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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8917 OF 2017

Gauri d/o Narayan Khule,
Age: 20 years, Occ: Education,
R/o. Gauri Colony, Shivaji Nagar,
Sangamner, Tal. Sangamner,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's
The Principal Secretary,
The Health and Family Welfare
Department, Mumbai.
2. Shri. Wamanrao Ithape,
Homeopathic Medical College,
Through it's-
The President
Shri Ashokrao Wamanrao Ithape,
R/o. New Nagar Road, Sangamner,
Tal. Sangamner, Dist.Ahmednagar.
3. Wmanrao Ithape,
Homeopathic Medical College,
New Nagar Road, Sangamner,
Tal. Sangamner, Dist.Ahmednagar.
4. The Assistant Director,
Health Services, Nashik,
Tq. & Dist. Nashik.
5. The Maharashtra University
of Health Science, Nashik,
Tq. & Dist. Nashik.

..RESPONDENTS

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Mr K.N. Shermale, Advocate for petitioner;
Mrs M.A. Deshpande, A.G.P. for respondent Nos. 1 &
4;
Mr V.D. Hon, Senior Counsel i/b Mr A.V. Hon,
Advocate for respondent Nos. 2 & 3

**CORAM : SHANTANU S. KEMKAR &
NITIN W. SAMBRE, JJ.**

DATE : 8th AUGUST, 2017

ORAL ORDER : [PER NITIN W. SAMBRE, J.]

This petition is by the petitioner-student, who after clearing her 12th Standard Examination in 2014, was admitted to respondent Nos. 2 and 3 private Homeopathic College for pursuing B.H.M.S. Course. The petitioner is seeking issuance of directions to respondent Nos. 2 and 3 to return original documents of the petitioner, as she is not interested in pursuing the said Course and wanted to take admission at some other place.

2. It is the case of the petitioner that she was admitted in the Academic Year 2014-2015 in respondent No. 3 College in pursuance of admission rules set up by the Commissionerate of Common Entrance Test Cell, Mumbai. The petitioner claimed

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that she has appeared for first year B.H.M.S. Course and then decided to discontinue her admission and as such, moved prayer in writing with respondent Nos. 2 and 3, praying return of original documents viz., mark sheet of SSC (10th Standard), mark sheet of 12th Standard, leaving certificate, caste certificate etc.

3. Pursuant to the notice ordered by this Court, respondent Nos. 2 and 3 appeared and have filed their reply vide affidavit dated 7th August, 2017 denying the claim of the present petitioner. According to respondent Nos. 2 and 3, it is a private College being administered out of fees received from the students. According to the said College, discontinuation of admission at the behest of student causes monetary loss for next five years, as respondent Nos. 2 and 3 will not be in a position to recover fees in view of discontinuation of admission, as such, will be required to pay from their own pocket towards expenses to be incurred towards maintaining a vacant seat which was

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occupied by the petitioner. According to Mr. Hon, learned Senior Counsel, the petitioner should be directed to deposit the entire Course fees and then only she can collect the original documents from the office of respondent Nos. 2 and 3.

4. So as to substantiate his contentions, he has tried to rely upon the information brochure and clauses therein. According to him, clause 1.13 of the information brochure contemplates penalty to be recovered from a student, who is resigning from admission against a seat already granted after cut-off date. According to Mr. Hon, learned Senior Counsel, respondent Nos. 2 and 3 will not be in a position to admit any other student against the seat, on which the petitioner was admitted.

5. Considered rival submissions. The petitioner was admitted for the Course in question, particularly, after having cleared 12th Standard Examination in 2014 from Science Faculty.

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6. It is admitted position on record that the petitioner was admitted with respondent Nos. 2 and 3 College in the Academic Session 2014-2015 to B.H.M.S. Course. It appears that the petitioner has appeared for the first year of B.H.M.S. Examination, however, was unable to clear the same though made attempt thereafter.

7. In the aforesaid background, she has requested for return of the original documents by narrating reason that she want to take admission at some other institute.

8. Respondents, while denying the prayer, though have come out with a case that it being a private institute, is required to survive on fees to be received from the students. In the aforesaid background, one has to examine as to whether respondent Nos. 2 and 3 can detain the documents of a candidate like petitioner, if such candidate does not wish to continue admission with respondent Nos. 2 and 3 College. It is also required to examine

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whether powers vest with respondent Nos. 2 and 3 to detain the documents for non payment of fees for entire B.H.M.S. Course, since petitioner has requested for cancellation of admission after period of about more than two years. Though learned Senior Counsel for respondent Nos. 2 and 3 has invited attention of this Court to the information brochure for MHT-CET-2016, however, admission of the present petitioner was governed by the information brochure for MHT-CET-2014-2015 and not of 2016. Though the submission is made that these admission rules are similar to that of Rules of 2014-2015, upon perusal of entire rules, this Court hardly notice any power with respondent Nos. 2 and 3 to deny request of a student of return of the original documents in case, such student intend to discontinue medical course, to which, she was admitted even in a private Homeopathic College.

9. Rule 4.1 of information brochure deals with the payment of fees, which contemplates that fee is to be paid in respective College by demand

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draft, whereas rule 4.2 provides for refund of fees by the College after change of College/Course or cancellation of admission. Rule 5 also deals with cancellation of admission, whereas Rule 7 deals with service bond and penalty.

10. Apart from above rules, this Court hardly see any other relevant rules, which deal with issue of return of fees and cancellation of admission. So far as rule 4.2 is concerned, same deals with refund of fees after cancellation of admission, gives a right to student to cancel admission by submitting application. Rule further provides for refund of fees to candidate if such cancellation is before cut-off date after deducting Rs.1500/-, whereas after cut-off date, no fee refund is provided.

11. So far as rule 5 is concerned, which deals with cancellation of admission; a candidate's admission stand cancelled, in case such student fails to join College at which he is selected on or

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before the date prescribed by the competent authority. Rule further prescribed, in case, candidate intend to cancel admission, the College should accept cancellation request and inform the competent authority. Penalty is provided in Rule 7 for lapse of seat and such penalty can be imposed only in case of lapse seat meant for MBBS or BDS Course, as could be apparent from plain reading. As such, rule of penalty or lapse of seat, in no case will be attracted to the case of petitioner.

12. Apart from above, there is no embargo on the right of petitioner or any power could be noticed in respondent Nos. 2 and 3 to deny the prayer of the candidate like petitioner for return of the documents. It must be taken note of the fact that what is sought to be claimed by the petitioner is, return of the original documents and not refund of the fees.

13. Even otherwise, upon scanning entire rules, this Court hardly notice that in case of petitioner, who was admitted to B.H.M.S. Course,

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by virtue of admission brochure or any other enactment, respondent Nos. 2 and 3 College can refuse or deny the return of documents for want of payment of Course fees for entire B.H.M.S. Course.

14. In the aforesaid background, this Court hardly notice any impediment in granting prayer of the petitioner thereby ordering return of the documents. As such, writ petition stands allowed in terms of prayer clause (B), which reads thus :

“(B) The Rule may kindly be made absolute by allowing this writ petition, thereby directions to the respondent Nos. 2 and 3 to return the original documents of the petitioner.”

15. Respondent Nos. 2 and 3 are directed to return the original documents to the petitioner within three days from the date of communication of this order.

(NITIN W. SAMBRE, J.) (SHANTANU S. KEMKAR, J.)