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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 2861 of 2021**

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JAWAL SURAJ CHHASIYA

Versus

DEAN, SURAT MUNICIPAL INSTITUTE OF MEDICAL EDUCATION AND
RESEARCH

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Appearance:

MR.ADITYA J PANDYA for the PETITIONER(s) No.

MR KAUSHAL D PANDYA for the RESPONDENT(s) No. 1, 2

MR UDAYAN P VYAS for the RESPONDENT(s) No. 4

MR KM ANTANI, AGP for the RESPONDENT(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 20/04/2021

IA ORDER

No vaccination, unless self-administered, can work to contain the evil of virus of commercial mindedness on part of any educational institution in charging exorbitant amounts from the students under one or other head or under one or another pretext, thereby demeaning the sanctity of the very concept of the education.

1.1 Heard learned advocate Mr.Aditya Pandya for the applicant-original petitioner, learned advocate Mr.Kaushal Pandya for respondent Nos.1 and 2, learned Assistant Government Pleader Mr.K.M. Antani for respondent No.3-State and learned advocate Mr.Udayan Vyas for respondent No.4.

2. By filing the present Civil Application, the applicant-original petitioner has prayed as under.

(i) set aside the letter dated 25.03.2021 bearing No.SMIMER/OUT/5090 and order dated 25.03.2021 bearing No.SMIMER/Out/5097 issued by respondent No.1 as being against the reasoned order passed by this Hon'ble Court and be further pleased to direct the respondents not to withhold marksheet, degree certificate, attempt certificate and consequential entitlement for internship on account of non-payment of penalty and late payment charges;

(ii) declare that there is willful disobedience of order dated 10.02.2021 passed by this Hon'ble Court in Special Civil Application No.2861 of 2021 by respondent No.1;

(iii) direct the respondent No.1 to allow the petitioner to join his internship training.

2.1 In other words, applicant-petitioner seeks release of his marksheet, degree certificate, attempt certificate and consequentially to undergo the internship. The applicant-petitioner is a student who has completed his M.B.B.S. course from respondent No.1-Surat Municipal Institute of Medical Education

and Research, Surat, which is self-financed college run by respondent - Surat Municipal Corporation.

2.2 The main Special Civil Application was notified today together with the present Civil Application, as was directed by the Court in order dated 09th April, 2021 to enable the Court to have the wholesome view of the controversy involved.

3. The prayer made in the main petition is to set aside decision reflected in communication dated 06th February, 2021 of respondent No.1 whereby petitioner No.1-student was debarred from attending classes and taking examination. It was next prayed to permit the petitioner-student to appear and to take examination of 9th Semester which was to commence from 11th February, 2021.

3.1 When the aforesaid communication dated 06th February, 2021 is seen, the petitioner-student was prevented by respondent No.1-educational institute from appearing in Semester examination on the ground that petitioner-student had not paid the tuition fees, late fees and other charges in the nature of penalty and cheque bounce charges. Along with the said communication dated 06th February, 2021, the statement figured showing the details of the amount demanded from the student.

3.2 The said tabular details are extracted hereinbelow.

Sem Nos.	Management Quota Fees (Rs.)	Last Date	Cheque Deposit Date	Amount of Returned Cheque	Amount including Late Fees (Rs.150.00/-, for one day)	Cheque Returned Charges	Total
4	527500	31/01/18	10/09/18	560800	692650	243095	935745
5	527500	31/07/18	10/09/18	533650	665500 (879 Days)	231326	896826
9	527500 (1, 2,3 installment pay) (4 th installment pending Rs.131875)	31/12/20	30/09/20 02/11/20 01/12/20	-	137275 (fee) + 5400 (late fee) (30 Days)	0	137275
Total				1094450	1495425	474421	1969846

3.3 Thus, the demand raised by respondent No.1 from the student was Rs.05,27,500/- each towards fees for 4th and 5th Semesters and Rs.01,31,875/- being the unpaid installment of fees for the 9th Semester. The total amount of Rs.11,87,875/- was sought to be recovered. It appears that cheques then submitted by the petitioner-student towards fees, were bounced.

