

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

WRIT PETITION NO. 9109 OF 2019

Ms. Mihika Pravin Sonalkar & Anr.	 Petitioners
Vs.	
Union of India & Others	 Respondents

Mr. Abhijeet Desai, *i/by Desai Legal for the Petitioners.*

Mr. Dushyant Kumar, *for Respondent Nos.1, 4 & 5.*

Mr. Mandar Goswami, *for Respondent Nos.2 & 3.*

Ms R.A. Salunkhe, AGP, *for the State.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

DATE : SEPTEMBER 23, 2019

P.C:

1. By this writ petition under Article 226 of the Constitution of India, the petitioners seek refund of admission fees. A sum of Rs.28,60,700/- has been paid for admission to the First Year MBBS Course. The petitioners also say that the college must return the original documents in addition to this sum.

2. The college in question is the Dr. D.Y. Patil Medical College and Hospital at Pune.

3. The respondents to this writ petition are the Union of India, the Dean of the college, the Registrar of the College/Deemed University, the Directorate General of Health & Family Welfare, Government of Maharashtra, and the Director of Medical Education & Research.

4. The petitioners aver that petitioner No.1 completed her 10th standard (SSC) in June 2017 and her 12th standard (HSC) in June 2019. The petitioner No.1 wanted to pursue a career in medicine, and, therefore, to obtain the necessary educational degree, took the National Eligibility-cum-Entrance Test (NEET), 2019 for Under-Graduates in MBBS. She secured 303 out of 720 marks, securing an All India Rank of 253241. She attended her mandatory counselling and the Medical Counselling Committee (“MCC”) allotted her a seat in the first round in this 3rd respondent-college. This allotment was made in the first round of the Centralized Admission Process or CAP. She, therefore, took admission in this academic year 2019-2020. The 2nd petitioner, her father, paid the fees. The fees having been paid, the college said that she must start attending the classes, for the academic year had commenced. She also complied with other formalities and handed over her original documents. Then she says that she and her family faced financial problems and difficulties. She apprehends that she would not be able to complete her education in medicine. That is why she requested a cancellation of the admission and a refund of the fees. The college said that it could not. This writ petition is filed for the college, according to the petitioners, has wrongfully retained this money.

5. However, the first respondent has filed an affidavit in this petition in which it claims that the allotment of seats is made on the basis of marks obtained and the quota that was identified. The quotas are in tune with the directions of the Hon'ble Supreme Court. The petitioner No.1 herein was allotted an MBBS seat as a management/paid seat at the college during the first round of the online counselling for the current academic year 2019-2020. She reported for this allotted seat. Now she is claiming a refund. The affidavit claims that the prayers are peculiarly worded. The deponent relies on the orders of the Hon'ble Supreme Court to say that the entire process of granting admission is over. The first respondent then says that the 3rd respondent, the Dr. D.Y. Patil Medical College and Hospital, would be in a better position to explain its stand. The authorities are no longer concerned with the process and therefore they cannot assist the petitioners.

6. The writ petitioners are aware of the correspondence that they have carried out with the college. Copies of the emails are annexed to the writ petition.

7. The petitioners before this Court rely upon a Notice, a copy of which is at Exhibit "G" at page 49 of the paper-book. That reads as under:

"Office of ADG (ME)
Email: adgme@nic.in

Government of India
Directorate General of
Health Services
Nirman Bhawan,
New Delhi-110108

Ref.U-11011/20/2019/35-MEC

Dated: 23-07-2019

NOTICE**Kind Attention: Candidates who want to resign their Seat allotted during Round-1**

As per the Notice (Ref.No.U-11011/20/2019-MEC dated 17th July, 2019) resignation for candidates who were not upgraded in Round-2 and wanted to surrender the seat allotted in Round-1 was allowed till 05:00 PM of 20th July, 2019 without forfeiture of Refundable Security Deposit. However, MCC of DGHS is still receiving many requests from candidates who want to surrender their Round-1 seat.

In this regard, it is informed that the time for resignation of Round-1 seat is being **extended till 05:00 PM of 25th July, 2019 (Thursday)**. However, the candidates will be allowed to resign with Forfeiture of their Refundable Security Deposit.

The rules for Round-2 are as follows:

- Candidates who have been allotted a seat for the first time in Round 2 but do not want to join their allotted seat can exit with forfeiture of Refundable Security Deposit.
- Candidates who join their Round 2 allotted seat will not be allowed to resign from their Round 2 seat in compliance with the directions of Hon. Supreme Court of India in W.P (C) No.267 of 2017 Dar-Us-Slam Educational Trust Vs. MCI and Ors.

Notice posted on 23rd July, 2019”

8. The petitioners claim that they applied for this refund and a cancellation of petitioner No.1's admission before this extended deadline of 25th July 2019.

9. There is a copy of an email at page 50 of the paper-book from the 2nd Petitioner. It is dated 24th July 2019 and was sent at 8:43 a.m. to the 3rd Respondent college (not the 4th Respondent, the Medical Counselling Committee of the Directorate General of Health Services). This email has been followed up by another email, a copy of which is at page 52 of the paper-book, and that is dated 24th July 2019, and was sent at 11:32 p.m. also only to the 3rd Respondent college. That refers to some discussion between the petitioners and the MCC (of which we have no particulars), and it is said that the Centre is still waiting for an email from the college 'seeking direction from the Counselling Committee about the cancellation of admission.' The original documents are also stated to be in the custody of the college. The request was for the 3rd Respondent college to send an email the next day so that the petitioners could make arrangements to visit the college on Friday, 26th July, 2019 to collect the refund and the original documents. There is another email at page 53 (Exhibit-J) of the paper-book which is dated Friday, 26th July 2019 and the despatch time is 1:10 p.m. It is also to the 3rd Respondent college. In fact, all the emails are only to the college.

