

Uday S. Jagtap

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

WRIT PETITION NO. 3548 OF 2022

Dr. Neil Jayant Shah,	]	
Age 23 years, 30,	]	
Lokmanya Co-op. Hsg. Soc. Ltd.,	]	
Nandurbar – 425 412	]	
Presently residing at	]	
C/o Nilesh Gandhi	]	
Veena Serenity, A-wing	]	
Flat No. 1202, Near Samajmandir Hall	]	
Shell Colony, Chembur (East),	]	
Mumbai – 400 071	]	
Through Power of Attorney Holder	]	
Dr. Jayant Shah, Age 61 years	]	.. Petitioner

Vs.

1. State of Maharashtra,	]	
To be served through the Govt. Pleader	]	
(A.S.), High Court, Mumbai	]	
	]	
2. Directorate General of Health Services,	]	
Medical Counselling Committee	]	
Nariman Bhawan, New Delhi – 110 108	]	
	]	
3. Seth G.S. Medical College,	]	
& King Edward VII Memorial	]	
Hospital, Parel, Mumbai – 400 012	]	.. Respondents

Mr. Piyush Shah a/w Mr. Jay Vora for the petitioner

Mr. V.M. Mali, AGP for the State

Mr. Rajesh Patil a/w Mr. Om Suryawanshi, Ms. Poonam Pednekar
& Ms. Neha Dabholkar for respondent no.3

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Coram : A.S. Chandurkar & G.A. Sanap, JJ.

Date : 19th April, 2022.

JUDGMENT :- (Per G. A. Sanap, J.)

1. Rule. Rule is made returnable forthwith. By consent, the petition is taken up for final hearing.

2. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner challenges letter dated 18th February, 2022 received from respondent no.2, rejecting the resignation of the petitioner from his M.S. Orthopaedic seat of the respondent no.3 – college and directions to the respondent no.2 to accept the resignation of the petitioner from his M.S. Orthopedic seat.

3. The petitioner is a M.B.B.S. from Grant Medical College, Mumbai. In September 2021, the petitioner appeared for NEET-PG. 2021 and secured all India rank 11. On 18th December, 2021, the respondent no.2 issued a notice detailing 04 Rounds of counselling for the purpose of admission as directed by the Hon'ble Supreme Court of India. The respondent no.2 in January, 2022 issued an Information Bulletin with respect to NEET-PG 2021 examination. As per the Information Bulletin, Round 1 ends when the selected candidates report to the allotted medical college for their Post Graduation Program. The petitioner having secured a

good rank at the All India Level, secured admission for M.S. Orthopedic with respondent no.3 – College. The respondent no.2 issued a Notice dated 19th January, 2022 and informed that the candidates who join their seat of Round 1, and later want to resign, the same can do so till 4.00 p.m. of 3rd February, 2022. It was informed that after resignation, they will be considered as a part of Round 2 and the same rules would apply for them as applicable for Round 2 counselling. The petitioner took the admission and joined respondent no.3 – College from 1st February, 2022.

4. It is the case of the petitioner that after joining respondent no.3 – College, he suddenly suffered 4-5 asthmatic attacks and went into acute clinical depression. Due to the sudden deteriorating health, the petitioner and his family decided that it would be in the interest of the petitioner to resign from the seat of MS Orthopedic with respondent no.3 – College. On 14th February, 2022, the petitioner made an application to that effect to the Dean of the respondent no.3 – College and requested the Dean to accept his resignation. The Dean of the respondent no.3 – College thereafter addressed a letter dated 15th February, 2022 to the respondent no.2 – Directorate General of Health Services, Medical Counselling Committee and requested to consider the mental and physical state of the petitioner sympathetically and cancel his admission and retain the P.G. seat of MS Orthopedics of the respondent no.3 – College. It is stated that despite this positive recommendation, the respondent no.2 vide its communication

dated 18th February, 2022 rejected the petitioner's request of resignation from his seat on two grounds. The first ground cited was the timeline fixed by the respondent no.2 for resignation was 3rd February, 2022. The second ground cited was the order of the Hon'ble Supreme Court of India wherein the Supreme Court has held that if the candidate who has been allotted a seat in Round 1 does not resign from his or her seat, within the prescribed period of time which is before the start of Round 2, then such candidate shall be presumed to be a part of Round 2 counselling and the candidate cannot resign thereafter. It is stated that the health of the petitioner does not permit him to continue his Post Graduation. He cannot continue his Post Graduation with such a deteriorating health condition. It is stated that the reasons cited are not proper. The respondent no.2 ought to have allowed the application made by the petitioner. The seat vacated by the petitioner would be available and the respondents can accommodate other candidate. The remaining rounds including the Mop Up Round are yet to be completed. On these averments, the petitioner prayed for the relief as above.

