

**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.23104 OF 2016 (O&M)
Date of Decision:03.04.2017**

Rajat Satija

.....Petitioner

Vs.

Pt. B.D. Sharma and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Jai Vir Yadav, Advocate for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Amit Rao, Advocate for respondent No.2.

Mr. Vikas Suri, Senior Standing Counsel for
respondent No.3.

RAKESH KUMAR JAIN, J.(Oral)

The petitioner has prayed for a writ in the nature of mandamus seeking a direction to respondent No.3 to return his original testimonials/ documents and also the tuition fee of ₹24,000/- and further to desist from insisting upon filling the ESIC UG Bond as a condition precedent for returning the documents.

In short, the petitioner after qualifying 10+2 examination, appeared in the NEET-2016 Examination and passed it for the purpose of his eligibility to take admission in the MBBS/BDS Course in the session 2016-2017 in the Pt. B.D. Sharma University of Health Sciences, Rohtak.

There are six Medical Colleges affiliated to the University, namely, Pt. B.D. Sharma PGIMS, Rohtak, BPS Government Medical College for Women Khanpur Kalan (Sonapat), Shaheed Hasan Khan Mewati Govt. Medical College, Nalhar (Mewat), Maharaja Agrasen Medical College, Agroha (Hisar), ESIC Medical College & Hospital, Faridabad and Post Graduate Institute of Dental Sciences, Rohtak. The petitioner appeared in the second counseling on 21/22.9.2016 for admission in respondent No.3- College. He was offered admission in respondent No.3- College, i.e. Employee's State Insurance Corporation (ESIC) Medical College & Hospital, Faridabad. He deposited tuition fee by way of demand draft of ₹24,000/-. The name of the petitioner appeared at No.6 with merit No.67 for admission in General Category. Since the petitioner was seeking upgradation of admission in other Colleges for the purpose of doing MBBS/BDS Course, therefore, he got a chance of admission in NDMC Medical College, New Delhi on the basis of his merit on 28.9.2016. He deposited the entire dues in the NDMC Medical College, New Delhi and started attending the classes but since the original documents of the education of the petitioner were retained by respondent No.3, he was asked by the NDMC Medical College, New Delhi to submit the original documents upto 15.10.2016. The petitioner requested the Dean of respondent No.3- ESIC Medical College, Faridabad by letter dated 1.10.2016 for the purpose of seeking cancellation of his admission and for refund of deposited fee and return of the original documents. It was followed by another request dated 4.10.2016 which was duly received vide receipt No.5733. The petitioner also made a request through his mother on 5.10.2016 for return of his original documents which was received in the

Office vide Diary No.1050 and also written a letter to the Director, Directorate of Medical Education and Research, Haryana on 10.10.2016. Since the original documents of the petitioner were not being returned along with the tuition fee, therefore, the petitioner has approached this Court for issuance of a writ in the nature of mandamus.

Counsel for the petitioner has submitted that in the prospectus for admission through online counseling of MBBS/BDS – 2016 issued by respondent No.1, it is provided, in the important instructions at a glance, that “Candidates will produce all the relevant certificates in original including resgistration-cum-counseling for receipt for verification along with provisional allotment letter, a signed print out of their online application form, their locked choice generated from the website before Admission Committee before reporting in the institute.” It further provides that “In case a candidate after having deposited required fee for admission to MBBS/ BDS course 2016-17 decides to leave the MBBS/BDS Course before the last round of counseling, the fee deposited by the candidate will be refundable to him/her by the concerned college if the seat so vacated is filled by some other candidate.” It also provides that “In case of ambiguity about any rule, the interpretation of the same by the University shall be final.” It is further submitted that the original documents of the petitioner are not being returned by respondent No.3 only on the ground that the petitioner had to fill the UG Bond of ₹7.5 lakhs i.e. if the petitioner deposits the said amount only then the documents would be returned to him.

