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

% *Date of Decision: 27.08.2022*

+ **L.P.A. No. 496 /2022 and CM No. 37544/2022**

VEDANSHI PATHAK THROUGH GUARDIAN

PIYUSH KUMAR PATHAK

..... Appellant

Through: Ms Mamta Sharma, Advocate.

versus

NATIONAL TESTING AGENCY

AND ORS.

..... Respondents

Through: Mr Rupesh Kumar and Ms
Pankhuri Shrivastava,
Advocates for NTA.
Mr Arjun Mitra, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

1. Issue notice. The learned counsel for the respondents accepts notice.
2. We have heard the learned counsel for the parties.
3. The appellant impugns an order dated 26.08.2022 rendered by the learned Single Judge of this Court in *W.P.(C) 11925/2022* captioned "*Vedanshi Pathak Through Guardian Piyush Kumar Pathak v. National*



Testing Agency & Ors.” (hereafter ‘**the impugned order**’).

4. In terms of the impugned order, the learned Single Judge dismissed the appellant’s application for interim relief to appear for the Joint Entrance Examination (Advanced), 2022 [hereafter ‘**JEE (Advanced)**’], which is scheduled to be held tomorrow (that is, on 28.08.2022)

5. The principal grievance of the appellant stems from not being included in the list of candidates eligible to appear for the JEE (Advanced).

6. The appellant had appeared in the Joint Entrance Examination (Main), 2022 [hereafter ‘**JEE (Main)**’], which was a qualifying examination for appearing in the JEE (Advanced). The appellant claims that 2,50,000 candidates were required to be selected as eligible for appearing in the JEE (Advanced), *inter alia*, on the basis of their score in the JEE (Main). The appellant discovered that there was duplication in the names of the candidates shortlisted by respondent no.1 (hereafter ‘**NTA**’). Resultantly, certain students, who would have otherwise been shortlisted, have been excluded. The appellant believes that if the anomaly is corrected, she would be included in the list of shortlisted candidates, given her score in the JEE (Main). In the circumstances, the appellant seeks, at the interim stage, to be permitted to appear in the JEE (Advanced) pending a final adjudication of the petition preferred by her [W.P.(C) 11925/2022].

7. The learned Single Judge has declined the appellant’s prayer for



interim relief. The learned Single Judge accepted the NTA's contention that even if the list of shortlisted candidates was rectified to remove the duplication, as pointed out by the appellant, her name would not feature in the list of shortlisted candidates. The learned Single Judge found that the duplication, as pointed out, was "*not egregious enough*" for the Court to conclude that the entire list of the shortlisted candidates was erroneous.

8. It is contended on behalf of the appellant that although the appellant has been able to ascertain the names of thirteen candidates that have been included twice over, it is clear that there are a large number of other such candidates. The appellant claims that if the list of shortlisted candidates is recast, she would be included in the said list of shortlisted candidates.

9. Ms. Sharma, learned counsel appearing for the appellant, earnestly contends that at the interim stage, the appellant may be permitted to appear in the JEE (Advanced), which is scheduled to be held tomorrow (28.08.2022) as no prejudice would be caused to any person, in permitting her to do so. If it is finally found that the appellant was not entitled to appear in the JEE (Advanced), she would not claim any equities.

10. The "JEE (Advanced) 2022 - Information Brochure", *inter alia*, provides the details of the scheme of the JEE (Advanced). Some of the relevant features of the JEE (Advanced), as set out in Part II of the Brochure, are as under:-



- “The JEE (Advanced) would be conducted by seven Zonal Coordinating IITs under the guidance of the Joint Admission Board 2022 (JAB 2022). The performance of a candidate in JEE (Advanced) will form the basis for admission to the specified Bachelors, Integrated Masters, and Dual Degree programs in all IITs (Indian Institute of Technology) in the academic year 2022-23.
- Indian Nationals who desire to appear for JEE (Advanced) are “*required to write / have written the JEE (Main) 2022 paper for admission to B.E./B.Tech. programs conducted by the National Testing Agency*”.
- One of the criteria for appearing in the JEE (Advanced) 2022 is the performance in JEE (Main). In order to fulfil the said criterion, the candidate is required to be among the “*top 2,50,000 successful candidates (including all categories) in B.E./B.Tech. Paper of JEE (Main) 2022*”.”

