

(1)

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

**2 CONTEMPT PETITION NO.520 OF 2022
IN CIVIL APPLICATION NO.4374/2022
IN WP/1469/2022**

**OMKAR GOPAL YENCHEWAD
VERSUS
DR. SUNIL NATHA MHASKE, THE DEAN DR. VITHALRAO
VIKHE PATIL FOUNDATIONS MEDICAL COLLEGE**

....

Mr S. M. Vibhute, Advocate for petitioner;
Mr V. D. Hon, Senior Advocate i/b Mr A. V. Hon, Advocate for
respondent

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 3rd October, 2022

PER COURT:

1. The respondent has filed the affidavit-in-reply dated 03/10/2022.
2. We have considered the submissions of the learned Advocate for the petitioner and the learned Senior Advocate Shri. Hon on behalf of the respondent.
3. Vide order dated 01/04/2022, passed in Civil Application No.4374/2022 in Writ Petition No.1469/2022, this Court had

(2)

recorded the submissions of the parties and then had passed it's order. Paragraph Nos.3 to 8 read as under :-

“3. Learned counsel for the applicant states that respondent No.5 is not agreeable to submit the proposal of the petitioner to respondent No.4 University in respect of issuance of degree certificate of M.B.B.S. course, unless the applicant furnish bank guarantee so as to secure the amount of fees received by the institute from the Government in respect of the applicant in case the caste claim of the applicant is invalidated by this Court in the present pending petition.

4. Heard Mr K. C. Sant, learned counsel for the university states that their past experience is that students who are issued such degree certificate upon furnishing undertaking are not traceable after dismissal of their caste claim in most of the cases.

5. We are not inclined to accept the suggestion of the learned counsel for the applicant that respondent No.5 shall be directed to forward the proposal of the applicant for issuance of degree certificate of M.B.B.S. course without any condition or shall forward such proposal only on the applicant furnishing undertaking to the effect that if the applicant does not succeed in the Writ Petition, respondent can enforce such undertaking against the applicant.

6. Be that as it may, we agreed with suggestion of learned counsel for respondent No.5 that reasonable condition that may be imposed while forwarding the proposal of the applicant in respect of issuance of degree certificate of M.B.B.S. course. We accordingly pass the following order :-

7. Civil Application is made absolute in terms of prayer clause 'B' and 'C' subject to the condition that it will be open for respondent No.5 to impose the condition if any while forwarding the proposal of the applicant for issuance of M.B.B.S. degree course to respondent No.4, in

(3)

accordance with law. The applicant shall comply before with such condition before his proposal is forwarded.

8. It is made clear that this order passed by this Court and the submission of the proposal by respondent No.5 to respondent No.4 University will be subject to outcome of the Writ Petition No.1469 of 2022 filed by the applicant.”

4. The learned Advocate for the petitioner submits that, the petitioner is agreeable to abide by such conditions as the respondent/College would impose or as this Court may direct.

5. The learned Senior Advocate for the College submits that, it is the experience of the College that an undertaking is not enough, since such students are untraceable once their Caste/Tribe claim is invalidated. If the writ petition filed by the present petitioner, whose claim is invalidated by the Committee, is dismissed, the petitioner would lose his degrees and therefore, would not be interested in paying any outstanding fees. Since he has secured admission on a reserved post, the State of Maharashtra has paid his fees under a scheme to the extent of Rs.23,37,500/-. Once the claim is invalidated and the degrees of the petitioner are confiscated, the State would debit the said amount from the accounts of the College and take back the said amount. The ultimate loser would be the College, as, on the one hand, it has

(4)

imparted education with all facilities to the petitioner and on the other hand, the invalidation of the petitioner's claim leads to the withdrawal of the amounts deposited by the State Government with the College. Such student, thereafter, is not willing to pay the fees, since he has lost the degrees and has nothing to gain.

6. We, therefore, called upon the learned Advocate for the petitioner to take instructions from the petitioner, who is present in the Court, as to whether he is willing to deposit 50% of the fees in this Court and tender an affidavit undertaking to this Court as regards the remaining 50% of the amount. The learned Advocate for the petitioner submits on instructions that, the petitioner is agreeable to both these conditions. He is willing to deposit 50% of the said fees in this Court, which is an amount of Rs.11,70,000/- (rounded of), on or before 15/12/2022. The petitioner shall tender an affidavit undertaking on or before 15/10/2022 and a self attested copy of the said undertaking would also be delivered to the College within the same period.

7. Hence, let such amount be deposited without fail, on or before 15/12/2022. Registry would invest the said amount with the Nationalized Bank in a Fixed Deposit Receipt, initially for a

(5)

period of three years and to be renewed thereafter, until Writ Petition No.1469/2022 is finally decided. The affidavit undertaking, would state that, if the State withdraws the fees, deposited with the College pursuant to the claim of the petitioner being invalidated by this Court, he would pay the remainder amount of fees to the College, by depositing the said amount in this Court, within 12 weeks, pursuant to such adverse order.

8. In view of the above, the respondent would forward the proposal of the petitioner to respondent No.4 – Health University, within 72 hours, considering the deadline of the Post Graduate Admissions being 07/10/2022. We except the Health University to do the needful.

9. We expect the University to issue such a degree certificate, on or before 06/10/2022.

10. In view of the above, this contempt petition stands disposed off.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

sjk