10. The question, therefore, is not whether the college could have returned the original documents and refunded the fees. The petitioners very well knew that the college management could not have been instructed, or directed, by the MCC to do so after the cut-off

date. Approaching the college directly for a cancellation was wholly impermissible, and, yet, and despite the fact that the abovenoted circular is annexed to the petition itself, there is nothing to show that the petitioners made the cancellation application in time to the competent authority. After the cut-off date, the MCC was no longer the competent authority, and the policy would apply. The Affidavit in Reply at page 101 makes it clear that the petitioner no.1 had not submitted her resignation to the MCC within the stipulated period.

11. In terms of the affidavit of the first respondent, it was at best the Directorate concerned who could have assisted and the Directorate has refused to oblige the petitioners when they knew that the legal position is as set out in the Supreme Court's orders. It is clear that all these directions have been issued so that the meritorious candidates are not deprived of admission in under-graduate courses. The State performs a supervisory role so that there is total transparency and everything that is arbitrary or discriminatory in the process is avoided. Once the MCC could not have issued any direction to the college, and the petitioners only rely upon some oral assertions in the email (page 55 of the paperbook), then we do not think that we should assist parties like the petitioners before us. They thought that this college can be pressurized through the statutory authorities to cancel the admission, to refund the fees and to return the original documents.

12. In our view, there may be more than a little misdirection in what the petitioners claim. The original withdrawal date was 20th July 2019. That was extended to 25th July 2019 (page 49). But the petitioners' own email at page 50 clearly shows that the petitioners had initiated

the cancellation or withdrawal a whole week earlier, around 15th July 2019. In that email of 24th July 2019, the 2nd Petitioner said that he had spoken to the staff of the third respondent the previous week, when the thought of cancellation first crossed his mind. Clearly, therefore, the petitioners could have applied well before 20th July 2019. It is no answer to allege that they did not know of any deadline. At a minimum, this had to be ascertained, and it was the responsibility of the petitioners to do so.

13. If the first petitioner is not interested in the course and she is also not interested in taking any degree in medicine at all, then we do not think that in writ jurisdiction we can issue any order contrary to the scheme of granting admissions to under-graduate courses.

14. The communication at page 59 of the paper-book, therefore, is very clear. The same refers to the entire process and then says that the college was requested to cancel the daughter's admission. The MCC and the Director General of Health Services have their own cancellation policies and a participating institute/college has no right to cancel the admissions of any candidate. The petitioners are also mixing up distinct issues, namely, of resigning an allotted and accepted seat, and which has to be done within the stipulated time by a proper application to the MCC of the 4th Respondent, and the question of refund of fees and return of documents by the 3rd Respondent college. If the resignation is not accepted by the appropriate authority on an application properly made and within time, there is no question of cancellation or refund.

15. This is also not a case where despite a resignation having been accepted (on an application made within time) the college is still not refunding fees. Here there is no resignation properly called and no cancellation of the allotment, and hence there can be no question of refund.

16. Moreover, we find that the policy is salutary and in the public interest. It is intended to stop persons from speculating in educational seat allotments and, particularly, in medical admissions which are highly coveted. It is for this reason that there is an open, structured and transparent process in place for admissions, counselling, various CAP rounds, mop-up rounds, allotments, reporting, undertaking, acceptance, etc. There is a time frame for each stage with not only dates but the latest timings noted. There is also such a time-frame for resignation of Round 1 seats and a mention of to whom this had to be addressed. The petitioners have not resigned the 1st petitioner's allotted seat within time and in the manner prescribed.

17. In this regard, we note that at page 48 is a statement signed by both petitioners dated 6th July 2019, the material terms of which reads thus:

I state that on my own will and along with my parents/guardian took admission to the MBBS course at Dr. D. Y. Patil Medical College, Hospital and Research Centre, Pimpri, Pune, Maharashtra, India as per the DGHS Provisional Allotment letter dated 06/07/19.

I further state that, in consideration of admission to 1st year MBBS course, **I shall complete the MBBS course and**

accordingly undertake to pay all the tuition and other fees as prescribed by Dr. D. Y. Patil Medical College, Pune / Dr. D. Y. Patil Vidyapeeth (Deemed to be University), Pune.

In the event of my discontinuation of MBBS course due to any reason at any point of time after my admission, I along with my parents/guardian hereby undertake to pay balance tuition and other fees to Dr. D. Y. Patil Medical College, Pimpri, Pune, payable for the entire course without any demur.

I along with my parents/guardian say that am binding to pay the entire amount of entire course fee in the event of my leaving the course before its completion the total MBBS course fee to Dr. D. Y. Patil Medical College, Pune / Dr. D. Y. Patil Vidyapeeth (Deemed to be University), Pune.

(Emphasis added)

18. If the argument of the petitioners is to be accepted then it would mean that this undertaking is worthless and the petitioners could cancel the admission at any time in any manner and without following any proper procedure or protocol. That is inconceivable.

19. In such circumstances and when the deadline was over, all the more the relief sought could not have been secured.

20. The writ petition is devoid of merits and is dismissed. No costs.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)