BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
25.09.2019	04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.(MD) No.17446 of 2019

Dr.Mohamed Khader Meeran A.S. ... Petitioner

-vs-

1. The Union of India
   rep.by the Principal Secretary
   Ministry of Health and Family Welfare
   Nirman Bhawan
   Motilal Nehru Marg
   New Delhi-110 011

2. National Board of Examination
   The Executive Director
   National Board of Examinations
   Medical Enclave
   Ansari Nagar
   New Delhi-110 029 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to direct the respondents to take immediate action to reduce the NEET-PG application fee and also to bring new regulation to fix the appropriate fee for the NEET-PG entrance exam for the coming years, and bring new regulation to fixing appropriate fee for all entrance examinations conducted by the Respondent No.2 by considering the petitioner's representation dated 12.06.2019, in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.S.Ramesh Kumar
for Mr.R.Alagumani

For Respondents : Mr.H.Velavadhas
Central Government Standing Counsel for R1
Mr.Rameez
for Mr.Anand, Samy & Dhruva for R2

O R D E R

T.S.SIVAGNANAM, J.

This writ petition has been filed as public interest litigation by Dr.Mohamed Khader Meeran, who is currently undergoing his C.R.R.I. in Mahatma Gandhi Institute of Medical Sciences, Maharashtra. The petitioner states that he is a public spirited citizen and is yet to take his NEET-PG Examination for the academic year 2020-2021. The petitioner would state that the Central Institutions, such as, All India Institute of Medical Sciences (AIIMS) is charging Rs.1,000/- as application fee for the Post Graduate Entrance Examination. Whereas, the second respondent, the National Board of Examinations (NBE), which conducts NEET-PG Examination, charges Rs.3,750/- as fee to make a candidate eligible to participate in the entrance examination. It is submitted that there is no difference between Post Graduate Entrance Examination conducted by AIIMS and NEET-PG Examination conducted by NBE, because both tests are online tests and conducted by a private entity. It is further submitted that NBE is charging Rs.3,750/- for General & OBC Category candidates. Further, it is submitted that there is no exemption granted to the physically challenged candidates in the examinations conducted by NBE. Thus, the petitioner would contend that when AIIMS is able to conduct the examination by charging Rs.1,000/- per candidate, there is no reason why the second respondent / NBE should charge such high fees.

2. Further, it is submitted that NBE has received a sum of Rs.48 Crores as application fee from NEET-PG 2018 applicants, out of which, only a sum of Rs.8 Crores has been paid to TCS, which conducted the computer based test and a profit of Rs.40 Crores is being retained by the second respondent in a single year. On the contrary, AIIMS has received Rs.5 Crores for the Post Graduate Entrance Examination, spent Rs.3.69 Crores for conduct of the examination and earned a profit of Rs.1.35 Crores. Further, it is submitted that AIIMS is conducting Post Graduate Entrance Examination twice in a year.

3. It is further submitted that when the petitioner sought certain information under the Right to Information Act, no worthwhile details were furnished by NBE, despite the direction by CPIO. Thus, the petitioner would contend that the fee to be charged by the second respondent is to be regulated and brought on par with the fee charged by AIIMS. With these facts, the petitioner seeks for issuance of a writ of mandamus to direct the respondents to take immediate action to reduce the NEET-PG application fee and to bring new regulation to fix appropriate fee for all entrance examinations conducted by the second respondent by considering the petitioner's representation.

4. The second respondent has filed a counter affidavit stating that the Ministry of Health & Family Welfare established the second respondent in the year 1975, which became an independenat autonomous non-profit making organization in the year 1982. Further, it is submitted that the second respondent, being a non-profit making organization, needs to sustain itself and deliver the objectives as mandated in its Memorandum of Association and there are certain specialities in which the second respondent conducts courses and examinations and has interface with many candidates in various examinations conducted in a given year. It is submitted that the second respondent was established to evolve uniform standards of Post-Graduate and Post-Doctoral Examinations in Medical Sciences on par with international standards. The details, as regards the Members of the Governing Council, have been set out, which is a multi-member body with the members nominated by the Central Government.

