

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17047 OF 2024
ALONG WITH
INTERIM APPLICATION NO.15012 OF 2024

Mashalkar Prasad, 22 years]
S/of Chandrashekhar M. Prasad] .. Petitioner
R/of Shivaji Chowk, Mashalkar Galli,]
Omerga (Tal),]
Dist. Dharashiv (Osmanabad)-413606]

Versus

1. Terna Medical College & Hospital,]
Sector No.-12, Phase No. - II,]
Nerul, Navi Mumbai – 400 706]
Through its Registrar]
2. State Common Entrance Test Cell,]
Government of Maharashtra, 8th Floor, New]
Excelsior Building, A.K. Nayak Marg, Fort,]
Mumbai – 400001.]
Through its Commissioner]
3. Fees Regulating Authority]
305, Govt. Polytechnic Building,]
49 Kherwadi, Ali Yawar Jung Marg,]
Bandra (E), Mumbai – 400051]
Through its Member Secretary]
4. National Medical Commission]
Pocket No.14, Sector -8, Dwarka]
Phase-1, New Delhi – 110077, India]
5. Directorate of Medical Education & Research]
Govt. Dental College & Hospital]
Building, St. George's Hospital Compound]
Mumbai – 400 001, Government of Maharashtra.] ...Respondents.

Mr. Devadatt Kamat, Senior Advocate (through V.C.) with Mr. Vinduprakash Pandey, Mr. Sunny Jain and Mr. Rohyl Fernandes, Advocates for the Petitioner.

Mr. V.P. Sawant, Senior Advocate, with Mr. Nitin Dhumal, Advocates for Respondent No.1.

Ms. Dhruti Kapadia, Advocate for Respondent No.2-CET Cell.

Mr. Rui Rodrigues with Mr. Jainendra Sheth, Advocates for Respondent No.3-FRA.

Ms. Tanu N. Bhatia, Assistant Government Pleader for the Respondent- No.5.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 28th NOVEMBER 2024.

JUDGMENT (Per A. S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2] The petitioner, desirous of pursuing MBBS Course for Academic Year 2024-25 appeared at the NEET (UG) Examination, 2024-25. Having successfully cleared the said examination, he was placed at Serial No.7490 of the Provisional Select List published by the 2nd respondent – State Common Entrance Test Cell (for short, the CET Cell). He was therefore issued a Provisional Selection Letter indicating that he had been allotted a seat in the Institutional Quota at the 1st respondent – Terna Medical College and Hospital (for short,

the Medical College). His admission was shown in the Economically Weaker Section Category (for short, the EWS Category). With a view to secure admission, the petitioner in accordance with the notice dated 10/11/2023 issued by the 3rd respondent – Fees Regulating Authority (for short, the FRA) was required to pay three times the regular fees for seeking admission in the Institutional Quota. The petitioner approached the College on 31/10/2024 for securing his admission with Demand Drafts for an amount Rs 26,94,000/- being tuition fees of the First Year alongwith two more Demand Drafts for Rs 4,00,000/- and Rs 50,000/- respectively. The said Demand Drafts were all drawn on 31/10/2024. It is the petitioner's case that he was denied admission by the Medical College. According to him, the Medical College was demanding five times the regular fees for securing admission in the Institutional Quota. The petitioner therefore could not secure his admission on 31/10/2024. On 01/11/2024, the petitioner issued an e-mail communication raising a grievance before the CET Cell. A grievance was also raised before the FRA and hence it issued an e-mail communication to the Dean of the Medical College on 04/11/2024 requiring the Medical College to act in accordance with notice dated 10/10/2024 indicating the maximum fees that could be charged. An explanation

from the Medical College was also sought. Since the petitioner failed to secure his admission, he has approached this Court under Article 226 of the Constitution of India seeking redressal of his grievance in that regard.

