IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 28769 of 2024

Dr. Sreeparna Ghosh

Vs.

State of West Bengal & Ors.

Mr. Arkadyuti Pahari

Ms. Gargi Maity

Mr. Alik Mandi

....For the petitioner.

Ms. Munmun Ganguly

Mr. Biman Haldar

....For the State.

Mr. D.N. Maiti

Mr. A. Santra

.... For the respondent no. 4.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.

Mr. Uday Sankar Chattopadhyay

Ms. Trisha Rakshit

Ms. Rajashree Tah
Ms. Aishwarya Datta
Ms. Bidisha Chakraborty
Ms. Sreya Banerjee
Ms. Ankita Saha

....For the respondent no. 5.

Mr. Saibalendu Bhowmik
Mr. Rajsekhar Basu
Mr. Subrata Bhattacharjee

....For the respondent no.3.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Yash Singhi
Mr. Sourav Bhagat
Mr. Jishnujit Roy
Ms. Deveshi Bose

....For W.B.M.C.

Hearing Concluded On : 11.06.2026

Judgment On : 23.06.2026

Uploaded On : 23.06.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for a direction upon the respondent no. 5 to return all original documents and Rs. 9,50,000/- to the petitioner as she is not willing to continue with her course in the respondent no. 5 college.

2. The petitioner after completion of her BDS Course from Kalinga Institute of Dental Sciences had appeared for the NEET MDS to pursue her higher studies and her rank was 8478. In the third round of counseling, she got admission in the Haldia Institute of Dental Sciences and Research (HIDSAR) to pursue her MDS course in Oral and Maxillofacial Surgery. The petitioner was informed by the respondents that the Course fee is Rs. 27,00,000/- for three years and she has to pay Rs. 9,00,000/- as tuition fees, Rs. 15,000/- as admission fees and Rs. 25,000/- on account of student activities.

3. The petitioner has paid Rs. 9,50,000/- in total and also submitted her following original documents as part of admission formalities and requirements:

> *"1) NEET MDS 2024 Admit Card (Original),*
> *2) NEET MDS Rank Card 2024 (Computer Copy),*
> *3) Class X Admit Card (Original),*
> *4) Domicile Certificate signed by the appropriate authority (Original),*
> *5) BDS Degree Certificate (Original),*
> *6) Professional BDS Marksheet (Original),*
> *7) Permanent Registration Certificate from West Bengal Dental Council (Original),*
> *8) Internship Completion Certificate (Original)."*

4. The petitioner has attended the college for 6 days and found that the concern college is not having proper educational facilities and guidance.

The petitioner realized that the college where the petitioner got admitted, she will not meet her academic excellence and will not be in a position to pursue her study, had applied for withdrawal of her admission from the college and request is made for return of fees deposited by the petitioner along with the original testimonials.

5. Mr. Arkadyuti Pahari, Learned Advocate representing the petitioner submits that instead of returning fees and original testimonials, the college authorities have directed the petitioner to pay the remaining fees of Rs. 18,00,000/- and after depositing the remaining course fees of three years only the original testimonials will be returned to the petitioner.

6. Mr. Pahari submits that in the absence of the original certificates specifically the Bachelor Degree and Certificates, the petitioner is unable to practice as a doctor. He further submits that without the original certificates, the petitioner is unable to proceed further in her academic career.

7. Mr. Pahari submits that the college is affiliated with West Bengal University of Health Sciences, which is approved by the University Grants Commission (UGC), thus the rules and regulations of the UGC are applicable to the respondent college. He has relied upon the UGC Circular dated 12th June, 2024 and submits that as per the said circular, the petitioner is entitled to get refund of 100% course fees deposited by the petitioner.

8. Mr. Pahari has relied upon the judgment in the case *of* ***Praneeth K. and Others Vs. University Grants Commission (UGC) and Others*** reported in ***(2021) 14 SCC 241*** and submits that the University should adopt the guidelines issued by the UGC and other statutory bodies from time to time.

9. Mr. Pahari further relied upon the unreported judgment passed by the Madras High Court in the case of ***M. Sumer Vs. The Chairman, PMR Institute of Technology, Adayalampattu, Chennai and Others*** in ***W.P.A. No. 19908 of 2009*** dated ***26th November, 2009*** and submits that the Madras High Court while considering the case of ***Islamic Academy of Education Vs. The State of Karnataka*** reported in ***(2003) 6 SCC 697*** held that the Hon'ble Supreme Court never held that to withhold the Transfer Certificate only on the ground that full fees for 3rd and 4th year were not paid.

10. Mr. Pahari has relied upon the judgment in the case of ***Shireen M.T. and Others Vs. The State of Kerala and Others*** reported in ***2017 SCC OnLine Ker 2660*** and submits that even an agreement is executed by the petitioner in favour of the College authorizing them to withhold their certificates is not void for want of consideration and the same is void as opposed to public policy in terms of Section 23 of the Indian Contract Act, 1872.

11. Mr. Bikash Ranjan Bhattacharyya, Learned Senior Advocate representing the respondent no.5 submits that the petitioner appeared in the National Eligibility cum Entrance Test for MDS courses. The petitioner secured 8478 rank in the said examination. The petitioner was the 16th in the list of admission of 23 candidates where the NEET rank of the highest rank holder was 1184 in the year 2024-2025 session. The date of admission of the petitioner is 29th August, 2024, under the Management Quota.

12. Mr. Bhattacharyya submits that on 22nd July, 2024, urgent notice regarding surrender of seat for West Bengal NEET MDS 2024 counseling was issued wherein it is mentioned that the seat surrender facility for Round-1 was available from 11 A.M. to 2 P.M. on 24th, 25th and 26th July, 2024, and seat surrender for Round-2 was available from 11 A.M. to 2 P.M. on 10th, 12th and 13th August, 2024. Seat surrender of the admitted candidates during the process of Round-1 was allowed without any penalty and seat surrender of admitted candidates during the process of Round-2 was allowed with forfeiture of admission fees. Seat surrender from Round-3 was not allowed any further till counseling process was over. The seat surrender with payment of bond penalty was possible only after the counseling of all rounds was over for the session 2024-2025.

13. Mr. Bhattacharyya submits that on 29th August, 2024, the petitioner filled up admission form and deposited Rs. 9,25,000/- and Rs. 25,000/- for student activities. On the same day, the petitioner has submitted her discontinuity bond on a stamp paper of Rs. 50/- in which the petitioner undertook that she admitted herself in the Post Graduate Course under the Management Quota and also undertook to pay the remaining amount of the total amount of the tuition fees of the entire MDS three years course if she resigned or discontinued the course before completion of course. On 2nd September, 2024, the petitioner informed the college that the petitioner will join College from 2nd September, 2024.

14. On 10th September, 2024, the petitioner sent an e-mail intimating that she wanted to discontinue the MDS course and requested to return all her original documents along with the amount deposited by the petitioner. He submits that upon receipt of the request of the petitioner, the same was forwarded to the concern authorities and after considering the request and the undertaking submitted by the petitioner, the respondents sent a reply to the petitioner directing the petitioner to deposit the balance amount of Rs. 18,00,000/- for getting back her original documents along with her reliving letter.

15. Mr. Bhattacharyya submits that the Guidelines, if any, issued by University Grants Commission, is not applicable to any medical college or any dental college. He submits that the colleges are governed by the DCI and the WBMCC. He submits that discontinuity bond has been introduced all over India in all private medical and dental colleges. He has relied upon the judgment in the case of ***Islamic Academy of Education and***

Another Vs. State of Karnataka reported in ***(2003) 6 SCC 697*** and submits that some of the educational institutions are collecting in advance the fees for the entire course because the institution was not sure whether the student would leave the institution in midstream. He submits that if the student leaves the institution in midstream, then for the remaining years the seat would lie vacant and the institution would suffer.

