

Mr.Dushyant Kumar, AGP for the Respondent-
State.

Mr.Ganesh Gole for Respondent No.3/MCI.

Ms.Priyanka Patil i/b Mahadik and Associates
for Respondent Nos.6 to 8 and 10 to 12.

WITH

WRIT PETITION (L) NO.3805 OF 2018

Tejas Joseph Varikasery

... Petitioner

Vs

**The State of Maharashtra through the
Chief Secretary and Ors.**

... Respondents

Mr.Mathew J. Nedumpara a/w Mr.C.J.
Joverson i/b Rohini M. Amin for the
Petitioner.

Mrs.Uma Palsuledesai, AGP for the
Respondent Nos.1,2 and 9.

Mr.Ganesh Gole for Respondent No.5/MCI.

Ms.Priyanka Patil i/b Mahadik and
Associates for Respondent Nos.6 to 8 and 10
to 12.

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

MONDAY, 28th JANUARY, 2019

P.C. :

1 The writ petition No.12906 of 2018 under Article 226
of the Constitution of India was argued together with the other

two petitions. Since common arguments were canvassed and the issue is identical, this order will dispose of all petitions.

2 The facts in the first writ petition No.12906 of 2018 would be sufficient to dispose of all the three petitions.

3 The petitioner before this Court is claiming that she is a student. That she belongs to Other Backward Class. That she is intending to join the MBBS Course. Thus, she desires that some day, she will become a doctor. She appeared in an National eligibility-cum-entrance test so as to qualify for seeking admission to a Medical College under the Common Admission Process. At this test, she secured 382 marks out of 720. She was ranked 92083 at National level in Open category and 38377 in Other Backward Class category.

4 It is clear that the State Government, through the Directorate of Medical Education and Research and a Common Entrance Test Cell, implements the policy of admitting students under a Common Admission Process on the basis of the marks obtained in the National eligibility-cum-entrance test. The merit list is utilized to grant such admission by allotting a college. In

the admission process, the petitioner opted for admission in Institution Level Round.

5 The allegation is that there is a college styled as “Terna Medical College” at Navi Mumbai. This college is a Medical College and, therefore, recognised to admit students from this admission process.

6 It is claimed that the admission was assured on payment of Rs.50,00,000/- which is nothing but a capitation fee or an illegal demand.

7 The petitioner claims that she has not been considered for admission under 15% Institutional Quota, including Non Resident Indian Quota for the simple reason that she refused to meet this demand of Rs.50,00,000/-. The petitioner, therefore, first filed a writ petition in this Court, being writ petition No.10779 of 2018 and which writ petition came to be disposed of by this Court with the following order:-

“1] Learned Counsel for Respondent No.4 and Respondent No.6 have stated that Petitioners have approached Respondent No.4 and Respondent No.4 is seized of the issue. It is further submitted by learned Counsel for

Respondent No.4 that the meeting was already conducted on 20/09/2018 on which date, Petitioners sought to produce certain documents and as such, matter came to be adjourned.

2] Parties cannot be permitted to prosecute two remedies simultaneously. In that view of the matter, we are not inclined to entertain the present Petition at this stage.

3] Petition is rejected.”

8 Then it appears that there is another petition filed being writ petition (L) No.3153 of 2018 wherein the following order is passed:-

“ We are informed that the hearing is kept by Admission Regulatory Authority on 30th October, 2018.

2 We request the authority to hear the matter on the said date and decide the same as far as possible within a period of 10 days after the date of the hearing.

3 Stand over to 22/11/2018.”

9 The petitioner says that the fourth respondent did not redress the grievance of the petitioner, and, therefore, this further petition, for the same relief, is maintainable.

10 The prayers in this writ petition proceed on the footing that the petitioner has a right to get admission in the college of her choice. That is guaranteed by Articles 14 and 21 of the Constitution of India. That this is nothing but an illegal

gratification of Rs.50,00,000/- sought to admit the petitioner in the first year MBBS course at Terna Medical College. For these reasons in terms of the prayers, the direction sought is that this Court should direct respondent No.6 to give admission to the petitioner for the first year MBBS course for the Academic Year 2018-2019 in Terna Medical College under the Institutional/NRI Quota and issue consequential orders.

11 A copy of this writ petition was served and we have a reply filed by respondent Nos.6 to 8 and 10 to 12.

12 In the affidavit in reply it is stated that all the allegations made are patently incorrect and false.

13 The National eligibility-cum-entrance test was first conducted by the Central Board of Secondary Education on 6th May, 2018. The results were declared on 4th June, 2018. After declaration of the results, the State Common Entrance Test Cell invited applications online for Health Science Courses. The applications were received and a merit list on the basis of ranking in the NEET was prepared and that list was published on the website on 26th June, 2018.

