

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4352 OF 2012

Dr. Gaurav Pramod Nemade	}	
age 27 years, permanently	}	
residing at Gajanan Maharaj	}	
Nagar, Plot No. 8, Bhusawal,	}	
District Jalgaon	}	Petitioner

versus

1. Union of India	}	
through its Secretary, Ministry	}	
of Health and Family Welfare,	}	
Nirman Bhavan,	}	
New Delhi-110011	}	
	}	
2. National Board of	}	
Examinations, Ministry of	}	
Health and Family Welfare,	}	
Government of India, NAMS	}	
Building, Ansari Nagar,	}	
Mahatma Gandhi Marg,	}	
New Delhi-110011	}	
	}	
3. Indorewala ENT Hospital	}	
DNB Institute and Research	}	
Centre having address at	}	
Behind Mahamarg Bus Stand,	}	
Old Mumbai Naka, Nashik-02	}	Respondents

Mr. Tanvir Abdul Hamid Shaikh for the petitioner.

Mr. N. R. Prajapati with Mr. H. V. Mehta for respondent no. 1.

Mr. L. S. Shetty with Mr. Arnav K. Mishra and Ms. Shamika Lalit I/b. M/s. L. S. Shetty and Sethna and Associates for respondent no. 2.

Ms. S. D. Vyas-'B' Panel Counsel for the State.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- DECEMBER 7, 2018

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for the following reliefs:-

“(a) call for the relevant records and proceedings from the office of the Respondent Authorities and after going into the legality of the same quash and set aside the letters dated 9.9.2010 and 5.1.2012 issued by the Respondent No. 2 under which request of Petitioner for registration as postgraduate primary DNB student is refused and for that purpose issue appropriate writ and/or order.

(b) direct the Respondent National Board of Examination to register the Petitioner as postgraduate DNB student with further direction to the said Board to allow him to appear for examination scheduled to be held in the year 2013.”

2. This writ petition is ample demonstration of the fact that a student is now conveniently projecting himself as a victim and totally innocent, but is a party to the acts of omission and commission on the part of an institution, namely, respondent no.3.

3. At the outset, we must indicate that a writ petition was filed by respondent no. 3 being Writ Petition No. 5632 of 2012 claiming similar reliefs, but that has been withdrawn and dismissed as such.

4. The present writ petition proceeds to state that the petitioner is an Indian National and resident of Bhusawal, District Jalgaon in the State of Maharashtra. Respondent no. 1 is the

Union of India and the second respondent is National Board of Examinations. It is an autonomous body set up by the Central Government for giving accreditation and/or recognition to various hospitals for admitting students for being trained in post-graduate DNB course and for conducting post-graduate and superspeciality examinations. The petitioner says that respondent no. 3 is one such accredited private institution which can conduct the DNB post-graduate course in the Discipline ENT.

5. The petitioner says that he passed his H.S.C. examination and was admitted in a medical college known as V.M.Medical College, Solapur for the MBBS course. He completed his internship of one year. He says that he is eligible for post-graduate course. The post-graduate course of the second respondent Board was opted by the petitioner and it is his claim that he came across an advertisement stated to be published by the third respondent. However, in the writ petition, in paragraph no. 3(C) and (D), he says that the enquiries made by him revealed that a Common Entrance Test (CET) of the second respondent Board was conducted. He appeared and passed the same. He came to know that respondent no. 3 was recognised hospital for admitting one student each to DNB Primary and Secondary course. As per the accreditation conditions, respondent no. 3 was

allowed to admit one student each for Primary and Secondary course. The petitioner claims that he came to know about the advertisement issued by the third respondent for admitting one student each to Primary and Secondary DNB course for the batch commencing from August, 2010. The very next line is that the petitioner was told that a news was displayed on the notice board of N.D.V.P.M. Medical College, Nashik as well as on the website and by the said advertisement, respondent no. 3 invited applications for admitting one student each in Primary and Secondary post-graduate DNB course. Then, he says that he came across an advertisement issued by the third respondent on its website. However, he refers to an advertisement published by the N.D.V.P.M. Medical College, Nashik and on website. He says that the third respondent asked the students to submit applications on or before 5th August, 2010. The notice was displayed by N.D.V.P.M. Medical College on 30th June, 2010 and by the said notice, applications were invited before 5th August, 2010. Similar notice was published on the website inviting applications before 5th August, 2010. Thus, it is stated that the advertisement is displayed at N.D.V.P.M. Medical College website and the students were asked to apply on or before 5th August, 2010.

