

\$~26

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16.03.2018

+ W.P.(C) 7230/2017 & C.M. Nos.29980/2017, 29981/2017

DR. DEVENDER PAL SINGH TOMAR & ANR.... Petitioner  
Through Ms. Noopur Singhal, Adv.

versus

UNION OF INDIA & ORS ..... Respondents  
Through Mr.Ripu Daman Bhardwaj,  
Adv. for R-1 to 3.  
Mr.T. Singhdev, Adv. for R-4.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**REKHA PALLI, J (ORAL)**

1. Vide the present petition, the Petitioners have sought a writ of mandamus directing the Respondent Nos. 1 and 2 to release their original documents, which were retained by the Respondent Nos. 1 and 2 on account of the Petitioners' failure to abide by the terms of the surety bond executed by them at the time of their admission in the institutes of Respondent Nos. 1 and 2.

2. The case set up by the petitioners is that, based on AIPGMEE counseling held in June, 2014, both the petitioners were selected as PG Trainee as M.S. (General Surgery) and, in accordance with the Information Bulletin for the admission to

Post-Graduate courses, they had executed a surety bond to serve as Short Service Commission Officers (SSC Officers) for five years with the Armed Forces Medical Services and pay a sum of Rs.25,00,000/- in case they were unwilling to join as SSC Officers upon completion of the said course.

3. It is an admitted case of the parties that the petitioners, while taking admission, had deposited their original MBBS certificates with the Academic Cell of the Respondent No. 2 and had also executed the surety bond of Rs.25,00,000/-. Though learned counsel for the petitioners seeks to contend that the petitioners were compelled to execute the said surety bonds, it is the contention of learned counsel for the Respondent Nos. 1 to 3 that, the said surety bonds were executed willingly by the petitioners.

4. Learned counsel for the petitioners further submits that, upon the petitioners successfully completing the M.S. Course and undergoing the requisite training, they were issued certificates to the effect that they had passed the M.S. Course, based on which they applied for the Super Specialty Course by appearing for the NEET Super Speciality M.Ch. Course – 2017. She contends that, despite being successful in the NEET Exam and having successfully completed their M.S. Course, the Petitioners have not been able to take admission in higher courses and appear in the counseling for the Super Speciality M.Ch. Course, for want of the requisite original documents, which have been illegally retained by the Respondent Nos.1 &

2 only because the petitioners, instead of joining service as SSC Officers, are desirous of undergoing higher studies. She, further, submits that the petitioners have written various letters to the Respondent Nos. 1 and 2 requesting them to release the original documents but to no avail.

5. On the other hand, Mr. Ripu Daman Bhardwaj, learned counsel appearing for Respondent Nos. 1 to 3, opposes the present petition by contending that, once the petitioners had admittedly violated the terms of the surety bond, whereby they had agreed to serve the Respondent Nos. 1 and 2 as SSC Officers for a period of five years, they cannot now seek release of the original documents without paying the requisite bond amount of Rs.25,00,000/-. He, further, submits that while undergoing the said course, the petitioners have been paid a sum of Rs.27,00,000/- by way of stipend and, therefore, contends that there is no justification on their part to demand the release of their original documents without paying the agreed sum of Rs.25,00,000/-, especially when they have received a sum of Rs.27,00,000/- each from the Respondent Nos. 1 and 2 themselves by way of stipend. While refuting the submissions of the petitioners, that they had been coerced into executing the said surety bond, he further submits that the petitioners had willingly taken admission in the institutes run by the Respondent Nos. 1 and 2 as they are very prestigious medical institutions. He further submits that, even though the fees in the said colleges were highly subsidised, the Respondent

Nos. 1 and 2 have also further paid a sum of Rs.27,00,000/- to each of the Petitioners.

