

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.3740 OF 2020

Madhavi D/o Vishnupant Narnaware ... Petitioner

Versus

The Dean, Government Medical College,
Nagpur, and another ... Respondents

Ms. Preeti Rane, Advocate for Petitioner.

Mr. D.P. Thakre, Additional Government Pleader for Respondent No.1.

Mr. Kiran Malokar, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 14 JANUARY 2021

P.C.

Heard the learned Counsel for the parties.

2. The Petitioner is pursuing her education in the Third (Second Semester) of MBBS Course from Scheduled Tribe category. The Petitioner's result of the Second Year MBBS Course was withheld for want of validity certificate. The Petitioner filed Writ Petition No.5919 of 2018. The result of the Petitioner's Second Year MBBS Course was declared. The Petitioner was permitted to appear for Third (First Semester) MBBS

Examination. Thereafter for want of 75% attendance, the result of the Petitioner for Third Year (Winter 2019) MBBS Examination was shown to be 'withheld'. On 24 October 2020, the Respondent No.2- University issued a mark sheet wherein the Petitioner has shown to have cleared two subjects, i.e. 'ENT' and 'Ophthalmology' but shown to have failed in the subject of 'Community Medicine' for lack of attendance. The Petitioner made a representation that she had in fact attended the Course, however the representation was not being decided and the Petitioner filed the present petition on 22 December 2020.

3. The petition came up before the Vacation Judge on 23 December 2020, when the following order was passed :

“Heard Ms. Rane, learned counsel for the petitioner.

2. At the outset, the learned counsel for the petitioner prays for grant of leave to file a document on record, which was not filed inadvertently.

3. Leave is granted.

4. Issue notice to the respondents, returnable on 5th January, 2021.

5. Shri Amit Madiwale, learned Assistant Government Pleader waives service of notice for the respondent no.1.

6. Shri Kiran Maloka, learned counsel waives service of notice for the respondent no.2.

7. *It is made clear that before the returnable date, the respondent no.2 is free to take decision on the representation dated 18th November, 2020 as per the communication dated 23rd October, 2020, which is in respect of improved attendance of the petitioner.*

8. *Respondent no.2 is also free to take appropriate decision after considering the representation.”*

4. Thereafter the petition came up on board on 5 January 2021, and on 11 January 2021 the following order was passed :

“Considering the fact that career of the student is involved, we refuse the request of learned Counsel for Respondent No.2 – University for longer time to take instructions and further since the case of the Petitioner is primarily based on Certificate issued on 23 October 2020 by Medical Government College, Nagpur. The Respondent No.2 – University to make its stand clear in respect of the Certificate on the on the next date.

2. *Stand over to 14 January 2021.*

5. Today when the matter was called out, again a request is made on behalf of the Respondent No.2- University for adjournment. The learned Counsel for the Petitioner makes a serious grievance in respect of the conduct of the Authorities of the Respondent No.2- University stating that the petitioner is facing a cut off date of 21 January 2021.

6. The learned counsel for the Petitioner has drawn our attention to a Certificate issued by the Department of Community Medicine, Government Medical College, Nagpur on 23 October 2020. She submits that this Certificate was brought to the notice of the Respondent No.2- University as far back as on 18 November 2020, but no cognizance thereof was taken.

7. We have perused the affidavit-in-reply filed by the Respondent No.1- Dean, Government Medical College, Nagpur, wherein the Dean has stated in Paragraphs 9 and 10 as under :

“9. The answering respondent humbly submits that, as per notice issued by the answering respondent dated 15.11.2019, the petitioner had attended the extra classes along with the other students and reached attendance upto to 89.47%. The answering respondent communicated this position vide letter dated 23.10.2020, which is already placed on record by the petitioner.”

“10. The answering respondent humbly submits that, the petitioner has already cleared all the other subject of 3rd (1) Winter 2019 Examination except the subject “Community Medicine” and that too for the reason of less attendance (Not Eligible NE) and declared as Fail-ATKT.”

8. The Certificate, which is issued by the Department of Community Medicine, Government Medical College, Nagpur, is reiterated by stand taken by the Respondent No.1- Dean himself on oath before this Court. The learned Counsel for the Respondent No.1- Dean, therefore, joins the Petitioner in pointing

out that the Petitioner has in fact attended the Classes and the attendance has been improved to 89.47%.

9. In spite of showing this document to the Respondent No.2 on 18 November 2020 and asserted it in the reply filed by the Respondent No.1- Dean, again the time has been sought by the Respondent No.2- University. Therefore, no cogent reason is forthcoming as to why the Certificate duly issued by the Respondent No.1- Dean, asserted on oath, shall not be given effect to and this is the sole prayer of the Petitioner in this petition. The career of a student cannot be jeopardised in this manner.

10. Accordingly, we dispose of this petition by granting Prayer Clause (i), which reads thus :

“(i) by issuance of appropriate writ, order or direction in the nature of mandamus thereby direct the respondent no.2 University to consider the petitioner’s improved attendance as mentioned in the communication dated 23.10.2020 (Annexure-11) issued by the college and further issue corrected mark sheet to that effect to the petitioner of subject “Community Medicine” of Third (1) MBBS Winter Exam-2019.”

11. Action be taken by the Respondent No.2- University before 21 January 2021, as above.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)