During the course of hearing, this Court passed an order on 8.3.2017 which reads as under:-

“The petitioner obtained 154 State rank and 2485 all India rank in general category in the NEET in the Session 2016-17. He applied for admission in the college of respondent No. 3. The Ist counseling took place on 12.09.2016. In the IInd counseling held on 23.09.2016, seat applied by the petitioner was offered and on 23.09.2016 the petitioner deposited ₹24,000/- towards tuition fees and the original documents. At that time, it was mentioned by hand on check list that the petitioner had to submit UG bond as well besides paying other dues on or before 5.10.2016. Last counseling took place on 29.09.2016. Thereafter, the petitioner made a request on 30.09.2016 orally and in writing on 1.10.2016 to relinquish his seat in the college of respondent No. 3 and requested for refund of the amount deposited along with the original documents. A meeting was held by the college and it was decided that the original document of the petitioner would be returned subject to his furnishing the UG bond as prescribed or in the alternative on payment of ₹7.5 lacs. Written request was made on 1.10.2016, emergent meeting was held on 3.10.2016 and representation was made by the petitioner to the University on 4.10.2016 on which the University took the decision on 17.10.2016 saying that the original documents of the students like the petitioner be returned after following '*due procedure*'.

Counsel for respondent No. 3 has submitted that since the petitioner had relinquished the seat, offered to him, after the last date of counseling, therefore, the college had to suffer the

loss of one seat as the seat vacated by the petitioner was not filled. It is also submitted that the University is not coming forward to describe the word '*due procedure*'.

In order to appreciate the rival contentions, it is necessary that respondent No. 3 files an affidavit disclosing as to how it has been put to loss after the vacation of seat by the petitioner and the University shall also disclose the meaning of '*due procedure*' used in the letter dated 17.10.2016.

The necessary affidavit by respondent No. 3 and detailed reply by respondent Nos. 1 and 2 be filed on or before the next date of hearing.

Adjourned to 22.03.2017.”

Apropos, the University has filed reply dated 21.3.2017 to explain the meaning of 'Due Procedure' in which it is mentioned that “It is further important to mention here that as per the prospectus for admission in MBBS/BDS Session 2016 issued by the answering respondent University i.e. Annexure (P-1) there is no such rules for furnishing the UG bond, therefore, the stand of the respondent No.3 college regarding furnishing the UG bond is illegal. The answering respondent University is not taking any UG bond from any of the students who take admission in University for UG courses except NRI candidates. The condition of furnishing the bond at the time of admission is mentioned in the MBBS/ BDS prospectus issued for NRI candidates and PG courses only. Therefore, the meaning of “after following due procedure” is that the college shall return the original certificates without asking for the bond money and after following the rule mentioned above.”

Counsel for the petitioner has submitted that the University has already issued a direction on 17.10.2016 to all the Directors/ Principals of Constituents Affiliated Medical/ Dental/ Nursing/ Pharmacy/ Ayurvedic/ Homeopathic/ Physiotherapy Colleges to UHS, Rohtak that “the matter has been considered by the University and it has been decided that the original certificates and other documents of the students who want to get their admission cancelled must be returned to them immediately after following the 'Due Procedure'.” Since the due procedure does not talk of submission of the UG Bond as stated by the University in its reply dated 21.3.2017, therefore, respondent No.3 cannot insist for submission of the UG Bond of ₹7.5 lakhs as a condition precedent for releasing the documents of the petitioner.

Learned counsel for the petitioner has though been very fair in contending that as per Important Instructions at a glance, already referred, in case the petitioner had decided not to study any more after taking admission then the respondent No.3 would be well within their right to forfeit the tuition fee but cannot insist upon the submission of the UG Bond of ₹7.5 lakhs.

