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

Date of Decision : 07th January, 2021

+ W.P.(C) 6838/2020 & CM APPL. 23648/2020

GAURAV JAISWAL THROUGH HIS
LEGAL GUARDIAN

..... Petitioner

Through: Mr. Paras Jain, Advocate.

versus

UNION OF INDIA THROUGH MINISTRY
OF EDUCATION/NATIONAL TESTING
AGENCY & ANR

..... Respondents

Through: Mr. Dev P. Bhardwaj, CGSC
for UOI/R-1.

Mr. Arjun Mitra, Advocate for
R-2/IIT.

Mr. Amit Bansal & Ms. Seema
Dolo, Advocates for R-3/NTA
with Ms. Sarika Soam,
Representative of NTA.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner was an aspirant for admission to the Indian Institutes of Technology and other engineering colleges. He participated in the Joint Entrance Examination ["JEE"] (Main)

conducted by the National Testing Agency [“NTA”] in January 2020 and September 2020. The grievance of the petitioner is that the final scoresheet of the JEE (Main) examination published by the NTA in September 2020 wrongly reflects the percentile in which he was placed in the January 2020 examination.

2. Learned counsel for the parties inform me that the JEE (Main) examination was conducted in January 2020, and any candidate desiring to improve his/her performance was entitled to take the examination again in September 2020. A scoresheet was issued after the January 2020 examination, reflecting the percentile in which the candidate was placed in that round. Another scoresheet, issued after the September 2020 round, contained the candidate’s result in both the rounds of the JEE (Main). The eligibility of the candidate to take the JEE (Advance) examination (necessary for admission to the IITs) was dependent on the better performance between the January 2020 session and the September 2020 session. The JEE (Main) examination is a computer-based examination conducted online. Candidates mark their responses to the questions electronically on OMR (Optical Mark Recognition) sheets, which are compared with the correct answers according to the NTA answer key. Prior to the declaration of results, NTA also uploads the answer key and the OMR sheets of the candidates, to enable consideration of any challenge to the answer key.

3. In the present case, the petitioner claims that he was placed in the percentile 98.8105888 in the January 2020 session. The petitioner has annexed a print-out of his scoresheet as Annexure - 2 to the writ petition (at page 23 of the paper book). He contends that this was the

scoresheet downloaded by him from the NTA website in January 2020.

4. The petitioner thereafter took the JEE (Main) examination again in September 2020, whereafter a combined scoresheet was issued by the NTA, a copy whereof has been annexed to the writ petition at Annexure - 3 (at page 24 of the paperbook). In the combined scoresheet, the petitioner is shown to have been placed in percentile 51.8105888 in the January 2020 session and percentile 71.3367318 in the September 2020 session of the JEE (Main) examination. According to the petitioner, this is the result of a technical error on the part of NTA, and the combined scoresheet of September 2020 does not correctly reflect the percentile in which he was placed in the January 2020 session.

5. The NTA was added as a party (respondent No.3) to the present petition by an order dated 23.09.2020, and notice was issued to it, returnable on 24.09.2020. In the order dated 24.09.2020, the contention of NTA is recorded to the effect that the scoresheet which is attached at page no. 23 of the paperbook is a forged one, and NTA was directed to file the original scoresheet. By a further order dated 25.09.2020, the petitioner's contention that the scoresheet at page 23 is the correct scoresheet was also recorded, and the petitioner was permitted to appear in the JEE (Advance) examination held on 27.09.2020. It was further directed that the petitioner's result would not be declared without further orders of the Court, and that the petitioner would not be entitled to claim any equity on the account of the said order.

6. Pursuant to the order dated 24.09.2020, the NTA filed (vide diary no. 834002/2020) the original scoresheet of the petitioner, which was published after the January 2020 session. The copy of the scoresheet filed by the NTA shows that after the January 2020 session, the petitioner was in fact placed in percentile 51.8105888. The NTA has also filed a counter affidavit on 29.09.2020, in which it has sought to substantiate its case regarding the forgery of the scoresheet by the petitioner with the following averments: -

“1. That present Petition deserves to be dismissed at the outset on the ground that Petitioner has not come before this Hon'ble Court with clean hands. The Petitioner has premised his entire case on the basis of a forged and fabricated Score Card for Joint Entrance Examination (Main) January, 2020 (at page 23 as Annexure P-2), which he claims he has downloaded from the website of jeemain.nta.nic.in which is maintained for the JEE (Main) Exam by Respondent No.3, National Testing Agency (NTA). The said score card reflecting Petitioner's percentile as 98.8105888, is not a genuine Score Card which is writ large on the face of the document. A comparison of the forged Score Card filed by the Petitioner with the actual Score Card from the official website of JEE (Main), shows great variances and points out the following glaring editing and changes made in the forged document:-

