

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11055 of 2008**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE MOHIT S. SHAH**

**AND**

**HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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**VIKAS SAWLA S/O. MOHANLAL SAWLA - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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Appearance :

MR AY KOGJE for Petitioner(s) : 1,

MRS MANISHA LAVKUMAR, AGP for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

MRS VD NANAVALI for Respondent(s) : 3,

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**CORAM : HONOURABLE MR. JUSTICE MOHIT S. SHAH**

**and**

**HONOURABLE MS. JUSTICE H.N.DEVANI**

**Date : 24/10/2008**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE MOHIT S. SHAH)**

RULE. Mrs Manisha Lavkumar, learned AGP waives service of Rule for respondent Nos.1 and 2. Mrs VD Nanavati waives service of Rule for respondent No.3.

2. This is an unfortunate case where the petitioner has moved this Court under Article 226 of the Constitution challenging the stand of the respondents that the petitioner did not join the Post Graduate Degree Course in Orthopedics within the stipulated time limit which stand, if upheld, will result into not only cancellation of the petitioner's selection and admission to the Post Graduate Degree Course in Orthopedics but will also debar him from applying to any PG Course in future.

3. The petitioner completed his MBBS Course in March 2007 from the Medical College at Indore (M.P.) and completed his internship in March 2008. In the meantime, the petitioner appeared at the All India Post Graduate Medical Entrance Test in January 2008 and secured 272<sup>nd</sup> rank on all India basis. At the third counseling which took place on 24.05.2008, the petitioner opted for admission to PG Course of MS Orthopedic with BJ Medical College at Ahmedabad (respondent No.2 herein). By letter dated 24.05.2008 from the Director General of Health Services, Medical Examination Cell, Government of India, the petitioner was allotted admission in MS (Orthopedic). The petitioner was also directed "to report to the Principal/Dean of BJ Medical College, Ahmedabad within seven days from the date of allotment for admission." He was further informed that "the candidates who fail to report to the Principal of the allotted college and do not take admission within seven days from the date of allotment shall forfeit the claim for admission and seat under 50% All India Quota 2008 without any further reference in the matter."

4. The petitioner accordingly reported before the Director, Post Graduate Studies and Research, BJ Medical College, Ahmedabad on 29.05.2008 and informed the said authority that he was reporting for MS

Orthopedic at BJ Medical College, Ahmedabad with all the documents. The intimation to that effect signed by the petitioner and counter signed by the Director, Post Graduate Studies and Research, BJ Medical College, Ahmedabad (respondent No.2 herein) is produced at Annexure-B to the petition. The endorsement made by the Director, Post Graduate Studies and Research on 29.05.2008 reads as under:-

“No.: PG/Reporting/AIEE/1424/08  
Office of the Director  
Postgraduate Studies and Research,  
B.J.Medical College, Ahmedabad-16.  
Dt. 29.05.2008  
Dr. Vikas Sawla reported on date 29.05.2008

Sd/- illegible  
D I R E C T O R  
POST GRADUATE STUDIES & RESEARCH  
B.J.MEDICAL COLLEGE, AHMEDABAD.”

The report also bears the endorsement of the office of respondent No.2 requiring the petitioner to “pay Post Graduate Deposit of Rs.9,000/-“ on 31.05.2008. The petitioner accordingly paid up the Post Graduate Deposit fees of Rs.9,000/- under receipt dated 31.05.2008 which is produced at Annexure-C to the petition. The petitioner was also granted Provisional Eligibility Certificate dated 30.05.2008 (Annexure-E to the petition) and the admission order dated 09.06.2008 signed by the Chairman, PG Medical Admission Committee of the Gujarat University (Annexure-F to the petition). The petitioner also paid the admission fee of Rs.500/-, tuition fees, registration fees and sports fees aggregating to Rs.898/- on 09.06.2008 (Annexure-D to the petition). There is no dispute about the above dates and events.

5. According to the petitioner, the petitioner signed the joining report dated 09.06.2008 which was also counter signed by Dr. Apurva Acharaya, PG Teacher, to whom the petitioner was assigned as a student being in charge of Unit No.1. According to the petitioner, the said joining report was thereafter to be submitted to the Head of the Department – Dr MM Prabhakar, but unfortunately, the petitioner did not submit the same till 04.08.2008 as the petitioner was of the bonafide belief that the same could be submitted later on. According to the petitioner, the petitioner also started attending the hospital during the orientation period and also attended one day surgical update for Synthetic Bone Substitutes held on 22.06.2008 at Paraplegia Center, Civil Hospital, Ahmedabad in the same campus where respondent No.2 College is located. The certificate is on the record of this proceeding and is signed by the Chairman – Professor Dr MM Prabhakar (Head of the Department of the Orthopedics) and faculty persons who had conducted the seminar.