On the other hand, counsel for respondent No.3 has submitted that the ESI Medical College & Hospital is being run from the ESI Funds and a meager tuition fee is being charged as against the fee being charged by the other Medical Colleges. It is also submitted that the students who take admission in the ESI Medical College & Hospital are supposed to serve the ESI Dispensaries for five years so that the time, amount and energy spent on such students may be of some use to the ESI Corporation

and the students who pass out from the ESI Institutes may serve in their dispensaries. In this regard, he has referred to the format of Bond to contend that it is specifically mentioned therein that if the student discontinues the study even then he has to fill up the UG Bond.

Nothing has been brought to my notice, at the instance of respondent No.3, from the record, that any such resolution has been passed by the Corporation, insisting upon the submission of the UG bond of ₹7.5 lakhs which has now been enhanced to ₹10 lakhs for the purpose of continuation of the study. The resolution which has been placed on record rather reads differently and is reproduced as under:-

“BOND

4.1 Presently, the students joining ESIC institutions execute Bond for compulsory service with conditions broadly as under:

05 years compulsory service after completion of the course (UG- MBBS & BDS and PG- MD/MS)

Payment of Rs.7.5 lacs in the event of failure to serve under Bond.”

(B) FOR UNDER-GRADUATE COURSES

1. Candidates seeking admission in ESIC Medical/ Dental Colleges may continue to execute ESIC Bond for compulsory service after successful completion of the UG Course.

2. The **tenure of service** under ESIC-residency Scheme (compulsory service under Bond) would continue to be

05 (five) years for UG (MBBS/BDS) pass-outs. **Also, scheme for utilization of services of these doctors would have to be devised.”**

The utilisation of Dental graduates under Bond does not appear to be feasible in the ESIC system at present.

3. The **Bond amount** may be enhanced to **Rs.10 lacs**, in event of failure to comply with conditions under bond.
4. The services of these graduate doctors may be meaningfully utilized at locations (ESIC dispensaries and hospitals) under guidance and supervision, depending on the vacancies, for now.
5. The posts of UG pass-outs for appointment as ESIC-JRs (Scheme yet to be devised), **to the extent of the students passing out that year, would be over and above the sanctioned posts of GDMOs in the ESIC system** to cater for the subsequent expansion of the scheme.

- (C) **The utilization of services of their doctors would be guided by the requirements of the ESIC. In the event of their services not being required, the ESIC would reserve the right to release these doctors from conditions of Bond.**

This would be applicable to a large extent for graduate doctors, especially Dental graduates. Presently, the first batch of 30 Dental Surgeons has completed internship

from ESIC Dental College, Rohini while here are only 14 vacant posts of Dental surgeons across India. These posts have already been advertised.”

Learned counsel for respondent No.3 has also failed to show the source from where the words “Discontinue the study” have been added in the format of Bond. Rather, he has not denied that every decision has to be taken by the Corporation through resolutions and in the absence of any resolution brought to the notice of this Court, the language used in the format cannot be relied upon to the detriment of the interest of the petitioner.

Even otherwise, there is no nexus to be achieved in order to ask for the bond of ₹7.5 lakhs for the UG Bond because the said amount of ₹7.5 lakhs is asked in case the student, having become the MBBS Doctor from the ESIC, refuses to serve for five years continuously in any of the ESI dispensary/ hospital. The Bond is thus has a nexus with the service and not with the admission. Thus, I am of the considered opinion that the said Bond has no nexus with the admission but with the service only, therefore, respondent No.3 has committed a patent error in asking the petitioner for submitting the UG Bond of ₹7.5 lakhs as a condition precedent for releasing his testimonial/ educational certificates. Consequently, finding merit in the present petition, the same is hereby allowed and direction is issued to respondent No.3 to return the original documents of the petitioner which were submitted by him at the time of taking admission, forthwith against receipt, so as to enable him to submit the same to the College where he is presently studying. However, respondent No.3 may retain the tuition

fee of ₹24,000/- deposited by the petitioner in terms of Clause 17 of the Important Instructions at a glance of the Prospectus.

With these observations, the present petition is disposed of.

April 03, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No