

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8026 OF 2016

Dr. Ajinkya Shiraji Kale & Others Petitioners

Vs.

Union of India & Others Respondents

Mr. V.M. Thorat with Mr. Fauzan i/by Ms Pooja Thorat
for the Petitioners.

Mr. Neel Helekar with Mr. Ashutosh Gole for Respondent
No.1.

Mr. L.S. Shetty with Mr. M.M. Nain i/by L.S. Shetty &
Associates for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 02, 2016

P.C:

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are praying for calling of the records and proceedings from the Office of the National Board of Examinations, respondent No.2, and thereafter direct that Board to modify its cut-off date to 31st July, 2016 and for that purpose issue appropriate writ and/or order. This Court

should also direct the National Board of Examinations to hold every candidate eligible for admission to Secondary Diplomate National Board (DNB) Course who, before his selection, has successfully completed two years diploma course. Lastly, it is prayed that the Maharashtra University of Health Sciences should declare the result of the diploma course of the students who were admitted in the academic year 2014-15. The writ petition is directed essentially against this National Board of Examinations.

2. The petitioners, in para 3 of the writ petition, have set out that they passed their HSC examination and were admitted to the MBBS course in the respective recognised medical colleges. They cleared the MBBS examination with compulsory internship. Thereafter, they applied for post-graduate degree and diploma courses in pursuance of the advertisement issued by the Competent Authorities. On the basis of their merit or rank in the Common Entrance Test (CET), all of them were admitted to the diploma course in Anaesthesia in their respective recognised medical colleges. It is stated that the

Indian Medical Council Act, 1956 obliges the Medical Council of India to determine the standards of medical education. The Council by its Resolution prescribed a cut-off date for admission to post-graduate degree and diploma courses. The cut-off date was declared by the Medical Council of India for admission to degree and diploma post-graduate courses as 31st May of each year and the course commences from 1st June of each year. The petitioners set out the directions of the Supreme Court and with regard to allocation of seats and the percentage reserved for the reserved classes and categories.

3. It is stated that every year the total seats carved out for All India Quota are not filled in and same remain vacant. These vacant seats revert back to the State quota for being filled in by local students. This process, every year, is completed before 31st May and students join their post-graduate courses, at the most, on 1st June of each year. These students thereafter complete two years' tenure before 1st June and immediately appear for the examination. The result is declared on 30th June of each year. It is stated that the National Board of Examinations

is established and/or created by the Central Government. The petitioners have set out as to how this Board admits students to post-graduate courses known as DNB-PG courses. This Board conducts examination for such courses. Every year the National Board of Examinations invites applications and conducts Common Entrance Test for admission to DNB-PG courses. These DNB-PG courses are of three years and two years' duration respectively. The DNB Primary Course is of three years whereas the DNB Secondary Course is of two years. The students who pass the diploma courses get one year exemption and are thus eligible to take admission in the Second Year DNB-PG course which comprises of only two years. Students after passing the MBBS course and joining the DNB-PG course are required to take that course for three years. It is stated that the National Board of Examinations publishes Rules every year and invites applications for primary and secondary courses. In the petition itself it is stated that this Board by its Rules declares the cut-off date of passing diploma courses for being eligible to apply for Secondary DNB course. Every year the eligibility date for passing

the diploma course is 30th June, meaning thereby students who clear the diploma course before 30th June are eligible to apply for Secondary DNB course of two years. The DNB course starts from 1st September of each year. The petitioners state that every candidate, irrespective of his University, is eligible every year for admission to Secondary DNB course, in as much as the result is always declared prior to 30th June of each year. Till date no grievance was raised against this cut-off date of eligibility declared by the National Board of Examinations. However, it is stated that every year the post-graduate diploma and degree seats available in the colleges affiliated to the Maharashtra University of Health Sciences are filled in before 31st May of each year. Even the All India Quota is filled in prior to 31st May of each year. Therefore, the Maharashtra University of Health Sciences was in a position to declare the result of the post-graduate diploma course prior to 30th June of the year in which the academic session comes to an end. That would, therefore, make these students eligible for appearance at the DNB courses. However, now the position is not a single student from

Maharashtra is eligible for admission to the DNB Secondary Course. The students are not at fault. At page 9 of the writ petition, the entire schedule is set out which would, according to the petitioners, enable us to conclude that it is the Maharashtra University of Health Sciences which was at fault. The said University is required to hold the examination only after completion of two years. It cannot hold it prior to that period. However, this year the regular schedule was postponed so that the students admitted in 2014 batch would become eligible. The examination was to commence on 23rd May, 2016, but was postponed to 6th June, 2016 followed by practical examination from 14th to 25th July, 2016. However, the last date of the result was not declared.

4. By now and as of today, the said University has declared the results, but the grievance is that the date prescribed by the National Board of Examinations, namely, the cut-off date of 31st July, 2016, cannot be satisfied by the students of State of Maharashtra and that is why the petitioners are seeking the above direction to that Board. In all fairness, the Information

Bulletin for Diplomate of National Board is annexed at page 36 onwards of the paper-book. It is undisputed that the Board is empowered to hold such an examination. The relevant authorisations were also fairly placed before us.

5. It is submitted by Mr. Thorat that the National Board of Examinations, New Delhi, issued a Corrigendum dated 3-5-2016, a copy of which is annexed at pages 110-111 of the paper-book. Mr. Thorat would submit that in the past this Court had issued directions to this Board so as to protect the interest of the students from Maharashtra. If none of them is eligible for the ensuing examination conducted by the National Board of Examinations, then, these state of affairs should prevail upon this Board to alter the cut-off date. That is also artificially prescribed and no prejudice would be caused in the event appropriate directions are issued by this Court.