3.4 As the above tabular details shows, amount of Rs.02,43,095/- and Rs.02,31,326/- came to be demanded towards cheque return charges in respect of two cheques respectively in addition to late fee amount. It was on such ground that the petitioner-student was debarred.

3.5 It appears that this Court considered the controversy and order dated 10th February, 2021 came to be passed. The Court noted the case of the petitioner and that of respondent No.1 as were represented by the respective learned advocates.

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"7. Mr.Aditya Pandya learned counsel for the petitioner would submit that the petitioner be permitted to appear in the examinations on an undertaking that the petitioner shall file stating therein that he will clear the entire amount of outstanding fees minus the penalty and the cheque return charges of an amount of Rs.11,86,875/- within a period of four weeks from today.

8. Mr.Kaushal Pandya learned counsel appearing for respondent nos.1 and 2 would submit that the institution has serious doubts on the genuineness of the conduct of the petitioner that the petitioner is willing to offer. He would submit that looking to the past history though the outstanding amounts of Rs.5,27,500/- in two separate installments were due in January 2018 and July 2018, cheques were issued in September, 2018, which were dishonored for which the institution had to initiate an appropriate proceedings. He would submit that the penalty charges and the cheque return charges are justified notwithstanding the principal amount of outstanding fees, the petitioner should not be given any indulgence in paying the fees in installments."

3.5.1 The Court considered the rival submissions as above and then observed and directed as under,

"10. Considering the fact that the petitioner had secured admission to the MBBS course in the year 2016-17 being well aware of the actual fee that he would have to pay of Rs.10,55,000/-, he cannot now be permitted to wriggle out of this commitment. However, looking to the averments made in the petition that the petitioner's family may have undergone financial crisis as a result of pandemic, only a limited indulgence can be given to the petitioner particularly in view of his past conduct in failing in his commitment by issuing cheques which were dishonored of the amount of Rs.11,86,875/- as the outstanding fees minus penalty and the cheque return charges. The petitioner is accordingly directed to;

(i) Handover cash or bankers cheque or demand draft in the name of the respondent no.1 of an amount of Rs.1,31,875/- to the competent officer of the respondent no.1 institution on or before 12.02.2021.

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(ii) An amount of Rs.5,28,000/- in a similar manner shall be paid in the mode as above on or before 18.02.2021.

(iii) The remaining amount of Rs.5,28,000/- shall be paid in the mode as per (i) above on or before 28.02.2021.

11. The petitioner shall file an undertaking to the effect that he will abide by the terms and conditions enunciated herein above within a period of one week from today. Failure to file such undertaking and/or abiding with the terms of such undertaking shall automatically disqualify the petitioner of the benefit of the undergoing of the examinations of the 3rd MBBS-II as per the schedule at page no.23 (Annexure:G)."

3.6 Upon requiring the petitioner-student to pay the amounts as indicated and directed in paragraph 10 reproduced hereinabove, the Court observed that if the said payment and undertaking to be filed in that regard is not honoured, then only the respondent No.1 shall have right to withhold the marksheet and other testimonials of the petitioner-student. It is not in dispute that the amounts indicated in (i), (ii) and (iii) in paragraph No.10 of order dated 10th February, 2021 above has been paid by the petitioner-student and the undertaking filed in that regard has been honoured. The payment is evidenced by the copies of receipts produced with the Civil Application.

3.7 It is noteworthy that on behalf of respondent No.1, as recorded in paragraph No.8 of the aforesaid order, the levy of penalty and cheque bounce charges proposed to be justified, but this Court in terms clarified that, it will not adjudicate those aspects in writ jurisdiction.

