

*Before Rajiv Narain Raina, J.*

**B. D. KAPOOR AND ANOTHER—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 9410 of 2012**

May 30, 2012

*Constitution of India Article, 1950 - Art 226 & 227 - Petition for the refund of fee deposited by the petitioner at the time of the admission - Public notice issued by AICTE - Refund of fees where the candidates withdraw before the starting of the course and consumption of seat does not lead to the seat remaining vacant - Here the student took admission, consumed the seat and then gave up to make his career elsewhere - Seat remained unfilled - Petition dismissed.*

*Held*, that however, in the present case, the student took admission, consumed the seat and then gave up to make his career elsewhere. I do not see how the AICTE instructions come to the rescue of the petitioner. In the present case, the seat remained unfilled. There is no rebuttal of this fact in the writ petition for this Court to debar and bail out the petitioner and put money back in his pocket. The physical counselling according to the petitioner himself was held on 31.08.2009 whereupon he deposited Rs.29,460/- as fee for the first semester. He surrendered the seat on 02.09.2009 and requested for refund of fee. The issue of refund of fee in 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.

(Para 3)

Jagdish Manchanda, Advocate, *for the petitioners.*

**RAJIV NARAIN RAINA, J.**

(1) The prayer in this petition is for refund of fee deposited by the petitioners at the time of admission in the 3rd respondent Engineering College – UIET, Kurukshetra University, Kurukshetra. The claim was

rejected by the University vide its letter dated 16.12.2009 (P-4). On certain requests made by the petitioners against the aforesaid order, the University reiterated its stand in its further letters dated 17.05.2010 (P-8) and 14.09.2011 (P-11). It was iterated that similar cases of refund are pending either before the Consumer Fora and this Court and decisions were awaited. However, the basic premise on which the University turned down the request of petitioner no.2 was that the seat vacated by him has remained unfilled and will remain so for the duration of the course causing irreparable and recurring financial loss to the University.

(2) After gaining admission at UIET, Kurukshetra, the petitioner no.2 did not accept the admission and preferred to pursue his further studies at the Guru Jambheshwar University of Science and Technology, Hisar. The petitioner has sought a mandamus for refund of fee along with interest @18% per annum. In support of his claim, the petitioner relies on a public notice issued by All India Council of Technical Education, New Delhi (AICTE) on the subject of, *inter alia*, refund of fees. These instructions addressed certain irregularities committed by admitting institutions of accepting fee long before actual starting of an academic session; collecting full fee for admitting students; retaining school leaving certificates in original; confiscating fee paid if students failed to join by specific dates; advancing time limits in some cases unrealistically so as to pre-empt students/ candidates from exercising their options of joining other institutions of their choice. To stem this rot, the aforesaid instructions have been issued which essentially deal with candidates withdrawing before the starting of the course; where there is no physical filling up or consumption of a seat. If this consumption of seat does not lead to the seat remaining vacant then there would be, without doubt, refund of fee.

(3) However, in the present case, the student took admission, consumed the seat and then gave up to make his career elsewhere. I do not see how the AICTE instructions come to the rescue of the petitioner. In the present case, the seat remained unfilled. There is no rebuttal of this fact in the writ petition for this Court to debar and bail out the petitioner and put money back in his pocket. The physical counselling according to the petitioner himself was held on 31.08.2009 whereupon he deposited Rs.29,460/- as fee for the first semester. He surrendered the seat on 02.09.2009 and requested for refund of fee. The issue of refund of fee in

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 privaterespondents. 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. Manchanda on the decision in CWP No.13308 of 2009 titled as *Sh. Atam Parkash Khatter & another v. Commissioner & Secretary to Govt. of Haryana and others* (P-16) is not well merited.

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

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