

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

BENCH AT AURANGABAD.

WRIT PETITION NO.11707 OF 2017

Dr.Kanchan Gangaram Sakharkar,
Age 30 years, Occ.Student,
R/o Flat No.A5/G2, Shikhar
Construction, GG Complex,
Seminary hills,
Nagpur-440006. ... Petitioner.

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya,Mumbai-400 032.

2. Commissioner, Tribal
Development Commissioner Office,
Nashik.

3. Ekatmik Adivasi Vikas
Prakalp, through Project
Officer, Rajur, Taluka
Akole, Dist.Ahmednagar.

4. Pramashree Dr.Vithalrao
Vikhe Patil Medical College
Ahmednagar, through its
Principal.

5. Maharashtra University
of Health Sciences, Vani,
Dindori Road, Mhasrul,
Nashik-422003. ... Respondents.

...

Mr.Amit Yadkikar, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.A.V.Hon, advocate for Respondent No.4.

...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

Date : 07.03.2018.

PER COURT :

1. The petitioner belongs to Scheduled Tribe category. The petitioner was admitted to the M.D. course with Respondent No.4 College in the academic year 2014-15 after having acquired M.B.B.S. degree.

2. Mr.Yadkikar, learned counsel for the petitioner submits that upon inquiry being made by the petitioner, the petitioner was assured by the Respondents that as the petitioner belongs to S.T. category, the petitioner would be entitled for reimbursement of the fees. The petitioner was reimbursed fees of the first year amounting to Rs.6,35,000/- (Rupees six lac thirty five thousand) in September 2016. The petitioner was allowed to keep terms for the 2nd and 3rd year. The petitioner also appeared for third year

examination. The result of the petitioner's third year is also declared and the petitioner has passed her M.D. course. According to the learned counsel, the petitioner had not paid the fees for the 2nd and 3rd year. The Respondent No.4 had informed that the fees would be credited directly by Respondent No.3. The Respondent No.4 intimated the petitioner on 1.7.2016 that there is a Government dues of Rs.13,33,500/- (Rupees thirteen lac thirty three thousand five hundred) about the fees of the petitioner and the petitioner was asked to deposit the same. The learned counsel submits that the petitioner approached the authorities for refund of the fees for the year 2015-16 and 2016-17. The petitioner was denied the same. The learned counsel submits that the father of the petitioner is a retired Government employee and is not in a position to bear such huge fees of the Respondents. It was only upon the assurance that the petitioner would not be required to pay the fees, the petitioner had taken admission in the M.D. course. The learned counsel submits that the Respondent College is not demanding the petitioner to

deposit the fees for all the three years i.e. Rs.19,68,500/- (Rupees nineteen lac sixty eight thousand five hundred) and interest thereon. The learned counsel further submits that the Government Resolutions dated 21.1.2012 and 28.8.2009 relied by the Respondents is inconsistent with the Resolution of Central Government dated 1.7,2010. The learned counsel submits that for all post graduate courses the benefit of scholarship is accorded by the Central Government through Ministry of Tribal Affairs. The Respondents can not contend that the post graduate course in Medicine would not be given the benefit of scholarship/fees reimbursement to the Scheduled Tribe students.

3. The learned counsel submits that the fees is demanded by the Respondents at the fag end of the third year of the course. Even the fees of the first year is reimbursed to the petitioner. In the first year itself if the Respondents would have made it clear to the petitioner that petitioner would not be entitled for the benefit of fees reimbursement then the

petitioner would not have undergone the course as it was beyond the financial capacity of the father of the petitioner to pay such huge fees. The learned counsel submits that after having refunded the fees of the first year, the petitioner had a legitimate expectation that even the fees for 2nd and 3rd year would be reimbursed. The learned counsel to buttress his submission relies on the judgment of the Apex Court in the case of **"Union of India (UOI) and another Vs. Arulmozhi Iniarasu and others"** reported in **(2011) 7 SCC 397** and another judgment of the Apex Court in the case of **"Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries"** reported in **(1993) 1 SCC 71**.

4. Learned A.G.P. for the Respondents submits that on two counts the petitioner is not eligible for fees reimbursement. The benefit of fees reimbursement and/or scholarship is governed by the Government Resolution dated 21.1.2012. The course of post graduation in Medicine is not covered under the said Government Resolution and even otherwise the income of the parent of the

petitioner is more than the minimum fixed by the Government. The learned A.G.P. also relies on the G.R. dated 1.7.2010.