14 After 20th June 2018 and 28th June, 2018, the further process was undertaken and the candidates were requested to give their preferences for the institution.

15 On 4th July, 2018, 12th August 2018 and 21st August, 2018, the State Common Entrance Test Cell published the select list of the candidates alongwith their allotted institutions and also directed them to report to the institution together with the Demand Draft of the fees of the concerned institution. The Fee Regulating Authority has determined this quantum and, therefore, it was obligatory on the part of the applicants/students to remain present with this Demand Draft and also the original documents at the institution.

16 The State Common Entrance Test Cell, in the month of July, 2018, sent a list of 100 students, which included 85 from State Merit Quota and 15 from NRI/Institutional Quota. From the list sent by the State Common Entrance State Cell, 87 students approached the sixth respondent -Terna Medical College, namely, 85 students from State Merit Quota and 2 students from NRI/Institutional Quota.

17 One student/candidate, Ms.Shrivastav Gargi Sanjay from the State Merit Quota cancelled her admission on 23rd August, 2018. The institution, therefore, was having 14 vacant seats till 26th August, 2018, namely, one seat from State Merit Quota and 13 from NRI/Institutional Quota. This vacancy position was communicated to the State Common Entrance Test Cell on 27th August, 2018.

18 At late night, the State Common Entrance Test Cell declared vacancy position of all institutions, including respondent No.6. This vacancy position was as on 26th August, 2018.

19 It was already informed to the students/candidates that they must submit their applications to the respective institutions in-person from 28th August, 2018 till 29th August 2018 upto 2.00 p.m. against the vacancies available in the concerned institution.

20 Respondent No.6 says on oath that it received the applications of students/candidates against vacant seats on 28th August, 2018 and all applications received till 2.00 p.m. on 29th August, 2018 were accepted.

21 Thus, the institution received 382 applications against one seat, which was available for State Quota and 8 applications were received from the students/candidates for the vacant seats available under the NRI/Institutional Quota.

22 On 29th August, 2018, on perusal of the merit list, one student, Mr.Prasad Vidyasagar Parmatma, who secured 481 marks was selected for one vacant State Merit Quota seat and 8 students were selected against the vacant seats from the NRI/Institutional Quota. Still, the sixth respondent had 6 vacant seats as far as NRI/Institutional Quota.

23 The selected candidate Mr.Prasad V. Parmatma indicated on 30th August, 2018 his inability to pay the fees and, therefore, the student next in the merit list, Faizan Galib Dhanase who stood second and who secured 477 marks was admitted. This fact was also displayed on the website by the sixth respondent. Out of 8 students who were interested in taking admission, 6 students took admission by following the prescribed procedure. The seven seats which were vacant till 30th August, 2018 till 5 p.m. were displayed on the website and notice board. This was on 30th August, 2018.

24 In pursuance of this notice, 11 students approached the sixth respondent for admission. From the 11 students, only one student- Mr.Sanket Sunil Patil took admission by making payment and submitting the original documents. Thus, the vacancy position as on 31st August, 2018 at 5.00 p.m. was that, 6 seats against the NRI/Institutional Quota were vacant.

25 Once again, after publication of the notice, 7 students approached the sixth respondent but out of which 6 students came with the necessary fees and original documents so they were admitted. After complying with the entire procedure for the Academic Year 2018-2019, it is only on 31st August, 2018 and somewhere in the evening, the petitioner came alongwith her parents. The affidavit in paragraph Nos.18 and 19 states as under :-

“18. I say that after the complying the entire procedure of the admission for the MBBS course for the academic year 2018-2019, the Petitioner on 31st August, 2018, somewhere at 7.00 p.m. came along with her parents and other persons approached to the Respondent No.06, institution and create chaos stating that the Petitioner had scored 382 markes in NEET then why she was not considered by the Respondent No.13, against the NRI Quota but here I would like to point out that the Petition was not present before the institution since 30th August 2018. I say that as per our notice dated 30th August 2018, it clearly mentions about the presence of the student/candidate along with fees and original documents but the Petitioner was never present before the institution

on 31st August 2018 from 9.00 a.m. to 11.00 p.m. Hereto annexed and marked **Exhibit -“K”** is the copy of the register maintained by the institution at the time of admission till 31st August 2018.