(i) The following score(s) have been fabricated in the as JEE (Main) January 2020 Score Card produced by the Petitioner (at page 23 as Annexure P-2):

Subject	Original Score	Fabricated Score
<i>Physics</i>	78.9217920	98.9217920
<i>Chemistry</i>	10.4721474	99..4721474
<i>Mathematics</i>	65.5215020	98.5215020

Total	51.8105888	98.8105888
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(ii) *The score against Chemistry subject in the forged document has **two decimals, 99.4721474**, which is evidently edited. It is pertinent to mention that the fabricated total score in percentile as well as its subject-wise component percentile score have not been awarded to any candidates of JEE (Main) January 2020.*

(iii) *The Score in digits, post decimal against Physics, Chemistry, Mathematics and total, are identically similar and only the digits before the decimal are different;*

(iv) *The entries against **Person with Disability (PwD), Gender, Nationality and the NTA Scores in Words** are all in **block letters in the Score Card produced by the Petitioner**. On the other hand, these entry in the Score Card of NTA, which is a standard format, is in sentence form. It may further be mentioned that the Candidate's particulars including Gender, Category and Person with Disability (PwD) have been indicated as mentioned by the candidate in the Online Application Form and are in sentence form only.*

The aforesaid variances irrefutably establish that the JEE (Main) January 2020 Score Card filed by the Petitioner has not been published by the NTA, the same being different from the usual format of Score Card issued by NTA."

7. The NTA has also annexed, alongwith its counter affidavit, a report of the National Informatics Centre ["NIC"], which provides technical support to the NTA. The NIC report dated 27.09.2020 states as follows: -

“TO WHOMSOEVER IT MAY CONCERN

*Subject: JEE (Main) 2020 - Candidate's Application
Number: 200310189671- reg.*

- 1. The National Informatics Centre (NIC) is providing Technical Support to National Testing Agency (NTA) for the JEE (Main)-2020. Based on result data and cut-off received from NTA, NIC published Score Card of January and April/September 2020 on JEE(Main) portal.*
- 2. As per the record available in database server, the Score Card of the Candidate (having Application Number: 200310189671, Name: GAURAV JAISWAL) for January 2020 and April/September 2020 are enclosed (200310189671-Scoresheet-JAN20.pdf and 200310189671-Scoresheet-SEP20.pdf).*
- 3. As per the Score Card, the NTA Score obtained by the Candidate are 51.8105888 Percentile in January 2020 and 71.3367318 in April/ September 2020.*
- 4. Details of the Audit Trail of Application Number: 200310189671 are attached for reference (200310189671-AuditTrail.pdf).*

*Yours sincerely,
Sd/-
(Mohd. Anwar Khan)”*

Thus, according to the NIC also, the scoresheet placed on record by the NTA is the correct scoresheet of the petitioner.

- 8. In addition to the above factual averments, Mr. Bansal, learned counsel for the NTA, also submits in the course of arguments that in the event the petitioner had been placed in percentile 98.8105888 in the January 2020 session, he would have been assured of his eligibility for the JEE (Advance) examination, and is very unlikely to have tried his luck in the September 2020 round of the JEE (Main). He also*

points out that, if the petitioner's case is accepted, he dropped from being placed above the 98th percentile in January 2020, to below the 72nd percentile in September 2020.

9. The petitioner, on the other hand, has placed on record an affidavit of his brother dated 24.09.2020, seeking to stand by the scoresheet annexed at page 23 of the writ petition. The petitioner has also filed a rejoinder to the counter affidavit filled by the NTA, in which this contention has been reiterated.

10. In the rejoinder affidavit, a contention has also been raised to the effect that there is a discrepancy between the petitioner's OMR responses of the September 2020 session, as downloaded by the petitioner and the copies placed on record by the NTA. According to the petitioner, this shows tampering of his result by NTA, and casts doubt on the credibility of the entire process.

11. Mr. Paras Jain, learned counsel for the petitioner, also relies upon orders passed by this Court in petitions relating to the National Eligibility cum Entrance Test (NEET), which is also conducted by NTA. The contention of Mr. Jain is that this Court is examining similar disputes regarding tampering of OMR sheets in those writ petitions.

12. Mr. Bansal, on the other hand, submits that the cases regarding the JEE and NEET are materially different, inasmuch as NEET is an offline, physical exam, where the candidates fill physical OMR sheets in hard copy, whereas JEE is an online, computer-based exam, where no physical OMR sheets are filled in by the candidates. Mr. Bansal specifically states that although in certain petitions regarding NEET,

this Court has called for the original documents in order to establish the veracity of the contentions of the petitioners therein, there is no case pending with relation to the veracity of the scoring in the JEE, being a computer-based exam.