3] Mr. Devdatt Kamat, learned Senior Advocate for the petitioner submitted that the petitioner had been deprived of admission at the First Year MBBS Course despite the fact that he was provisionally selected in the light of the Provisional Selection Letter issued by the CET Cell. In accordance with the schedule of fees prescribed by the FRA initially on 10/11/2023 and reiterated thereafter on 10/10/2024, it was evident that a student who was granted admission under the Institutional Quota was required to pay a maximum of three times the regular fees. As per the schedule of fees on the website of the Medical College, the petitioner prepared three Demand Drafts for amounts of Rs 26,94,000/- (three times the regular fees of Rs 8,98,000/-), Rs 4,00,000/- (Hostel fees) and Rs. 50,000/- (Mess fees). All these Demand Drafts were dated 31/10/2024 on which date the petitioner had approached the Medical College for seeking his admission. Referring to the affidavit-in-reply on behalf of the Medical College, it was submitted that the

presence of the petitioner with the said Demand Drafts was admitted in paragraph 12. There was no reason whatsoever for the Medical College not to confirm his admission though the petitioner was prepared to pay the requisite fees to it. Demand Drafts towards tuition fees which was three times the regular fees for the Institutional Quota were not accepted by the Medical College as it demanded an amount that was five times the regular fees. On a grievance being raised by the petitioner, the FRA took cognizance of the same and had directed the Medical College to submit a detailed explanation. The response of the Medical College as recorded on 18/11/2024 clearly indicated that the petitioner was called upon to also pay the Second Year fees while securing his admission for the First Year. He referred to the provisions of Section 14(5) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (for short, Act of 2015) and submitted that the Medical College was bound to collect only the prescribed fees and nothing more. Having denied admission to the petitioner for unjustified reasons, the Medical College had come up with the specious plea that as the cut off date was 05/11/2024, it was now precluded from considering the petitioner's claim. The petitioner could not be deprived of his admission on this

count especially when he was not at fault and that it was the Medical College which denied him admission. Placing reliance on the decision of the Supreme Court in *Vansh s/o Prakash Dolas vs The Ministry of Education and the Ministry of Health and Family Welfare and Others*, 2024 INSC 235 it was submitted that the facts of the present case warranted grant of restitutive relief to the petitioner. The same could be in the form of creation of a supernumerary post to enable the petitioner to pursue his education. Since the petitioner had immediately approached this Court on being denied admission, the ratio of the aforesaid decision could be applied to the facts of the present case. He also referred to the judgment of the co-ordinate Bench at Nagpur in *Aryan vs. State of Maharashtra, Through Principal Secretary and Others*, Writ Petition No.5536 of 2024 decided on 03/10/2024. It was thus submitted that the petitioner be granted appropriate relief.

4] These submissions were opposed by Mr. V. P. Savant, learned Senior Advocate for the Medical College. According to him, the Medical College did not deny admission to the petitioner. There was no deliberate act committed on behalf of the Medical College that would deprive the petitioner of admission. The petitioner

insisted for the grant of benefit under the EWS Category and was thus not willing to even pay the required fees under the Institutional Quota. Further, since the documents pertaining to the anti-ragging requirements were not submitted, the petitioner was called upon to bring his parents to the Medical College. The petitioner after leaving the College on 31/10/2024 did not turn up till the cut off date which was 05/11/2024. As a result, all the sanctioned seats at the Medical College had now been filled-in and there was no vacant seat available. He disputed the correctness of the observations made by the Grievance Committee of the FRA in its minutes. The petitioner having initiated proceedings before the FRA, he could seek redressal of his grievances before that Authority. Since the Medical College did not deny the petitioner his admission and as the cut off date for admission had now been crossed coupled with the fact that there were no vacant seats available, the writ petition was liable to be dismissed.

5] Mr. Rui Rodrigues, learned counsel appearing for the FRA placed on record the minutes of the proceedings initiated by it pursuant to the grievance received from the petitioner with regard to breach of provisions of Section 14 of the Act of 2015. He submitted

that perusal of the minutes of the meetings held on 18/11/2024 and 26/11/2024 clearly indicated that the Medical College was demanding fees in a manner that was not permissible under Section 14(5) of the Act of 2015. The stand taken by the Medical College that there was some doubt with regard to the actual fees payable and probable increase in the fees was misplaced in view of the specific notice issued by the FRA on 10/11/2023 and thereafter again on 10/10/2024. Since the petitioner had brought three Demand Drafts dated 31/10/2024 towards tuition fees, hostel fees and mess fees, it was clear that he was interested in seeking admission at the Medical College. He therefore submitted that in accordance with the provisions of the Act of 2015 that was binding on the Medical College, three times the regular fees ought to have been accepted by the Medical College.

