

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

WRIT PETITION NO.1453 OF 2018

Quazi Afsheen Fatema Quazi Muntukhaboddin
..Petitioner

VERSUS

The State of Maharashtra and Ors. ..RESPONDENTS

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Mrs. Vaishali A. Shinde (More), Advocates for the
Petitioner.

Mrs. A. V. Gondhalekar, A.G.P. for Respondent Nos.1
to 2.

Mr. S. K. Kadam, Advocate for Respondent No.3.

Mr. K. C. Sant, Advocate for Respondent No.4.

Mr. M. D. Narwadkar, Advocate for Respondent No.5.

Mr. L. V. Sangeet, Advocate for Respondent No.6.

Mr. S. V. Dixit, Advocate for Respondent No.7.

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

Closed for Orders on : 27.02.2019.

Order Pronounced on : 29.03.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner seeks directions to cancel the admission of respondent no.7 in respondent no.6-College for M.B.B.S. Course and allow the petitioner to take admission in respondent no.6-College for M.B.B.S. Course. The petitioner also seeks compensation of Rs.50,00,000/- from respondent no.6 on the ground that the admission is wrongly denied to the petitioner.

2. Mrs. Shinde (More), learned counsel for the petitioner submits that the petitioner has appeared for MH-CET 2014-2015 State Common Entrance

Test to seek admission in M.B.B.S. Course. The petitioner secured 369 marks out of 720 in the said exam. The petitioner stood at serial no.3748 in the State Merit List. The respondent no.6-College has intake capacity of 100 students out of which 69 students are meant for Muslim (Minority) and 31 for other category. The petitioner appeared for counseling and was at waiting list serial no.2. She was having hope to get admission. The admission has to be given from the list of students forwarded by DMER. The petitioner on 30.09.2014 at about 04.16 p.m. filed an application with the Director, Medical Education Directorate, Mumbai stating that on 30.09.2014 the petitioner is present at respondent no.6-College and if any admission is cancelled, the petitioner be given admission. The same was faxed at 4.16 p.m.. The evidence of the application being faxed is placed on record. The learned counsel submits that instead of giving admission to the petitioner respondent no.6 gave admission to respondent no.7, which is illegal. The respondent no.7 was at serial no.3971 of the State Merit List and whereas, the petitioner was at serial no.3748 in the State Merit List much above respondent no.7. The respondent no.6-College could not have admitted respondent no.7 on 30.09.2014, as she was much below the petitioner and the petitioner was very much present with respondent no.6 on 30.09.2014. The learned counsel submits that illegality having

been committed by respondent no.6, the petitioner is entitled for damages of Rs.50,00,000/-. The learned counsel relies on the judgment of the Apex Court in a case of **Krina Ajay Shah and Others Vs. Secretary, Association of Management of Unaided Private Medical and Dental Colleges, Maharashtra and Others** reported in (2016) 1 Supreme Court Cases 666.

3. The learned counsel submits that respondent no.7 had filed writ petition before this Court bearing writ petition no.5474/2015 after her admission was canceled by respondent no.3. This Court allowed the writ petition only on the ground that no grievance is made by any candidate that the merit has been compromised or that the grievance was not made by any candidate standing in between the last candidate admitted and the petitioner. The learned counsel submits that the petitioner was very much present on the day respondent no.7 was given admission that is 30.09.2014. The petitioner was consistently making correspondence with authorities for the necessary information. However, respondents ignored and only in November 2017, the petitioner could get the information that respondent no.7 is given illegal admission. Thereafter, immediately the present writ petition is filed in January 2018. In the case of **Krina Ajay Shah and Others Vs. Secretary, Association of Management of Unaided Private Medical and Dental Colleges, Maharashtra and Others** (supra) the Apex

Court directed the institution to pay damages of Rs.20,00,000/- to each petitioner for the illegality committed by the institution in giving admission to less meritorious candidate. The petitioner be compensated with damages of Rs.50,00,000/-.

