

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15867 of 2018

Date of decision: August 27, 2018

Dishant Dhingra (minor)

...Petitioner

Versus

CBSE through its Secretary and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.S.K.Bhardwaj, Advocate for the petitioner.

Mr.Harsh Aggarwal, Advocate for respondents No.1 and 2.

Mr.M.S.Longia, Advocate for respondent No.3.

Mr.Pritam Singh Saini, Advocate for respondents No.4 and 5.

Rakesh Kumar Jain, J. (Oral)

The petitioner had appeared in the National Eligibility Test/Entrance Test (NEET) 2018 for the purpose of admission to the medical courses. The NEET was conducted by the Central Board of Secondary Education (for short 'CBSE') on 6.5.2018. Actual examination was started at 10 A.M. The candidates appearing in the examination were given sealed answer sheet (OMR) appended with the test booklet in a sealed cover. Both the test booklet and OMR sheet should have same serial number and the same code. The petitioner who had appeared under Roll No.504000654 got the question booklet No.8393670 but the OMR sheet was bearing No.8393674 whereas another student who had appeared under Roll No.504000654 got the question booklet No.8393674 but the OMR

sheet was bearing No.8393670. The total duration of the examination was three hours during which the students/candidates were to attempt 180 objective type questions on the OMR sheet by encircling the right answers with the black/blue ball pen. According to the petitioner, all was going well but at about 11.30 p.m. Invigilator Ms.Sonam Rastogi and Ms.Pinki Sharma found that the serial number of the question booklet of the petitioner was different from the serial number on the OMR. This fact was brought by them to the notice of the Central Superintendent of the Centre, who found their report to be correct but in her letter addressed to the Director of the NEET, it was mentioned that this inadvertent error could not be pointed out by the candidate and since unused booklets were now sealed therefore, booklets could not be provided. After the examination was over, there was no complaint made by the petitioner immediately to anyone. The result was declared on 4.6.2018 in which the petitioner had secured 453 marks as it has been found that out of 180 questions, he had attempted 153 questions and there were 31 wrong answers attempted by him. According to him, due to the aforesaid facts and circumstances that Invigilator had found the discrepancy in the question booklet and OMR number, the petitioner had to loose about 30 minutes. As a result thereof, he could not attempt atleast 28 questions. The petitioner has filed the petition on 2.7.2018 after the decision of the Bombay High Court, Nagpur Bench in ***Writ Petition No.2842 of 2018 titled as Vaishnavi Sandeep Maniyar Vs. The Central Board of Secondary Education and others decided on 15.6.2018*** in which in the similar circumstances, the student who had appeared in the NEET exam was given proportionate marks for the wastage of time on the basis of a decision

Disha Panchal and others Vs. Union of India and others decided on 13.6.2018.

The responders were put to notice pursuant to which the counsel appearing for the respondent-CBSE has filed reply. The case set up by the CBSE is that though there was a discrepancy in the serial number of the test booklet and the OMR sheet but the fault is on the part of the petitioner who did not carefully read the instructions issued by the CBSE regarding the schedule in the examination room to be followed. It is submitted that the Invigilator had pertinently announced that candidates should check the number and code of both test booklet and OMR sheet only for this purpose that if there is a discrepancy, it may be removed but the petitioner did not care for it and started reading the paper to attempt the questions even during that period when he was not supposed to read the question paper but listening to the instructions carefully and follow the same. It is also submitted that the petitioner has even otherwise attempted all the questions. In this regard, OMR sheet is appended with the reply in which it appears that the petitioner has attempted upto question No.179. It is also submitted that the petitioner cannot be allowed to take advantage of the decision of the Bombay High Court in the case of ***Vaishnavi Sandeep Maniyar (supra)*** because in that case the writ petition was filed just two days after the examination i.e. on 8.5.2018 and the Court had held an enquiry through the District Collector, Nagpur (District Coordinator for NEET UG-2018 to find out the truth in the allegations made by the petitioner therein that because of the fault of the Invigilator of the examination centre, the petitioner had lost about 30 minutes in taking the examination.

Counsel for the petitioner, in reply, has submitted that the writ petition, in the case of *Vaishnavi Sandeep Maniyar (supra)*, was filed on 8.5.2018 but it was ultimately decided on 15.6.2018. However, he has not denied that the present petition has been filed by the petitioner only after the decision rendered by the Bombay High Court in the case of *Vaishnavi Sandeep Maniyar (supra)*.

Mr.Harsh Aggarwal, counsel appearing on behalf of respondent-CBSE has submitted that the petitioner had nowhere mentioned any objection regarding the conduct of the respondents in holding the examination, which is apparent from the email (Annexure P-4) dated 8.5.2018 which was sent by the petitioner to the CBSE in which he did not mention anything in this regard and quantifying any time loss except for stating therein that precious time has been lost which had caused stress to him. It is further submitted that CBSE has otherwise regularised the question booklet and answer sheet as per his question paper despite the fact that there was variation in the number, therefore, no loss has been caused to the petitioner.

