

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

WRIT PETITION NO. 10440 OF 2016
WITH CA/5465/2017 IN WP/10440/2016

NIHAR VIJAY NAVANDAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.P.S.Pawar, Advocate for the petitioner
Mr.C.S.Kulkarni, AGP for the respondents/State
Mr.S.V.Dixit, Advocate for respondent No.3

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.
DATED : 07.12.2017**

P.C. :-

. We have heard Mr.Pawar, learned Advocate for the petitioner and Mr.Dixit, learned Advocate for the respondent. In the writ petition the petitioner claimed directions against respondent No.2 to return the original documents of the petitioner. Further sought direction against the respondent not to demand Rs.35,00,000/- as penalty. Mr. Pawar, learned Advocate submits that the respondent has returned the original documents to the petitioner and demand of penalty also does not survive. By filing civil application the petitioner has claimed refund of amount deposited with the respondent. The petitioner had deposited an amount of Rs.7,29,500/- with

respondent No.3 college at the time of taking admission to the 1st year of MBBS course for the academic year 2016-2017.

2. Learned Advocate submits that within the notified period the petitioner could get admission in the Government college, the petitioner shifted to the government college as such he is entitled to refund of the fees which is deposited with respondent No.3 college. The learned Advocate relies on the judgment and order of the Division Bench of this Court delivered at Nagpur in writ petition No.5952/2016 dated 27.10.2016.

3. Mr. Dixit, learned counsel for the respondent submits that the petitioner is not entitled for refund of fees. The admission of the petitioner was cancelled after cut off date i.e. 30.09.2016.

4. According to the learned counsel the brochure itself prescribed the condition that the candidate is not entitled for refund of fees more particularly as per Clause-15-b of the Maharashtra Un-Aided Private Professional Education Institution (Regulation of Admission) to the full time professional under Graduate Medical and Dental Courses Rules, 2016. The petitioner is

not entitled for the refund of the fees after cut off date declared by the MCI or DCI. The cut off date as declared by MCI was 30.09.2016 and admission of the petitioner was cancelled on 07.10.2016. Respondent No.3 college could not have admitted any student after the cut off date of 30.09.2016. The seat has gone vacant. Learned counsel also relies on the government resolution dated 31.05.2016 to contend that respondent No.3 is entitled for penalty of Rs.10,00,000/-.

5. It is not disputed that the petitioner was given admission to the 1st year of the MBBS Course with respondent No.3 college and the petitioner had deposited fees of Rs.7,29,500/- with respondent No.3 college. It is also not disputed that subsequently the petitioner got admission in the government medical college and his admission with respondent No.3 college was cancelled on 07.10.2016.

6. It appears that the last cut off date for admission of the students with the un-aided medical college was 30.09.2016 but that date was extended for the government medical college. In view of that the petitioner could get admission in the government medical college even after cut off date fixed for admission to

the un-aided Medical College. The date was extended for taking admission to the government college for 15% all India quota pursuant to the order of the Apex Court and the petitioner could get benefit of the same. However, the fact remains that seat in the respondent No.3 college could not have been filled in after the petitioner cancelled the admission on 07.10.2016.

7. Rule 15 of the Rules, 2016 reads as under:-

15. Payment of fees- The fee for the course shall be paid at the respective college by Demand Draft from any Nationalised or Scheduled Commercial Bank in favour of Dean or Principal of College, as applicable.

(a) Refund of Fees by the College After Change of College or Course or cancellation of Admission : The candidate who has been admitted and desires to cancel the admissions shall submit application to the respective college or institute to cancel admission. The refund of fees to such candidate admitted in the college shall be made after deduction as under:-

(i) Before cut-off date as declared by MCI or DCI Rs.1500/- (Rs.One Thousand Five Hundred only) to be deducted and rest of the fees to be refunded.

(ii) On or after cut-off date as declared by MCI or DCI No refund of fees;

(ii) The Dean or Principal of the college shall be responsible for making refund of the fees,

after receiving cancellation letter from the candidate. If the candidate expires or become invalid within 90 days from the date of admission, no deduction shall be made.

8. Reading the said rule it is manifest that on or after cut off date as declared by MCI and DCI, no refund of fees is permissible. Undisputedly, the cut off date was 30.09.2016. The said rules would squarely apply to the present case.

9. In the light of above the prayer made in the Civil Application by the petitioner cannot be considered. Civil application as such is rejected. The prayer made in the writ petition does not survive. In view of above the writ petition stands disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]