

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2099 OF 2023
IN
WRIT PETITION NO. 1704 OF 2022

Raghav Mago	...Applicant
<i>In the matter between</i>	
Dr Sagar Govind Gavali & Ors	...Petitioners
<i>Versus</i>	
State of Maharashtra & Ors	...Respondents

Mr VM Thorat, Senior Advocate, with PV Thorat, MV Thorat,
Amar Bodke, Avinash Bailmare & Kiransingh, i/b Pooja Thorat,
for the Petitioner.

Ms Pooja Malik, i/b NR Bubna, for Respondent No. 4.

Ms PH Kantharia, GP, for the Respondent-State.

Mr Sagar Patil, for the Respondent-MCGM.

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CORAM G.S. Patel &
Neela Gokhale, JJ.

DATED: 1st August 2023

PC:-

1. The Interim Application is by one , Dr Raghav Mago, one of the many Petitioners in the Writ Petition. He had earlier filed an Interim Application (L) No. 10581 of 2022 which was allowed directing the Respondent Authorities including all colleges to accept forms for all Petitioners for the examinations.

2. Now in the present Interim Application the prayers sought from (a) to (d) are as follows:

“(a) call for the relevant records and proceedings from the office of Respondent authorities and after going through the legality of the same, Respondent Authorities including all the colleges be directed to return all the original education certificates/ documents back to the applicants as mentioned in the present IA.

(b) call for the relevant records and proceedings from the office of Respondent authorities and after going through the legality of the same, Respondent Authorities including all the colleges be directed to issue the passing certificate, marksheet, degree certificate of super-specialty degree course of the applicants alongwith NOC.

(c) pending the hearing and final disposal of the Interim Application, Respondent Authorities including all the colleges be directed to return all the original education certificates/ documents back to the applicants as mentioned in the present IA.

(d) pending the hearing and final disposal of this Interim Application, respondent Authorities including all the colleges be directed to issue the passing certificate, marksheet, degree certificate of super-specialty degree course of the applicants along with NOC.”

3. The case of the Petitioners is that they took admission to various colleges in Maharashtra on the basis that they would have to serve out a compulsory bond of one year after the super-specialty course completion. Well after they took admission, they were confronted with a requirement that the bond would be for two years. Had they known about this before they took admission in August 2019, Mr Thorat argues, they would not have sought admission in

Maharashtra at all. The penalty provided for not serving out the full two-year term is Rs 2 crores payable to the Government of Maharashtra. For failure to abide by that condition, apparently the Respondent Authorities and colleges have declined to return to the Petitioners their education certificates, marksheets and degree certificates of superspecialty degree courses etc.

4. As a matter of law, two questions will arise. The first is whether the Petitioners are entitled to say that they took admission on the basis of a certain specific representation, viz., that their service bond was to be of a one-year duration and this could not have been changed to their prejudice after they took admission. The second question that necessarily follows is whether, irrespective of whatever be the demand of the Government, the authorities have the right in law to withhold an individual student's mark sheets, documents etc.

5. In the Interim Application, no relief is sought regarding the first question — that will have to await the outcome of the Petition. But since arguments have been advanced before us, we proceed to note these. Mr Thorat draws our attention to a series of documents from Exhibit 'C' to the Petition. *In paragraph (C)(5) at pages 11 and 12 of the Petition, the reference is to a Government College namely a Grant Medical College but not to a Municipal College.* The requirement was said to have been that the service bond would be for one year or, in default apparently of Rs 2 crores. This was repeated elsewhere. The narrative goes on to say that the Medical Counselling Committee's website referred to two Government Resolutions ("GR") of 28th May 2010 or any GR issued in that

regard periodically. But that also mentioned, curiously, a one-year bond or Rs 2 crores in default. There are similar entries for other colleges not all of them municipal, such as The Topiwala National Medical College, Lokmanya Tilak Medical College and the Government Medical College, Nagpur.

6. The Petitioners say they took admission in August 2019. It was in September 2019, by a notice published on the notice board of one and only one college that they were alerted that the bond period would be two years, not one. This, they say was the document at Exhibit 'F' put up on the Seth GS Medical College notice board in September 2019 and the relevant averment in that regard is at paragraph (F) at pages 15 to 16 of the Petition.

7. The present Interim Application points out that this Petition was filed soon after. A list of the Petitioners' names is at Exhibit 'A' to the Writ Petition. Paragraph 2 of the Interim Application says that at the time of admission all the Petitioners were told they had to undergo government service of one year or in default pay a penalty of Rs 2 crores. All the Applicants completed a three-year course. They were to appear for their annual examination. At that point, an Affidavit was demanded asking for willingness to complete the two-year period. This led to the filing of the first Interim Application which, as we noted, was allowed on 20th April 2022. The order of 20th April 2022 required the Petitioners to fill in the Affidavits but on a without prejudice basis and subject to the outcome of the contentions in the Writ Petition.

8. The Applicants completed their examinations. They all joined bond service sometime in October 2022. It will end towards the last week of October 2023 but it is sought to be extended now till October 2024. The Applicants have completed seven months of the bond service.

9. At the time when they took admission to the super-specialty course, the Petitioners were required to submit various documents. They will need these documents going ahead. These include nationality documents, selection copies and mark sheets. There is a fairly hefty list that starts at page 9 of the Interim Application and runs all the way to page 12 covering some 30 different types of documents. The need for these documents is set out in paragraphs 8 and 9. Apart from anything else, these documents will be needed by the Applicants so that they can register themselves with the State Medical Council.