19. I say that on 31st August 2018, at 5.00 p.m. when the 06 (Six) seats got remained vacant at that time Respondent No.06, displayed the same position of the vacant seats of NRI/Institutional Quota, at that time also the Petitioner never visited the institution and showed her willingness towards the admission and for the same I put Petitioner to the strict proof thereof. I say that if the Petitioner sought to seek admission against vacant seat under NRI Quota she should report to the Respondent No.06, i.e. college on 31st August, 2018.”

26 After setting out the above position, all allegations in the writ petition, including the demand for bribery are expressly denied. It is also said that the petitioner is not attending the proceedings before the “Admission Regulatory Authority”, but has rushed to this Court with one more petition.

27 On such an affidavit being filed with all the annexures and particularly, the endorsement with regard to the petitioner not being present with the demand draft for the fees, the petitioner claims that it is incorrect to say that she was not present. She was present throughout. In her affidavit in rejoinder, she seeks to state that the petitioner came at the college and if the admission process was to get over on 31st

August, 2018, then, she has definitely attended the college and there is no question of creating a chaos. Rather the scene at site is summarized in para 7 of this affidavit in rejoinder in the following words:-

“7. With respect to para 18 of affidavit reply I state that the entire paragraph with respect to me that I was not present along with fees and original documents is wrong and I have got ample proof to substantiate my presence in the institution. I say that the affiant cannot use loose words that I along with my parents and other persons “approached the respondent no.6 institution and created chaos.” The fact is that there was a mob of around more than 50 persons who had literally gheraoed the respondents as they were found to be unabashedly indulging in corrupt and malafide practices. A few irate parents also called the police and the police had come on the spot and in the presence of the police the parents could get access into a few anomalies like acceptance of blank cheques without any dates etc. instead of DDs. The most embarrassing thing was that the college was conducting its admission process in the Engineering College Premises when, in fact, it was given to understand to the public at large that the admissions would be conducted at the Terna Medical College premises. I crave leave to produce CCTV footages and mobile photography and videography with audio. The parents of the students are so terrified and shocked by the open defiance of established rules laid down by the authorities that they didn't have the courage to show the videography footage to any authority so far. I beg for an opportunity, in camera, to allow me to show to this honourable court the images and videos with support my contentions.”

28 Then, it is stated in para 11 that the petitioner approached the Commissioner, Common Entrance Test Cell on 23rd October, 2018 seeking a copy of the visit book, CCTV footage

during the period 28th August, 2018 to 31st August, 2018 in order to prove her presence.

29 She has also reiterated her allegation that the hefty amount of Rs.50,00,000/- was demanded as a bribe and because she could not pay the same, she has been denied admission.

30 It is on these allegations and materials that we have heard Shri Nedumpara, learned advocate for the petitioner.

31 He would submit that given the mandate of the Constitution, education and particularly higher education is an occupation and not a trade or business. Nobody can indulge in selling of seats even if one has established the Medical College privately. If the whole process of admission is regulated and settled by procedure prescribed by rules, then, it is evident that nobody should be denied admission and particularly when the said candidate is meritorious.

32 On the other hand, relying upon the affidavit filed in reply, the learned advocate for the contesting respondents would submit that the writ petitioners are blowing hot and cold. It is they who are to be blamed for not being able to secure the

admission. They had to comply with the entire procedure before the cut-off date. The institution could not have accepted any form or request for admission even if accompanied by the fees after the prescribed date. The whole procedure is transparent and open and in the circumstances, we should not allow the petitioners to now secure the admission. That would mean unsettling other students who have already commenced their studies.

33 We have, with the assistance of the parties and their counsel, perused these petitions, the annexures thereto, the affidavits placed and record and the relevant documents.

34 We have before us the affidavit in rejoinder by the petitioner as also the petitioner's attempt to introduce some more materials in the form of a recording which, according to them, would evidence that the assertion of the contesting respondents is not accurate, but incorrect.

35 We are aware of the limits of our writ jurisdiction. This is not a Court of appeal. Secondly, this is not a Court which will substitute the views of the statutory authorities for it is the statutory authorities in-charge of conducting competitive

examinations and granting admissions to courses in Medicine, who have verified the whole records and placed its seal of approval on the procedure adopted by the respective colleges. The college in its affidavit has categorically referred to the primary documents. The primary documents are that there was an examination conducted by the Central Board of Secondary Education on 6th May, 2018. The results of this exam were declared on 4th June, 2018. After these results were declared, the list of successful candidates in order of marks was arranged. That the State Common Entrance Test Cell prepared a merit list based on which the admissions to this competitive courses were granted. Thus, the basis on which the State Common Entrance Test Cell prepared the merit list of the marks obtained in the NEET ranking of the students, was displayed on the website.