I have heard learned counsel for the parties and perused the record with their assistance.

Respondent has given a strict time schedule for the students and also for supervisory authorities about the manner in which the examination is to be held. The said time schedule which is appended with the reply by respondent No.1, is reproduced as under:

<i>S.No.</i>	<i>Activity</i>	<i>From</i>	<i>To</i>
i.	Entry inside the Examination Centre by the candidate (As per details given in the Admit Card)	7.30 A.M.	9.30 A.M.
ii.	Start of entry by candidates in examination rooms	9.15 A.M.	

<i>S.No.</i>	<i>Activity</i>	<i>From</i>	<i>To</i>
iii	Last Entry in the Examination Centre	9.30 A.M.	
iv	a. Arrival of Invigilators in assigned exam room b. Checking of Admit Card by the Invigilators c. Announcement to ensure that candidates have occupied correct seat only d. Announcement to ensure that candidates are not in possession of any barred item	9.30 A.M.	9.45 A.M.
v.	Distribution of Test Booklet to the candidates	9.45 A.M.	
vi.	Collection of unused Test Booklets in the examination room by the Invigilator	9.50 A.M.	
vii.	a. Seal of Test Booklet to be broken/Opened by the candidates to take out the answer sheet b. Announcement by invigilators (i) To check number and Code of both Test Booklet and OMR by the candidates (ii) Ensure that total no. of pages as written in booklet are actually available in test booklet. c. Announcement for filling of correct entries in OMR d. Packing of unused Test Booklets by invigilators after ensuring that number & Code of both Test Booklet and OMR are correct.	9.55 A.M.	
viii.	a. Test Commences b. Return of sealed packet of unused Test Booklet by the Invigilator to Centre Superintendent	10.00 A.M.	
ix.	a. Collection of Post Card Size photograph from the candidate b. Frisking of each candidate and checking of their ears for Bluetooth c. Videography of the candidates	10.00 A.M.	12.30 P.M.
x.	Follow the instruction No.5 on back page	10.00 A.M.	01.00 P.M.
xi.	Sealing of unused Test Booklets packets received from examination rooms by the Centre Superintendent	10.10 A.M.	
xii	No candidate should be allowed to use wash room after	12.30 P.M.	
xiii.	Closing of doors of examination rooms	12.45 P.M.	
xiv.	Test concludes	01.00 P.M.	

According to the time schedule, the students have to occupy their correct seat between 9.30 AM to 9.45 AM. The test booklets were to be distributed to the students at 9.45 a.m. The unused test booklets were to be collected by the Invigilator by 9.50 a.m. and thereafter, before the test

commenced at 10 A.M., at 9.55 a.m. the seal of the test booklet of the student was to be broken/opened by the candidates to take out the answer sheet. At this stage, the Invigilator has to announce to check number and code of both test Booklet and OMR by the candidates to ensure that total number of pages as written in booklet are actually available in test booklet. There is no allegation of the petitioner that the said announcement was not made by the Invigilator. It is presumed that this announcement was made and heard by the petitioner to check number and code of the test booklet and OMR sheet. The petitioner has not admittedly checked the number and code of the test booklet and OMR because had it been checked at 9.55 A.M. then the discrepancy which actually had occurred in the serial number of the question booklet and OMR sheet, as the petitioner has been given question booklet No.8393674 and OMR No.8393670 instead of 8393674 could have been brought to the notice of the Invigilator at that time. It is also interesting to note that even the other student, who had appeared under Roll Number 504000650 to whom the question booklet No.893670 was given and the OMR sheet was given 8393674 did not bring to the notice of the Invigilator at that time i.e. at 9.55 A.M. Had it been done so by that time then this problem would have been sorted out that time only but the petitioner did not follow the instructions religiously and continued to attempt the paper. It was a matter of chance that the discrepancy came to the notice of Ms.Sonam Rastogi who brought it to the notice of Central Superintendent, who further brought to the notice of respondent no.1 about the error therein but it was specifically mentioned by him that this error could not have been pointed out by the candidate. Meaning thereby it was the duty of the candidate to point out the wrong number of the test booklet and OMR because at that

time, it was in his possession. It was also pointed out by the Central Superintendent that the petitioner cannot be given the unused booklet because those were already sealed as per the time schedule at 9.50 A.M. Thus, the error was on the part of the petitioner who cannot take advantage of his own fault by relying upon the judgment in the case of ***Vaishnavi Sandeep Maniyar (supra)*** specially when he did not come to the Court immediately after the examination was over rather he kept quite upto 2.7.2018 and filed the writ petition only after getting the order of the Bombay High Court in the case of ***Vaishnavi Sandeep Maniyar (supra)*** etc. because the petitioner has even otherwise appears to have attempted all the questions while taking the exam and it has been found that he had attempted 31 wrong answers on account of which he has been awarded 453 marks.

Thus, in my considered opinion, there is no merit for interfering in this petition and hence, the writ petition is hereby dismissed though without any order as to costs.

August 27, 2018
Meenu

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No