

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12796 OF 2021**

AKASH MUNJAJI KANDHARE

..PETITIONER

VERSUS

THE DEOGIRI INSTITUTE OF ENGINEERING AND MANAGEMENT
STUDIES AURANGABAD THROUGH ITS PRINCIPAL
..RESPONDENTS

...

Mr. Akshay D. Kulkarni, Advocate for the
Petitioner.

Mr. D. J. Choudhari, Advocate for Respondent.

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**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : 02nd DECEMBER, 2021.

PER COURT:-

1. Mr. Kulkarni, learned counsel for the petitioner submits that, after having taken admission with the respondent-Institution the petitioner had canceled the admission on 28.02.2021. The respondent is not returning the documents. The learned counsel relies on the Clause 15 (c) and (d) of the Information Brochure for Admission to Under Graduate Technical Courses (2020-21).

2. Mr. Choudhari, learned counsel for respondent-Institution submits that, petitioner was admitted to the Bachelors of Computer Science Course on 30.01.2021. The last cut off date for admitting the students was 05.02.2021. The petitioner could have canceled the admission before 5.00 p.m. of the last cut-off date. However, the petitioner continued his studies with respondent-

Institution upto 28.02.2021 and he canceled the admission on the said date. Because of that, Institution cannot fill in the seat on which the petitioner was admitted, the seat will go vacant for all the years. The learned counsel further submits that, respondent college is non-grant-in-aid college and it has to cater for the infrastructure and all other things from the fees received. The petitioner was admitted from S.C. category. The notice was also published that the candidates admitted from reserved category shall fill in the scholarship form by 20.02.2021 or else they will have to pay full fees. The petitioner did not fill in the form. The petitioner also gave an undertaking on 30.01.2021 that, if the scholarship is canceled due to some reason, he will pay full fees. The petitioner in view of that undertaking is required to pay full fees of the Institution.

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

4. Clause 15 of the Information Brochure for Admission to Under Graduate Technical Courses (2020-21) (supra) reads thus:

(a) The Candidate shall apply online for cancellation and submit duly signed copy of system generated application for cancellation of admission to the institution. Once the candidate submits online request for cancellation, his/her admission shall be treated as cancelled. The Institute shall

consider the online request made by Candidate for cancellation as final irrespective of whether he/she has submitted duly signed copy of system generated application to the Institute. Upon such cancellation, the candidate shall lose the claim on the seat and such seat shall become available for further allotment. The candidate shall then become entitled to and the Institute shall refund the entire fees to the candidate after deduction of Rs.1000/- towards the Institute within two days from submission of duly signed copy of system generated application to the Institute;

(b) Notwithstanding clause (a) above, candidate shall not be entitled to any refund of his/her fee except the Security Deposit and Caution Money Deposit if the online cancellation is effected by the candidate after 5.00 p.m. of the cut-off date prescribed by the Competent Authority.

(c) No institution, who has in its possession or custody, of any document in the form of certificates of degree, diploma or any other award or other document deposited with it by a person for the purpose of seeking admission in such institution, shall refuse to return such degree, certificate award or other documents with a view to induce or compel such person to pay any fee or fees in respect of any course or program of study which such person does not intend to pursue or avail any facility in such institution.

(d) The institution shall not entitle to recover the fees for the subsequent years from the student seeking cancellation of his admission at any point of time.

5. The candidate, if he applies for cancellation after 5.00 p.m. of the cut-off date is not entitled for refund of fees. Sub-clause (c) of Clause 15 of the Brochure puts embargo on the rights of the Institution to retain the documents with a view to induce or compel such persons to pay fees.

6. In view of the said clear provision, respondent would not be in a position to retain the documents submitted by the petitioner during the admission on the ground of non-payment of fees. The Division Bench of this Court in a case of **Gauri Vs. The State of Maharashtra and Ors.** decided on **08.08.2017** in **Writ Petition No.8917/2017** had also observed that, even otherwise, upon scanning entire rules, this Court hardly notice that in case of petitioner, who was admitted to B.H.M.S. Course, by virtue of admission brochure or any other enactment, respondent, nos.2 and 3 college can refuse or deny the return of documents for want of payment of Course fees for entire B.H.M.S. Course.

7. In light of the above, we pass the following order:

a. The respondent shall return the original documents of the petitioner submitted at the time of admission immediately.

b. In case, respondent is entitled to recover any fees, the respondent may take such steps as may be permissible under law.

8. Writ Petition is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE