

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.9072 OF 2020**

**JYOTI EKNATH WAGH  
VERSUS  
THE UNION OF INDIA THR THE UNDER SECRETARY AND OTHERS**

...  
Advocate for the Petitioner : Shri Abhaya R. Rathod  
AGP for Respondent 2 : Shri S.G. Sangle  
ASGI for Respondents 1 and 5 : Shri A.G. Talhar  
Advocate for Respondent 3 : Shri M.D.Narwadkar  
...

**CORAM : RAVINDRA V. GHUGE  
&  
SMT. VIBHA KANKANWADI, JJ.**

**(VACATION COURT)**

**DATE :- 31<sup>st</sup> December, 2020**

**Per Court :-**

1. We have passed an order on 29.12.2020, which reads as under :-

- “1. We have heard the learned Advocate Mr. A. R. Rathod for the petitioner, the learned Assistant Solicitor General of India Mr. A. G. Talhar for respondent Nos.1 and 5, the learned AGP Mr. S. G. Sangle for respondent No.2, and the learned Advocate Mr. M. D. Narwadkar for respondent No.3.
2. The learned Advocate for the petitioner submits that he has attempted to serve respondent No.4. Since we do not find proper service effected on respondent No.4, we are permitting the petitioner to serve respondent No.4 through the E-Mail address mentioned in the cause title of the petition along with a copy of this order.
3. The controversy zeroes down upon the petitioner's original

*documents having been retained by respondent No.4, in view of her application for admission to the Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.) course. Simultaneously, she was selected to join the Bachelor of Dental Surgery (B.D.S.) Course. The call letter indicates such allotment and the authorities dealing with the admissions to the B.D.S. course are demanding the original documents which are with respondent No.4. We are informed that respondent No.4 has forwarded the request of the petitioner to respondent No.5 for permitting her to exit from the B.A.M.S. course and for return of the original documents.*

- 4. Stand over to 31-12-2020, keeping in view that the second round for the B.D.S. course admission is likely to commence on 01-01-2021. The learned Assistant Solicitor General of India representing respondent Nos.1 and 5 shall forthwith intimate respondent No.4 to release the original documents of the petitioner and such communication shall be placed before us on the next date.*
- 5. The matter will be listed in the urgent admissions category. The petitioner shall serve respondent No.4 by E-Mail.”*

2. Shri Rathod, learned advocate for the petitioner, makes a categorical statement that respondent No.4 has been served through an email. The hard copy of the notice of circulating this matter on 29.12.2020 was also sent to respondent No.4 through Blue Dart on 28.12.2020. He also tenders a copy of the tracking report of the Blue Dart DHL to indicate that respondent No.4 was served on 29.12.2020 at 14:08 hours. Both these documents are taken on record and marked as “X-1” collectively for identification.

3. The learned ASGI appearing on behalf of the Ministry of Ayush/ respondent No.5 submits that the directions issued by us on 29.12.2020 have been complied with. He places before us certain

documents (06 pages, which were not paginated and the Court itself paginated these pages). These six pages are taken on record and marked as “X-2” collectively for identification.

4. The learned ASGI submits that respondent No.2 has been informed that the petitioner is granted an exit from B.A.M.S. admission process and her documents should be forthwith returned to her, by respondent No.4.

5. Shri Narwadkar, learned advocate appearing on behalf of respondent No.3, which is the authority in-charge of the admission process to the B.D.S. course, submits that the deadline to participate in the Government quota admission round was 25.12.2020 and the candidates were expected to appear along with the original documents. The exit from an earlier course in which a candidate may have been selected, was permissible till the end of 25.12.2020. The petitioner did not appear before respondent No.3 for her admission to the B.D.S. course.

6. We find from the record before us that the petitioner had tendered her application for exiting the B.A.M.S. course to respondent No.4 on 23.12.2020. An email in this context was submitted to respondent No.5 on 24.12.2020 at 12:08 hours. Shri Rathod also points out from page 29 annexure-E that the Principal of the college immediately contacted respondent No.5/ Ayush on 23.12.2020 at 05:24 PM seeking guidance to permit the petitioner to exit the B.A.M.S. course.

7. It is apparent from the record that it is only after we passed the order on 29.12.2020, that respondent No.5 woke up from deep slumber and reacted by granting approval to the petitioner to exit the B.A.M.S. course after a delay of 07 days. We also find from page 1 of X-2 that respondent No.5 has tacitly permitted the petitioner to exit by directing respondent No.4 College to return her original documents and fees as detailed in the attached notice for enabling free exit.

8. We, therefore, find fault with respondent No.1 and respondent No.5 for having wasted precious time of the petitioner and virtually jeopardised her admission to the B.D.S. course. We cannot sit as silent spectators and turn a Nelson's eye to this conduct of respondent No.5. A meritorious girl student like the petitioner is likely to lose a valuable course like B.D.S. only on account of the apathy and laxity shown by respondent Nos.1 and 5. We, therefore, find this to be a fit case to exercise our extra ordinary jurisdiction and rescue the petitioner from such a precarious situation.

9. As such, this Writ Petition is partly allowed with the following directions :-

(a) The petitioner shall approach respondent No.4 on 01.01.2021 (tomorrow) at 11:00 AM along with the copy of this order and the Principal of respondent No.4 shall forthwith return all original documents of the petitioner along with fees, within one hour.

(b) Thereafter, the petitioner would be at liberty to approach respondent No.3 for participating in the mop-up II round for the B.D.S. admission course and her candidature would be considered strictly on her merit.

(c) In the event, any seat reserved for the Scheduled Caste Woman category, to which the petitioner belongs, is available with respondent No.3, she may be considered from the said quota. In the event, no such seat is available, she would be considered from the general category.

*kps*

(SMT. VIBHA KANKANWADI, J.)

(RAVINDRA V. GHUGE, J.)