11. The scheme of the JEE examinations, as noted in the impugned order, is reproduced below:

- “i. A candidate is required to register by filling-up an online application form, through which a “*system generated application number*” is allocated. Candidates are allowed two opportunities to write the JEE (Main), which are described as Session 1 and Session 2, for which, candidates are to use the same application number. It is, however, not mandatory to appear in both sessions.



- ii. Scores are obtained on a percentile basis, and are not an aggregate or average of the marks obtained. If a candidate appears in both sessions, the higher score of the two is considered as final for each subject, total of which forms the “*Total NTA Score*” of a candidate.
- iii. NTA announces the “*All India Rank based on Final NTA Score*” which is a rank list, and further declares “*Cut-off Total NTA Score based on Paper 1 (B.E./B.Tech.)*” for general as well as reserved categories. These are used by candidates for – (i) seat allocation to many premier engineering colleges such as NITs, NSIT, DTU [“*NIT + institutions*”] through a Joint Seat Allocation Authority [“*JoSAA*”] which considers the All India Rank; and/or (ii) qualifying to write the JEE (Advanced) for attaining admission into IITs through the cut-off NTA Score for the said exam.”

12. On 07.08.2022/08.08.2022, the NTA declared the ‘Cut-off Total NTA Score based on Paper 1 (B.E./B.Tech.)’. The cut-off for the general/unreserved category was declared as 88.4121383 percentile.

13. The appellant claims that she was not included in the list of shortlisted candidates eligible to appear for the JEE (Advanced), mainly, for two reasons. First, the number of candidates that were included twice in the shortlist [“single student having two Common Rank List (CRL)”]; and second, due to discrepancy in the marks obtained by the candidates and converted to percentile using the normalisation process.

14. The appellant appeared in Session 1 of the JEE (Main) that was conducted between 23.06.2022 and 29.06.2022. She scored 87.5764669



percentile in the said examination. The appellant also appeared in Session 2 of the JEE (Main) that was conducted between 25.07.2022 and 30.07.2022 and scored 88.2866394 percentile. Since her better score was 88.2866394 percentile, the same was relevant for considering her inclusion in the list of shortlisted candidates for the purposes of eligibility to appear in the JEE (Advanced).

15. In terms of the examination scheme, whilst a candidate could appear for both the sessions (Session 1 and Session 2) of the JEE (Main); it was necessary that he/she appears under the same application number and login ID as allocated and used for Session 1. The appellant duly complied with the same.

16. The appellant claims that several candidates, who had appeared in both the sessions of the JEE (Main), did so under different application numbers. This has led to the names of certain candidates meeting the eligibility criterion, being included twice over in the list of shortlisted candidates.

17. Although only the top scoring 2,50,000 numbers of candidates are eligible to appear in the JEE (Advanced); 2,62,176 numbers of candidates have been shortlisted by the respondent. The increase in the number of shortlisted candidates is on account of a 'One Time Measure' announced in the wake of the Covid-19 pandemic for accommodating those students who had appeared in Class 12th (or equivalent) examination conducted in 2020/2021 and had successfully registered for the JEE (Advanced) Examination 2020/2021, but did not appear in



the JEE (Advanced) Examination 2020/2021.

18. The learned Single Judge had noted that although the candidates were required to use a single application for appearing in both the sessions of the JEE (Main), however, the “*online system was not able to prevent multiple registrations per candidate*”. It was apparent that there was duplication and certain candidates had registered for Session 2 of the JEE (Main) under new application numbers, which was different from the ones used by the candidates earlier for appearing in Session 1 of the JEE (Main). The Court also noted that some of the candidates had managed to clear the cut-off in both the sessions, which had resulted in their names being reflected twice in the list of shortlisted candidates.