13. Without getting into the merits raised in other petitions against NTA, I am of the view that in the present case, the contention regarding the discrepancy in the OMR sheets is a red herring. The petitioner's grievances in this regard relate to the September 2020 session, which is not the subject matter of the present writ petition at all. There is no challenge in the petition to the September 2020 result declared by NTA. The grievances of the petitioner are based only upon the result which he claims to have achieved in the January 2020 examination being wrongly reflected in the combined scoresheet published by the NTA in September 2020. In these circumstances, the grievances of the petitioner regarding the OMR sheets of the September 2020 examination are not germane to the determination of this petition.

14. As far as the January 2020 examination is concerned, the petitioner has clearly stated that he did not download his recorded responses of January 2020 as he was satisfied with his performance in that exam. The following averment in the rejoinder affidavit is unequivocal on this aspect: -

“8. That on seeing the result of the Part-1, JEE Main Examination, 2020 dated 17.01.2020 with percentile score of 98.8105888, Petitioner like any prudent person did not download his recorded response of January, 2020 dated 17.01.2020 as he was satisfied with his

performance. However, for JEE Main Examination September, 2020 (Part-2), Petitioner downloaded his recorded response from the official website of the Respondent and, now, after matching the a) JEE Main September, 2020 recorded response downloaded by Petitioner with b) JEE Main September, 2020 recorded response furnished by the Respondent in its Short Affidavit before this Hon'ble Court, Petitioner has been astonished to observe that there is mis-match in the recorded response of the JEE Main Examination, September, 2020. This proves that there has been an internal manipulation on the part of the Respondent, firstly with the recorded response and, thereafter, with the final result dated 12.09.2020."

(Emphasis supplied)

15. In these circumstances, it is impossible for the petitioner to dispute at this stage that the OMR sheets of January 2020 placed on record by NTA are incorrect.

16. Significantly, in answer to the specific query of the Court, Mr. Jain submitted that the window for a candidate to download his/her OMR responses from the NTA website is prior to the declaration of results. In these circumstances, it appears that the contention of the petitioner in the aforesaid paragraph that he did not download his responses of January 2020 because he was satisfied with his score is, at the very least, misleading. Mr. Bansal also confirms, upon instructions from the representative of the NTA, who is attending the video conference hearing, that the recorded responses of the candidates can only be downloaded prior to the declaration of results. In these circumstances, the explanation offered by the petitioner for

his failure to download the January 2020 OMR responses is not worthy of acceptance.

17. This diversion having been dealt with, we return to the original issue regarding the genuineness and veracity of the January 2020 scoresheet annexed by the petitioner at page 23 of the writ petition. The petitioner claims this is the scoresheet downloaded from the NTA website, and the inconsistent September 2020 scoresheet is the result of a technical error; the NTA stands by the September 2020 scoresheet, and characterises the document at page 23 as false and fabricated.

18. I am of the view that this is a matter entirely dependent on an adjudication of disputed questions of fact and unsuitable for determination in writ proceedings. Mr. Jain was given time to consider this, and today cites paragraph 11 of the judgment of the Supreme Court in *Popatrao Vyankatrao Patil vs. State of Maharashtra & Ors.*, 2020 SCC Online SC 291 [C.A. No. 1600/2020, decided on 14.02.2020] to submit that the existence of disputed questions of fact does not entirely preclude the jurisdiction of the writ court. In paragraph 11 of *Popatrao*, the Court relied upon *ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors.*, (2004) 3 SCC 553, and held as follows:

“11. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard and fast rule. In any case, this Court in ABL International Ltd. v. Export Credit

Guarantee Corpn. of India Ltd. (2004) 3 SCC 553 has observed thus:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact””

19. I am afraid, learned counsel misses the point. Just because something *can be done* in an appropriate case does not mean it *must be done* in every case – there are cases where the factual disputes raised may be appropriate for adjudication under Article 226, but that is an exceptional position and not the general rule. This is clear enough from the opening sentence of paragraph 11 of *Popatrao*, cited by Mr. Jain, and placed beyond doubt by the observations in paragraph 13 of the same judgment:

“13. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the

action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.”

20. The present case does not, in my view, fall within the exception carved out by the Supreme Court. As detailed above, the NTA has certainly raised a credible doubt as to the genuineness of the scoresheet at page 23 of the writ petition. The technical agency responsible, the NIC, has looked into the matter and supported its stand. The NTA cannot be said, in these circumstances, to have acted unreasonably or arbitrarily. The questions of forgery, fraud and tampering raised in present case would require elaborate evidence, and are not capable of summary adjudication under Article 226 of the Constitution.

21. For the reasons aforesaid, the present writ petition is dismissed. The petitioner is however at liberty to take such other remedy as may be available to him in law, if he is so advised.

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PRATEEK JALAN, J.

JANUARY 07, 2021

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