6. Then, we have a very guarded statement in the writ petition and to the effect that it seems that respondent no.3-college also issued an advertisement in the local newspapers and in that, because of typographical mistake and mentioning of the incorrect date, the petitioner is left in lurch. The petitioner says that he was the only candidate applying for DNB Primary course. He is left in the lurch because of the incorrect date mentioned by the third respondent in the local newspapers.

7. The petitioner then says that immediately after knowing that there is one seat available in the Primary course in respondent no.3 college, he applied after passing the CET. He applied on 2nd August, 2010 and claimed that seat. He was called for an interview on 5th August, 2010. In the meeting, respondent no. 3-hospital/college verified his documents. He was informed that he was the only candidate and that is why he was admitted to this course on 5th August, 2010.

8. Then, it is stated that in the letter issued to the petitioner by respondent no. 3, his name is erroneously mentioned as Vaibhav Nemade. Exhibit 'A' is the copy of this selection letter. Immediately on the same day or soon thereafter, the petitioner paid the full fees with necessary documents. Then, he was informed that the papers would be forwarded to the Board

(second respondent) for registration. The registration fees were also demanded. With all this, the petitioner was expecting that he would obtain registration and then he can appear for the annual examinations. However, respondent no. 2-Board did not register him.

9. Then, the writ petition, though affirmed by a student and a beneficiary of the admission process, entirely projects the case of the third respondent-college. The petitioner says that respondent no. 2-Board, by its first communication dated 9th September, 2010, informed the third respondent-hospital that in the scrutiny of the application sent by the institute for registration with the Board for session July, 2010, it had been found that respondent no. 3 conducted aptitude test for selection of the Primary candidate, which was in contravention of the guidelines as prescribed in the Information Bulletin CET June, 2010 and also by the public notice dated 1st July, 2010. Hence, the petitioner's application for registration was returned. The petitioner relies upon Exhibit 'B', which is a copy of the rules framed by the Board.

10. The second respondent-Board, however, permitted the third respondent to fill up the seats before 15th September, 2010 strictly as per the guidelines. Exhibit 'C' is a copy of this letter dated 9th September, 2010. The writ petition then says and surprisingly

that for selecting the Secondary candidate, even if aptitude test is conducted, it cannot be considered as wrong step taken by respondent no. 3-college, inasmuch as under the amended rules, Primary candidates were required to be selected on the basis of performance in the CET-2010. The petitioner was a Primary candidate and there is an allegation made about the selection, but for clarification, he says that he was the only candidate applying and because of that, he came to be selected. Surprisingly, in the further sub-paragraphs, the petitioner makes a reference to the correspondence carried out by the third respondent with the second respondent and then says that though the matter was followed up from time to time, the third respondent maintained that there was a serious lacunae and defect in the whole process. The advertisement mentioned the last date for receipt of application and that was much before the declaration of the result of the CET conducted by the Board in June, 2010. This is a contravention of a serious nature. Pertinently, all these allegations are to be found in the correspondence between the third and the second respondents. However, as pointed out by us above, the Management, namely, the third respondent initially put up the petitioner for challenging this action of the second respondent and then filed its own petition, which, as revealed now, has been withdrawn. This writ petition, which is filed on 24th

April, 2012 by the present petitioner contains a verification of all the averments of the writ petition and says that paras 1 to 10 contain facts which he believes to be true to the best of his knowledge and the rest of the paragraphs contain his legal submissions.

11. We do not wish to be hyper technical, but if this petition is filed on 24th April, 2012 and the petitioner being aware of all the facts, being a recipient of the benefit in the form of admission to a very competitive course, then, he should have been very careful. However, he projects as if he is innocent though aware of the entire correspondence and the details thereof. It has been carried out by the third respondent with the second respondent. We have no doubt in our mind that such students are put up initially by the Managements and thereafter they file a petition. It is evident that in this writ petition, this Management whole heartedly supported the petitioner. When this was moved before a Division bench of this court and it was prima facie satisfied with the truth of the allegations made, it passed an ad-interim order and which is to the following effect:-

“1. The petitioners, in the above writ petitions seek interim reliefs permitting them to appear for the examinations to be held later this month and early next month. Respondent no. 2 the National Board of Examinations had rejected their application.