5. With the assistance of the learned counsel for respective parties, we have considered relevant Government Resolutions.

6. The right to prosecute post graduation studies is not within the contour of fundamental right. The benefit of fees reimbursement/scholarship would be governed by the policy of the Government which is spelt out by various Government Resolutions introduced by resorting to powers under Article 162 of the Constitution of India.

7. Reading the Government Resolutions, it is abundantly clear that post graduate course in Medicine is not included in the policy giving benefit of fees reimbursement.

8. The policy of the Central Government as relied by the learned counsel Criapp5741for the

petitioner also would not enure to the benefit of the petitioner inasmuch as means test prescribed therein is that the parents/guardians' income from all sources does not exceed Rs.2,00,000/- (Rupees two lac only) per annum. It is submitted that subsequently that limit has been increased to Rs.2,50,000/- (Rupees two lac fifty thousand) per annum. Admittedly, the income of the petitioner's parent at the relevant time is more than the said limit prescribed.

9. Reliance is placed by the petitioner of a benefit of fees reimbursement to one of the student of Respondent No.4 College, undergoing post graduate course. Explanation is given by the Respondent State that the said benefit was wrongly given. The petitioner can claim equality in legal rights. If something has been paid erroneously or by mistake, that would not instill a right in the petitioner to claim equality.

10. The other aspect of legitimate expectation would not also be of any avail to the petitioner.

11. The legitimate expectation would arise if the policy when the petitioner had taken admission prescribed for fees reimbursement and subsequently the same was disbanded. In such case, the petitioner would have certainly claim legitimate expectation.

12. In the present matter since inception, the policy was not in vogue of giving any benefit of fees reimbursement. It is by mistake the Respondents reimbursed the fees of first year to the petitioner. The same would not create any vested right in the petitioner, so as to suggest that the right has been crystalised and could not be divested.

13. The judgment in a case of **"Union of India (UOI) and another Vs. Arulmozhi Iniarasu and others"** (supra) was with regard to the relaxation in age limit, wherein the parties had changed their position pursuant to the representation made.

14. As stated above, the policy never

existed for giving benefit of fees reimbursement to the students of the Scheduled Tribe category for post graduate course in Medicine and after the petitioner had paid the first year fees, wrongly the fees reimbursement was made would not be sufficient to imply legitimate expectation in favour of the petitioner.

15. We have already concluded that the policy does not exist for giving benefit of fees reimbursement to the petitioner, however, the Respondents reimbursed first year's fees to the petitioner and now has demanded repayment of fees for all three years. We will have to strike balance between the right of the Respondents and the equities.

16. It is a matter of record that the petitioner has already completed the course and at the fag end of the third year, the Respondents demanded the fees for all the three years from the petitioner when in fact, first year's fees paid by the petitioner was reimbursed by the Respondents. In such circumstance, equities will

have to be adjusted.

17. It would create hardship if the petitioner is asked to again refund the amount which the petitioner was paid. To strike the balance, we pass the following order :

(a) The Respondents shall not claim recovery of fees which is already reimbursed to the petitioner of the first year.

(b) The petitioner shall pay fees of the remaining two years of Rs.13,33,500/- (Rupees thirteen lac thirty three thousand five hundred). For payment of the said amount, we are inclined to grant instalments to the petitioner. The petitioner shall instantly pay an amount of Rs.2,66,700/- (Rupees two lac sixty six thousand seven hundred) to the Respondent No.4 College. Upon payment of the said amount, the Respondent College shall deliver all the original documents, mark sheets and degree certificate of the petitioner.

(c) The petitioner shall give an undertaking to the Respondents that she would pay the remaining amount of Rs.13,33,500/- (Rupees thirteen lac thirty three thousand five hundred) after adjusting the amount of Rs.2,66,700/- (Rupees two lac sixty six thousand seven hundred) within a period of one year. The bond shall be executed by the petitioner with the Respondent College. The petitioner shall also give her changed address as and when the change of address takes place.

(d) In case the amount is not paid by the petitioner as undertaken by the petitioner, the Respondent No.4 College will be entitled to recover the same in all legal manner.

(e) The Writ Petition is accordingly disposed of. No costs.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

