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

% ***Date of decision:*** 21.10.2020

+ W.P.(C) 6973/2020 & CMs. 23800 & 25636/2020

RHYTHM JAIN Petitioner

Through Mr.Utkarsh Joshi, Adv.

versus

NATIONAL TESTING AGENCY & ANR. Respondents

Through Mr.Amit Bansal and Ms.Seema Dolo,
Advs. for R-1/NTA.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

This hearing is conducted through video conferencing.

1. This writ petition is filed by the petitioner seeking an appropriate writ of mandamus to the respondents to conduct a normalisation exercise to reconcile the scores of the petitioner to match the score he would likely have achieved without unforeseen interruption during the DUET exam for BBA on 07.09.2020.

2. The case of the petitioner is that she has cleared the Senior School Certificate Exam (Class XII) conducted in July, 2020 and applied for University of Delhi/respondent No.2 for course of BA (Honours) in Business Economics, Bachelor of Business Administration (Financial Investment Analysis) and Bachelor of Management Studies. For admission to the courses, the Delhi University conducts an entrance examination, i.e. Delhi University Entrance Test(*in short 'DUET'*) 2020-21. The University

of Delhi has engaged respondent No.1/National Testing Agency (NTA) for conducting the entrance test.

3. The DUET Information Bulletin (UG) states that the duration of the exam is two hours which include 100 multiple choice questions. Each question would carry four marks (maximum score of 400 marks) and there would be negative marking of one mark for each incorrect answer. The test is a computer based test and the centres are set up in 24 cities for the conduct of the DUET. The petitioner gave the DUET test on 07.09.2020. It is stated there were a technical problem at the venue. It is stated that everything was proceeding smoothly till the 58th minute when the computer system on which the petitioner was appearing for the DUET was shut down. The petitioner requested the aid of the invigilator who assisted the petitioner in restarting the computer as well as paper. It is the case of the petitioner that no time had been lost in the electronic timer when the petitioner continued with his attempt. In the 88th minutes into the paper, the petitioner who was at around the 61st question, heard his roll number was being called out. He was informed that none of the answers that the petitioner was entering in the system were reaching the “main server” of DU. The concerned official gave a plain A4 white sheet paper to the petitioner who manually wrote question numbers on the said sheet and thereafter wrote the corresponding answer after referencing to the entries he had made in the computer. It is stated that the petitioner had to click 61 times to see all questions and make sure no clerical mistakes were being made. It is the case of the petitioner that the petitioner lost 30 minutes in this issue. However, it is admitted that in the result that the petitioner is at 98.9 percentile.

4. Respondent No.1/National Testing Agency has filed the counter affidavit where they have denied the above contentions of the petitioner. As per the counter affidavit, the total permitted time was 2 hours and the petitioner was given 2 hours and 9 minutes to complete the exam. As per audit log, the petitioner logged in at 12.34 p.m. and started attempting questions. There was a temporary technical issue at 2.15 p.m. and the candidate logged in again at 2.22 p.m. The petitioner got compensated time of 9 minutes. It is admitted that to avoid any panic the candidate was advised to quickly note down the responses and the invigilator parallelly undertook to resolve the connectivity issue. Later on the candidate was informed that the responses were being saved at the local server which matched with the count attempted by the candidate.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner has urged that in view of the loss of 30 minutes his marks should be subject to normalisation. Reliance is placed on the judgment of the Supreme Court in the case of ***Disha Panchal v. Union of India & Ors.***, AIR 2018 SC 2824/ MANU/SC/0640/2018. He also states that only 7 minutes were lost in a technical glitch yet 9 minutes have been given, which indicate that there was another technical glitch also while conducting of the exam.

7. Learned counsel for respondent No.1/NTA has denied the contention of the petitioner and has taken me through their counter affidavit to say that there was loss of only 7 minutes and the petitioner was compensated by 9 minutes extra.

8. I may look at the relevant portion of the counter affidavit of respondent No.1/NTA, which reads as follows:

“I. Questions attempted by the Petitioner/ Candidate:

a) Total questions attempted by the Candidate/ Petitioner

- Total number of Questions : 100;
- Number of Questions Visited : 93;
- Number of Questions Not Attempted : 26, and
- Number of Questions Finally Submitted: 74.

b) The login details of the candidates are:-

- Login time : 12:34 p.m.
- Log out time : 2:43 p.m.
- Total permitted time : 2 hrs;
- Total time given : 2 hrs 9 minutes.