5. The respondent nos. 1 to 3 were served. Appearance has been reported by respondent nos. 1 and 3 only. The affidavit-in-reply has been filed by the Administrative Officer of the respondent no.3 – College. The respondent no.3 – College has opposed the petition. It is contended that as per the guidelines of the Government of India, Director General of Health Sciences, dated 21st January, 2021, the candidate who joins the seat in first

Round and later want to resign, the same could have been done till 4.00 p.m. of 3rd February, 2022. The petitioner has been admitted in MS Orthopedics at respondent no.3 – College on 25th January, 2022 from all India quota in Round 1 for the academic year 2021-22. The petitioner has submitted the certificate of Medical fitness before securing admission. He was certified to be fit to undergo P.G. Course. The petitioner did not participate in the next round of counselling and thereby declared that he did not wish to go for further Round of counselling. The petitioner comes from a family of Doctors and as such well versed with technicalities of the medical profession. A letter dated 14th February, 2022 for resignation was addressed without giving reasons. The reasons are now sought to be substituted for the first time in the writ petition. The petitioner did not resign till 4.00 p.m. on 3rd February, 2022 and, therefore, the said seat is treated as filled in. The vacancy of one seat, therefore, has not been communicated for second and further Rounds. On resignation, the seat would remain vacant. It is submitted that the grant of the application with this reason would create further problems because four more students from the same college have expressed their desire to resign, subject to the outcome of this petition. It is contended that the respondent no.3 got information from other respondents that about 176 students all over India who have secured admission in P.G. courses, have orally informed their respective colleges that they wish to resign. It is contended that if the petition is allowed then, it will have a great impact on the over all medical field. The reasons have been stated in the communication dated 18th

February, 2022. The communication dated 15th February, 2022 was made on receipt of the resignation letter by the Dean of the respondent no.3 – College.

6. We have heard the learned Advocate for the petitioner, learned AGP for the respondent – State and the learned Advocate for respondent no.3. We have perused the record and proceedings.

7. The learned Advocate for the petitioner submitted that the petitioner has secured All India Rank 11 and, therefore, it is inconceivable that he would resign from the said post without there being any reason. The learned Advocate submitted that after admission, the petitioner suffered 4-5 Asthmatic attacks and went into acute clinical depression. The learned Advocate submitted that the health of the petitioner does not permit him to continue his Post Graduation. The learned Advocate submitted that on acceptance of the resignation of the petitioner, the seat which would become vacant, can be filled in by carrying the said seat forward in the remaining Rounds. The learned Advocate submitted that on humanitarian ground, the prayer made by the petitioner deserves to be granted. No prejudice as such would be caused to the respondents. On the contrary, if the resignation of the petitioner for the said seat is not accepted, the petitioner would suffer through out his life.

8. The learned Advocate appearing for respondent no.3 – College submitted that the reasons were not mentioned in the

application dated 14th February, 2022 made by the petitioner to allow him to resign. The learned Advocate submitted that the petitioner is busy in his study for next year NEET-PG. examination. The learned Advocate submitted that if the resignation is accepted, then, other students who have expressed their desire to resign would also claim parity. No right is vested with the petitioner. The learned Advocate submitted that the petitioner had a right to resign on or before 4.00 p.m. of 3rd February, 2022. The learned Advocate submitted that as on today, all the rounds including the Mop Up Round are over and, therefore, on acceptance of the resignation, the seat allotted to the petitioner would remain vacant. The learned Advocate submitted that on account of blocking of the seat in this manner, the petitioner has denied right and claim of one genuine candidate.

9. In order to appreciate the rival submissions, we have gone through the record and proceedings. It is to be noted that vide Notice dated 18th December, 2021, the information with regard to the NEET-UG/PG Rounds was published. The modalities of participation and retention of a seat were, therefore, published well in advance. It is not the case of the petitioner that he was not made aware of it. The Information Bulletin and Counselling Scheme was published well in advance vide Notice dated 19th January, 2022. On completion of the first PG. Round Counselling, the candidates and colleges were put to notice that the candidates who joined the seats in Round 1 and later want to resign the same, can do so till 4.00 p.m. of 3rd February, 2022 and after the

resignation, they will be considered eligible for Round 2 and the same rules will apply to them as applicable in next Round of Counselling.