6. Having heard the learned counsel for the parties, I am of the considered opinion that the Respondent Nos. 1 and 2 are fully justified in contending that the petitioners ought to have served as SSC Officers for a period of five years or in the alternative, paid a sum of Rs.25,00,000/- to the Respondent Nos. 1 & 2, in view of the admitted position that they had executed surety bonds to the aforementioned effect. At this stage, I may also add that there is absolutely no merit in the contention of learned counsel for the petitioners that the petitioners were, in any manner, compelled to execute the said surety bonds. The petitioners were both qualified doctors who had chosen to take admission in prestigious colleges run by Respondent Nos. 1 & 2 with the clear understanding that, in case they were unwilling to serve in the Respondent Nos. 1 and 2 organizations after undergoing the courses, they would be liable to pay Rs.25,00,000/- of the bond amount.

7. However, the question raised in the present petition does not rest here. The main issue which arises in the present petition is as to whether in view of the condition in the surety bond and on account of the admitted failure on the part of the petitioners to pay the bond amount, were the Respondent Nos. 1 and 2 entitled to per force retain the original documents submitted by the Petitioners?

8. Before I proceed further, it may be useful to refer to the relevant clauses of the surety bond which read as under:-

**“SURETY BOND FOR STUDENTS**

SEEKING ADMISSION TO POST GRADUATE  
9PG0 DEGREE COURSES (2014-17) AT ARMY  
HOSPITAL R & R (NAME OF INSTITUTION)

KNOW ALL MEN BY THESE PRESENTS Dr. DEVENDRA PAL SINGH TOMAR S/o KIRPAL SINGH R/O H.NO.-95, NAND VIHAR, SHEOPUR ROAD, SANGANER, JAIPUR, RAJASTHAN-302033, hereinafter called the PG Student (which expression shall include his/her heirs, executors, administrators and representatives), KIRPAL SINGH (name of surety) S/o MAHAVEER SINGH R/o 95, Nand Vihar, Sheopur Road, Sanganer at present employed at LIC OF INDIA SEC – 6 PRATAP NAGAR, Jaipur hereinafter called surety (which expression shall include his/her heirs, executors, administrators and representatives) are jointly and severally held and firmly bound into the president of India-hereinafter called the Government in the terms and conditions for admission to M.D. Pathology post graduate course at ARMY HOSPITAL R & R DELHI CANTT, New DELHI (name of Institution) stated hereinafter and expenses that may have been incurred 'By occasioned to the Government be paid to the government for which payment to be well and truly made we hereby bind ourselves, our heirs, executors, administrators and representatives few firmly by these presents as witness our hands this 27 June 2014.

2. And Whereas the PG student has undertaken to join and continue post graduate studies in accordance with rules and regulations of the Delhi University (name of university)/Army Hospital R&R Delhi Cantt, New Delhi (Name of Institution) for obtaining MS Gen. Surgery in pathology of the Delhi University and join the Armed Forces Medical Services as a short service commissioned Officer on successful completion of the course if found medically fit for the same. And whereas in consideration of the government having agreed to sanction the admission to the said PG Student, the candidate along with the surety has agreed to execute the above bond with such conditions as hereunder written.

a) That in consideration of the PG student being admitted by the Govt. To ARMY HOSPITAL R & R DELHI CANTT, NEW DELHI (Name of Institution) for the purpose of obtaining PG degree the PG Student and surety covenant with Government that the said PG Student will attend the ARMY HOSPITAL R & R DELHI CANTT, New Delhi (name of Institution) for obtaining PG degree and such other training as Government may determine from time to time for the prescribed period until he/she successfully completes his/her PG degree course and is declared fit (as to which the decision of Director General Armed Forces Medical Services shall be final) to be granted Short Service Commission and that the PG Student will be commissioned as a Medical Officer in the regular Indian Army of the Indian Navy or Indian Air Force as SSC Officer unless he/she, the PG Student is prevented from doing so on account of ill health or some other reason over which he/she, the PG student has no control as determined by a service medical board (as to which the Government shall be the sole judge) or by being removed on the

ground that the student is considered by the appropriate authority to be unfit to continue as PG, or any other ground, to be granted a Commission.

(b) That in the event of the PG Student refusing to accept commission in the Armed Forces Medical Services on successful completion of his/her PG degree course, the PG Student and the Surety shall jointly be liable to pay and refund forthwith to the Government of India on demand and without demur in cash an amount of Rupees Twenty Five Lacs as per GOI letter No:PCIII/17436/DGAFMS/DG-1D/1819/13(a)/D (Medical) dated 15 January 2014.

