

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.10697/2009**

% **Date of Decision: 06.08.2009**

Devesh Dutta & Ors Petitioners

Through Mr.Navin Chawla, Advocate.

Versus

National Board of Examinations & Anr Respondents

Through Dr.Rakesh Gosain, Advocate for the
respondent No.1.
Mr.Sanjay Katyal, Advocate for the
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners challenge the decision of the respondent canceling the Exit Examination of Fellowship Programme in Cardiac Anesthesia and directing the petitioner to reappear for the same on 22nd/23rd August, 2009 and seeks a direction to the respondents to declare the result of the petitioner for the Exit Examination held on 12th/13th March, 2009 at Narayana Hirudayalay, Bangalore.

The petitioners have contended that they had appeared for the programme in the year 2004/2005/2007 and after being successful in the entrance examination for the Fellowship examination in cardiac anesthesia were allotted hospitals where they had to undergo the course.

The petitioners' plea is that there are only 13 seats all over India and they had applied for Exit Examination in March, 2008 and deposited the requisite fees whereafter by communication dated 2nd March, 2009 they were called upon to appear for the exit examination on 12th/13th March, 2009 at Bangalore.

According to the petitioners they appeared in the Exit Examination and waited for the results, however, they received the communication dated 28th July, 2009 intimating them about cancellation of Exit Examination held on 12th/13th March, 2009 and calling them to reappear in the examination on 22nd/23rd August, 2009 at SGPGI, Lucknow.

The petitioners have contended that the programme was started with the laudatory objective of preventing brain drain of qualified medical professionals leaving this country, however, the said objective would stand defeated, if the examination for the same is cancelled at the whims and fancies of the respondent No.1. It was also contended

that no Exit Examination was conducted by respondent No.1 in the year 2008.

The learned counsel for the respondent, Mr.Gosain who appears on advance notice has produced the copy of the letter dated 4th August, 2008 from Executive Director of National Board of Examinations to Under Secretary, ME Desk II, Government of India stipulating the reasons for cancellation of the examination. It is contended that 9 candidates had appeared in the aforesaid examination. Relying on NBE rules, it is contended that three examiners had to examine all the candidates as per the scheme of examination prescribed by the Board. However, one of the examiners could not report for the examination duties, thereafter, examination coordinator Dr.Mularalidhar conducted the examination in the breach of the guidelines of NBE on both days of examination and conducted the examination with only two examiners Dr.Mularalidhar and Dr.(Col) G.S.Ramesh against the mandatory requirement of three examiners. It is also contended that these two examiners have also awarded identical marks i.e 120 marks to almost all the candidates. It has also been contended that other infirmities were also noticed and the matter came to the notice of NBE only when the result of the aforesaid centre was submitted to NBE office by the examination centre. In the circumstances, it is contended that decision was taken to cancel the examination held on 12th/13th March, 2009 and

the candidates including the petitioners have been informed accordingly and they have been directed to reappear in the examination.

The learned counsel for the petitioner has contended that it was never communicated to the petitioners that the panel of the examiners had to be of three examiners and not of two examiners and consequently the examination conducted by the respondent could not be cancelled. Reliance has also been placed on *Union of India and Ors v. Rajesh P.Puthuvalnikathu and Ors.*, (2003) 7 SCC 285, wherein it was held that if it was possible to weed out the beneficiaries of irregularities or illegalities out of the selectees, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner and in the circumstances on the facts of the case it was held that the decision cancelling the selection in the entirety was not right.

In the case of the petitioners, in view of the communication dated 4th August, 2008 it cannot be disputed that as per the rules of NBE, a panel of three examiners had to examine the candidates as per the scheme of examination. If one of the examiners had not reported for examination duties, the remaining two examiners could not have continued with the examination. However, in breach of the rules of NBE for conduct of the examination, the examination was conducted by only two examiners. If examination was not conducted in compliance with

the rules of NBE, the respondents are justified in cancelling the entire examination. The petitioners do not have such a right which will impel the respondents to seek consent of the petitioners for cancelling the entire examination which was not conducted according to the norms. The learned counsel for the petitioners has rather contended that the petitioners did not know that the examination had to be conducted by three examiners in place of two examiners. The alleged ignorance of the petitioners about this fact, in the facts and circumstances will not be material. It rather reflects non compliance of rules in conduct of the examination which will entail cancelation of the entire examination. The petitioners in the facts and circumstances cannot impugn the decision of the respondent to cancel the examination of all the candidates which was taken by panel of two examiners in place of panel of three examiners.

The learned counsel for the petitioners has also contended that all the doctors who appeared in the examination are specialists and, therefore, similar marks have been awarded to them. Another reason noticed and relied on by the respondents in cancelling the examination is of awarding 120 marks to almost all the candidates. Even if the petitioners and other doctors are stated to be very competent persons, if the respondents have a doubt about the two examiners continuing with the examination contrary to the rules of NBE and awarding similar

marks, the decision to cancel the examination of the candidates cannot be faulted. The judgment relied on by the petitioners is distinguishable as in that case there was no allegations of malpractice or conducting the examination contrary to the rules in contradistinction to the present case where though the panel of examiners consisted of three examiners, however, since one of the examiner could not report, the examination was conducted by the remaining two examiners contrary to the rules. In the circumstances, the decision of the respondent to cancel the examination cannot be faulted. The petitioners cannot get the relief on the basis of precedent relied on by them which is distinguishable. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme Court had observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

The petitioners do not have a vested right to have their result declared of an examination which had not been conducted in accordance with the rules. No malafide has been alleged against the respondents. The learned counsel for the petitioners is also unable to substantiate that the cancellation of the examination held in March, 2009 shall be contrary to the object of conducting the examination.

The petitioners in the facts and circumstances, is not entitled to the relief prayed and the decision of the respondents to cancel the examination of the candidates is not liable to be set aside nor can the respondents be directed to declare the result of the petitioners for the examination which has been cancelled. The writ petition is, therefore, without any merit and it is, therefore, dismissed.

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August 06, 2009
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ANIL KUMAR, J.