19. The National Informatics Centre (hereafter the ‘NIC’) was entrusted with the task of developing, hosting, maintaining and securing the online application portal.

20. Apparently, the NTA had requested the NIC to look into the matter. The communication dated 25.08.2022, received from the NIC, indicates that ten candidates had appeared in the JEE (Main) under different application numbers. The extract of the said response, as quoted by the learned Single Judge in the impugned order, is set out below:

“In pursuance of the receipt of your Letter No. NTA/Legal/DHC/W.P.(C)/11925/2022 dated 22.08.2022 in the above mentioned matter, it is informed that the



following parameters are normally checked to eliminate duplicity in applications:

- Candidate Name
- Father Name
- Mother Name
- Candidate's Date of Birth
- Candidate's Gender
- State of Eligibility
- State of Residence In addition to the above parameters, when we applied the additional parameters like Address, Contact Details, Nationality, Category, PwD Details, Question Paper Medium, Annual Family Income, Father & Mother Qualification & Occupation, Candidate Qualification, Medium of Schooling in Qualifying Examination, it was found that there are only 10 candidates who are common in both sessions of JEE (Main) 2022 but has different application numbers and don't have duplicate records within the same session."

[Emphasis Supplied]

21. Notwithstanding that the names of certain candidates have appeared more than once in the list of shortlisted candidates; the learned Single Judge declined the request of the appellant to appear in the said examination. The impugned order is premised on the basis that even if the list of shortlisted candidates is rectified, the appellant would not be included in the top scoring 2,50,000 numbers of candidates. This is largely based on the affidavit filed by the Director, NTA, *inter alia*, affirming that the "*Petitioner to register and appear in JEE (Advanced) 2022 are not maintainable, as the Petitioner would not be eligible for*



JEE (Advanced) 2022, even if the ten (10) candidates having two applications for two different sessions of JEE (Main) 2022 are removed from the selected list.”

22. The impugned order indicates that the appellant had controverted the assertion that only ten candidates – who are declared as eligible for appearing in the JEE (Advanced) – had appeared in both the sessions of the JEE (Main) under different application numbers. She had also produced score cards of thirteen candidates whose names, according to the appellant, had featured twice in the list of shortlisted candidates. However, the learned Single Judge was of the view that excluding the thirteen candidates from the list of shortlisted candidates would not result in the appellant being included in the list of shortlisted candidates for, essentially, three reasons. First, that the list of shortlisted candidates had already been expanded to 2,62,176 numbers of candidates to grant the benefit of the ‘One Time Measure’ scheme to certain candidates, who had registered for the JEE (Advanced) Examination in 2020/2021. Second, that there were 1,471 (one thousand four hundred and seventy one) candidates, who fell between the general category cut-off score and the score secured by the appellant. And third, that there were fifty-six other candidates, whose percentile were identical to that of the appellant: that is, 88.2866394 percentile and therefore, the appellant could not be considered to their exclusion.

23. It is apparent that exclusion of the names of certain duplicate candidates from the list of shortlisted candidates would alter the cut-off score declared for the purposes of the eligibility criteria stipulated for



appearing in the JEE (Advanced). This is for the obvious reason that a candidate's score in the JEE (Main) is a statistical expression of the placement of the candidate on the scale of relative merit and the cut-off is fixed keeping in view the number of candidates to be shortlisted (that is, 2,50,000).

