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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03.08.2016

\+ W.P.(C) 7532/2014

RAHUL POPLI ..... Petitioner

versus

EMPLOYEES STATE INSURANCE CORPORATION & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Sonali Malhotra and Mr. Amit Sanduja, Advocates

For the Respondents : Mr. Nimit Mathur and Mr. Yakesh Anand, Adv. for R-1 to R-3
Mr. Vaibhav Kalra, Adv. for R-4

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks the following reliefs:

    a) *writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction be issued and the Respondents be directed to immediately return the original documents of the Petitioner that were received by them at the time of giving admissions to the Petitioners and as mentioned in para-6 hereinabove;*

    b) *writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction be issued* *and the Respondents be directed to withdraw and cancel the surety bond dated 23.04.2011, which has been got executed from the Petitioner under coercion;*

c) *awarding the Cost of the Petition in favour of the Petitioner; and*

d) *Any other relief, which this Hon'ble court may deem fit and proper under the circumstances of the case, may also be granted in favour of the Petitioner.*

2. The contention of the petitioner is that, the petitioner completed MBBS in 2011. In April, 2011 the petitioner cleared Post Graduation Medical Entrance Examination conducted by Guru Gobind Singh Indraprastha University-Respondent No. 4.

3. The petitioner was allotted a seat in respondent no. 4. The petitioner executed a bond in favour of Registrar of respondent no. 4 in terms of Clause 18(xii) of the prospectus in the sum of Rs. 3 lakhs.

4. The petitioner was also required to execute a surety bond in favour of respondent no. 1 in the sum of Rs. 7,50,000/-. It is contended that the petitioner was not told about the requirement of executing the bond at the time of counseling but was required to execute the bond after the counseling was over and the petitioner had already been allotted a seat. Since the petitioner had no other option, the petitioner executed the bond. At the time of seeking admission, the petitioner was also required to submit all the original documents which, the petitioner did. It is contended that the documents were deposited with respondent no. 1 to 3 under instructions

from respondent no. 4, which was a condition in the bond submitted to respondent no. 4.

5. The petitioner has completed the course and on completion of the course the petitioner sought release of the original documents. However, the original documents have not been released by respondent no. 1 to 3. The contention of the petitioner is that the bond which was executed by the petitioner in favour of respondent no. 4 stands discharged, in as much as, the bond was for completing the course and since the petitioner has completed the course, the bond is liable to be discharged. It is contended that there is no condition in the surety bond executed in favour of respondent no. 1 to 3 that they could retain the original documents.

6. Learned counsel for respondent no. 1 to 3 submits that the petitioner continues to be bound by Clause 20.4 of the Brochure which states that the documents would be returned only after completion of the course or on payment of bond money. It is contended that the petitioner has breached the condition of the bond submitted to respondent no. 1 to 3 and as such in terms of Clause 20.4, the documents cannot be released. It is further contended that the petitioner was duly informed at the time of counselling that the petitioner would also have to submit a surety bond with respondent no. 1 to 3.

7. Learned counsel for respondent no. 4 submits that the petitioner has completed the course and the bond executed in their favour stands discharged. He submits that in so far as respondent No. 4 is concerned, there is no embargo on the release of the original documents as the conditions

stipulated by Clause 20.4 stand satisfied.

8. Clause 20 of the prospectus reads as under:-

"20. Bond

20.1 A bond of Rs 3.0 lacs on a non judicial stamp paper with two sureties will have to be submitted by each candidate at the time of counselling in the prescribed format as per annexure III.

20.2 The bond money of Rs 3.0 lacs shall be paid by the student to the institution under the following circumstances:

(i) If the student does not join the course at the allotted institution on or before the stipulated date.

(ii) If the student leaves the course before its completion.

(iii) If the admission/ registration of the student is cancelled/terminated by the university on account of unsatisfactory performance / misconduct / indiscipline.

20.3 Such students who withdraw their admission by due date i.e 02/05/2011 in the manner as laid down in para 15.0 above, then the bond submitted by them during first counselling shall be treated as null and void.

20.4 The original certificates of the student would be kept in the custody of the admitting institution and would returned only after completion of the course or on payment of bond money, as the case may be.

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9. Reading of Clause 20 of the prospectus shows that the students

seeking admission have to execute a bond in the sum of Rs. 3 lakhs. The condition of the bond is that in case the student does not join the course at the allotted institution on or before the stipulated date or if the student leaves the course before its completion or if the admission/registration of the student is cancelled/terminated by the university on account of unsatisfactory performance / misconduct / indiscipline, the bond money would have to be deposited. Clause 20.4 stipulates that the original certificates of the student kept in custody would be returned only after completion of the course or on payment of bond money. The petitioner has admittedly completed the course and as stated by counsel for Respondent No. 4, the bond in their favour stands discharged.