2. The petitioners in both the writ petitions were admitted to their respective courses by the 3rd respondent on or about 8th August, 2010. The petitioner in Writ Petition No.4352 of 2012 was admitted to the Primary D.N.B. Post Graduate, M.D. Course and the petitioner in Writ Petition No.4256 of 2012 was admitted to the Secondary D.N.B. Post Graduate, M.D. Course. The primary course is for a period of 3 years and the secondary course is for a period of 2 years. The petitioners who are at the end of their respective courses, claim to have attended the classes and pursued the course throughout.

3. Respondent no.2 however, contends that they were admitted by the 3rd respondent illegally in as much as the admission for the said seats were issued prior to the results of the C.E.T. Examination for that year. Respondent no.2 therefore contends that their admissions were illegal and contrary to the provisions of law.

4. Respondent no.2 further states that the petitioners were informed about the same for the first time on 9th September, 2010 and even thereafter. The petitioners however, contend that they came to know about the said letters/correspondence only before the writ petition was filed.

5. The above correspondence, especially the letters dated 9th September, 2010 and 10th January, 2011 state that copies were sent to each of the petitioners. The petitioners have denied the same. It will therefore be necessary for respondent no. 2 to produce the acknowledgments in respect of both the letters.

6. The petitioners also contended that even assuming that there was any irregularity or illegality regarding their admissions as aforesaid, the institution was entitled to grant them admission in view of the orders passed in certain other matters on the basis of the earlier norms.

7. We are inclined to grant interim reliefs in view of the fact that certain issues require clarification. One of the most important issues is whether the 2nd respondent itself permitted the petitioner in Writ Petition No.4256 of 2012 to appear for the theory examination of the secondary course on 9th and 10th June, 2012. Ms. Thorat produced the hall ticket. It is true that these hall ticket/admit card had not been placed on record earlier. Respondent no.2, therefore, is entitled to an opportunity to respond to the same. A photocopy of the hall ticket tendered in the Court today is taken on record and marked "X". If indeed the hall ticket is genuine and the petitioner in Writ Petition No.4352 of 2012 was permitted by

respondent no.2 to appear for the said theory exam, *prima facie*, there is no reason why the petitioner in Writ Petition No.4352 of 2012 ought not to have entitled to the same benefit. If indeed hall ticket is fabricated, different consequences may follow. However, till the same is either confirmed or denied by respondent no.2, the denial of interim reliefs would lead to irreparable harm and injury to the petitioners if they ultimately succeed in these writ petitions. On the other hand, if they are permitted to appear subject to the further orders and without claiming any equity, neither party would suffer any harm or injury.

8. In the circumstances, following interim order is passed.

(i) The respondents shall declare the results of the petitioner in Writ Petition No.4256 of 2012 in the theory exam and in the event of her passing, permit her to appear for the practical examination and in the event of her failing, to reappear in the theory examination.

(ii) The respondents shall permit the petitioner in Writ Petition No.4352 of 2012 to appear for the theory examination scheduled to be held on or about 10th June, 2013.

(iii) Neither, of the petitioners shall be entitled to claim any equity on the basis of this order and the same shall be subject to further orders in this writ petition.

(iv) In the event of the 2nd respondent coming to the conclusion that the said hall ticket is fabricated or that the petitioner in Writ Petition No.4256 of 2012 was not permitted to appear for the theory examination, they shall be at liberty to apply for vacating the said order, after giving the petitioner's advocate notice of at least 48 hours.

(v) Stand over to 21st June, 2013.”

12. This ad-interim order was challenged by the second respondent before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed the following order:-

“ORDER

Heard learned counsel for the parties.

We deem it appropriate not to interfere with the directions of the High Court in the impugned Judgment and order as the matters are posted before the High Court for hearing on 21.06.2013.

We, although, approve of the observations of the High Court to the effect that the permission granted to the respondents to appear in the theory papers shall not create any equity in their favour, we deem it just and appropriate to add that the result of the theory papers of the petitioner shall not be declared without the leave of the High Court. In the meantime, the parties obviously are at liberty to address the High Court in regard to the entitlement of the petitioners (in the High Court)/respondents in this Court to continue with the course.

In view of the above observations and directions, the Special Leave Petitions are disposed of.

It is expected of the High Court to dispose of the matters expeditiously considering the stake of the students as also the concern of the petitioner.”

13. Today, when this writ petition was heard finally, the learned advocate appearing for the petitioner, after referring to the list of dates and events, would submit that the petitioner is a victim of the mistake committed by the third respondent and he should not, therefore, suffer. He is otherwise a meritorious student and fully eligible to take admission. Though he has not been allowed by the further ad-interim order dated 10th December, 2014 of this court to appear for a practical examination, still, having appeared for the theory paper way back on 5th December, 2013, the results thereof having been withheld, the petitioner should be allowed to prosecute his studies and the second respondent be directed accordingly. The counsel places reliance upon the above referred facts and circumstances to urge that a student, who has no knowledge of the status of the third respondent, the rules and

regulations of the second respondent, should not, therefore, suffer and his career is precious enough and fit to be saved by exercise of our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

14. Mr. Shetty appearing for respondent no. 2, however, relies upon the affidavits filed in reply and the factum of a companion writ petition being withdrawn today by a similar beneficiary, who obtained admission to the post-graduate degree course. That petitioner, who obtained admission to the Secondary course of the same Board and from the same institute-respondent no. 3, has advisedly decided not to press his writ petition containing similar allegations. Mr. Shetty emphasises that the third respondent filed its substantive petition against the actions of the Board, but chose to withdraw it. This conduct is eloquent enough and would project as to how the students collude with the Management and thereafter obtain benefits in the form of admission to a competitive course and that too at the National level. Thus, the defects in the process go to the root of it. Mr. Shetty would submit that we should not grant any relief in our writ jurisdiction.

15. We agree with Mr. Shetty for more than one reason. In the affidavit in reply that is filed by the Board, it is pointed out that it issued a Information Bulletin and application form for the

Diplomat of National Board Centralized Entrance Test Post Graduate Courses (CET-NBE), June, 2010. Pertinently, National Board of Examinations operates and functions under the auspices of the Ministry of Health and Family Welfare, Government of India. It has enunciated its policies in terms of which it conducts this CET. It awards what is known as Diplomat Qualification, which is post obtaining the MBBS Degree. The information in this bulletin is, this CET is a entrance examination for admission to the three years' post-graduate DNB programme. The examinations are held as per the schedule of examinations prescribed by the Board from time to time. The applications for admission to the examination should definitely reach it by the specified date. There is no provision for condonation of any kind of delay, including postal delay. It is clear from the Schedule for the examination that apart from fulfilling the eligibility criteria prescribed, it is stated that this CET will be held on 13th June, 2010. The result of the CET, 2010 is likely to be declared within a period of four weeks after the examination. The test which is taken on 13th June, 2010, its results would be known only on 12th July, 2010.

16. The Board, therefore, in its affidavit, categorically says that the third respondent claims to be an eligible institution. This

third respondent is Indorewala ENT Hospital. It styles itself as DNB Institute and Research Centre. It is stated to be situated at Nashik. It claims to be DNB accredited post-graduate institution. However, this third respondent has totally ignored and violated the uniform admission process and the guidelines issued by the second respondent. Respondent no. 3, for July, 2010 admission session, published an advertisement for inviting applications for DNB-ENT Speciality on 17/18th June, 2010 with last date for submission of applications as 20th June, 2010. Admittedly, this is a date before the declaration of the CET result. This, therefore, limits or completely eliminates competition for this seat. The third respondent, in this admission process, failed to appoint any external expert. The entire selection panel was from the third respondent-college itself. Then, it submitted the registration application of the petitioner in the office of the Board in August, 2010. The Board, after scrutiny of the documents, informed the third respondent that there was non-compliance with the admission guidelines and therefore, the application for registration cannot be accepted.

17. Then, this third respondent modified or changed its stand and says that the last date for submission of the applications was extended by it till 5th August, 2010. However, on scrutiny of the relevant documents, the second respondent found that once the

advertisement was published in various newspapers and the last date for submission of forms was notified as 20th June, 2010, then, after rejection of the registration of the petitioner, the third respondent says that it has extended the date till 5th August, 2010 as displayed on the notice board. What the second respondent obtained are the details of the advertisement duly signed by the third respondent dated 12th August, 2010 and which reveals that there are no particulars of the alleged website and notice board notifications stated to have been issued by the third respondent. The application of the Primary candidate i.e. the petitioner before us was received by the third respondent-institute on 6th August, 2010, which is after 5th August, 2010. Pertinently, the petitioner in the companion petition, which has been withdrawn today, submitted his application on 24th June, 2010. Thus, for Primary and Secondary seats, only one application was received. There is also an identity crisis, in the sense, in one document, the name of the petitioner appears as Vaibhav Nemade, whereas, the petitioner is stated to be Dr. Gaurav Pramod Nemade. All the annexures to this affidavit would reveal that the third respondent-college and the petitioner have virtually colluded with each other and ensured that beyond the petitioner, there was no candidate or student who could have sought admission to this course or its eventual registration.

