

24. In the result, the petitions succeed and are **allowed**. As the petitioners have been subjected to unnecessary harassment and compensation has been withheld on a specious plea, which is evidently afterthought and unsustainable in law, therefore, the petitioners are held entitled to cost and damages, quantified as Rs. 25,000/- for each patta, to be paid by respondent no. 5, within four weeks from the date of communication of the instant order.

25. A copy of the order be kept on the file of each case.

(2025) 4 ILRA 670

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.

Writ C No. 31506 of 2023

Dr. Saba Sarif ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Ms. Akansha Mishra

Counsel for the Respondents:
C.S.C.

Civil Law – Constitution of India, 1950 – Article 226 - Writ Petition – seeking a writ of mandamus – commanding the medical college (respondent no. 2) to release the petitioner's original documents – petitioner submitted a bank guarantee in compliance with a prior court order – respondent no. 2 released the original documents – however, court finds that - Rs. 5,00,000/- as security taken by the medical college under a bond was not

enforceable and also same was not in consonance with the public policy – held, relying on precedents from the Madhya Pradesh and Gujarat High Courts, the Court directed to the respondent no. 2 to refund the security deposit of Rs.5,00,000/- along with interest at the rate of 4% per annum from the date of payment, including the bank guarantee, within four weeks – direction issued accordingly – writ petition is disposed of.

Writ Petition Disposed of. (E-11)

List of referred Cases: -

1. Ruxmaniben Deepchand Gardi Medical College Vs Dr. Anshul Jain & ors.– Writ Appeal No. 757 of 2020,
2. Dr. Anshul Jain Vs St. of MP & ors.– Writ Petition No. 7982/2019,
3. Shitanshu Shekhar Manoharlal Vs St. of Guj. – P/STA/18840/2014.

(Delivered by Hon'ble Shekhar B. Saraf,
J.
&
Hon'ble Dr. Yogendra Kumar Srivastava,
J.)

1. Supplementary affidavit filed on behalf of the petitioner is taken on record. The supplementary affidavit reveals that in pursuance of the order dated 22.09.2023 passed by a coordinate Bench of this Court, the petitioner has filed the bank guarantee before the respondent no.2.

2. Upon submission of the bank guarantee, the respondent no.2 has released the original certificates/documents to the petitioner.

3. Counsel appearing for the petitioner submits that the respondent no.2 is still to refund the security deposit of

Rs.5,00,000/- alongwith interest which was taken from the petitioner as condition of the bond. Relying on the Division Bench decision of the Madhya Pradesh High Court in **Writ Appeal No.757 of 2020 (Ruxmaniben Deepchand Gardi Medical College Vs. Dr. Ansul Jain and others)**, learned counsel further submits that the bond that was taken by the respondent no.2 is not valid and is required to be treated as null and void.

4. It is to be noted that the Division Bench of the Madhya Pradesh High Court in the aforementioned writ appeal, had affirmed an earlier judgment of a learned Single Judge in **Writ Petition No.7982 of 2019 (Dr. Anshul Jain D/o Vimal Jain Vs. State of MP and others)**, which in turn had relied upon a judgment of the Gujarat High Court judgment in **Shitanshu Shekhar Manoharlal Vs. State of Gujarat (P/STA/18840/2014)**, wherein it had been held as follows:-

"17. At this juncture, it would be relevant to mention that the Supreme Court time and again has struck down the clauses or the conditions contained in the service agreement, which were found to be unfair, unreasonable, unconscionable and opposed to the public policy. As stated earlier, pursuant to the G.R. dated 28.06.2013, the bonds are required to be executed by the students while taking the admission in PG Courses. The students have no choice but to sign in the agreement bond in the prescribed format. In the opinion of the Court such bond agreement could not be said to be have been executed by free will or consent of the students, in view of the provisions contained in the Indian Contract Act. As per Section 19A of the Indian Contract Act, when the consent to an agreement is caused by undue influence,

the agreement is a contract voidable at the option of the party whose consent was so caused. Subsection (1) of Section 16 defines "undue influence" to the effect that a contract is said to be induced by the "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Subsection (2) of Section 16 further inter alia provides that a person is deemed to be in a position to dominate the will of another, where he holds a real or apparent authority over the other. At this juncture, it would be also relevant to refer to Sections 23 of the Contract Act. Section 23 states that the consideration or object of an agreement is lawful, unless inter alia the Court regards it as opposed to public policy. It also provides that every agreement of which the object or consideration is unlawful, is void.

