

(2021) 02 GUJ CK 0050

In the Gujarat High Court

Case No : R/Special Civil Application No. 715 Of 2021

Hiral Muljibhai Solanki

APPELLANT

Vs

State Of Gujarat & 2 Other(s)

RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 02 GUJ CK 0050

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Jay R Shah, Jinesh H Kapadia, Vandan K Baxi, Prachiti V Shah, Nanavati, Vikas V Nair

Judgement

Biren Vaishnav, J

1. In this petition under Article 226 of the Constitution of India, the petitioner has approached this Court with a prayer that the respondents be directed

to grant scholarship to the petitioner in accordance with the Centrally Sponsored Scheme of the Post Matric Scholarship awarded to the students

belonging to the schedule caste.

2. The case of the petitioner is that she is pursuing her studies in M.D. Anesthesiology in the college-respondent no.2 since 2018. The academic

session of 3rd Master's Course would end in June, 2021. The annual fees for the course is of Rs.8 lakhs per annum. In all therefore the petitioner has

to pay a total fees of Rs.24 lakhs. The petitioner has approached this Court by way of a petition stating that she has paid an amount of Rs.8 lakhs and

the outstanding fees of Rs.16 lakhs may be waived / adjusted in lieu of her entitlement to the scholarship under the Centrally Sponsored Scheme of

post matric scholarship to the students belonging to Scheduled Caste. Averments

in the petition were made that the college was forcing her to pay fees of the outstanding amount of Rs.16 lakhs when otherwise her applications for the scholarship were pending decision at the hands of the competent authorities. On 12.01.2021, the Court passed the following order:

1. It is the case of the petitioner that she is a Scheduled Caste candidate pursuing her M.D. (Anesthesiology). Her father is a labourer at Morbi. The

income certificate indicates that the annual income of the father of the petitioner is Rs.48,000/-. She had applied for scholarship under the reserved

category, the application for which is pending. Despite dire financial constraints, she paid Rs.8 lakhs as fees for May and December, 2018 semesters.

Her eligibility for scholarship is not yet decided and now she has been asked to pay fees of Rs.16 lakhs for the remaining four semesters, failing

which, she will not be entitled to appear in the ensuing examination in May, 2021.

2. Mr.Jinesh Kapadia learned advocate for the petitioner states that the last date for filling up the form is 15.01.2021. The respondent college no.2

shall permit the petitioner to fill in her form for the examination of M.D. (Anesthesiology) subject to further orders.

3. Issue NOTICE returnable on 27.01.2021. Registry to communicate the order through E-mail.

3. On the returnable date, Mr.Sudhir Nanavati learned Senior Advocate with Mr.Vandan Baxi learned advocate appeared for the respondent no.2-

college and Mr.Vikas Nair appeared for the respondent no.3-Gujarat University.

4. Taking the Court through affidavit in reply filed by Dr.Yogendra Modi, DEAN of the GCS Medical College, Hospital and Research Center, it was

pointed out by Shri Sudhir Nanavati that the allegations against the college forcing the petitioner to pay the fees, was misconceived. He would submit

that the regulations of the Medical Council of India viz. the Medical Council of India Post Graduate Medical Education Regulations 2000, mandates

that a stipend has to be paid to the postgraduate students. The petitioner till date has received an amount of Rs.18,61,892/- as the amount of stipend.

The college is bound to pay such stipend. Inviting the attention of the Court to the scheme under which the scholarship entitlement is claimed by the

petitioner, Mr.Nanavati would submit that in accordance with the scheme, the petitioner is bound to reimburse and refund the stipend that she has

received from the college in the event the petitioner is awarded scholarship

under the scheme. She cannot on the basis of her pending applications for scholarship be given indulgence not to pay the fees, which today is outstanding at Rs.16 lakhs when she has already received stipend of Rs.18,61,892/- and would still receive an additional amount which would almost bridge the gap of the deficit fees that the petitioner is bound to pay.

5. Considering the scheme of the Central Government for awarding scholarship to students like the petitioner and having perused the affidavit in reply filed by the college, the allegation of the petitioner that she has been forced by the college to pay the fees is an allegation which is misconceived.

Admittedly she has paid an amount of fees to the tune of Rs.8 lakhs only, as against which she had received a total stipend of Rs.18,61,892/- upto

December 2020. The scheme envisages that a request for scholarships has to be made year to year. The first application made by the petitioner after

having secured the admission was on 15.11.2018. Thereafter the application is made on 09.01.2021 whereas the present petition was filed on

10.01.2021. Admittedly these applications are pending for decision at the hands of the competent respondents.

6. It cannot be comprehended that after having secured the benefit of stipend to the tune of Rs.18,61,892/- which the college is mandated to pay and

which the petitioner has received that the petitioner can be given the indulgence of not paying the outstanding amount of fees of Rs.16 lakhs to the

college in which she secured admission through the ACPC.

7. Since the applications for entitlement to scholarship are pending before the competent authorities, the competent respondents are directed to decide

the applications for scholarship under the scheme on or before 15.03.2021.

8. As far as the amount of outstanding fees to the tune of Rs.16 lakhs is concerned, the petitioner shall file an undertaking before this Court within a

week from today that she shall pay the outstanding fees to the respondent no.2- college of Rs.16 lakhs on or before 25.04.2021. This direction is

independent of any outcome that may be given to her entitlement to the scholarship issue. In the event a positive decision is taken by the competent

authority on the application for scholarship and the petitioner receives such scholarship, the stipend amount that she receives during the entire tenure

of her course shall be refunded to the college within two weeks from the time that the scholarship amount is deposited in her account in the event of a

favorable decision.

9. The petitioner is therefore directed to file an undertaking to the effect that;

(i) She will pay the outstanding amount of fees to the college of Rs.16 lakhs on or before 25.04.2021.

(ii) In the event the petitioner's scholarship application is decided positively and she receives the scholarship amount for the academic course of M.D.

Anesthesiology, she will refund the amount of stipend within a period of two weeks on the scholarship amount being deposited in her account.

(iii) It is clarified that in the event the petitioner fails to pay the outstanding fees of Rs.16 lakhs on or before 25.04.2021, she will not be entitled to

appear in the exams of the final semester of M.D. Anesthesiology course of the respondent University. It is also clarified that on her failure to pay

outstanding fees the college as well as the university will not be obliged to award the Degree of M.D. Anesthesiology.

10. Stand over to 19.03.2021, to report compliance of the direction vis-a-vis the issue of scholarship. It is clarified that the application of the scholarship

will be decided on its own merits in accordance with law.