18. The second respondent, therefore, has highlighted these gross illegalities which Mr. Shaikh appearing for the petitioner may term as mere irregularities. It is, therefore, clear that this institute, namely the third respondent could not have acted in the manner which the Board has pointed out and the Board was, therefore, justified in refusing the registration. In these academic matters, when such illegalities are highlighted by the Board and it refused to approve the admission and the selection process as well, then, in writ jurisdiction, we must be slow in interfering with its decision. Ultimately, such decisions are reached by academicians and experts in the field of conducting superspeciality courses in Medicine at the National level. They are aware of the importance of the courses and the value of such posts-graduate degrees. These are degrees sought by students competing at the National level and from all parts of the country. These seats are not easily available and the endeavor is that the best and meritorious must be selected by a fair and transparent process. We have found that this process is not at all transparent and fair.

19. The petitioner before this court has filed an additional affidavit and he purports to deny the contents of the affidavit of the second respondent-Board. In para 4 of this additional

affidavit, which has been affirmed on 20th February, 2018, the petitioner says that he submitted his application on 2nd August, 2010 for this Primary seat on the basis of the advertisement given by respondent no. 3 on its website and claims that the last date for submission of application is 5th August, 2010. However, this petitioner has not explained as to how when the petition was filed in this court by him on 24th April/May, 2012, he says that he came across an advertisement issued by the third respondent and that advertisement was published at N.D.V.P.M.Medical College, Nashik on its website. The third respondent-college asked the students to submit the applications on or before 5th August, 2010. The notice was displayed by the N.D.V.P.M.Medical College on 30th June, 2010 and by that notice, applications were invited before 5th August, 2010. Then, he says that because there was typographical mistake in the advertisement issued in the local newspaper mentioning incorrect date, he had to suffer.

20. Pertinently, in the correspondence with the Board, the third respondent has issued a clarification firstly, on 15th September, 2010 stating that the advertisement was issued in the newspaper on 17th August, 2010. It is stated in this correspondence commencing from the letter at page 41 of the writ petition that it received only one application. The petitioner is named as

Dr.Vaibhav Nemade and they have selected him for the current term beginning from July, 2010 and in the very next letter, which is at page 42 dated 1st October, 2010, it is stated that the date of the advertisement is 17th June, 2010. Exhibit 'F' is a letter of 7th January, 2011, wherein, this institute says that it displayed the advertisement at various medical colleges for the term beginning from 1st July, 2010. The last date of calling applications was 5th August, 2010. The registration of the candidates is dated 9th August, 2010 in the case of the present petitioner and 10th August, 2010 in the case of the petitioner in the companion petition. However, when the Board informed respondent no. 3 that the advertisement for July, 2010 session, published by it, mentions the last date as 20th June, 2010 and which is much before declaration of the CET, 2010 results and hence, the registration of the petitioner cannot be accepted, on 17th January, 2011, respondent no. 3, by letter at Exhibit 'H' at page 45, says that it had given notification to display the advertisement at various medical colleges for the registration of candidates for Primary and Secondary seats. The last date for calling applications of the candidates was 5th August, 2010 and the date of registration is reported to be 9th and 10th August, 2010. Pertinently, it states that the application of the petitioner was received on 2nd August, 2010. As per the advertisement, this application was received

before the last date. Then, at page 46 is a copy of the letter dated 25th July, 2011 once again addressed by the third respondent to the second respondent-Board and it blames the Board for not being communicative enough. Pertinently, while replying to this letter, on 4th May, 2011, the Board has not deviated from its stand, but found that not only the advertisements were not issued by a proper and fair process, but even the selection is vitiated for no external expert was a member of the panel appointed by the respondent for aptitude test of Secondary candidate. Thus, these are gross discrepancies. There are other discrepancies once again highlighted regarding the last date of inviting applications. Therefore, it says that the registration of this candidate cannot be accepted because the documents in support thereof do not inspire confidence.