10. The surety bond which was executed by the petitioner in favour of respondent no. 1 to 3 reads as under:-

> ***"SURETY BOND***
>
> *KNOW ALL MEN BY THESE PRESENTS THAT I Dr. Rahul Popli son of Shri Hari Krishan Popli residing at 31/3 Old Rajinder Nagar, New Delhi-110060 (Residential Address) (hereinafter called the Bounden) and (I) Shri Hari Krishan Popli s/o Sh. K.C. Popli (hereinafter called 'the sureties') do hereby bind ourselves and each of us & our respective heirs, executors & administrators residing at ________________ (Here enter address) jointly and severally to pay to the Employee's State Insurance Corporation (hereinafter referred to as 'the Corporation') on demand the total amount of Rs. 7,50,000 (Rupees Seven lakh fifty thousand only) with interest @ 15% towards failure to fulfil the obligation/for violation of the condition here-in-after mentioned.*
>
> *WHEREAS the Bounden Dr. Rahul Popli has been*

selected to undergo M.D. Anesthesiology (here enter the name of the course of study) on the basis of merit Central/State/Stake Holder quota in ESI PGIMSR (Name of the PGIMSR) for a period of three/two years.

AND WHEREAS the Corporation have agreed to incur the expenses on condition that after successful completion or of ESI scheme of the State Government as the case may be for a period of five years anywhere in India and also subject to the terms and conditions hereinafter appearing and the bounden and the sureties have agreed to the same.

NOW the condition of the above written obligation is that in the event the Bounden discontinues the study or after completion of the Post Graduate Course of study to which he/she selected, fails to serve the Corporation for period of five years, the Bounden and sureties shall forthwith pay to the Corporation on demand the total amount of Rs. 7,50,000/- (Rupees Seven lakh fifty thousand only) with interest @ 15% towards failure to fulfil the obligation. The bond is legally binding on the bounden and the sureties and upon the payment of such sum the above written obligation shall be void and of no effect otherwise this shall remain in full force and effect.

PROVIDED further that the bounden and the sureties do hereby agree that if the Bounden discontinues the study or after completion of Post Graduate Course of study to which he/she was selected, fails to serve the Corporation for a period of five years, it may be construed as professional misconduct and the fact reported to the Medical Council of India or of the Medical Council of the State concerned for suitable action including cancellation of Registration by the Council.

PROVIDED further that the bounden and the sureties do hereby agree that all sums found due to the Corporation under or by virtue of this bond shall be recovered jointly and severally from them and their properties moveable and immoveable as if such dues were arrears of land revenue under the provisions of *the Revenue Recovery Act for the time-being in force or in such other manner as the Corporation may deem fit.*

Provided further that it is not necessary for the Corporation to sue the bond holder before taking action on the surety, under this bond and the liabilities of the sureties in Co-extensive with that of the Bounden and shall not be affected by the Corporation giving time or any other indulgence to the bounden or by the Corporation varying of the terms and conditions herein contained."

11. Reading of the surety bond which the petitioner has executed in favour of respondent no. 1 to 3 shows that there is no such condition or stipulation that the original documents of the petitioner can be retained in case of breach of the surety bond. Since, there is no condition that the original documents would remain in the custody of the respondents 1 to 3 till the surety amount is paid by the petitioner, the action of the respondents 1 to 3 in retaining the original documents of the petitioner cannot sustain.

12. The reliance placed by the counsel for the respondents 1 to 3 on clause 20 of the prospectus is misplaced. Clause 20 of the prospectus is independent of the surety bond which was executed by the petitioner in favour of respondent no. 1 to 3. The stipulation like the one in clause 20.4, which entitles retention of original documents till the course is completed, is not there in the surety bond executed in favour of respondent no. 1 to 3. as already noted above, the condition stipulated in Clause 20 of the prospectus has been satisfied and the bond executed in favour of respondent No. 4 stands discharged.

13. In view of the above, the retention of original documents by respondent no. 1 to 3 is illegal. Respondent no. 1 to 3 are directed to forthwith return the original documents to the petitioner.

14. The controversy whether the surety bond executed in favour of respondent no. 1 to 3 is legal or not and whether the same has been breached by the petitioner or not is left open. The parties are at liberty to agitate the same in appropriate proceedings. The present order is without prejudice to the rights and contention of the parties in respect of the said controversy.

15. The writ petition is accordingly disposed of. No costs.

SANJEEV SACHDEVA, J

AUGUST 3, 2016
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HIGH COURT OF DELHI
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