24. This Court is unable to accept that any reduction in the cut-off score would be immaterial as the number of candidates shortlisted is in excess of 2,50,000. It is the NTA's stand that the number of shortlisted candidates has exceeded beyond 2,50,000, due to the inclusion of the candidates that are eligible on account of the 'One Time Measure' announced in the wake of the pandemic. The Information Brochure clearly indicates that the candidates, who become eligible pursuant to the relaxation granted as a 'One Time Measure', on account of the Covid-19 pandemic, *"would be considered in addition to and not as a part of the total number of candidates"*. Thus, the increase in the number of shortlisted candidates is not relevant. The appellant's case is that she is entitled to be included in the list of the top scoring 2,50,000 candidates, which has been drawn on the basis of the JEE (Main). And, the list of these candidates has to be determined by excluding those that are granted the benefit of relaxation, on account of the Covid-19 pandemic.

25. The other two reasons that persuaded the learned Single Judge to decline the appellant's request for interim relief are merited. Although the appellant's score is only 0.126 lower than the cut-off of 88.4121383 percentile, there are 1,471 (one thousand four hundred and seventy-one)



candidates in the general category, who do not make the cut-off score but have scored higher than the appellant. Thus, a reduction in the cut-off on account of removal of ten or thirteen names from the list of shortlisted candidates would not be sufficient to accommodate the appellant amongst the list of successful candidates. It is also pointed out that the appellant is one of the fifty-seven candidates, who have the same score. Thus, the appellant cannot be included to the exclusion of other similarly placed candidates. It is also apparent that if the percentile score has to be altered on account of removal of thirteen names, the reduction in cut-off would not be sufficient to accommodate all the candidates (57 in number), that have similar scores as that of the appellant.

26. It is also relevant to mention that there are a total number of 16,234 seats that are available to accommodate students. Thus, in any event, the JEE (Advanced) is a highly competitive examination. The purpose of fixing a cut-off on the basis of the score secured by the candidates in the JEE (Main) is to shortlist the candidates in the order of merit. Admittedly, the appellant ranks lower in merit as compared to the candidates that have been shortlisted on the basis of the JEE (Main). Thus, there are no overwhelming considerations of equity and balance of convenience, in favour of the appellant in this case. Even if it is found that the number of candidates, whose name appeared twice in the shortlist, is in excess of the thirteen candidates as identified by the appellant; it would not take away the fact that only the candidates who are higher in the order of merit than the appellant have been selected in



the list of shortlisted candidates.

27. Before concluding, this Court also considers it apposite to observe that although this Court finds no fault with the decision of the learned Single Judge to decline the interim relief, it can hardly be disputed that the appellant has pointed out an important flaw in the manner in which the list of eligible candidates has been compiled.

28. Mr Rupesh Kumar, learned counsel appearing for NTA, submitted that the names of certain candidates appeared twice in the shortlist as a result of the manner in which those candidates would have filled up their application forms. As a matter of illustration, he referred to the applications of a candidate named Agrim Patel, a copy of which has been annexed (which is a part of Annexure P-8 at Pages 222 and 223 of this Appeal) to the appeal. The said candidate's application for Session 1 of the JEE (Main) reflects his mother's name as Mrs. Shashibala Rathore. However, his application for Session 2 of the JEE (Main) reflects her name as Mrs. Shashibala. All other details including the Father's Name; Date of Birth; Gender; and, State Code of Eligibility are identical. His photograph that appears on the NTA score card is also identical. Notwithstanding the same, the NTA has failed to identify that the said candidate had appeared in two sessions under different application numbers. If the appellant is correct that the respondents have failed to identify such cases leading to duplication of the names in the shortlist, then it is obvious that there is a flaw in the manner in which the said results have been compiled.



29. Mr. Rupesh states that the entire exercise has been conducted by the NIC and the failure, if any, is on the part of the NIC. At this stage, it is not relevant to consider as to which authority has failed in its task. However, if the cases as mentioned above have escaped detection, it is apparent that the body responsible for the same has not measured up to the function assigned. This Court expects that this aspect be fully investigated; responsibility allocated; and all apposite measures taken, in order to ensure that such errors are avoided in future.

30. The appeal is, accordingly, dismissed with the aforesaid observations. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 27, 2022
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