5. The details regarding the examinations conducted by the second respondent have been set out as follows:

(i) Centralized Entrance Test (CET). It is through this Centralized Examination, that successful candidates can undertake the DNB Training;

(ii) Fellowship Entrance Examination (FEE). It is through this Examination, that successful candidates are admitted to Post-Doctoral Fellowship Courses, conducted by the Petitioner;

(iii) Fellowship Exit Examination (FEE). It is by this Examination, that successful candidates are awarded the Post-Doctoral Fellowship Qualification, awarded by the Petitioner;

(iv) Screening Test (ST). It is through this qualifying Test, that Indian Nationals with Foreign Medical Graduate (FMG) Qualifications can apply for registration with the Medical Council of India / State Medical Councils; and

(v) National Eligibility cum Entrance Test – Post Graduate (NEET-PG). It is the eligibility cum ranking exam prescribed as single entrance for MD/MS/MDS/post-graudate diploma courses etc.

(vi) National Eligibility cum Entrance Test – Post Graduate (NEET-PG). It is the eligibility cum ranking exam prescribed as single entrance for MD/MS/MDS/post-graduate diploma courses etc.

(vii) NEET-SS – It is the eligibility cum ranking exam prescribed as single entrance test for DM/MCh courses.

6. Further, it is submitted that the second respondent conducts examinations in about 71 disciplines / streams of modern medicine and 1,50,000 candidates appear every year in the various examinations conducted. Apart from conducting courses and examinations, there are other objectives, which need to be achieved by the second respondent. A brief facts of NEET-PG Examinations have been set out in the counter affidavit.

7. Further, it is submitted that NBE-MCQ Examinations conducted in 2011 had collected a fee of Rs.4,250/-. In 2012, the Governing Body of the second respondent has approved the fee pattern to be charged for the computer based platform and ever since, the amount has not been increased and has been fixed at Rs.3,750/- and Rs.2,750/- for the General and SC/ST candidates respectively. Further, the process, which is undertaken for conducting a single examination and the details regarding number of candidates etc., have been set out in the counter affidavit.

8. Further, with regard to the expenditure, which is incurred, it is submitted that there are certain examinations, which have very limited candidates, but the expenditure involved is the same as the number of Centres spread across multiple states from the urban centres to the remotest parts of the country also remains the same and therefore, there was a necessity to average out the expenditure incurred and accordingly, this was done and the average expenditure incurred per candidate was worked out to Rs.3,335/-, which was close to the fee of Rs.3,750/- collected from General / OBC candidates.

9. The importance of the examinations conducted by the second respondent has been highlighted in several paragraphs of the counter affidavit. A strong exception has been taken to the manner in which the petitioner has made imputations against the second respondent by stating that the second respondent has acted in good faith within the mandate and timelines of the Honourable Supreme Court. To substantiate the averments set out in the counter affidavit, a typed set of documents have been filed by the second respondent.

10. The writ petitioner has filed an additional affidavit setting out certain details based on the information secured by him under the Right to Information Act and would state that the payment made to TCS will show that the expenditure per candidate is only Rs.595.90. Therefore, it is submitted that new regulations have to be introduced.

11. We have heard Mr.S.Ramesh Kumar, learned counsel assisted by Mr.R.Alagumani, learned counsel on record for the petitioner; Mr.H.Velavadhas, learned Central Government Standing Counsel appearing for the first respondent and Mr.Rameez, learned counsel appearing for M/s.Anand, Samy & Dhruva, learned counsel on record for the second respondent.

12. The first aspect that is required to be seen is whether this Court exercising jurisdiction under Article 226 of the Constitution of India can entertain a public interest litigation in a matter concerning administration of affairs of an independent autonomous non-profit making organization initially established by the Central Government. If the answer to the question is in the affirmative, then what would be the circumstances under which a public interest litigation can be brought out. The normal rule is to exercise restrain in the exercise of powers under Article 226 of the Constitution of India in a public interest litigation. Courts have interfered, when there is arbitrariness, capriciousness, illegalities and when actions are wholly without jurisdiction. There may be few more exceptions to the normal rule.

13. In the instant case, the petitioner, who is pursuing his C.R.R.I. and would be obtaining his M.B.B.S.Degree in the current academic year, if qualified, would be eligible to appear for NEET-PG in the session 2020-2021. The petitioner does not state that the fee fixed by the second respondent payable by the candidates, who are appearing for NEET-PG, is either illegal or capriciousness or without jurisdiction. The only faint plea of arbitrariness is on the ground that AIIMS conducts Post Graduate Entrance Examination by chargiging a lesser fee. Can this be a ground to declare that the fee charged by the second respondent from the candidates, who intend to appear for the examination is arbitrary from the standpoint of the petitioner. A fee is levied by an organization or entity or Department of the Government for the services to be rendered. Thus, when a person tests the fee, he is entitled to expect a service to be rendered to him. This is a marked difference between tax and fee, as there is no "*quid pro quo*" in tax. Thus, if the second respondent renders service to the candidate for the fee paid by him, then the test that the payment is a fee is satisfied.

14. The next aspect would be whether the fee is exorbitant, wholly unreasonable and therefore, arbitrary. There have been cases, where certain organizations, which are not wholly under the control of the Government or established by the Government, levy fees at higher rate and Courts have intervened to assess as to whether the fee charged is reasonable vis-a-vis the services rendered and many times, the Courts have rejected such pleas.

15. The petitioner with the information secured under the Right to Information Act has presumed that there is only one vendor, who conducts the computer based test for the second respondent and taking into account the payment made by the second respondent to the said agency, the petitioner would state that the per candidate expenditure for the examination paid to the entity is less than Rs.600/-. The petitioner next compares the fee charged by AIIMS for the Post Graduate Entrance Examination conducted by it twice a year and would state that when AIIMS charges Rs.1,000/- per candidate, there is no reason for the second respondent, who charges Rs.3,750/-/Rs.2,750/- per candidate. Unfortunately, such a mathematical exercise could not be done and cannot be done while examining as to the reasonableness of the fee fixed for any service.

16. From the perusal of the counter affidavit, it is seen that the named vendor is not the only vendor, who conducts the computer based test for the second respondent organization. Apart from that, we find that six other examinations are conducted by the second respondent every year. That apart, the second respondent conducts examination in about 71 disciplines / streams of modern medicine and 1,50,000 candidates appear every year in the various examinations conducted. Apart from conduct of these examinations, the second respondent is involved in developing the pattern of teaching in Post Graduate Medical Education; exploring new methods of medical examination; providing linkage on a continuing basis between various scientific and research agencies / laboratories and other organizations working in the country in the field of medicine and other allied sciences and organizing Post Graduate Courses, Workshops, Seminars etc.

17. Further, we find that the present fee structure was adopted in the year 2012 and there has been no increase in the fee charged from the candidates. In our view, this is a very relevant fact to be borne in mind to give a seal of approval to the fee fixed by the second respondent by holding that there is nothing irrational, arbitrary, capriciousness in the fee fixed by the second respondent. On reading of the affidavit filed in support of the writ petition and the additional affidavit, we find that the petitioner is not well informed and the writ petition appears to have been premised on the ground that the only activity done by the second respondent is to conduct NEET-PG Examination every year. The long list of other activities, which have been mentioned by the second respondent in the counter affidavit, should definitely enlighten the petitioner.

18. Furthermore, we find that the petitioner is ignorant about what are all the prior arrangemens to be made for conduct of any examination at any level. The onus casts upon the agency for conducting examinations is very heavy and utmost care and caution is required to be taken. The host of activities involved have been enumerated in Paragraph No.6(f) of the counter affidavit. All these activities definitely require engagement of vendors for providing technical support, IT support, logistic support, security services etc. Further, the second respondent has stated that M/s.Prometric and M/s.TCS are not the only vendors of the second respondent for conduct of examinations, but there are several other vendors and experts, who are involved in the examination process.

19. Further, we find that the second respondent though was established by the Government of India in the year 1975, it became an independent autonomous non-profit making organization in the year 1982. This is presumably to ensure independence in its functioning and necessarily, the second respondent has to sustain itself as an organization.

20. The submissions made by the petitioner with regard to the per candidate expenditure etc., are thoroughly misconceived. Any organization, which has to independently exist and function needs to generate its own revenue. Therefore, a surplus is required to be generated and what is adequate surplus is not for this Court to decide. The second respondent, in the counter affidavit, has stated that excess of income, if any, over expenditure at the end of a given financial year, is transferred to the corpus and reserve fund as prescribed in the Income Tax Act, 1961. The annual accounts of the second respondent, including income and expenditure, are audited by the office of the Comptroller & Auditor General (CAG) and are placed before the Parliament of India. Further, reference is made to Rule 229(ix)(g) of GFR, 2017, which provides peer review of autonomous organizations for self-sustaining, such that there is a scope of maximising of internal resources by the organization itself, thereby minimising the dependence upon the Government budgetary support.

21. For all the above reasons, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

To:
The Principal Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,Motilal Nehru Marg,
New Delhi-110 011.

+1 CC to Mr.H.VELAVADHAS, Advocate (SR-91240[F] dated 04/10/2019)
+1 CC to Mr.DR.R.ALAGUMANI, Advocate (SR-91514[F] dated 04/10/2019

ORDER IN
W.P.(MD) No.17446 of 2019
04.10.2019

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VB(16.10.2019) 7P 4C