(c) That the PG Student shall on successful completion of his/her PG degree Course will report within such period, as may be allowed by the Director General Armed Forces Medical Services as joining time to the unit or station as specified in this behalf by the Director General Armed Forces Medical Services for grant of short Service Commission on terms and conditions set out in Army Instructions 75/78 and amended time to time.

(d) That if the PG student after grant of short service commission applies for release from service within five years of grant of said commission for any reason whatsoever and provided his/her release is sanctioned by the Govt. as per the rules in-force, he/she shall be relieved only after he/she has refunded bond money at the rate of Rs. Five lakhs per completed year or part thereof of unfulfilled liability to the bond money as contained in the bond agreement executed at the time of admission.

(e) That if the PG student leaves the PG institution without completing the course due to any reason after the last date of admission to the PG course as specified by MCI/affiliated

university, he/she will be required to pay a sum of Rs.five lakhs per year or part thereof of the education at the institution based on extant rules.

(f) That the PG student made Non-service Liability (NSL) on medical grounds will be required to pay bond money at 50 % of amount laid down, before he/she is allowed to continue his/her studies. However, in case of students becoming medically unfit for commission due to any disease or disability contracted in the circumstances over which he/she has not control (on which the decision of DGAFMS shall be final) and for which he/she has not refused treatment, he/she will not be required to pay any Bond money but will have to pay the cost of training as applicable for further period of study from the date declared NSL.

3. NOW THE CONDITION OF THE OBLIGATION is such that if the PG student after grant of short service commission serves for a period of five years or cause to be paid to the Government the amount due to his/her in contravention of the bond agreement then this bond shall be void, otherwise the same shall be and remain in full force.”

9. However, on a perusal of the aforesaid surety bond, I find that there is no condition in the said bond entitling the Respondent Nos. 1 and 2 to retain the Petitioners’ original documents and, therefore, in my considered opinion, the Respondent Nos. 1 and 2 cannot, by way of ransom, retain the said documents. Even though the Respondent Nos. 1 and 2 may be free to initiate steps to recover the said amount in accordance with law, the action of the Respondent Nos. 1 and 2 to retain the said documents in the absence of any condition in the bond, is

wholly arbitrary, illegal and liable to be set aside. The issue of whether the Respondent Nos. 1 and 2 have a right to retain the petitioners' original documents in view of the aforesaid surety bond is, even otherwise, no longer res integra. At this stage, it may be relevant to refer to the decision of this Court in **Rahul Popli v. Employees State Insurance Corporation & Anr.** [WP(C) No.7532/2014] wherein this Court, in dealing with a surety bond similar to the one in question in the present petition, held as under:-

*“11. Reading of the surety bond which the petitioner has executed in favour of respondent no.1 to 3 shows that there is no such condition or stipulation that the original documents of the petitioner can be retained in case of breach of the surety bond. Since there is no condition that the original documents would remain in the custody of the respondents 1 to 3 till the surety amount is paid by the petitioner, the action of the respondents 1 to 3 in retaining the original documents of the petitioner cannot sustain.*

xxx

xxx

xxx

*13. In view of the above, the retention of original documents by respondent no.1 to 3 is illegal. Respondent no.1 to 3 are directed to forthwith return the original documents to the petitioner.”*

10. Similar views have been taken by the High Court of Kerala in **Tissna Paul v. School of Communication & Management & Ors.** [WP(C) No.24526/2013] and by the High

Court of Madras in *S. Rajesh v. State of Tamil Nadu* [WP(C) No.12716-18/2008].

11. The petition is, accordingly, allowed. The Respondent Nos. 1 and 2 are directed to immediately release the original documents of the petitioners. However, the Respondent Nos. 1 and 2 would be at liberty to take appropriate steps in accordance with law to recover the aforesaid amount with interest. The Respondent Nos. 1 and 2 would also be well advised to amend their agreements to incorporate, in case they so desire, the appropriate condition for retaining of the said documents.

12. The petition and applications are disposed of with no orders as to costs.

**(REKHA PALLI)**  
**JUDGE**

**MARCH 16, 2018/aa**