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4. Prayers in the Civil Application as above were required to be made by the applicant-petitioner in view of order dated 25th March, 2021 passed by Dean of respondent No.1 Medical College. Thereby despite payment of amount of the fees by the student as directed by this Court, the Dean, by the aforesaid written order, provided that duties assigned to the petitioner-student in South-West Zone (Athwa Zone) for Rapid Antigen Test and COVID-19 vaccination shall be withdrawn as the petitioner had not paid the fees. It is further provided that petitioner shall not be entitled to be considered eligible for internship and that the duty given to the petitioner-student for COVID-19 and his internship were ordered to be suspended.

4.1 In response to the Civil Application, reply affidavit came to be filed by respondent Nos.1 and 2 affirmed by one Dr.Rajkumar K. Bansal, stating to be holding the post of Dean of respondent No.1 Institute. The detailed contentions were canvassed and it was *inter alia* highlighted that petitioner had not paid the amounts mentioned in the above tabular form which included the penalty and cheque bounce charges. In support of such claim, Resolution No.167/2019 of the Surat Municipal Corporation was relied on which stated that as per the Standing Committee resolution, 18% interest will be recovered for the cheques which may bounce in respect of payments made by the tax payers, ijaradars and other general payments. Another Resolution dated 24th June, 2009 of the Corporation was also relied on which

contemplate levy of late fee from the student. Learned advocate for respondent No.1 further relied on paragraph Nos.16 and 26 of the reply affidavit to vehemently defend the stand of respondent No.1.

4.2 Learned advocate for the petitioner submitted that the said Resolution for 18% interest on the cheque bounce charges was for different purpose and would not apply in the present case. He also disputed requirement of payment of late fees in light of the aforementioned order dated 10th February, 2021 passed by this Court, whereby the applicant-petitioner was required to pay amount of fees and that the petitioner has already paid the said amount. Learned advocate for the petitioner termed the approval and action on part of respondent No.1 educational institute to charge such exorbitant sum for cheque bounce charges etc. as razor-like arbitrary and unreasonable.

5. There is no need for the Court to express anything about the claim of respondent No.1 for late fee to the extent of about Rs.03.00 lakhs and the cheque bounce charges to the extent of almost Rs.04.74 lakhs as in order dated 10th February, 2021 itself the Court has already observed thus,

"13. It is clarified that as far as the stand of the institution with regard to the penalty and the cheque return charges, the Court will not adjudicate those issues in this petition under Article 226 of the Constitution of India."

5.1 By refusing that the Court would not go into the questions of levy of cheque bounce charges and

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late fee in the present writ proceedings, the Court has in that way rejected the stand of respondent No.1 Institute and the action of debarment against the student taken on the said ground is disapproved.

5.2 In the aforementioned order dated 10th February, 2021, the Court has already expressed to provide that the said issues could not be gone into in the writ jurisdiction. In view of that, the action on part of respondent No.1 to withhold the issuance of marksheet and other testimonials and to further withdraw the eligibility of the petitioner-student for internship and preventing the petitioner from undertaking the COVID-19 duty and vaccination duty assigned to him could hardly sustain. Astonishingly, order dated 25th March, 2021 further provided that the dues assigned to the petitioner for Rapid Antigen Test and COVID-19 vaccination shall also stand cancelled.

6. While the arbitrariness is evident, it also smacks commercial approach on part of respondent No.1.

6.1 As a result, the Civil Application deserves to be allowed by setting aside order dated 25th March, 2021 passed by Dean of respondent No.1-Medical College, declaring that it is not only arbitrary but stands against the express directions issued by this Court in order dated 10th February, 2021. The respondents in particular respondent No.1 are directed to release the marksheet, degree

certificate, attempt certificate and all other testimonials of the petitioner. It is further directed that the petitioner shall be treated as entitled to undergo internship and the said right shall not be denied to him on the ground of non-payment of penalty and cheque bounce charges.

7. The application stands allowed in terms of above direction.

Direct service is permitted.

(N.V.ANJARIA, J)

ANUP