According to the petitioner, on 28.06.2008, the petitioner left for home in Madhya Pradesh due to some family problems and though the petitioner wanted to return before the end of July, due to Bomb Blast at the Civil Hospital, the petitioner ultimately reported back on 04.08.2008 on which date, the petitioner submitted his formal joining report which was counter signed by Post Graduate Teacher, Dr. Apurva Acharya and also by Dr MM Prabhakar, Head of the Department. The said report is at Annexure-H to the petition.

6. It appears that, however, the respondents did not treat the petitioner as having joined PG Course in Orthopedics as respondent No.2 College submitted a report dated 24.07.2008 to the Medical Council indicating that the petitioner had not joined the course. Since the

petitioner's attempts to persuade the authorities to take a different view failed, the petitioner moved this Court on 02.09.2008.

7. In response to the notice, affidavit-in-reply has been filed by the Director of Post Graduate Studies and Research, B.J.Medical College, Ahmedabad (respondent No.2 herein) stating that the petitioner was to immediately report on duty on payment of fees on 09.06.2008, but after the payment of fees, the petitioner did not report for duty and therefore, PG Teacher under whom the petitioner was to study under his letter dated 04.07.2008 informed the Director that the petitioner had not submitted the report and therefore, the seat may be considered as vacant. By letter dated 30.07.2008, Dr MM Prabhakar, Head of the Department also informed the Director that the petitioner had not joined the department. According to the respondents, the petitioner for the first time came to join on 04.08.2008. However, since the course had already commenced on 31.05.2008 and the deadline of 10.06.2008 was fixed by the Hon'ble Supreme Court, it was not possible for the College to allow the petitioner to join. It is further stated that the first round of PG Course would be over by 30.10.2008 and the petitioner had lost more than 50% of the term and therefore, it was not possible to permit the petitioner to join the course at such a belated stage. It is also stated that Medical Council of India was informed on 19.07.2008 that the petitioner had not joined.

8. Reliance is placed by the respondents on the Rules governing admission to Post Graduate Degree and Diploma Medical Courses framed by the Gujarat University, particularly, Rule 7.10 providing that the selected and admitted candidate has to join within stipulated time of seven days, failing which, the candidate would lose his admission (and registration) and would not be eligible for admission in future.

Reliance is also placed on Rule 5 providing that admitted student has to apply immediately for registration through the institution concerned and that if such application does not reach the University within one month of the date of joining, the selection will be cancelled and the student will not be eligible to apply for any PG Course in future.

Reference is also made to Government of Gujarat Residency Rules, 1989, wherein Rule 9.1 provides that in case the candidate does not join on the day fixed by the Dean, the residency will be considered as vacant. Rule 7.12 provides that if the Post Graduate student is found absent for more than 30 days without permission, the registration in the PG Course will be cancelled.

9. Mr AY Kogje, learned advocate for the petitioner submits that the petitioner was allotted the seat in the Post Graduate Course of MS Orthopedic by Government of India on 24.05.2008 and was required to join respondent No.2 College within seven days; that the petitioner did join respondent No.2 College well within the time limit on 29.05.2008 and the petitioner also paid all the requisite fees to the University including PG medical admission fees and registration fees on 09.06.2008 about which there is no dispute. The petitioner was also granted admission order by the Chairman, PG Medical Admission Committee on 09.06.2008. It is submitted that the aforesaid particulars including the fact that the petitioner had reported before the Director of Post Graduate Studies and Research on 29.05.2008 as borne out by Annexure-B are sufficient to show that the petitioner had joined the Post Graduate Course of MS Orthopedic at respondent No.2 College. It is also submitted that the joining report signed by the petitioner on 09.06.2008 was counter signed by the Post Graduate Teacher i.e. Dr AR Acharya,

photostat copy whereof is produced at Annexure-R1 along with the rejoinder affidavit. Mr Kogje has submitted that the petitioner had also started discharging his duties as resident as borne out by the documents. Copies of the documents produced at Annexure-G Collectively are the forms relating to various patients admitted to the hospital attached to respondent No.2 College. It is, therefore, submitted that merely because the formal joining report was not presented before the Head of the Department between 09.06.2008 and 04.08.2008, the petitioner cannot be visited with harsh consequences of cancellation of his admission and being debarred for admission to PG Course in future.

Strong reliance is placed on the decision of the Apex Court in Charles K. Skaria Vs. Dr. C. Mathew and Ors., AIR 1980 SC 1230 in support of the contention that when the petitioner had joined the course within the time limit, non-submission of the formal joining report cannot wipe out the factum of joining the course.

10. On the other hand, Mrs Manisha Lavkumar, learned AGP has opposed the petition and submitted that since the petitioner did not submit the joining report, nor submitted the application for registration to the University within one month, the petitioner could not be considered as having joined the Post Graduate Course conducted by respondent No.2 College. It is submitted that the Rules leave no discretion for the Institution or the Head of the Department and therefore, no fault may be found with the decision of the respondent authorities treating the petitioner as having forfeited his admission. It is submitted that the Medical Council of India was also informed accordingly on 19.07.2008. It is further submitted that the petitioner has not even completed the terms in the first academic term.

