



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 6942 OF 2017

Dr. Zahid Zaheer **....Applicant.**

Versus

The State of Maharashtra and Ors. **....Respondents.**

Mr. A.N. Kakade, Advocate for applicant.

Mr. S.J. Salgare, APP for respondent Nos. 1 and 2.

Mr. S.S. Ladda h/f. Mr. S.J. Rahate, Advocate for respondent No. 3.

WITH
CRIMINAL APPICATION NO. 7005 OF 2017

Dr. Maqdoom Mohiuddin Farooqui **....Applicant.**

Versus

The State of Maharashtra and Ors. **....Respondents.**

Mr. N.S. Ghanekar, Advocate for applicant.

Mr. S.J. Salgare, APP for respondent Nos. 1 and 2.

Mr. S.S. Ladda h/f. Mr. S.J. Rahate, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JUNE 28, 2018.

ORDER : [PER T.V. NALAWADE, J.]

1. Both the proceedings are filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for

short) for relief of quashing of F.I.R. No. 417/2017 registered in City Chowk Police Station, Aurangabad for the offences punishable under sections 420, 467, 468, 471 and 34 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and also for the offences punishable under sections 3 and 7 of the Maharashtra Educational Institutions (Prohibition of Capitation Fees) Act, 1987 (hereinafter referred to as 'the Act' for short). Both the sides are heard.

2. The applicant of the first proceeding is the Principal of Y.B. Chavan College of Pharmacy, Aurangabad and the college is run by Maulana Azad Educational Trust. The applicant of the second proceeding is working as the Principal of Maulana Azad College of Arts, Commerce and Science, Aurangabad. The applicant of the second proceeding is also the Secretary of the aforesaid institution and the institution runs many colleges. It is minority institution.

3. In F.I.R. given against the applicants, one Chisti Habib Ahemad has made allegations against the applicants of the two proceedings and the allegations are as under :-

(i) For academic year 2016-17 when Pharmacy Council of India had given permission to pharmacy college of the applicants to admit only 100 students, for the first year of

B. Pharm course, they admitted 19 more students to make money and they have made money by giving illegal admissions.

(ii) From the students of B. Pharm course, illegally money is collected in the name of advance fees for all the four academic years and that way, there is breach of provisions of the Act against capitation fees.

(iii) Admission is given to less meritorious students in B. Pharm course by the applicants, accused and for doing so, they avoided to follow the proper procedure for giving admissions.

(iv) From the less meritorious students, to whom by illegal mode admission is given, more money is taken and mostly from them fees is taken in advance.

(v) To achieve the object of making money, illegal and false record of admission is prepared by the accused and false information was supplied to various authorities by the college and the authorities are :

(a) Deputy Director of Technical Education, State Government (competent authority),

(b) Dr. Babasaheb Ambedkar Marathwada University
Aurangabad,

(c) Pravesh Niyantaran Samiti (Admission Regulatory Committee),

(d) Shikshan Shulk Samiti (Fees Regulatory Committee),

(e) Pharmacy Council of India (F.C.I) and All India Council of Technical Education (AICTE).

(vi) The students of Ph.D. course are also given admissions illegally in aforesaid manner.

4. For proper appreciation of the aforesaid allegations and the material on the record, it is necessary to keep in mind the instructions given by the Apex Court in the cases reported as under :-

(i) **(2002) 8 SCC 481 [T.M.A. Pai Foundation and Others Vs. State of Karnataka and Ors.]**,

(ii) **(2003) 6 SCC 697 [Islamic Academy of Education Vs. State of Karnataka]**,

(iii) **(1981) 4 SCC 512 State of Kerala v. T.P. Roshana**, (This case needs to be read with Rule 5 of the Regulations on Graduate Medical Education, 1997 framed by MCI).

(iv) **(1998) 3 SCC 183, Ravindra Kumar Rai vs. State of Maharashtra**,

(v) **(2012) 10 SCC 770, Rajan Purohit v. Rajasthan University of Health Sciences**,

(vi) **(2005) 2 SCC 65, Mridul Dhar v. Union of India**,

(vii) (2012) 7 SCC 433, Priya Gupta v. State of Chhattisgarh, and

(viii) (2012) 10 SCC 149, Faiza Choudhary v. State of Jammu & Kashmir.