21. With regard to all this, the petitioner's additional affidavit maintains complete silence. Yet, in para 5 of this additional affidavit, the petitioner takes up the case of the third respondent and says that by letter dated 23rd June, 2010 addressed to the Head of the ENT Department, N.D.M.V.P. Medical College, Nashik, the third respondent requested this institution to display its advertisement on the notice board for admission to one Primary and one Secondary seat. This advertisement mentions the last

date of submission of application as 5th August, 2010. The petitioner heavily relies upon this letter, copy of which is at Exhibit 'B' to the additional affidavit stated to be dated 23rd June, 2010. It is addressed to the Head of ENT Department of N.D.M.V.P. Medical College, Adgaon, Nashik. Now, in the writ petition, this institute is mentioned to be "N.D.V.P.M.", whereas this letter says "N.D.M.V.P." Pertinently, there is no acknowledgment of this college/institution at Nashik having received the third respondent's letter and this is merely a request to display advertisement, whereas, the petitioner proceeds and is bold enough to say that this advertisement was also published on the website of this other institution at Nashik and that is how he became aware that there is initiation of the admission process. Thus, it is stated that there is an incorrect statement made in the reply of the second respondent. The petitioner is, therefore, clearly trying to get over the serious flaws in the selection process by proclaiming his innocence. At a crucial stage, the petitioner and the third respondent seem to have parted company. Now, the petitioner has chosen to play the victim card.

22. We do not think that this affidavit filed and a good four and half years from the events culled out by us above would enable us to exercise our extraordinary, equitable and discretionary

jurisdiction under Article 226 of the Constitution of India in favour of the petitioner. The petitioner's conduct alone should disentitle him from such reliefs. It is unfortunate that an otherwise meritorious student, namely, the petitioner goes to this extent to secure admission. It may be because of tough competition and at all India level and not everybody is equipped mentally to face it that such tactics are resorted to, but once we notice them, then, we would not be supporting such litigants. If we do not cancel the whole admission process by upholding the stand of respondent no. 2, then, we would be putting a premium on the dishonesty of parties like the petitioner and the third respondent. Together they have polluted the whole academic process. Such candidates, therefore, do not deserve any sympathy nor a chance to seek a declaration in terms of the prayers of the writ petition, much less to the effect that their appearance at the examinations should not be nullified and that their result should be declared. We cannot accede to such request once we notice that the ad-interim orders passed by this court have only tentative and prima facie effect. They cannot be said to be binding at the stage at which we have reached and after a detailed discussion. That is based on the records, including the affidavit of the second respondent. That does not contain anything, much less the position emerging from the record. That record is now accepted by the petitioner in the

accompanying petition and equally by the Management and they have withdrawn their challenge to the action of the second respondent-Board.

23. Even in the case of the present petitioner, the further order of this court dated 10th December, 2014 is eloquent enough. It reads as under:-

“ These petitions were moved by the petitioners for seeking interim relief to declare the result of theory examination and allow the petitioner-candidates to appear for practical examination of postgraduate DNB course. Learned counsel for the petitioners referred to the order passed by this Court on 10th May 2013. Under the said order, the petitioner-candidates were permitted to appear for theory examination. It is submitted that management of respondent No. 3-Indorewala ENT Hospital, the petitioner in WP No.5632/2012 kept the petitioner-candidates in dark in respect of communications made by respondent No.2-National Board of Examinations (NBE) since 2010 returning the application forms of the petitioners and refusing to grant registration for DNB examination. It is submitted that the petitioners are prejudiced by the stand taken by the NBE. It is further submitted that for the lapse on the part of the management of the hospital, career of the petitioners should not get affected.

2. The learned counsel appearing for respondent No.2-NBE has referred to communications at Exh.J; Exh.M; and Exh.S annexed to the petition. First communication in respect of admission of petitioner-candidates to the course was made by NBE to the Indorewala Hospital on 3rd September 2010. Second communication was made on 8/10th January 2011 and third was made on 14th December 2011. It is submitted that several such communications were exchanged between the Indorewala Hospital and NBE. Learned counsel submits that applications were received from Indorewala Hospital for registration as DNB trainee. However, on scrutiny the NBE found that the applications were not in consonance with the guidelines and therefore decided to return the applications to the hospital. Learned counsel submits that hall tickets were wrongly issued in favour of the petitioners. An inquiry was initiated against the person concerned and he was terminated from service.

