

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2918 OF 2016

Umesh Pratap Singh ...Petitioner
Versus
Nashik District Maratha Vidya
Prasarak Samajs Medical College And Ors ...Respondents

**WITH
WRIT PETITION NO. 2919 OF 2016**

Amar Vilas Patil ...Petitioner
Versus
Nashik District Maratha Vidya
Prasarak Samajs Medical College And Ors ...Respondents

**WITH
WRIT PETITION NO. 3007 OF 2015**

Neha Venkatesh ...Petitioner
Versus
Nashik District Maratha Vidya
Prasarak Samajs Medical College And Ors. ...Respondents

**WITH
WRIT PETITION NO. 3008 OF 2015**

Swara Prashant Palekar ...Petitioner
Versus
Nashik District Maratha Vidya
Prasarak Samajs Medical College And Ors. ...Respondents

Mr.Digajmaan G. Mishra i/b Mr.Mangesh Bhende a/w Ms.Khushboo
R. Sherwani and Atvarish Varshi for the Petitioner in all Writ
Petitions.

Mr.N.V. Bandiwadekar a/w Mr.S.A. Mane for Respondent No.1 in all
Writ Petitions.

Ms.Kavita N. Solunke, AGP for Respondent Nos.3 and 4 in all Writ
Petitions.

**CORAM : B.R. GAVAI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 12th APRIL 2018

ORAL JUDGMENT (PER JUSTICE B.R. GAVAI)

1. Rule. Rule made returnable forthwith.

2. Heard by consent.

3. The petitioner has approached this Court being aggrieved by the notices issued by respondent No.1 dated 05th July 2005 thereby directing the petitioner to pay increased fees as determined by respondent No.2-Shikshan Shulka Samiti.

4. The facts of the present case are undisputed. All the petitioners had taken admission for MBBS course for the academic year 2000-2001 in the respondent No.1-college. It appears from the material placed on record that the respondent No.3-State of Maharashtra vide Government Resolution dated 25th January 2001 had considered the aspect with regard to the fixation of maximum fees payable by the students who have taken admission against the free seats in the private medical colleges as well as the students who had taken admission against the payment seats in the said college.

5. It would be relevant to reproduce the relevant part of the Government Resolution dated 23rd January 2001.

“GOVERNMENT RESOLUTION :- The Central Government has informed vide the above referred (no. (iy) letter dated 18-12-2000 that the upper limit of fees to be levied for three years commencing from year 2000-2001 for free and payment seats of Private Medical and Dental Colleges has been increased above the earlier prescribed limit. Taking this into consideration the Government approves the following fees to be levied per annum for free and payment seats students undergoing the academic course in Private Medical and Dental colleges.

Serial No.	Academic Branch	Fees of Free Seats	Fees for payment Seats
1	Medical	14950	1,26,500
2	Dental	9200	86250

2. The above mentioned fees structure will be applicable for 3 years from the year 2000-2001 that is for years 2000-01, 2001-02 and 2002-03 to all students studying during these years.

3. So far as payment seats in Private Medical colleges are concerned Rs.23000 per student per annum in case of colleges which do not have their own hospital facilities and Rs.8750 per student per annum in case of colleges having partial hospital facilities will have to be paid back by the concerned medical colleges to the Government/authority running the hospital utilized by

such Medical colleges.

Similarly in case of private Dental colleges which do not have their own hospital facilities Rs.11500 per student per annum will have to be paid by the concerned Dental college to the government/authority running the hospital.

4. All private Medical and Dental Colleges are intimated that they must levy fees only according to the fees structure fixed by the Government. In case of breach of the above mentioned conditions legal action will be taken against the concerned institutions.”

6. However, it appears that subsequently the matter went before the respondent No.2-committee for considering the fees for the academic year 2003-2004, 2004-2005 and 2005-2006. The respondent No.2-committee determined the same set of fees for all the students. On the basis of the recommendation of the respondent-committee the respondent No.1. issued notices to the petitioner on 05th July 2005 thereby directing the petitioner to pay fees at the rate of Rs.1,00,700/- per student.

7. It appears that originally the petitioners had approached this Court by Writ Petition No.4819 of 2005 being aggrieved by the said notice. The Division Bench of this Court

passed the order on 22nd July 2005.

“Rule. To be heard along with O. S. Writ Petition No.537 of 2005 and companion petitions. Interim relief in terms of prayer clauses (d) and (e) which read as follows :

“(d) That pending the hearing and final disposal of the Petition, the operation of the report-cum-finding of the 2nd Respondent committee (Ex.E) be stayed and the 1st Respondent be restrained by an order and injunction of this Hon'ble Court from acting upon the notice dated 5.7.2005 (Ex.D).