36 The petitioners cannot dispute their placement in the said list. Thereafter there was counselling session and session for verification of documents. It was found that after the allotted institutions in terms of the preferences chosen, there were certain seats which were identified as Institutional Quota or Non Resident Indian Quota. It is pointed out in para 10 of the affidavit

that one candidate-Ms.Shrivastav Gargi Sanjay cancelled her admission on 23rd August, 2018. That is how the institution in question had 14 seats vacant till 26th August, 2018 i.e. one seat from State Merit Quota and 13 seats from NRI/Institutional Quota. The said vacancy position was communicated to the State Common Entrance Test Cell and thereafter, there is a list dated 27th August, 2018 which was also sent by the institution to the State Common Entrance Test Cell. This contains the names of the candidates in terms of their merit. The vacancy position was declared after the communication with the State Common Entrance Test Cell and later on it was displayed. Once the vacancy position was displayed and made known to the students/candidates and they were aware of the cut-off date, then, in terms of the further paragraphs of this affidavit, it is revealed as to how the admissions were granted against the vacant seats. The candidate selected in place of Ms.Shrivastav also showed his inability to make payment of fees and, therefore, the next merit listed candidate-Faizan Galib Dhanase was granted the admission. His name was also displayed. After that the vacant seats of NRI/Institutional Quota were filled in and it is evident that this Quota was vacant till 30th August, 2018 and after

having been displayed, it was for the candidates/students to approach the institution. If there was no display at all or there was something which was held back from the candidates/students, then, it is inconceivable that 11 students approached this institution for admission. One candidate/student- Sanket Sunil Patil took admission by making payment of the entire fees. He submitted the original documents also and before the cut-off date. Thus, everything was finalised before 31st August, 2018. It is thereafter that this affidavit asserts that the petitioner did not turn up till 7.00 p.m. on that date. Once the petitioner could not be said to be armed with all the original documents and the fees by way of Demand Draft drawn in favour of the institution, then, the college or institution could not have accommodated the petitioner. Once the petitioner was aware of the cut-off date and the time, then, first this petitioner tried to rush to the authority and during the pendency of the proceedings before the authority and when it was considering the petitioner's representation, the first writ petition was brought before this Court. That was not entertained. That contains identical grievance. Merely because one of the petitioners was attempting to secure admission not against a Institution/NRI seat but from

State quota on merit, still, the cut off date for that as well was prescribed. The sixth respondent filled such merit quota seat by admitting a meritorious student. That student approached the college before the cut off date and firmed up his admission by complying with the procedure. Hence, no exception can be made in such petitioner's case.

37 It is in these circumstances that we are unable to agree with Shri Nedumpara that every single document which is annexed to the affidavit in reply of the institution should be discarded and disbelieved and instead, the version of the petitioner as set out in the petition and affidavit in rejoinder should be accepted. The petitioner has her own version. Now the petitioner wants to introduce another version that cheques instead of Demand Drafts were accepted. That there was police presence and that there was general chaos and confusion prevailing. That there was a demand for money and this is nothing but bribery. That the petitioner had no choice but to resist such demands. We have been shown certain photographs, but we are aware of the fact that by themselves, they cannot be said to be conclusive. Once there are documents which are

forwarded to the State Common Entrance Test Cell and the petitioner's version has been highly disputed, then, it would be totally unsafe to rely upon it and unsettle the admission process. The petitioners raised the grievances belatedly.

38 We have found that in both petitions, the identical allegations are made. In one petition, the version is that the petitioner's mother was seeking admission not necessarily against the NRI/Institutional Quota, but against a State Merit Quota seat which was stated to be vacant. We do not think that once the version is highly doubtful and incapable of acceptance insofar as the approach of the petitioner to secure admission before the cut- off date and time, then, we should accept the case of the other petitioners also.

39 We have found from the scrutiny of the relevant material that in writ jurisdiction we cannot embark upon the course of investigation or inquiry at the instance of the candidates like the petitioners, who are not serious in seeking admission, but belatedly questioning the whole process by alleging lack of transparency, fairness and equity. We have not

found them to be challenging the official version and the list which has been forwarded to the statutory authorities, including the State Common Entrance Test Cell and its Commissioner. Once this Court has been approached in order to take a chance, then, all the more we are reluctant in exercising our jurisdiction under Article 226 of the Constitution of India which is extraordinary, discretionary and equitable.

40 As a result of the above discussion, all these writ petitions fail and they are dismissed, but without any order as to costs.

[M.S.KARNIK, J.]

[S.C.DHARMADHIKARI, J.]