In aforesaid cases, importance of giving admissions on inter-se merit is discussed by the Apex Court. To see that the selection is made on the basis of inter-se merit only, the Apex Court has also discussed the importance of schedule, transparency in admission process. In such cases, action which can be taken against such institution is also described by the Apex Court and the action of cancelling permission and derecognition of the institution can be taken. Even contempt proceeding can be started as the procedure is laid down by the Apex Court. Due to these circumstances and observations made by the Apex Court, the things cannot be taken lightly in the present matter. Further, it is a statutory power of the police to make investigation. As per the instructions given by the Apex Court, the State Government has prepared the Pravesh Niyantaran Samiti and Shikshan Shulka Samiti. The instructions given by the State Government through these committees are being quoted hereinafter.

5. As per the procedure, if some seats remain vacant after following the schedule prepared by Pravesh Niyantaran Samiti for Central Admission Process (referred to as 'CAP' for short) rounds,

the procedure for filling those vacancies need to be followed as per the Rules given in brochure, instructions prepared by the Samiti for the year 2016-17. Rule 3 of this brochure shows that for getting admission under any category, a student is required to apply to competent authority for admission through CAP. For every category, the authority is expected to prepare merit list of all such applicants to enable the institution like the present one to give admissions to such students and the admissions are to be given strictly on the basis of inter-se (underline added) merit. For filling even management quota, Rule 7 (4) of the aforesaid brochure need to be followed and for that also inter-se merit needs to be strictly adhered.

6. Rule 4 of the aforesaid brochure shows that Director of Technical Education shall act as Nodal Officer to carry out admissions under supervision and control of competent authority. The provision of section 2 (g) give definition of 'competent authority' and so, the college cannot give go-bye to the instructions issued by the Deputy Director of Technical Education (the Officer acting for Director) and necessary information must be supplied by the College, institution to such Officer.

7. Rule 13 of the brochure shows that procedure for filling

vacant seats after CAP rounds Nos. (i), (ii), (iii) and (iv) is given. Rule 13 is important in the present matter as the allegations are in respect of the seats filled after aforesaid CAP rounds. Rule 13 runs as under :-

"13. Admissions in Institutional Quota and vacant seats after CAP.- The Director or Principal of the institution shall carry out the admissions for these seats in the following manner.-

(a) Admissions shall be made in a transparent manner and strictly as per the Inter-Se-Merit of the Candidates who have applied to the Institution.

(b) Information brochure or prospectus of the Institution which specifies rules of admission should be published well before the commencement of the process of admission. All the information in the brochures should also be displayed on the Institution's website.

(c) Institution shall invite applications by notifying schedule of admission and the number of seats in each course to be filled by the institution, by advertisement in at least two leading newspapers and on the website of the institute.

(d) Aspiring Candidates fulfilling the eligibility criteria as notified by the Government and specified by the appropriate authority, from time to time, shall apply to the Principal or Director of the respective institution for admission at the Institution level as provided in rule 3 (2) (b).

(e) The institution, as specified by the appropriate authority, shall fill the seats in the NRI Quota, based on the Merit list prepared and published by the Competent Authority.

(f) The institution may give admission to the applicants on the basis of their inter-se merit derived from Merit list declared by the Competent Authority for filling the seats in the Institutional Quota, excluding the NRI seats.

Provided that, where the appropriate authority specifies that such admissions shall be based on the basis of CET, in that case the Institutional quota, excluding NRI seats, shall be filled on the basis of Inter-Se-Merit prepared by following the procedure specified in 8 (4).

(g) The institution shall prepare and display the Inter-Se merit lists of the Candidates to be filled in at the institution level, in the Institutional Quota and Supernumerary Quota of OCI / PIO, Foreign National, Children's of Indian workers in Gulf Countries along with the vacant seats after CAP, on the notice board and shall publish the same on the website of the institution.