18. The Supreme Court, in the case of Central Inland Water Transport Corporation versus Brojo Nath Ganguly reported in (1986) 3 SCC 156 employing the provisions of the Contract Act into the principles of reasonableness and fairness imbibed in Article 14 of the Constitution of India, has held inter alia that when the contracts are entered into by the weaker party under the pressure of circumstances, which results in inequality of bargaining power, such contracts would not fall within the four corners of the definition of "undue influence" given in Section 16(1) of the Contract Act, even though at times they are between the parties one of whom holds a real or apparent authority over the other. Such contracts, which affect a large number of persons or a group of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public

interest. Such a contract or its clause should be adjudged void under Section 23 of the Contract Act on the ground of being opposed to the public policy. The Supreme Court in the said case was examining the question of validity of a service rule framed by a Government Company, namely Central Inland Water Transport Corporation. The rule viz. the Rule 9(i) empowered the corporation to terminate the services of its employees at will. The Supreme Court held the said Rule not only arbitrary, unreasonable and unconscionable infringing Article 14 of the constitution but the term contained in the said contract rule as opposed to the public policy and therefore void under Section 23 of the Contract Act. The relevant observations made by the Supreme Court may be reproduced as under:

"91. Is a contract of the type mentioned above to be adjudged voidable or void? If it was induced by undue influence, then under section 19A of the Indian Contract Act, it would be voidable. It is, however, rarely that contracts of the types to which the principle formulated by us above applies are induced by undue influence as defined by section 16(1) of the Indian Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other. In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of "undue influence" given in section 16(1). Further, the majority of such contracts are in a standard or prescribed form or consist of a set of rules. They are not contracts between individuals containing terms meant for

those individuals alone, Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and would also not be in the public interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void. While the law of contracts in England is mostly judge made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872. In order that such a contract should be void, it must fall under one of the relevant sections of the Indian Contract Act. The only relevant provision in the Indian Contract Act which can apply is section 23 when it states that "The consideration or object of an agreement is lawful, unless . . . the court regards it as . . . opposed to public policy."

92. The Indian Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public

interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought "the narrow view" school and "the broad view" school. According to the former, courts can not create new heads of public policy whereas the latter countenances judicial law- making in this area. The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in *Janson v. Uriefontein Consolidated Mines Limited* "Public policy is always an unsafe and treacherous ground for legal decision." That was in the year 1902. Seventy-eight years earlier, & Burros, J., in *Richardson v. Mellish*, described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you." The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus he said in *Enderby Town Football Club Ltd. v. Football Association Ltd.*; "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles." Had

the timorous always held the field, not only the doctrine of public policy but even the Common Law or the principles of Equity would never have evolved. Sir William Holdsworth in his "History of English Law", Volume III, page 55, has said :

"In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them.

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution."

93. **** The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed

to public policy and require to be adjudged void."

19. *The aforestated decision has been affirmed by the Constitution Bench in case of Delhi Transport Corporation versus DTC Majdoor Congress and Others reported in 1991 Supp (1) SCC 600. The said decision has also been followed in the case of Indian Oil Corporation Ltd. versus Nilofer Siddiqui & Ors reported in (2015) 16 SCC 125. As per the legal position settled in the said decisions, even though the rights of the citizens are in the nature of contractual rights, the manner, the method and the motive of a decision of entering into a contract are subject to judicial review to be examined on the touchstone of reasonableness, fair play, equality and non discrimination. It has been stated inter alia that the Courts will not enforce, and will when called upon to do so, strike down an unfair and unreasonable agreement or a clause or condition in the agreement entered into between the parties who are not equal in the bargaining power. The ratio laid down in the said decisions would also apply where the person has no choice, rather no meaningful choice but to give his assent to a condition, howsoever unreasonable and unconscionable it may be, and sign on a dotted line in the prescribed or standard form of agreement.*

