

IN THE HIGH COURT OF SIKKIM

WRIT PETITION (C) NO. 38 OF 2004

(Court on *Suo motu*)

Shri Sudhir Kr. Ray ... Petitioner

Versus

Sikkim Manipal University of Health,
Medical & Technological Sciences
5th Mile, Tadong
Gangtok-737 102
East Sikkim.

Represented by its Dean. ... Respondent

For the Respondent : Mr. A.K. Upadhyaya, Senior Advocate assisted
by Miss Manita Pradhan.

Assistance taken from: Mr. Sonam Wangdi, Advocate General
Assisted by Mr. J.B. Pradhan, Government
Advocate and Mr. Karma Thinlay, Assistant
Government Advocate.

PRESENT: THE HON'BLE SHRI JUSTICE N.S. SINGH, CHIEF JUSTICE
(ACTING).
THE HON'BLE SHRI JUSTICE A.P. SUBBA, JUDGE.

Date of Judgment: 18th July, 2005.

JUDGMENT

Singh, CJ (Actg)

A petition dated 03rd October, 2004, in the form of a
fervent appeal has been received from one Shri Sudhir Kr.
Ray a resident of A-9/149, Kalyani, P.O. Kalyani, Dist. Nadia,

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West Bengal, Pin-741 235 stating therein that his son Soumyadipta Ray took admission in the MBBS course in the year 2003-2004 in Sikkim Manipal Institute of Medical Sciences, Gangtok and he was subjected to ragging and other physical torture by his seniors and as a result of which he had left the hostel for the sake of his life. In spite of the fact that he had left the Institution, the authorities are demanding a further sum of Rs.27,00,000/- (Rupees twenty seven lakhs). At the initial stage, this court was of the view that the allegations made in the said petition are very serious and the same need proper enquiry and accordingly, the petition was registered as suo motu writ petition, thus issuing notice upon the authorities of the Sikkim Manipal Institute of Medical Sciences, Gangtok. In response to the notice, the respondent Sikkim Manipal Institute of Medical Sciences filed counter affidavit, wherein the authority had indicated that the petitioner's son Soumyadipta Ray applied for admission to the first year of MBBS course for the academic session 2003-2004 under NRI/Foreigner category quota in the Institution and being selected in the counseling, he was admitted to the said course on 22nd September 2003. In terms of the related prospectus for the said course, if the candidate himself/herself is not an NRI, then he/she may be sponsored by his/her father, mother, brother, sister, uncle or aunt and the

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admission was to be made as per the inter se merit according to the marks obtained in the related subjects at the qualifying examination and the prospectus also clearly prescribed the annual fee which was required to be paid by the student inasmuch as NRI/Foreign category candidates, the annual tuition fee is US \$ 10,000 and in addition, a student is also required to pay Rs.60,000/- as Clinical Fee, Rs.15,000/- as Library Fee, Laboratory Fee of Rs.18,000/- and other fee of Rs.4,250/- and Clinical Fee is payable from the second year of the study and onwards. The respondent-authority has also highlighted the rules regarding refund of fees at para 5 of the counter affidavit. According to the respondent-Institution, the petitioner having accepted the terms and conditions prescribed in the prospectus, now he cannot be permitted to rescile therefrom. It was also stated in the counter affidavit that the petitioner's son left the premises of the Institution sometimes on 6th November 2003 surreptitiously and without informing any authorities of the Institution and only on 13th November 2003 the petitioner personally came to the campus and handed over a letter dated 06th November 2003 in which it was stated that due to some unavoidable circumstances his son was compelled to leave the college and hostel on 5th November 2003 and a request was made to refund all the fees and on enquiry it was revealed that the petitioner's son had

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been selected for admission to a Government Medical College in Midnapore where fee is low. The University/Institution expressed its inability to refund the fee in accordance with the rules of the University.

2. Supporting the case of the respondent-University/Institution, Mr. A.K. Upadhyaya, learned counsel argued that in terms of the rules regarding refund of fees there shall not be any refund of fees on account of withdrawal/absence from college or other reasons once a student is admitted to any course of study and in the case in hand, the petitioner as well as his son namely, Soumyadipta Ray are quite aware of the terms and conditions laid down in the related prospectus and there is provisions in the related prospectus pertaining to the refund within the prescribed limit in the following order: -

Sl. No.	Time of withdrawal	Tuition fee refunded	Hostel fee refunded
i.	Any time after the admission but before commencement of classes	100 %	100 %
ii.	Within fifteen days from the date of commencement of classes	90 %	90 %
iii.	After fifteen days, but before the expiry of thirty days from the date of commencement of classes.	50 %	75 %
iv.	After thirty days, but before the completion of one semester from the date of commencement of classes	No refund	50 %

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The learned senior counsel further contended that the claim made by the student (petitioners' son) for refund of certain deposits permissible under the rule had already been refunded @ 50 % of it to the student concerned and therefore, the claim of the petitioner herein made in his petition has no substance. This argument so far advanced by Mr. A.K. Upadhyaya was endorsed by the learned Advocate General who also submitted that the Institution as well as the authority of the University shall be governed by the prescribed provisions and rules laid down under the related prospectus for MBBS course of the Sikkim Manipal Institute of Medical Sciences.