(h) The Minority or Non-Minority institution intending to surrender the Institutional Quota (in part or full) of specified courses to the CAP shall communicate two days before the display of seat matrix of each CAP Round and the same shall be allotted as per the rules of CAP.

(i) All the admissions and cancellations shall be

updated immediately through online system.

If any CAP seat remains or becomes vacant after the CAP Rounds then the same shall be filled in by the Candidate from the same Category for which it was earmarked during the CAP. Further if the seats remain vacant then the seats shall be filled on the basis of Inter-Se-Merit of the applicant."

Rule 14 of the brochure is also relevant and it runs as under :-

"14. Institution Level Round.- If the seats remain vacant after all CAP Rounds, the said seats shall be filled in by the institution through Institution Level Round with the prior approval of the Competent Authority."

8. Rules 13 and 14 show that transparency is expected from the college in the process of admission and they also show that admission should be given strictly on inter-se merit basis. The sum and substance of Rule 13 is that the information needs to be published by way of advertisement in newspapers and by other mode in following respects (a) number of seats to be filled after aforesaid four CAP rounds, (b) the schedule for filling the aforesaid seats. The aforesaid information needs to be published in two leading newspapers and also on website of the institution. They also provide that the information brochure prepared by institution should

be published well before the commencement of the procedure which the institution wants to follow for admission and all the information in the brochure should also be displayed on the website of the institution. As per the procedure, the candidates who are entitled to apply as per the brochure prepared by the State Government are entitled to apply in this round also and so, proper publication of the information is must.

9. The applicants have produced copies of two advertisements published in two newspapers. They are dated 10.8.2016. The advertisement in English in daily newspaper Divya Marathi was as under :-

Dr. Rafiq Zakaria Campus
Y.B. Chavan College of Pharmacy
Dr. Rafiq Zakaria Marg, Rauza Bagh, Aurangabad 431001
Phone : 0240-2381307, 0240-2381129 : www.ybccpa.ac.in

ADMISSION NOTIFICATION 2016-17
B. Pharm First Year

Applications are invited for institute level admission against vacant seats/cancellation after CAP / CAP Minority allotment, as per rules of Directorate of Technical Education, Maharashtra State, Mumbai. Schedule for admission is notified on the College notice board.

Dr. Zahid Zaheer
Principal

The advertisement published in Urdu newspaper is also similar. It is not clear as to whether these newspapers had circulation outside of

Aurangabad district.

10. The aforesaid advertisements published in newspapers were not in accordance with Rule 13 of the brochure prepared by the statutory committee. Number of seats which were lying vacant after CAP rounds and the schedule for filling these seats was not given. There is nothing on the record to show that the brochure of the institution for that year was published prior to the date of advertisements and it was placed on the website. The letter of competent authority dated 1.8.2016 shows that for these rounds, strict compliance of Rule 3 and 13 of the brochure prepared by the statutory committee was expected from the institution. There was no such compliance made in the present matter.

11. The learned counsel for the applicants placed reliance on some correspondence made by this college with University. Copy of letter of University dated 25.11.2016 is produced on the record and it shows that for the academic year 2016-17 list of 116 candidates was supplied by this college to the University to inform that they were admitted for first year course. This list was approved by the University. The submissions made and the record show that around 40% of the seats were filled after CAP rounds. The last candidate

who got admission in this round, had secured only 47 marks out of 150 marks.

12. The learned APP took this Court through the other correspondence made by the applicants with Deputy Director of Technical Education, the competent authority. The letter dated 5.3.2018 of the competent authority shows that for the year 2016-17 list of only 96 candidates was supplied to the competent authority and this list was approved. The correspondence further shows that only 65 students for the first year were approved during CAP rounds and the remaining candidates were for the other academic years. Thus, complete information was not supplied to the competent authority by the applicants and there is allegation that it was done intentionally, so that the institution was able to do illegal things in respect of the remaining seats. There are allegations that separate record was prepared for other students.