Learned counsel submits that the petitioners cannot claim equity on the basis of getting hall tickets. It is submitted that the Hospital and the petitioners were informed about refusal of registration of applications for DNB course and in spite of that they continued their training at their own risk. Learned counsel submits that the guidelines issued by NBE were not followed by the hospital. It is submitted that being autonomous body the NBE should be given free hand to maintain educational standards. DNB being a specialized course affecting the larger sections of the society the NBE has to seriously monitor the institutes and hospitals authorized to run these courses. Learned counsel placed reliance on two judgments of Apex Court dated 6th March 2013 delivered in SLP (Civil) No.31892/2012 and other connected SLPs (***Ayurved Shashtra Seva Mandal & Anr. v. Union of India & Ors.***) and judgment of Division Bench of this Court dated 5th January 2012 passed in WP No.1895/2011 (***Dr.Nupur Vishnu Dhankani v. Union of India***) wherein this Court held as under:

“9. The primary relief that has been sought by the Petitioner which seeks to enforce a direction for registering the Petitioner as a secondary DNB trainee either in the Fourth Respondent or in any other institution cannot be granted. The provisional accreditation that was granted to the Fourth Respondent on 1 August 2007 in Paediatrics was valid only until December 2010 and has not been renewed thereafter. The Information Bulletin published by NBE in December 2010 did not include the name of the Fourth Respondent for the Paediatrics Specialty as an accredited institution. NBE had by its notice dated 31 December 2010 clarified that the selection process for secondary DNB candidates shall be undertaken only after primary candidates had joined the course. Moreover, it was stated that the process shall be conducted strictly on the basis of the guidelines of NBE and that accredited centers shall have to ensure transparency and objectivity in the process. The Fourth Respondent had no accreditation at all in Paediatrics after December 2010. As a matter of fact, NBE's letter dated 14 March 2011 to the Fourth Respondent recorded that the institute had not responded to its earlier communication dated 4 November 2010 following an inspection conducted by the Inspection Team. Eventually, as already noted earlier, the accreditation of the Fourth Respondent was withdrawn in all specialties on 19

July 2011 on the ground that the institute was found to be charging fees well in excess of the stipulation made by NBE and on the ground that the institute was not paying a stipend to the admitted candidates. A direction cannot be issued to NBE by this Court in the exercise of its jurisdiction under Article 226 of the Constitution contrary to the mandate of its admission regulations.”

3 We have considered the submissions advanced. We may refer to the order passed on 10th May 2013. This Court while passing interim order in para 8(iii) observed as under :

“(iii) Neither, of the petitioners shall be entitled to claim any equity on the basis of this order and the same shall be subject to further orders in this writ petition.”

4 The communications made by NBE to the Indorewala Hospital in 2010 clearly stipulates that on scrutiny it was found that the applications sent by the hospital for registration were in contravention to the guidelines prescribed as such applications were returned. Further such communications were made by NBE in the year 2011 informing the hospital that it would be at their own peril if the candidates continue their training with the hospital and the same shall be the sole responsibility of the candidates. Prima facie we do not find any reason for the management and the petitioners not to raise issue concerning refusal of registration of petitioners for DNB course which the NBE intimated long back in the year 2010. As to whether the management kept the petitioners in dark, whether they were aware of the communications in respect of refusal of registration of applications of petitioners are disputed questions of fact and need investigation.

5 Prima facie we are not inclined to accept the request of the petitioners to allow them to appear for practical examination and issue directions as prayed for. The petitions would be heard on its own merits. List these petitions for hearing after six weeks.”

24. As a result of the above discussion, we dismiss this writ petition and finding that the petitioner and the third respondent have colluded with each other to mislead this court and polluted

the admission process of selection of meritorious students for post-graduate course, we impose costs on the petitioner quantified at Rs.2.5 lakhs. The costs to be paid to the Board (second respondent) within a period of eight weeks from the date of the receipt of a copy of this order, failing which, they shall be recovered from the petitioner and the institution (third respondent) in equal proportion by coercive means, including attaching their movable and immovable properties.

(SMT. BHARATI H. DANGRE, J.) (S.C.DHARMADHIKARI, J.)