Our attention is also invited to letter dated 17.09.2008 which reflects the stand of the respondent authorities that the petitioner had not submitted written joining report at Orthopedic Department before leaving for home on 28.06.2008 and that he was not given any specific Orthopedic work but it would appear from the said letter that the petitioner had attended the orientation from 10.06.2008 to 28.06.2008 and thereafter, he had left for home. The letter also states that the petitioner had filled up certain forms and entered certain written data on advice and instructions of his resident seniors.

The learned AGP also relies on the letter dated 04.07.2008 of Dr Apurva Acharya stating that the petitioner had not joined his duties and had not submitted his joining report till 04.07.2008.

It is vehemently submitted that since no joining report was submitted to the Head of the Department till 04.08.2008, the authorities are justified in taking the stand that the petitioner had not joined the Institution within the stipulated time limit and therefore, forfeited his admission. It is further submitted that this Court would not interfere with the decision of the authorities in academic matters, otherwise it would erode the authority of the Head of the Institution in maintaining attendance and discipline.

11. We have heard the learned counsel for the parties and given anxious consideration to the rival submissions. There is no dispute about the fact that after allotment to PG Course of MS Orthopedic at respondent No.2 College on 24.05.2008, the petitioner did report at respondent No.2 College on 29.05.2008 i.e. within the period of seven days as stipulated in the allotment letter issued by Director General of Health Services, Medical Examination Cell, Government of India. That



report is also counter signed by the Director of Post Graduate Studies on the same day, which fact is not disputed by the Director in his reply affidavit. In fact there is no dispute about the fact that after reporting before the Director, the petitioner also paid PG deposit of Rs.9,000/- on 31.05.2008 with respondent No.2 College and thereafter, paid PG Medical Admission Fees, tuition fees and registration fees to the Gujarat University on 09.06.2008 upon which the Chairman of the PG Medical Admission Committee issued admission order in favour of the petitioner specifically mentioning that Dr Apurva Acharya was the teacher under whom the petitioner was to study in the MS Orthopedic course. The petitioner's case is that on 09.06.2008, the petitioner signed the joining report and it was counter signed by Dr Apurva Acharya, PG Teacher on 09.06.2008. This averment is also not disputed. It is of course true that joining report was thereafter not submitted to the Head of the Department, nor was it forwarded to the University. But the papers produced at Annexure-G Collectively to the petition indicate that the petitioner had attended the Institution during the joining and orientation period from 10<sup>th</sup> to 28<sup>th</sup> June and the certificate signed, inter alia, by Dr MM Prabhakar (Head of the Orthopedic Department) also bears out the petitioner's case that the petitioner had attended one day surgical update for Synthetic Bone Substitutes held at the Civil Hospital on 22.06.2008 at Paraplegia Center, Civil Hospital, Ahmedabad where respondent No.2 College is located. In light of this material, it cannot be said that the petitioner had not joined respondent No.2 College till the formal joining report was submitted to the Head of the Department on 04.08.2008. May be, there was delay in submission of formal joining report to the Head of the Department and may be on account of his absence from the College for five weeks from 28<sup>th</sup> June to 3<sup>rd</sup> August 2008, the petitioner could not complete his terms in the first academic term. However, that cannot permit the respondent authorities to visit the petitioner with the

harsh consequence of treating the petitioner as having not joined the college or cancelling the admission which was granted to the petitioner on the basis of his all India merits.

12. It is true that in exercise of writ jurisdiction under Article 226 of the Constitution, this Court does not sit in appeal over the decision of the administrative authorities in charge of academic institutions. If the only consequence of the decision of the respondent authorities was not granting the petitioner permission to appear at the examination on the ground of non-completion of the first academic term, this Court would not have interfered with the decision. But as highlighted in the reply affidavit filed by the Director of Post Graduate Studies, the impugned decision, if allowed to stand, would result into cancellation of the petitioner's admission and also his being debarred for applying to any Post Graduate Course in future. Hence, we have to consider whether any reasonable person would have taken such a view of the matter which has been taken by the respondent authorities in the instant case. In the facts and circumstances of the case already indicated in the preceding paragraph, we are of the view that such a view could not have been taken on the basis of the material produced on the record of this proceeding.

13. It is true that the respondent authorities have contended in the reply affidavit that the petitioner had remained absent for more than 30 days. However, the facts and circumstances of the case and particularly, the fact that when the petitioner was to return to Ahmedabad, the serial blasts in Ahmedabad delayed the petitioner's return to Ahmedabad may be sympathetically considered by the authorities in this matter.

14. For the aforesaid reasons, we allow this petition and direct the respondent authorities to treat the petitioner as having joined the BJ Medical College for the course in MS Orthopedic within the time limit and to consider the petitioner's application for registration on that basis. The petitioner not having completed his terms in the first academic term shall not be treated as the ground for cancellation of admission.

15. The petition is accordingly allowed in the aforesaid terms.  
Rule is made absolute.  
Direct service is permitted.

(MOHIT S. SHAH, J.)

(HARSHA N. DEVANI, J.)

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