16. There are two issues in the present case:

> ***(i)*** *Whether the letter issued by the University Grants Commission dated 12th June, 2024, is applicable to the college wherein the petitioner got admission and;*
>
> ***(ii)*** *Whether the respondent college can retain the original certificates of the petitioner on the pretext of payment of the balance amount of Rs. 18,00,000/- as per the bond executed by the petitioner.*

17. The petitioner has relied upon the Fee Refund Policy 2024-2025 issued by the University Grants Commission dated 12th June, 2024, which reads as follows:

"Subject: Fee Refund Policy 2024-25

> *The University Grants Commission receives many representations/complaints from students/parents on the non-refund of fees by the Higher Education Institutions (HEIs) on cancellation/withdrawal of admissions.*
>
> ***2.*** *Students should be allowed a full refund of fees within a specified period to enable them to opt for a course of their choice.*

3. *The Commission has considered the matter in its 580th meeting held on 15 May 2024, and after considering the relevant factors decided, the following fee refund policy for the academic session 2024-25:*

- ***a.*** *Notwithstanding anything contained in any guidelines/ prospectus/ notification/ schedule, a full refund of fees shall be made by the HEIs on account of all cancellations of admissions/migrations of students up to 30 September 2024 and with a deduction of not more than Rs. 1,000, as a processing fee, up to 31 October 2024.*

- ***b.*** *It shall apply to all higher education institutions, whether established or incorporated by or under a Central Act or a State Act, and every institution recognized by the University Grants Commission under clause (f) of Section 2 of the University Grants Commission Act, 1956 and to all institutions deemed to be a University declared as such under Section 3 therein and to all higher education institutions affiliated to a University.*

- ***c.*** *These guidelines would also be applicable to organizations, consortiums, committees, associations, etc., constituted for the purpose of conducting counseling or processing admissions and collecting fees on behalf of participating HEIs, and the HEI concerned will be responsible for refund fees.*

- ***d.*** *For any admission schedule extending/commencing beyond/after 31 October 2024, the provisions contained in the UGC Notification issued in October 2018 on Refund of Fees and Non-Retention of Original Certificates shall apply (reproduced below for ready for reference):*

Category	***Percentage of Refund of fees****	***Point of time when notice of withdrawal of admission is received in the HEI***
(1)	*100%*	*15 days or more before the formally notified last date of*

		admission
(2)	*90%*	*Less than 15 days before the formally notified last date of admission*
(3)	*80%*	*15 days or less after the formally notified last date of admission*
(4)	*50%*	*30 days or less, but more than 15 days after formally notified last date of admission*
(5)	*00%*	*More than 30 days after formally notified last date of admission*

e. *This policy will remain in force for subsequent academic session until the issuance of a revised policy by the UGC.*

4. *It may also be noted that the UGC has notified the Redressal of Grievances of Students Regulations, 2023, wherein "delay in, or denial of, the refund of fees due to a student who withdraws admission within the time mentioned in the prospectus, subject to guidelines, if any, issued by the Commission, from time to time" has been defined as one of the grievances.*

5. *The Higher Education Institutions are requested to ensure compliance with the fee refund policy for the academic session 2024-25 and redress any grievance by the provisions of the University Grants Commission (Redressal of Grievances of Students) Regulations, 2023.*

6. *Any HEI violating the provisions of UGC Fee Refund Policy 2024-25 shall be liable for punitive action as notified in Clause 5 of the UGC Notification on Refund of Fees and Non- Retention of Original Certificates issued in October 2018."*

18. The respondent no. 5 college denied for applicability of the said guidelines to any medical college or any dental college. It is the case of the college authorities that the colleges are governed under the Dental Council of India and West Bengal Dental Counseling Committee. Haldia Institute of Dental Sciences and Research (HIDSAR) is the approved list of the UGC but primary regulatory body for the said Institute is not the UGC.