4. Mr. Sangeet, learned counsel for respondent no.6 submits that respondent no.6 has intake capacity of 100 students. All 100 seats were filled in. On 30.09.2014 was the last date for giving admission. At about 07.45 p.m. on 30.09.2014 one candidate namely Shabnam Bano Mohammed Shabbir had canceled her admission. The said fact was communicated to respondent no.3 by respondent no.6. The competent authority had given deadline for completion of admission process by 30.09.2014 upto 05.00 p.m. for regular admission. However, it was communicated orally that, any seat lying vacant after the said time, efforts should be made to fill up the vacant post by candidates present on the spot according to merit. The University site of registering such candidates was kept open by the Maharashtra University of Health Sciences, Nasik till 11.00 p.m.. The respondent no.7 is resident of Jalna and was the only candidate present on the spot at the relevant time fulfilling all other eligibility criteria. The admission of respondent no.7 was confirmed at 10.00 p.m. on 30.09.2014 as per the oral permission on telephone from DMER. Upon directions of the

competent authority the admission of respondent no.7 was canceled. The respondent no.7 filed writ petition no.5474/2015. The same was allowed by imposing penalty of Rs.2,00,000/- upon respondent no.6. The Apex Court confirmed the order of this Court.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The petitioner was at serial no.3748 in State Merit List. The petitioner appears to be the resident of Beed. The 100 seats were filled in by respondent no.6. The petitioner and respondent no.7 did not find place in the list of 100 admitted students. The candidates above them in the State Merit List were given admission. In an earlier writ petition filed by respondent no.7 bearing no.5474/2015 decided by this Court on 16.12.2016 we had observed as under:

"14. The factual matrix that Respondent No.4 institution had given admission to 100 students as per its intake capacity as per the list prepared on 26.9.2014 is not disputed. It is also not disputed by any of the party that one student from the said list of 100 students i.e. Shabnam Bano Mohammed Shabbir, had cancelled her admission at about 7-30 in the evening on 30.9.2014. It is also not disputed by D.M.E.R. That at 9 p.m. it had received email from the Respondent No.4 institution communicating it that one student Shabnam bano Mohammed Shabbir had cancelled her admission. D.M.E.R. Had not sent any student for admission and at about 10 p.m. on

30.9.2014, the petitioner was given admission. No admission could have been given after midnight of 30.9.2016. The Pravesh Niyantran Samiti after considering the report of the expert i.e. Directorate of Medical Education and Research (D.M.E.R.) has approved the admission of the petitioner.

15. The Expert Committee i.e. the Directorate of Medical Education and Research, Mumbai in its report has pointed out that 100 candidates of the Indian Institute of Medical Sciences and Research Centre, Jalna (Respondent No.4) are selected for the academic year 2014-15 by central admission process of D.M.E.R., Mumbai. Out of these one candidate's admission i.e. Shahnam bano Mohammed Shabbir is cancelled and one candidate Reema Riyaheen Abdul Hafeez Shaikh (petitioner) is selected against the vacancy at institute level and she secured requisite marks in MHCET. The competent authority and the Director of Medical Education and Research, Mumbai, as such communicated the Respondent No.4 on 21.2.2015 that the Pravesh Niyantran Samiti has decided to approve the 100 admissions of selected candidates in Ist year MBBS course for the academic year 2014-15 of Respondent No.4. The Pravesh Niyantran Samiti has approved the admission of the petitioner also.

16. It is not a matter of debate that Pravesh Niyantran Samiti is the competent authority either to approve or disapprove the admission and the Pravesh Niyantran Samiti has already approved the admission of the petitioner on 21.2.2015. The Respondent Nos.2 and 6 have also filed affidavit to the effect that the petitioner is admitted by Respondent No.4 College and is fulfilling the eligibility criteria required for MBBS admission and nobody has challenged that merit was compromised. The affidavit further states that there is no fault of the petitioner and that

the Hon'ble Court may take a compassionate view and may direct Medical Council of India to regularise the admission of the petitioner.

17. The Respondent No.5 has also filed affidavit stating that the Director of Medical Education and Research submitted its verification report on 10.2.2015 to the Respondent No.5 and the Respondent No.5 Pravesh Niyantaran Samiti in its meeting dated 10.2.2015, considering the report of the Expert Committee i.e. DMER approved 100 admissions of the selected candidates in Ist year MBBS course for the academic year 2014-15 of Respondent No.4 and that the petitioner has secured requisite marks in MHCET.