10. The petitioner took admission on 1st February, 2022. It is not the case of the petitioner that he was not put to notice about the timeline for resignation after joining the seat of Round 1. In this context, it would be necessary to consider the ground put forth by the petitioner seeking resignation of the P.G. seat allotted to him. The petitioner made an application on 14th February, 2022. In this application, he has made a prayer to accept his resignation from the P.G. seat in MS Orthopedics. It is the case of the petitioner that soon after his joining the respondent no.3 – College on 1st February, 2022, he suddenly suffered 4-5 Asthmatic attacks and went into acute clinical depression. This being the case, the petitioner was expected to mention this fact in his letter dated 14th February, 2022. It is to be noted that the petitioner ought to have stated the reason for his resignation in view of the fact that he was put to the notice that after 4.00 p.m. on 3rd February, 2022, the candidate will not be allowed to resign. The learned Advocate for the petitioner on being questioned by the Court, submitted across the bar that the petitioner is busy in his NEET-PG. study for the next year. The learned Advocate for respondent no.2 submitted that in the power of attorney executed by the petitioner in favour of his father, he has categorically stated that he could not attend the litigation personally because he has been busy in his NEET-PG study for the next year. In our view, this aspect has to be

reconciled with the failure on the part of the petitioner to state the reason in his Application dated 14th February, 2022. On perusal of the record and proceedings, we are fully convinced that the ground put forth is nothing but a figment of imagination of the petitioner to wriggle out of the situation invited by his act and conduct.

11. It is to be noted that the petitioner in support of his contention has relied upon letter dated 15th February, 2022 addressed by the Dean of respondent no.3 – College to the respondent no.2. Perusal of this letter would show that the Dean has recommended the respondent no.2 to consider the application of the petitioner dated 14th February, 2022. The petitioner did not state the reason in his application. The Dean of the respondent no.3 – College has stated the reasons in his letter while requesting the acceptance of the resignation. In our view, this letter of the Dean has to be rejected out rightly. It is to be noted that the petitioner is from the Doctors family. The family of the petitioner is from Mumbai. It is further pertinent to note that the Administrative Officer of respondent no.3 – College has opposed the prayer made by the petitioner by filing an affidavit-in-reply dated 11th April, 2022. The learned Advocate for the respondent no.3 – College submitted that this letter of the Dean deserves no consideration. In our opinion, in view of certain facts stated in the reply, the letter of the Dean of respondent no.3 – College deserves to be ignored. It seems that the Dean of respondent no.3 – College has shown unwarranted sympathy that too without there being

any written request stating the ground justifying such sympathy. In the backdrop of the facts brought on record, without production of the medical record of the treatment of the petitioner, it would be very difficult to accept the contentions based on the letter of Dean of Respondent No.3-College. Even if it is assumed that there was reason to recommend the acceptance of the resignation, the ultimate authority to consider the request was with the respondent no.2. The respondent no.2 vide communication dated 18th February, 2022 has recorded the reasons. It has been stated in the communication dated 18th February, 2022 that the resignation letter submitted after the prescribed timeline, could not be entertained. Similarly, it has been stated in this communication that respondent no.2 was bound to strictly follow the directions of the Hon'ble Supreme Court of India.

12. The petitioner has relied upon a Medical Certificate dated 15th February, 2022 from Deenanath Mangeshkar Hospital and Research Center, Pune. Perusal of this Certificate would show that there is no stamp of the Hospital. There are no other medical examination papers to support the fact stated in the certificate. Along with the reply of the respondent no.3 – College, a Medical Fitness Certificate obtained by the petitioner on 12th January, 2022 has been produced. In this certificate, it has been specifically stated that the petitioner is medically fit to undergo Medical Post Graduate Course (NEET-PG 2021). It is to be noted that within a period of 17 days of this fitness certificate, the petitioner seems to have become unfit. In our view, in the teeth of this medical fitness

certificate, the petitioner was required to establish the ground, if he desires equitable relief in his favour. In our opinion, the change of mind does not seem to be due to any ailment. It seems to be with a view to participate in next years NEET-PG examination. The rules of admission and participation were made known well in advance. The respondent no.2 has displayed fairness at every stage. The petitioner has taken advantage of the same and after blocking the seat in first Round, came with this letter of resignation. In our view, the acceptance of the prayer would entail cascading effects. The acceptance of the resignation would mean that one PG Seat which could have gone to a genuine candidate, would remain vacant. It would amount to a denial of the claim of one genuine candidate. The intention of the petitioner is to participate in next year's NEET-PG examination. If the petitioner succeeds in his next year NEET-PG examination, then again for the next year he would deny the claim of one more aspirant candidate. It is further pertinent to note that grant of a prayer as rightly stated by the respondent no.3 would entail serious consequences. The grant of relief would be a precedent and the same could be made use by other similarly situated candidates, who have already secured admission in the NEET-PG 2021. In our view, therefore, the petition cannot be allowed. We are not satisfied with grounds put forth. It is nothing but a sort of an attempt to wriggle out of a self-created situation. Therefore, the submissions advanced on behalf of the petitioner cannot be accepted. The petition deserves to be dismissed.

13. Accordingly, the Writ Petition stands dismissed with no order as to costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)