19. In the case of ***Praneeth K. and Others (supra),*** the Hon'ble Supreme Court decided the issue whether the Guidelines issued by the UGC have any statutory force or only a non-statutory and advisory. The Hon'ble Supreme Court held as follows:

> ***"86.*** *Now, coming to the first part of the issue that the Guidelines are non-statutory and advisory only, it is the case of both the parties that Guidelines have been issued by UGC in exercise of power under Section 12. Section 12 of the Act provides that it shall be the general duty of the Commission to take all such steps as it may think fit for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. The words "all such steps" are of wide import. The steps referred to in Section 12 may include issuance of guidelines, directions, circulars, etc. The Guidelines dated 6-7-2020 have to be treated to have been issued in exercise of statutory powers vested in the Commission under Section 12. Guidelines issued in exercise of statutory powers, thus, cannot be said to be non-statutory.*

> ***87.*** *There is one more reason to hold the Guidelines have statutory force. The University Grants Commission, in exercise of power under Section 26 sub-section (1) of the 1956 Act has made the Regulations, namely, "the UGC (Minimum Standards of Instruction for the Grant of the Master's Degree through Formal Education) the 2003 Regulations", on which both learned counsel for the petitioners as well as learned counsel for UGC have placed reliance. Regulation 6, which deals with "examination and evaluation" contains following regulation as Regulation 6.1:*
>
> > ***"6.1.*** *The university shall adopt the guidelines issued by UGC and other statutory bodies concerned from time to time in respect of conduct of examinations."*
>
> ***88.*** *The statutory Regulation, 2003 thus, categorically requires universities to adopt the Guidelines issued by UGC, hence, it is the statutory duty of the universities to adopt the guidelines issued by UGC. It is the statutory obligation of the universities to adopt the Guidelines and the Guidelines cannot be ignored by terming it as non-statutory or advisory."*

20. The policy dated 12th June, 2024, issued by the UGC after consideration of the representations of students and parents on the non-refund of fees by the Higher Education Institutions on cancellation/ withdrawal of admission. In paragraph 3(a) of the said guidelines provides that a full refund of fees shall be made by the Higher Education Institutions on account of all cancellations of admission/ migration of students upto 30th September, 2024 and with a deduction of not more than Rs. 1,000/- as processing fees upto 31st October, 2024.

21. The petitioner herein got admitted in the college on 29th August, 2024 and deposited the total amount of Rs. 9,50,000/-. On 10th September, 2024, the petitioner sent an email to the college authorities informing that she wanted to discontinue the MDS course and requested to return her original testimonials and the amount of Rs. 9,50,000/-.

22. The guidelines issued by the UGC dated 12th June, 2024 provide for a full refund of fees, if the admission is cancelled up to 30th September, 2024. The petitioner has informed the college that she is not intending to continue MDS course and requested for refund of fees deposited on 10th September, 2024.

23. Considering the judgments passed by the Hon'ble Supreme Court and Clause 3(a) of the Guidelines dated 12th June, 2024, the petitioner is entitled to get the full amount of Rs.9,50,000/- from the respondent no.5.

24. The respondent no. 5 has relied upon the Circular dated 22nd July, 2024, issued by the WBMCC and the bond executed by the petitioner on 29th August, 2024 which reads as follows:

"Govt. of West Bengal
Directorate of Medical Education

Swasthya Bhavan, GN-29, Sector – V, Salt Lake,
Kolkata – 700091

Memo No. HFW-23099/206/2023/M/1832 Dated 22.07.2024

<u>Urgent Notice related to Seat Surrender for WB NEET MDS 2024 Counseling</u>

The seat surrender facility for ***Round 1*** *is available from* ***11 am till 2 pm of 24.07.2024, 25.07.2024*** *and* ***26.07.2024.*** *Similarly the seat surrender facility is available for* ***Round 2 from 11 am till 2 pm of 10.08.2024, 12.08.2024 and 13.08.2024.***
It is hereby further reiterated that the seat surrender of the admitted candidate during the process of Round 1 is allowed without any penalty money. ***The seat surrender of the admitted candidate during the process of Round 2 is allowed but with forfeiture of admission fees.*** *Such candidate must apply in person before the admitted college for seat surrender and must receive the server generated Seat surrender letter. Otherwise, the name of such candidate shall continue to appear in the admitted candidate list of the said college. Such candidate is however not allowed any further in the counseling process. The seat surrender is not allowed from Round 3 counseling any further till the counseling process is over. The seal surrender with payment of bond penalty is possible only after the counseling of all round is over for the session 2024-25.*

This is in the interest of public service and all concerned are hereby informed accordingly.

Director of Medical Education and Chairman WBMCC
Govt. of West Bengal"

"DISCONTINUITY BOND

Discontinuity Bond by the candidate taking admission in Post graduate Degree Course (MDS) at Haldia Institute of Dental Sciences and Research, for the session 2024-2025.

I, Dr. Sreeparna Ghosh ____________________

S/o/D/o Ardhendu Ghosh ____________________

Resident of Boro Kalitala, Chandannagar, Hooghly, West Bengal ____________________

____

have taken admission in Post Graduate degree course (MDS) at Haldia Institute of Dental Sciences and Research, Banbishnupur, PO-Balughata, PS-Bhawanipur, Haldia, Pin – 721645, Purba Medinipur, under ***Management Quota*** *seat do hereby undertake to pay the remaining amount of total tuition fee of the entire MDS course (Three* *years) if I resign or discontinue the course before completion of the tenure.*

Full Signature of the Candidate Sreeparna Ghosh…………………………
Full Signature of the Guardian Ardhendu Ghosh……………………………
Candidate Mobile No.8240902004…Guardian Mobile No.9831946435.
E-mail ID: ct3326834319@gmail.com Date 29/08/24. Place Kolkata..
Full Signature of the Witness Timir Baran Sinha………………………….."

25. In the case of ***Islamic Academy of Education (supra),*** the Hon'ble Supreme Court held that:

> ***"8.*** *It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."*

26. In the case of ***M. Sumer (supra),*** the Madras High Court considered the case of ***Islamic Academy of Education*** and held that:

> *"**5.** The learned counsel for the respondents placed reliance upon the judgment of the Supreme Court in Islamic Academy of Education vs. The State of Karnataka reported in (2003) 6 SCC 697. In that case, it was stated that an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any student may leave in midstream then, a bond/bank guarantee can be obtained for the whole course. If any institution has collected fees in advance, that amount can be kept in a Fixed Deposit and it can be utilized year after year and the interest on such deposit can be returned to the student. The Islamic Academy's case came up for consideration by the Supreme Court in P.A. Inamdar vs. State of Maharashtra reported in 2005 (6) SCC 537. The passage quoted by the respondent do not find acceptance in that case. Further nowhere in the said judgment, there is any reference to withholding of the Transfer and other certificates.*
>
> ***6.*** *The respondent cannot trace any sustenance from the said judgment to withhold the Transfer Certificate only on the ground that the full fees for 3rd and 4th year were not paid. In the present case, the petitioner did not even attend his second year class."*

27. In the case of ***Shireen M.T. (supra),*** the Kerala High Court held that:

> ***"10.*** *The case of the College is that since the petitioners have not fulfilled their bonded obligation, the College is entitled to withhold their certificates. The petitioners do not admit their liability. In other words, the certificates of the petitioners are withheld by the College for enforcing a disputed liability. Even assuming that the agreement/bond executed by the petitioners in favour of the College authorising the College to withhold their certificates is not void for want of*