Ms. Dhruvi Kapadia, learned counsel appearing for CET Cell submitted on instructions that the cut off date prescribed for seeking admission pursuant to the NEET (UG) notice was 05/11/2024 and presently there was no vacant seat available for accommodating the petitioner.

6] We have heard the learned counsel for the parties at length and

with their assistance we have perused the documents on record. At the outset, we may refer to certain undisputed facts. The petitioner has successfully cleared the NEET (UG) Examination 2024-25 and was issued a provisional selection letter by the CET CELL. He was placed at serial no.7490 in the select list. He was allotted the Medical College for being admitted under the Institutional Quota. The notice dated 10/11/2023 published by the FRA indicates that a student seeking admission in the Institutional Quota is required to pay three times the regular fees. The contents of the said notice were again published on 10/10/2024 without any change. This would indicate that the quantum of fees prescribed under the said notices were required to be charged and paid in the academic year 2023-24 and 2024-25. In accordance with the said notice, the petitioner alongwith three demand drafts that were payable to the Medical College approached it on 31/10/2024. The fact that such demand drafts were ready and available is clear from the photocopies of the same on record. The petitioner's presence with the said demand drafts at the Medical College is also admitted by it in paragraph 12 of the affidavit filed on its behalf. The aforesaid would indicate that the petitioner in accordance with the Provisional Selection Letter proceeded to take admission at the Medical College on 31/10/2024.

7] According to the learned Senior Advocate for the petitioner, the Medical College required the petitioner to deposit fees for the Second Year also whilst taking admission in the First Year. This was objected by the petitioner. The petitioner's grievance in that regard can be seen from his complaint addressed to the FRA immediately on 01/11/2024. The FRA therefore directed the Medical College to comply with the provisions of the Act of 2015 as well as the notice dated 10/10/2024. Though there is a denial on the part of the Medical College of having demanded fees for the Second Year for the present, we may rely on the Minutes of the Meeting of the Grievance Committee held on 18/11/2024. The response of the Medical College as recorded in the said Minutes was that the petitioner requested for a concession and was unwilling to pay fees for the Second Year. The Grievance Committee accordingly recommended that if all prescribed requirements were satisfied by the petitioner, the Medical College ought to provide a detailed explanation for denying him admission in the First Year.

8] At this stage, it would be necessary to refer to Section 14(5) of the Act of 2015. The same reads as under:-

“14. Procedure to be adopted by Fees Regulating Authority-

5) No institution shall collect fee amounting to more than one year fee from a candidate in an academic year and collection of fees for more than one year in an academic year shall be construed as collection of capitation fee and such institution shall be liable to be proceeded against.”

The aforesaid provision clearly indicates that it would not be permissible for a College to demand or collect fees exceeding what was prescribed by the FRA and that breach of the said provision could attract necessary action. Considering the fact that the petitioner was armed with the requisite College fees payable under the Institutional Quota through the three demand drafts on 31/10/2024 which fact is admitted, on the principle of preponderance of probabilities, we do not find that a student who has secured admission in a Medical College and has arranged for the necessary fees prior to the cut-off date would not take admission on the allotted seat. This probability is furthered by the observations of the Grievance Committee made on 18/11/2024 that the Medical College was demanding fees for the Second Year too alongwith the fees for the First Year.

We do not find it necessary to enter into any disputed arena as

to what actually transpired between the petitioner and the staff of the Medical College on 31/10/2024. In the facts of the case, we are satisfied that the petitioner who was issued a Provisional Selection Letter and allotted a seat in the Institutional Quota would not on his own volition be reluctant to take admission in the First Year despite having arranged the necessary fees. We therefore find that the petitioner was denied admission at the Medical College under the Institutional Quota on 31/10/2024 for no fault on his part.