13. It is the case of the applicants that after CAP rounds (i) to (iv), 167 students applied directly to the college and out of those students, the candidates who paid the fees were admitted and for them the inter-se merit was followed. This submission of the applicants cannot be accepted at this stage. It is already observed

that there was no compliance of provisions of Rule 13 prepared by the statutory committee. Further, even in the list of this round supplied by the college, the students who had approached to the institution and who had secured more than 100 marks like Kasliwal who had secured 115 marks and Pokharana who had secured 107 marks were not admitted. Further, more than 100 students had secured more marks than the last candidate Shaikh. It is already mentioned that the last candidate Shaikh had secured 47 marks. Thus, more than 100 students who were more meritorious and when many of them were from minority community were not given admission even when on the basis of aforesaid short advertisement they had approached the college. Thorough investigation in to that is necessary.

14. The aforesaid circumstances are sufficient to infer that due to not following the proper procedure, information was not reached to the students who intended to take admission to this course in this college. The learned counsel for applicants submitted that no student, who was more meritorious has made complaint. This submission cannot be accepted at this stage. The interim order made by this Court shows that this Court has prevented the investigating agency to file the chargesheet. Many times, the

investigating agency take such order as order of prevention to do anything. When institution like the present one is involved, not many persons dare to go against such institution. There are very few persons and students, who have resources and courage to make such complaints. The record itself also can speak about the intentions, but that record of admission is not yet collected by the police during investigation. Some copies of lists produced by the institution in the present matter cannot be accepted as they are. It is very easy in such case to read between the lines and that needs to be done in the present matters. Thus, there was illegality and irregularity in giving admissions in the round in which the students were given admissions from Sr. No. 66 onwards and that needs to be investigated. That is a fraud on the society and such act destroys careers of meritorious students. Less meritorious students come in the field of medicine and that affects adversely the entire society.

15. Other allegation that from many students fees of entire course, four academic year, was collected in advance is not disputed. But, the fees in advance from more than 40% of students was collected by the college and there are specific allegations in that regard against the applicants. It will be interesting to ascertain as to whether all of them were are from the list of the last round. As per

the procedure given by Fees Regulatory Committee and also as per the provisions of the Act, against capitation fees, the fees cannot be taken in advance for all the four academic years. Such collection of fees amounts to taking capitation fees. The learned counsel for applicants submitted that as per the Special Act, only students or aggrieved persons can give complaint and so, in the present matter, complaint cannot be entertained. This submission is not acceptable. Even the competent authority can take action in such cases. The papers of the present matter show that the competent authority has grievance about the procedure followed. Few admissions are not yet approved by the competent authority. Further, when there is one cognizable offence and others are non cognizable offences, all the offences can be treated as cognizable offences. Complaint can be accepted during investigation and such students can come forward. Investigation is still in progress.

16. The aforesaid two circumstances show that there is substance in the allegations made against the applicants. The aforesaid material and the circumstances are sufficient to make out prima facie case for the allegations, for the offences that merit was not followed, the procedure was not followed, more amount of the nature of capitation fee was collected and offence of fraud against

the meritorious students and against the society is also committed.

17. Other allegation like sanction/permission to admit more students than 100 need not be considered at this stage. It appears that the dispute about the authority of two institutions like Pharmacy Council of India and AICTE for pharmacy colleges is pending in the Supreme Court. It appears that this Court has granted stay in favour of the institutions and the permission granted by AICTE to admit 120 students is in existence due to stay order made by this Court. In view of these circumstances, this point, allegation made in that regard need not be considered. Further, even if that allegation is ignored, the aforesaid allegations cannot be ignored and they can be considered independently.

18. For the reasons given, this Court holds that detail investigation needs to be made in the aforesaid allegations. It involves fraud, creation of false record, use of record containing incorrect information to the competent authority and also the commission of the offences under the Act. No relief can be granted in favour of the applicants as there are specific allegations against them in respect of commission of the aforesaid offences. In the result, both the proceedings are dismissed. Interim relief is vacated.

A request made for continuation of interim relief granted earlier is rejected. The investigation should go on.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

SSC/