consideration, the question arises is whether the certificates of the petitioners can be withheld for enforcing a disputed liability. This question assumes importance in the light of the large number of similar litigations instituted before this Court in the recent past. A bond is only an instrument by which a person obliges or binds himself to another for payment of a sum of money or in the performance of any other act. It is fundamental that if a person does not fulfill the bonded obligation, he is liable to pay the amount agreed upon and if he does not pay the amount agreed upon, in a country where rule of law prevails, the payment has to be enforced through a court of law. It cannot be said that non-payment of the amounts covered by the bond will always be without any basis. In some cases, it may be without any basis, but in some others, it may be due to some reason which the person concerned believes to be a justifiable reason for non payment. The sustainability or otherwise of the reason, on the basis of which the liability under the bond is denied, has to be examined by the court through the process of which the payment is to be enforced. If the practice of withholding the documents as a means to realise the disputed amounts is permitted to be adopted, the person affected would be compelled to forgo the defences, if any, available to him. Further, education has always been, and continues to be one of the most important needs of mankind. Every citizen has a right to education and State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The recent change in the social and economic fabric of the country has, however, created a situation where it is inevitable for the State to permit private educational institutions to meet the requirements in the field of education. Education is essentially a charitable activity. As such, even when private bodies establish educational institutions, the object shall be charity and not profit. Of course, reasonable revenue surplus can be generated by the institutions for the development of education and expansion of the institutions. Certificates of education/qualification are very important documents as far as students

> *are concerned. Non availability of the certificates establishing educational qualifications may result in deleterious consequences as far as students are concerned, for, the same are the first and foremost documents insisted for employment and higher studies. It is trite that whatever tends to injustice of operation, restraint of legal rights, whatever tends to the obstruction of justice and whatever is against the morals can be said to be against public policy. In other words, matters which concern the public good and the public interest connotes the public policy. [See P. Rathinam v. Union of India (1994) 3 SCC 394]. It is also trite that the principles governing public policy are capable, on proper occasion, of expansion or modification and the court in a given case is empowered to declare a practice as opposed to public policy in consonance with public conscience and in keeping with public good and public interest. [See Central Inland Water Transport Corporation v. Brojo Nath Ganguly [(1986) 3 SCC 156] and State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77]. The agreements obtained by the College from the petitioners authorising them to withhold the certificates of the petitioners for payment of the amounts covered by the bonds, if any, executed by the petitioners, cannot be accepted as an approved social conduct and the same, in that sense, is unethical. Further, agreements of that nature are against public good and public interest as well. In the circumstances, even assuming that the agreement/bond executed by the petitioners in favour of the College authorising them to withhold their certificates is not void for want of consideration, the same is void as opposed to public policy, in the light of Section 23 of the Indian Contract Act.*"

28. Section 23 of the Indian Contract Act, 1872, provides that for a contract to be valid, there must be the legality of object and consideration. The Object is the purpose for which the parties enter into a contract. The fulfillment of the object leads to transfer of the consideration agreed from one party to other. The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when:

> ***i.*** *They are specifically forbidden by law,*
>
> ***ii.*** *They are fraudulent in nature,*
>
> ***iii.*** *The nature of the object and the consideration is such that it defeat the purpose of law,*
>
> ***iv.*** *They involve injury or harm to a person(s) or property,*
>
> ***v.*** *Are considered immoral by the court of law and*
>
> ***vi.*** *Are against the public policy.*

29. In the present case, the UGC has issued Guidelines on 12th June, 2024 with respect to the Fee Refund Policy. The College has issued circular on 22nd July, 2024 after the guidelines issued by the UGC. The College has not considered the policy decision taken by the UGC while issuance of the circular. By ignoring the UGC policy, the College has obtained Discontinuity Bond from the petitioner.

30. There is no condition in the Discontinuity Bond that the College will retain the original testimonials of the petitioner till the payment is made.

31. This Court finds that the College without considering the UGC policy dated 12th June, 2024, has refused to refund the fee and original testimonials of the petitioner.

32. In view of the above, the respondent no. 5 is directed to refund the amount of Rs. 9,50,000/- along with all original testimonials of the petitioner within two weeks from the date of receipt of his order.

33. **WPA No. 28769 of 2024** is **allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)