9] In this backdrop, the question to be considered is the nature of relief that can be granted to the petitioner. The petitioner on being denied admission immediately raised a grievance with the FRA on 01/11/2024 which was much prior to the cut-off date of 05/11/2024. Cognizance of the same was taken by the FRA and it directed the Medical College to act in accordance with the notice dated 10/10/2024 in the matter of charging fees from the petitioner. In the interregnum, the cut-off date of 05/11/2024 has passed. The petitioner approached this Court by filing the writ petition on 22/11/2024. The writ petition was taken up on 25/11/2024. After considering the contentions urged on behalf of the petitioner, time was granted to the Medical College to put up its stand on affidavit by

27/11/2024. All this has occurred within a short period of the cut-off date and prior to expiry of the period of one month therefrom. These facts are being referred to for considering the entitlement of the petitioner to relief in the facts of the present case.

10] The grant of restitutive relief has been considered by the Supreme Court in *Manoj Kumar vs. Union of India and Others*, 2024 INSC 126 wherein it has been observed that merely on the ground that with passage of time the proceedings as filed have been rendered futile, the constitutional Courts may not dismiss the same on that count. It is the primary duty of a constitutional Court to control and regulate the exercise of power or arbitrary action. It has thereafter referred to the second step relating to restitution. The said principle was also referred to in *S. Krishna Sradha Vs. State of Andhra Pradesh and Ors.*, (2017) 4 SCC 516. It was observed that if the Court finds that there is no fault attributable to the candidate who has pursued his/her legal right expeditiously without any delay but has been denied his/her rightful claim, under exceptional cases a direction could be issued to create a supernumerary seat, which may be one or two so as to direct admission to be granted. It has however cautioned that such direction should not be issued beyond a period

of one month from the cut-off date.

11. The Supreme Court in *Vansh Prakash Dolas (supra)* has referred to the principle of restitutive justice. It has referred to the judgment in *Manoj Kumar (supra)* in that regard. Thereafter in paragraph 27, it has observed as under:-

“27. This Court in the case of ***S. Krishna Sradha v. State of Andhra Pradesh and Others*** [(2017) 4 SCC 516] examined the issue of wrongful denial of admission in a medical course, and propounded the theory of ‘restitutive justice’ by holding as below:-

"13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the

process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court. shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate

directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to Admission in MBBS Course only and we have not dealt with post graduate medical course."

(emphasis supplied)

A co-ordinate Bench of this Court in *Aryan (supra)* had an occasion to consider the case of a student who was denied admission for no fault of his. The Division Bench referred to the decision in *Vansh Prakash Dolas (supra)* and granted relief to the said petitioner.

12] In that view of the matter, we are satisfied that the petitioner was denied admission at the Medical College in the Institutional

Quota for which the CET Cell had issued the Provisional Selection Letter. The petitioner having taken steps to secure admission in the Institutional Quota by paying three times the regular fees could not have been denied admission. He raised a grievance immediately on the next day which was much before the cut-off date. The FRA too directed the Medical College to act in accordance with its Notice dated 10/10/2024. It is true that 05/11/2024 was the cut-off date and presently there are no vacancies in the First Year MBBS course where the petitioner could be granted admission. We therefore find that this is a fit case in which the ratio of the decisions of the Supreme Court referred to hereinabove ought to be applied. A case for grant of restitutive relief has been made out. Since the petitioner approached this Court immediately on being denied admission and as the period of one month from the cut-off date of 05/11/2024 is yet to expire, we are inclined to direct admission of the petitioner at the Medical College in the Institutional Quota on a supernumerary seat. This direction would meet the ends of justice. We are cognizant of the fact that the FRA is seized of proceedings initiated on the basis of complaints made against the Medical College under the Act of 2015. It would be open for the Medical College to contest those proceedings on their own merits and in the light of the provisions of

the Act of 2015. There is no reason whatsoever to deprive the petitioner of his admission in the Institutional Quota in the First Year MBBS course.

13] Hence for the aforesaid reasons, it is held that the petitioner was unfairly denied admission at the Medical College to which he was entitled pursuant to the Provisional Allotment Letter dated 31/10/2024 issued by the CET Cell. It is thus directed that the petitioner shall be duly admitted at the Medical College in the Institutional Quota on a supernumerary post. The respondent nos. 2 to 5 in the facts of the case are directed to approve the creation of the said supernumerary post. It would be open for the FRA to continue the proceedings initiated against the Medical College in accordance with the provisions of the Act of 2015. All contentions of parties in that regard are kept open.

Rule is made absolute in the aforesaid terms with no order as to costs. The Interim Application also stands disposed of.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]