20. *If the facts of the present case are appreciated in the light of the aforestated legal position, it clearly transpires that the petitioners who are the meritorious students and have got their admission on their own merits in the PG Courses in the Government Colleges as per the admission Rules, have been called upon to give undertaking for execution of the bond in view of the G.R. dated 28.06.2013. They have also been*

called upon to sign on the dotted lines in a prescribed form of bond agreement, the copy of which is produced on record in Special Civil Application No. 2690 of 2016. The respondent authorities being in dominating position, the petitioners and the students similarly situated as the petitioners have no choice but to give assent to the conditions mentioned in the said bond agreement, though the said conditions are too harsh, unreasonable and onerous. The concerned respondent authorities by issuing the circular dated 28.02.2019, have literally tried to cause fear in the minds of the students that their stipend will be stopped, and that they will not be allotted the exam hall tickets, if they did not furnish the bond agreement. Thus, the action of the respondents in compelling the PG students to undertake to execute fresh bond of Rs. 10,00,000/- for serving in rural areas for three years, and to extend the bond already furnished as UG students for a further period of three years in view of G.R. dated 28.06.2013 and further compelling them to sign on the dotted lines of the bond agreement containing absolutely unreasonable and unconscionable conditions, smacks of arbitrary exercise of powers at the instance of the respondent authorities. Such bond agreement and the conditions mentioned therein being unreasonable, unjust and unconscionable are required to be construed as opposed to the public policy and therefore void, as also violative of Article 14 of the Constitution, in view of the decision of the Central Inland Water Transport Corporation (supra)."

5. In the present case, we are of the view that the bond that was executed by the medical college was not in consonance with the public policy, and accordingly the

bond cannot be enforced by the respondent no.2.

6. In light of the same, the respondent no.2 is directed to refund the security deposit of Rs.5,00,000/- alongwith interest at the rate of 4% per annum, of the principal sum, starting from the date of payment made by the petitioner till the payment to be made by the respondent no.2 to the petitioner.

7. The above refund should be made within a period of four weeks from the date of receipt of a certified copy of this order.

8. Further more, the bank guarantee that has been deposited by the petitioner, in pursuance of the order of the coordinate Bench of this Court, should also be returned to the petitioner alongwith the refund of the security deposit.

9. With the above directions, the writ petition is disposed of.

(2025) 4 ILRA 675

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ - C No. 31742 of 2024

Smt. Kehkashan		...Petitioner
	Versus	
State of U.P.		& Ors.
...Respondents		

Counsel for the Petitioner:

Sri Imtiaz Husain, Sri Siddharth Nandan,
Sri H.N. Singh (Sr. Advocate)

Counsel for the Respondents:

C.S.C., Sri Ganesh Pratap Singh, Sri R.P.S. Chauhan, Sri Rajeev Kumar Singh, Sri Siddharth Khare, Sri Navin Sinha (Sr. Advocate)

Civil Law – Constitution of India,1950 –

Article 226 - U.P. Panchayat Raj Act, 1947 - Section 12-C, - U.P. Panchayat

Raj (Election of Members, Pradhan and Up-Pradhans) Rules, 1994 – Rule 33, 82,

86, 86(1), 86(2), 86(2)(b), 105, 105(2)-

Writ Petition – challenging the election of the Gram Pradhan - the petitioner initially secured 664 votes while respondent no. 4 received 658 - however, respondent no. 4 filed an election petition under Section 12-C of the U.P. Panchayat Raj Act, 1947, prompting a recount – being aggrieved, petitioner filed writ petition - High Court by earlier order remanded the matter before the prescribed authority to decide the election petition a fresh - led to a Supreme Court – Supreme Court directed recount in present of a Court Commissioner – recounting revealing 659 votes for respondent no. 4 and 657 for the petitioner, with 114 ballots declared invalid - the Supreme Court remanded the matter to the High Court to quickly review only disputed ballots and decide the matter without delay – both contesting parties were allowed to inspect and filed their objections regarding invalid votes – the Court relying on the legal maxim *expressio unius est exclusio alterius* held that, any deviation from the prescribed method, such as using ink dots or thumb impressions, renders the ballot invalid and threatens the integrity of the election process – therefore, court upheld the rejection of several disputed ballot papers in the Gram Pradhan election, citing violations of the mandatory voting procedure under Rules 86 and 105 of the U.P. Panchayat Raj Rules, 1994 - after reviewing the objections to 40 out of the 114 invalid votes, the Court found 36 ballots to be invalid, while 2 were valid in favour of petitioner and 2 in favour of respondent no. 4 – thus, the revised tally brought petitioner's total to 659 votes and respondent no. 4's total to 661 votes - thereby declaring respondent no. 4 as the winning candidate – directions issued to respondent authorities to take consequential steps for