II. Time Loss

a) As per Audit log, the Petitioner/ candidate logged in at 12:34 p.m. and started attempting the questions. It is submitted that there was a temporary technical issue at 2: 15 p.m. and candidate logged in again at 2:22 p.m. It is pertinent to mention herein that the software stops the clock for the candidate when the exam is stopped and the clock starts again from the same time when the candidate logs in again.

b) It may further be mentioned that the Invigilator, in order to avoid any possible panic to the candidate, advised the candidate to quickly note down the responses and the Invigilator parallelly undertook to resolve the connectivity issue. In the meantime, the candidate was informed that responses were being saved at the local server which matched with the count attempted by the candidate.

c) The Petitioner/ Candidate had submitted the exam at 2:43 p.m., which is evident that he automatically got compensatory time of around 9 minutes.”

9. Clearly, as per respondent No.1/NTA, only 7 minutes of the petitioner were got wasted. The petitioner was given 9 minutes approximately extra.

10. Based on the facts and evidence on record, it is not possible for this court to conclude that the claim raised by the petitioner is correct. The onus was on the petitioner to show unassailable facts to enable the court to accept the version of the petitioner. In contrast, respondent No.1 has placed on record facts based on computer records.

11. In the light of these facts, in my opinion, the judgment of the Supreme Court relied upon by the petitioner in the case of ***Disha Panchal v. Union of India & Ors.***(supra) would have no bearing on the facts and circumstances of this case. The relevant portion of the judgment reads as follows:

“1. These petitions highlight improper conduct of Common Law Admission Test (CLAT) 2018 by Respondent Nos. 2 and 3, which is a single window online entrance test for admission to 19 prestigious National Law Universities in the country. The Petitioners had appeared for said CLAT and had faced various difficulties, which according to them, were occasioned as a result of mismanagement by Respondent Nos. 2 and 3. Some of the difficulties that were experienced by the Petitioners and other candidates were:

A. Questions of the examination did not appear on the screen at the start, and were intermittently disappearing and re-appearing.

B. The options to move to the next question, etc. stopped working intermittently.

C. Blank screens or frozen screens and software crashes.

D. Invigilators were incompetent and unhelpful-in being unable to help resolve glitches and in terms of their rudeness, when apprised of the existence of glitches.

E. Computers were dysfunctional and rebooting them did not help. Resultantly, the effective time available to the candidates was far lesser than the allotted time, which in turn caused great prejudice to the candidates.”

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12. Having considered the entirety of the matter, we give following directions:

A). The exercise of applying normalization formula as suggested by Mr. V. Giri, learned Senior Advocate and revising the scores of 4690 candidates shall be completed by 15.06.2018. Respondent Nos. 2 and 3 namely the National University of Advance Legal Studies, Kochi and Core Committee-Common Law Admission Test 2018 through its Convenor-Vice Chancellor, National University of Advance Legal Studies, Kochi shall undertake the entire exercise and complete it by 15.06.2018.

B). Upon completion of said exercise, the revised scores of 4690 candidates will be published by Respondents 2 and 3 on the official website on 16.06.2018.

C). Based on such revised scores the merit list will be rearranged in terms of Para 3 of the suggestion given by the Committee. In other words, the revised position of the concerned candidate will be indicated by rank Nos. 51A-51B as illustrated by the Committee.

D). The first round of counselling which began on 10.06.2018 shall go on without any impediment and if any candidate is allocated a seat, such allocation will not in any way stand adversely altered as a result of revised position granted to any of the candidates from the body of 4690 candidates.

E). If any candidate from the body of 4690 candidates is otherwise entitled, that is to say even without the benefit of revised score, to be allocated any seat, it goes without saying that such allocation will not in any way stand adversely affected.

F). In the second round of counselling the rank/merit list so prepared in terms of these directions shall be the governing list and the seats in second and subsequent rounds of counselling will be allocated on the basis of the list so revised in pursuance of these directions.

G). If a candidate, as a result of revised rank list being operative in second and subsequent round of counselling wants to secure admission in any other college of his or her choice going by his or her revised ranking, he/she shall be allowed to do so without incurring any disadvantage. In such cases, the fees if deposited in the first college shall be given due credit against the admission in the second college which the candidate may opt for as a result of revised ranking.”

12. Clearly in the given facts of this case, the abovesaid judgment of the Supreme Court has no application.

13. There is no merit in the present petition. The same is dismissed. All pending applications, if any, are also dismissed.

JAYANT NATH, J.

OCTOBER 21, 2020/v