10. Therefore, on the first question, the submission by Mr Thorat is simplicity itself. At no point were these Petitioners told of a two-year required service. Such a condition could not be added later to their detriment. He draws our attention to the decision of the Supreme Court in *State of Punjab & Anr v Dr Viney Kumar Khullar and Ors.*¹ The Supreme Court held that whether viewed from the perspective of legitimate expectations or a consideration of equity, it is clear that the candidate should be made clearly known of the requirements to be fulfilled and cannot be exposed to what the Supreme Court described as ‘unknown liabilities or limitations’.

1 (2010) 13 SCC 481

11. The answer from Ms Kantharia for the State based on an Affidavit of the Directorate of Medical Education and Research (“**DMER**”) is that there is a GR of 12th October 2017 long before the Petitioners took admission. She says that in many of the documents produced by the Petitioners (example page 98) the reference is to GRs as amended from time to time. It was therefore the responsibility of medical students to find every applicable GR, understand and digest it and take an informed decision accordingly. During counselling, which is mandatory, all candidates must have been informed or must be deemed or should be presumed to have been informed of the applicability of the GR.

12. Mr Thorat’s response is that a GR not even referenced by date (although others of 2010 and 2012 are) cannot be invoked in this fashion. It is thoroughly unreasonable to expect students attempting to gain admission with all the attendant trauma to spend time trying to get through a government website to find a particular GR or to find which GR might or might not apply to them. Nothing prevented the Government from insisting that the two-year bond be specifically mentioned or that the GR be specifically referenced in the admission documents and information supplied in hard copy. Nothing was simpler than this and the government does not show, Mr Thorat submits, a single reason why a condition of severe limitation or restriction could not have been clearly specified by every college or why the Government could not have insisted that every college in Maharashtra must clearly specify the requirement of such a bond. It is quite unreasonable to say, he submits, that the condition must be presumed to exist and must be presumed to have been known and that people must be expected to go from site to site

constantly in hunt of some possibly relevant GR. In his submission, settled law says that if the Government wants to make an onerous demand on a student in Medicine, Law or Engineering then the very least that can be expected is that this demand be clearly stated at the time the person takes admission so that the person taking admission can make an informed decision.

13. Ms Kantharia says the GR of 2017 has been upheld. But Mr Thorat has no quarrel with it generally. He says it can be perfectly well be made applicable to those to whom it is made known and to whom the two-year bond is notified. But it is for the Government to show, Mr Thorat insists, that its two-year requirement was notified to these Petitioners before they took admission if they are to be bound by it. If that has not been shown then the decision of the Supreme Court in *Dr Viney Kumar Khullar* must apply *proprio vigore*.

14. The significant difficulty in the Petitioners' way as we see it is that in the Interim Application and in the Petition we have only generalised information. We do not have specific information of or pertaining to all the Petitioners whose names are at Exhibit 'A' from pages 28 to 35. There are 81 such persons in all. All are said to have taken admission between June 2019 and 11th to 15th September 2019 except for the person at Sr. No. 60 whose admission is of 2020, and the person at Sr. No. 63 whose admission is also of 2020. We are now told that these are typographical errors, but we have no means of knowing this.

15. In Exhibit 'A' in the Petition, therefore, we will need a compilation of what was the information disclosed or shown to each of these 81 Petitioners at the time of admission such as the material that is shown to us from Exhibit 'C' onwards. Once that information is available, we will then be able to more accurately assess the relief sought in respect of the service bonds. It is not possible to do that today when we are taking up only the Interim Application. There is no such prayer in the Interim Application for release of the bonds in any case.

16. We are, therefore, not making an order in regard to the bond at all nor are we disposing of the Writ Petition. There are Affidavits and undertakings given pursuant to the previous order of this Court and those undertakings will undoubtedly continue. In this Interim Application we are only concerned with the return of the documents and not with the question of serving out of the bonds.

17. These are the rival submissions in brief on the matter of the duration of the service bond.

18. As to the second question of withholding the documents, we believe it is clearly settled that colleges and educational institutions enjoy no special lien over these documents. They are the personal documents of these students. They may be required by the college for various purposes at the time of admission. But they cannot be withheld.

19. We direct the authorities to return the documents to the Petitioners, ***and students mentioned in Exhibit "A"***, i.e., with an order in terms of prayer clauses (b) and (c) of the current Interim Application.

20. However, we understand the urgency given the dates that we have noted above and we will list the Petition itself for hearing and final disposal on 14th September 2023.

21. We also note that some of the documents and annexures in the Petition are mere extracts and are not complete. This will not suffice for the final hearing. The document at page 103 is a solitary page out of the MH-SSET-2016 Preference Form Brochure. To begin with, we do not understand how a 2016 Preference Form Brochure could be of any relevance whatsoever in an admission of 2019. We allow the Petitioners to produce in a compilation the relevant Preference Form Brochure for the year in which they took admission.

22. The Interim Application is disposed of in these terms.

23. List the Petition for final hearing on 14th September 2023.

(Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 10th August 2023. The corrections are shown in paragraphs Nos. 5, 6, 14, 15 & 19 in bold, italics and underline.