18. The DMER and the Pravesh Niyantaran Samiti have approved the admission of the petitioner. We have asked the learned counsel for Respondent No.1 as to the powers of the Respondent No.1 to direct cancellation of admission of a particular student. It was candidly accepted by the learned counsel for Respondent No.1 that no such powers explicitly exist in the statute.

19. As observed supra, the Pravesh Niyantaran Samiti is the final authority to approve and/or disapprove the admissions of the student. The Pravesh Niyantaran Samiti upon consideration of the report of the DMER approved the admission of the petitioner. It is not the case that the petitioner was admitted after the cut off date i.e. 30.9.2014. The name of the petitioner also appeared in the merit list of MHCET. There were some names between the last candidate admitted as per the said list and the petitioner. The Respondent No.4 institute at about 9 p.m. had communicated about cancellation of admission of Shabnam bano Mohammed Shabbir, at 7-45 p.m. on 30.9.2014 to the DMER. Even if we disbelieve the case of petitioner and Respondent No.4 that on oral instructions admission was given, still,

there is nothing on record to even remotely suggest that DMER had suggested the admission of a particular student and that student was not admitted by the Respondent No.4. No student from the merit list in between the last candidate admitted and the petitioner were available for admission and the petitioner was given admission at 10-00 p.m. on 30.9.2014. We could have even appreciated the stand of Respondent No.1, had some other candidate standing in between the last candidate admitted and the petitioner in the MHCET list would have made some grievance. No grievance is made by the candidate to the effect that the merit has been compromised. It also needs to be considered that the petitioner has been admitted on 30.9.2014 and has completed two years of course. The interim order was passed by the learned Vacation Judge on 22.5.2015, by virtue of which the petitioner appeared for Ist year examination. The petitioner has cleared the Ist year examination and is admitted to the 2nd year MBBS course and is to appear for 2nd year final examination from tomorrow i.e. 17.12.2016. The petitioner has almost completed two and half years course i.e. more than the half course."

7. It would be seen that DMER had not forwarded the name of the petitioner nor respondent no.7. It appears from the facts given by the petitioner to Director, Medical Education Directorate, Mumbai that she may be considered for admission with respondent no.6-College and she is present in respondent no.6-College, the same was at 04.16 p.m. The one candidate namely Shabnam Bano admitted on 26.09.2014 canceled her admission at about 07.45 p.m. on 30.09.2014. There is nothing on record to show that the

petitioner was present in respondent no.6-College after the cancellation of admission by Shabnam Bano at 07.45 p.m.. The respondent no.6 could admit the students upto 05.00 p.m. on 30.09.2014. Unless the petitioner is in a position to show that even at about 07.45 p.m. the petitioner was present with respondent no.6-College, it would not be appropriate to accept the bare words of the petitioner that she was present on 30.09.2014 at 07.45 p.m.. We had already imposed cost of Rs.2,00,000/- in the earlier writ petition on the institution considering the facts as were averred and pleaded in the earlier writ petition for admitting respondent no.7.

8. The petitioner is seeking admission to M.B.B.S. Course for academic year 2014-2015. The candidate admitted as on the said date has already completed the course. The admission of the respondent no.7 was canceled by the appropriate authority and she had filed writ petition, which has been allowed. The said order is confirmed by the Apex Court. It would not be possible to accept the contention of the petitioner to cancel the admission of respondent no.7.

9. The petitioner approached after a long slumber of four years. The only ground stated is that the documents were not given to the petitioner. Even the list of 100 students is forwarded by respondent no.6 to the competent

authority. It would not be possible to accept the contention of the petitioner that she would be entitled for the damages after lapse of four years. The petition is not filed within the reasonable time to consider the payment of damages and in absence of any proof that the petitioner was present after 07.45 p.m. in the premises of respondent no.6-College, it cannot be safely concluded about the presence of the petitioner after the admission was canceled by one Shabnam Bano.

10. In light of the above, no relief can be granted to the petitioner. Writ Petition is dismissed. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/March-19