

*Before Rajiv Narain Raina, J.*  
NIKHIL MADAN—*Petitioner*  
*versus*  
ITM UNIVERSITY—*Respondents*  
CWP NO. 17048 OF 2011  
30ST MAY 2012

*Constitution of India, 1950 - Art.226 - Petitioner secured admission in respondent college and deposited refund of admission fee - Meanwhile got admission to a Government College - After that he applied for refund of fee, well beyond the cutoff date for admissions*

***- Refund refused - Writ petition dismissed holding that, the seat was consumed, as no student could be admitted against that seat after the cutoff date - Private colleges run on fees collected from students and vacant seat, a liability - Reliance also placed on Clause 27.7 of the Admission Policy and Selection Procedure.***

*Held*, that it is a precious right of a person to pursue studies where he thinks it best possible for future prospects. The petitioner can be given only a pat on his back for gaining admission in a reputed Government College, namely, Deen Badhu Sir Chotu Ram Engineering College, Murthal. But the fact of the matter is that the seat that he gave up has remained unfilled for no fault of the college. The respondent-ITM University is said to be a private deemed University. Private colleges are run on fees collected from the source of sanctioned intake of seats determined by apex statutory bodies over which colleges have little or no control on the number of seats made available to it according to infrastructure. Thus the competing interests deserve to be balanced out and there can be place for no sympathy in a matter of this kind.

(Para 3)

Jatinder Singh, Advocate, for A.P. Bhandari, Advocate, *for the petitioner.*

Saurabh Dalal, Advocate, *for the respondent.*

**RAJIV NARAIN RAINA, J.**

(1) The prayer in this petition is for refund of fee. The petitioner got admission in the respondent-University in the Electronics & Communication Branch of Engineering on 03.07.2010. He deposited Rs.87,500/- towards part fee. Thereafter, the petitioner got admission in Government College and, therefore, made a request on 29.09.2010 to cancel his admission against the seat consumed. On his representation, the respondent-University through letter dated 01.10.2010 stated that withdrawal of the admission was after the cut off date and, therefore, the University has been deprived of admitting another student. The University relied on its Admission Policy and Selection Procedure 2010-11. Clause 27.7 reads as follows:-

*27.7. "As per the Hon'ble Supreme Court and/or the competent authority, no admissions can be made by the University to fill a vacancy that may arise after the last date of admission*

*(i.e. 6th Aug. 2010). Therefore, in case of withdrawal after the last date of admission, it will be classified a mid course withdrawal, as per the seat so vacated will continue to remain unfilled for the balance years of the degree. In view thereof, in case of any mid course withdrawal, no fee, by whatsoever name called is refundable under any circumstances whatsoever."*

(2) The University statutes laid down that mid-term admissions cannot be made and NOCs can be given only after the petitioner deposits the entire balance amount as per the affidavit submitted at the time of admission. The University took further shelter of Clause 28.1 which is reproduced below:-

#### 28. MID COURSE WITHDRAWALS

*28.1 "Since no mid-course admissions can be made by the University to fill a vacancy caused by a mid-course withdrawal, No Objection Certificate of Migration/Transfer Certificate for a midcourse withdrawal shall only be given by the university to a student after he/she has deposited the balance years fee and any other dues outstanding to the University as per affidavit submitted at the time of admission."*

(3) It is a precious right of a person to pursue studies where he thinks it best possible for future prospects. The petitioner can be given only a pat on his back for gaining admission in a reputed Government College, namely, Deen Badhu Sir Chotu Ram Engineering College, Murthal. But the fact of the matter is that the seat that he gave up has remained unfilled for no fault of the college. The respondent-ITM University is said to be a private deemed University. Private colleges are run on fees collected from the source of sanctioned intake of seats determined by apex statutory bodies over which colleges have little or no control on the number of seats made available to it according to infrastructure. Thus the competing interests deserve to be balanced out and there can be place for no sympathy in a matter of this kind. The issue of refund of fee within the framework of rules

of refund has been considered by this Court in CWP 1133 of 2011; *L. K. Talwar and another v. Lovely Professional University* decided on 09.05.2012. The proposition laid down is against the petitioner when it holds that:

*“In terms of the UGC letter dated 23.4.2007, the case for refund would be justified if the seat consumed and then vacated is filled by another candidate by or before the cut off date, only then refund may become a matter of right. In the present case, the position is different. There is a clear recital in the written statement that the seat which fell vacant on account of petitioner leaving the course remained “unfilled by any other candidate throughout the academic session and afterwards”. No replication has been filed by the petitioners to rebut this statement of fact. The truth of the statement is, therefore, not open to question. I have no earthly reason to disbelieve it. The respondent-University is bound by letters, guidelines, policy circulars issued by the University Grants Commission. In the face of a specific rule, Mr. Bajaj submits that the decision rendered in *Atam Parkash Khatter, supra*, would not apply as no rule to the contrary was dealt with and decided in that case. In fact there was no rule of refund relied upon in that case and the matter was decided on first principles. Closer home, Mr. Bajaj relies on a decision of a learned Single Judge of this Court in CWP No.9711 of 2010 (*Bhagwan Mahavir Institute of Engineering and Technology, Sonapat through its Vice Principal vs. The Haryana State Counselling Society & Ors* decided on 6.1.2012) wherein a provision akin to the UGC letter was dealt with being the rules of refund of fees of the AICTE. This Court, speaking through Augustine George Masih, J. observed as follows:-*

*“....As per the stand of the petitioner-College, the seats vacated by respondents no.3 and 6 are still lying vacant, which fact has not been disputed by the official respondents as well as the private respondents. Accordingly, the stand of the*

*petitioner-College of not refunding the admission fee deposited by respondents no.3 to 6 being in consonance with the AICTE norms cannot be faulted with. This norm, as has been laid down by the AICTE has a rationale behind it i.e. the colleges especially the unaided colleges survive on the fee charged by them from the students. They do not depend upon the aid from any source and for their survival they are primarily dependent on the fee collected from the candidates/students..."*

*In this view of the matter, it is not possible for this Court to give any direction as prayed for, either in law or on facts or on moral grounds, pious responsibility or sacrosanct duty."*

(4) Therefore, reliance placed by Mr. Jatinder Singh, learned counsel for the petitioner on the decision in CWP No.13308 of 2009 titled as *Sh. Atam Parkash Khatter & others v. Commissioner & Secretary to Govt. of Haryana and others* (P-7) is not well merited.

(5) For the foregoing reasons, I do not find any merit in this petition which would stand dismissed.