6. On such a petition, the Board appeared. After being noticed, it engaged Mr. Shetty, learned Advocate, to appear on its behalf. Mr. Shetty has filed an affidavit in reply on behalf of

this Board and in the affidavit, apart from pointing that this Court should not interfere in the academic decisions and that too of the National Board of Examinations, what is pointed out is that since the introduction of DNB PD-CET in 2011, the National Board of Examinations has been conducting this examination twice a year, that is in January and July sessions. Therefore, to give maximum time to candidates to obtain their qualifications, respondent No.2 has decided to fix the cut-off date as 30th June and 31st December. It is submitted that no exception can be made by the Board for the students of Maharashtra. For them, another date cannot be prescribed for the cut-off date already determined is extended to 31st July, 2016. These decisions are taken bearing in mind that the Board conducts examinations at the national level. Students from all States are eligible and qualify. Their respective colleges and Universities are vigilant and they hold examinations and declare results much before the expiry of the cut-off date prescribed by the National Board of Examinations. In any event, Mr. Shetty has pointed out that nothing is lost by the present petitioners for

they can appear in the examination which would be conducted in the month of December. Once the Board conducts such examination twice a year and that is a statement made on affidavit, then, all the more this Court should not interfere in a purely academic exercise and dismiss this writ petition.

7. On the earlier occasion when the hearing of this petition concluded, we enquired from Mr. Shetty as to whether the students from Maharashtra and particularly bearing in mind their grievance that they are not to be blamed if the Maharashtra University of Health Sciences delays the process, he can take appropriate instructions from the Board.

8. To be fair to Mr. Shetty, he had pointed out that the Board did not desire to cause any prejudice and, therefore, on 23rd and 24th May, 2016 it addressed a letter to the Office of the Vice-Chancellor of the Maharashtra University of Health Sciences and informed him that the National Board of Examinations will be conducting the said PD-CET on 28th June, 2016. After inviting his attention to the eligibility criteria, it was

pointed out that there are many aspirants possessing Post Diploma qualifications awarded by the Maharashtra University of Health Sciences. They appeared for the PD-CET conducted by the NBE and the anxiety of the students can be taken care of by informing them about this cut-off date of the Board dated 30th June, 2016 and that no alteration would be made as far as the same is concerned. Therefore, the MUHS, namely, the Maharashtra University of Health Sciences should endeavour and declare its results with a view not to cause any inconvenience to the Maharashtra students.

9. Mr. Shetty has also filed an additional affidavit and has pointed out that about 19 States in India have completed their process and declared the result of diploma qualification before the prescribed cut-off date. It is not as if the States which are small in size and have less population, have only abided by the cut-off date but those students who have appeared for post-graduate examinations even in States like Tamil Nadu, Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, Gujarat have qualified. The argument that PD-CET session for July gives

Maharashtra students no opportunity to qualify is incorrect. It is pointed out that the results of the petitioners/candidates show that they are not eligible. All the four petitioners were found to be not eligible. As many as 115 candidates who have completed their diploma qualification from Institutions/Universities in the State of Maharashtra applied for DNB PD-CET July, 2016 session. Out of these 115 candidates, 30 have cleared their post-graduate diploma in the current year 2016, that is before the prescribed cut-off date of 30th June, 2016. It is, therefore, fallacious to suggest that none of the Maharashtra students would qualify. It is stated that this year in the subject of Anaesthesiology 93 seats are available but 171 candidates have qualified. The candidates who have cleared the entrance examination and fulfilled the examination criteria are nearly double the number of the total seats available. Hence no seat is likely to remain vacant. It is not as if there are no stake-holders other than the Board. These students would also be having an equal stake and this Court should bear in mind their interest as well.

10. After having heard both sides and perusing the detailed pleadings, we are of the opinion that in a pure academic exercise of the National Board of Examinations this Court should not interfere and cause any obstruction by alteration of the prescribed cut-off date. In the writ petition itself the petitioners have stated that the National Board of Examinations prescribes the cut-off date. We do not think that the date can be termed as artificial merely because the petitioners find it inconvenient to qualify before the same. There is a schedule prescribed by the Board. The examinations are held twice a year. The Board has arranged its affairs in such a manner that it does not have to hold an entrance examination more than twice a year. If that is how it has chalked out its schedule, then, considering the duration of its courses, it would not be appropriate to interfere and direct any change or alteration in the cut-off dates at the instance of some candidates like the petitioners. There is no reason to disbelieve the statements based on affidavits tendered by Mr. Shetty on the earlier occasion and even today. There are other Universities in

the State of Maharashtra and which were prompt in completing their courses, holding examinations and declaring results before the cut-off date so that students aspiring to go for higher studies are not inconvenienced. Mr. Thorat would term them as deemed Universities and not Universities. We do not think that we should enter into such a controversy at the instance of only four petitioners. We do not think that they are qualified to state on oath that all the students from the State of Maharashtra are inconvenienced and none would qualify from Maharashtra for the National Board of Examinations. Such a statement or a very bold assertion need not be examined any further at the instance of these four petitioners.

11. Having found that an academic decision and by an academic body is taken bearing in mind the interest of students and arrangement of its own educational affairs, then all the more we are disinclined to interfere in our writ jurisdiction. The prescribed cut-off date cannot be termed as artificial or illusory violating the mandate of Article 14 of the Constitution of India.

12. As a result of the above discussion and when the petitioners are going to get one more opportunity in the ensuing December examination of the National Board of Examinations, then, we do not feel that this is a fit case for interference in writ jurisdiction. The writ petition is dismissed. No costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)