(e) that pending the hearing and final disposal of the petition, the 1st Respondent be ordered and directed to permit the Petitioners and other students whose names are given in Ex.A to use all college facilities as students including filling up of examination forms, issuance of hall ticket, appearing for examination, declaration of results etc.”

8. It further appears that in the said petition subsequently the aforesaid order was modified and the petitioners were directed to furnish bank guarantee of an amount of Rs.2 lakhs to the respondent No.1 vide order dated 17th December 2007.

9. However, it appears that when the said petition came up before the Division Bench of this Court the matter was sought to

be argued by two different counsel. The Division Bench therefore passed the following order on 13th February 2015.

“Since two petitioners have engaged advocate Mr.S.M. Sharma and the two others have engaged advocate Mr.Mangesh S. Bhende, it was not possible to hear both the counsel separately for the petitioners in the same petition.

Mr.Bhende, the learned counsel for the petitioner Nos.1 and 4 seeks permission to withdraw this writ petition with liberty to file a fresh petition as according to the petitioner Nos.1 and 4, their interest was not being safeguarded.

We permit the petitioner Nos.1 and 4 to file a separate petition. If the same is filed within a period of 15 days, the petitioners would get the benefit of the orders dated 22nd July, 2005 and 17th December, 2007.

The petitioner Nos.2 and 3 are permitted to delete the names of the petitioner Nos.1 and 4 from the array of the petition.

Writ petition stands disposed of as withdrawn so far as petitioner Nos.1 and 4 are concerned. ”

10. In pursuance to the aforesaid liberty these three petitions have been filed. As such the petitioner are protected by the interim orders passed by this Court dated 22nd July 2005 and

17th December 2007.

11. We find that the present petitions deserve to be allowed on the short ground. The perusal of the Government Resolution dated 23rd January 2001 would clearly reveal that separate figures, showing the outer limit of fees that can be charged for candidate belonging to free seats and payment seats have been ear marked in the said resolution. The perusal of the government resolution would reveal that the same has been done on the basis of the outer limits that is fixed by the Central Government.

12. We find that when the State Government had itself fixed two sets of different fees for the free seats and the payment seats and created two separate classes, it was not permissible for the respondent No.2-committee to have enhanced the fess subsequently for the academic year 2004-2005 onwards, by treating both free seats and payment seats in a same class. It is not in dispute that the candidates who were selected against the free seats were selected on their own merit, whereas the candidates who were admitted against the payment seats were from the management quota. The perusal of the Government Resolution dated 17th July 1997 would itself reveal that whereas the fee for the free seats were only Rs.14,950/-

per year, for payment seat it were Rs.1,25,500/- per year i.e. almost more than nine times. However, the committee under their recommendation have equated the fees to be paid by the candidates who belong two different classes and treated them equally. It is settled principle of law that equal treatment to equals and unequal treatment to unequals, to the recognized facet from Article 14 of the Constitution of India.

13. It will be relevant to note that the petitioners who had taken the admission had taken them on the basis of the fee structure that was notified in the Government Resolution. The impression that the petitioner's had gathered while taking an admission was that for free seats the tuition fess would be Rs.14,950/- per year i.e. much less as compared to the payment seats. We are therefore of the considered view, that the cases of the present petitioner would also be covered by the principles of promissory estoppel.

14. We are of the considered view that the approach of the respondent No.2-committee in equating two different classes under the Government Resolution is erroneous. By the Government Resolution dated 23rd January 2001, the fees were determined in the proportion of approximately one nine and directing them to be paid

cannot be said to be rational or reasonable. When the Government Resolution itself had kept a vast difference in the fees payable by the candidate admitted against free seats and the candidate against the payment seats, the approach of the respondent No.2-committee in treating these two classes similarly and directing them to pay the similar fees in our view violates the mandate of Article 14 of the Constitution of India.

15. It is to be noted that though the petitions have been pending for last more than two years neither of the respondents have chosen to file their replies. In that view of the matter the averments made in the petition have gone uncontraverted.

16. We are therefore inclined to allow the petition. We however make it clear that we are restricting the relief in the petitions only insofar as the petitioners who were admitted against the free seats are concerned and nothing in the order to be deemed to have effected the fees payable by the candidates admitted against the payment sets.

17. In the result the decision of the respondent No.2-committee insofar as increase in the fees of the petitioner is

quashed and set aside. The consequential notices issued by the respondent No.1 shall also stand quashed and set aside. The bank guarantee if any, submitted by the petitioners shall stand discharge.

(SMT.BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)