3. We have perused the Prospectus – 2004 MBBS Course of the Sikkim Manipal Institute of Medical Sciences, 5th Mile, Tadong, Gangtok, East Sikkim. There are provisions pertaining to the categories of seats allotted in different quotas; namely, State Government quota, Defence category, North East category, NRI/Foreign category and General category and also rules regarding refund of fees. For better appreciation and for just determination of the real points in controversies between the parties, the rules regarding refund of fees containing in the related prospectus are relevant and accordingly it is quoted below: -

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“ RULES REGARDING REFUND OF FEES

1. There shall not be any refund of fees on account of withdrawal/absence from college or other reasons once a student is admitted to any course of study.
2. A refund claim may, however, be admitted on merits after due consideration of the request by the college and the amount to be refunded shall be within the limits stated below.

Sl. No.	Time of withdrawal	Tuition fee refunded	Hostel fee refunded
i.	Any time after the admission but before commencement of classes	100 %	100 %
ii.	Within fifteen days from the date of commencement of classes	90 %	90 %
iii.	After fifteen days, but before the expiry of thirty days from the date of commencement of classes.	50 %	75 %
iv.	After thirty days, but before the completion of one semester from the date of commencement of classes	No refund	50 %

3. Other fee: Fees other than tuition fee are not refundable under any circumstances.
4. Deposits: All deposits such as caution deposits, mess advance, etc. lying to the credit of the student as on the date of withdrawal/cancellation of admission shall be refunded in full to the student after adjusting all dues of the student (if any).
5. The refund rule also applies to students, who are expelled or declared not fit for further study, by the college or the university.
6. This rule also applies to students, who take admission to any other regular course of study of this university, by withdrawing their admission from their existing course of study.

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7. Any student who withdraws from the course after thirty days from the date of commencement of classes or after the admission will be required to remit to the college, in addition to the fee already forfeited, "50% of the tuition fee applicable for the remaining period of the course.

This clause does not apply to the cases mentioned in para (6).

8. Any student who withdraws from the course after thirty days from the date of commencement of classes, the number of days specified in para (2) above will be reckoned from the date of admission. For calculation of Hostel Fee Refund 'date of admission' means the 'date of hostel allotment'.

Request for withdrawals should be made in the prescribed application available at the Director's/Dean's office. "

A bare perusal of the said rules shows that there shall not be any refund of fees on account of withdrawal/absence from college or other reasons once a student is admitted to any course of study.

4. In the case in hand there are materials on record to establish the fact that the petitioner's son namely, Soumyadipta Ray left the college; rather absented himself from the respondent-college as he got admission in a Government Medical College in Midnapore. It is an admitted position, which cannot be controverted by the petitioner. In

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view of the above position, the claim of the petitioner for withdrawal/refund of fees except the refund of certain deposits permissible under the rule as stated above, has no substance/basis and accordingly, his prayer as well as the reliefs sought for in the petition is rejected. It may be mentioned that this court cannot sit as an appellant authority on the decision of the Sikkim Manipal Institute of Medical Sciences in the matter pertaining to the instructions to the petitioner to deposit the balance amount in another four installments in four years to the tune of Rs.27,00,000/- (Rupees twenty seven lakhs) approximately as the authority made such instructions to the petitioner in terms of the related provisions contained in the prospectus which the petitioner is quite aware of it. We also made it clear that the court while exercising its writ jurisdiction shall not interfere with the domestic affair of an Institution as their activities are closely supervised by the University authorities in terms of the related rules of the University unless there is deprivation of legal rights of the individual/student concerned. In our considered view, the petitioner has no enforceable legal rights. In the result the petition is dismissed in limine but, no order as to costs.

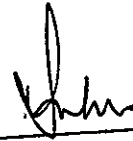
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5. Registry of this Court is directed to communicate a copy of this Judgment to the petitioner Shri Sudhir Kr. Ray.



(N.S. Singh)
Chief Justice (Acting)
18.07.2005

I agree.



(A.P. Subba)
Judge
18.07.2005