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

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Date of Decision: 19.10.2020

+ W.P.(C) 7444/2020 and CM Nos. 24870-72/2020

ANUJ GUPTA

..... Petitioner

Through Mr. Abhinav Gupta, Adv.

versus

UNION OF INDIA THROUGH DEPARTMENT OF
HIGHER EDUCATION, MINISTRY OF
EDUCATION & ORS.

..... Respondents

Through Mr. Arjun Mitra, Adv. for R-
2/Organising Chairman, JEE (Advance) 2020.

Mr. Amit Bansal and Ms. Seema Dolo, Adv. for R-
3/National Testing Agency.

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 to direct the respondents to conduct the petitioner's JEE Advance Examination, 2020 on a subsequent date.
2. The case of the petitioner is that in March 2020, IIT-Delhi issued an Information Brochure for conducting JEE (Advanced) Examination, 2020. To be eligible to appear in the JEE (Advanced) Examination, 2020, a candidate was required to obtain a rank in the top 2,50,000 candidates who appeared in the JEE (Mains) Examination. The petitioner is a General

category candidate and as per the Information Brochure, only 96,187 were to be called upon to give JEE (Advanced) Examination in General category. Initially, the JEE (Mains) Examination, 2020 was to be held across the country between 5th April 2020 to 11th April 2020. However, on account of a nationwide lockdown due to the present Pandemic, the same was postponed on two occasions and was finally conducted on 1-6th September 2020. The petitioner appeared in the said examination and obtained a rank in the top 96,187 General category candidates. The petitioner had become eligible to give the JEE (Advanced) Examination on 27.09.2020. Unfortunately for the petitioner, he underwent a COVID Test on 22.09.2020 and along with his mother tested positive for COVID 19 virus. Similarly, on 23.09.2020, the petitioner's father and brother also tested positive. Hence, the petitioner was forced to be in home isolation/quarantine. The petitioner wrote an email on 26.09.2020 to the Organising Chairman, IIT-Delhi explaining his position and seeking accommodation/relaxation to another date for taking this Examination. The petitioner also contacted the helpline number. He also contacted the Examination Centre in Jaipur where he was informed that there were no arrangements for a COVID-19 Positive student to appear in the said Examination.

3. The grievance of the petitioner is that the respondent did not make any protocol for students/candidates like the petitioner who were suffering from COVID 19 virus. It is further pleaded that the eligibility criteria for JEE Advanced is that a candidate can appear only two times in two consecutive years. Hence, the petitioner will lose a chance of getting admission into prestigious institutions like IITs. It is further pleaded that separate arrangements in the form of isolation centres for candidates who

tested positive for COVID 19 should have been made and implemented at centres. In other examinations such as in CLAT 2020, the same were made. Reliance is also placed on an order of the Supreme Court dated 28.09.2020 passed in WP.(C) 1030/2020.

4. The above matter was listed on 06.10.2020 when the following directions were passed:-

“4. Learned counsel for respondent No.2 on instructions states that they have fixed a meeting on 13.10.2020 to consider cases like that of the petitioner. He further states that the result of the JEE Advance Examination 2020 has already been declared yesterday and the first round of counselling begins from 17.10.2020.

5. Let respondent No. 2 take appropriate instructions including as to whether a re-test can be conducted for students like the petitioner who could not give the exam on account of being tested COVID positive.”

5. In response to the above order, respondent No. 2 has placed on record the Minutes of the Meeting of the Joint Admission Board held on 13.10.2020 where there was a proposal to examine the proposition for conducting of another examination/re-examination for the candidates who could not attempt the examination due to their COVID 19 positive status. The Minutes note that there are numerous hurdles in conducting a re-examination and it was decided not to conduct re-examination. The Meeting however agreed that all the candidates who had successfully registered for JEE (Advanced) Examination 2020 but were absent in the exam, can appear in JEE (Advanced) 2021 as a one-time measure. The said candidates will not have to qualify JEE (Mains) 2021 and will be allowed to directly appear in

JEE (Advanced) 2021. There would also be proportionate relaxation of age bar.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner however strongly relies upon the order of the Supreme Court dated 12.10.2020 passed in the case of **CBSE & Anr. vs. T.K. Rangarajan & Ors.** to state that it was CBSE who had gone to the Supreme Court for conducting a re-examination for NEET in similar circumstances. It is also strongly urged that the petitioner has been preparing for the exam in question for several years and his entire year will go waste. He urges that there is no impediment for a fresh exam being conducted for people like the petitioner.

8. Learned counsel for the respondent however states that there are very few representations of this kind which have been received. Keeping in view the discussions of the Joint Admission Board and the reasons given in the Minutes, it would not be possible to hold a re-examination.

9. I may look at the Minutes of the Joint Admission Board dated 13.10.2020 which was attended by 46 professors from various IITs, relevant portion of which reads as follows:-

“The JAB observed that a candidate who had tested positive necessarily had to remain in quarantine and therefore, the occasion for creating isolation rooms for such candidates did not arise; consequently, these candidates had no option except to miss the examination due to the operation of the quarantine restrictions. It was also noted that owing to these restrictions, it was not open to the organising team to have made any exception by which a Covid-19 positive candidate could have been encouraged to break quarantine.

In the above context, the JAB also examined the proposition of

conducting another examination/re-examination for the candidates who could not attempt the examination due to their Covid-19 positive status. The JAB noted that the principle of merit and fair competition was of foremost importance and it was for this reason the entrance examination had been consistently conducted as a single examination, where the same set of questions was put to all the candidates at the same time, thereby ensuring complete fairness and a level playing field for all. Consequently, organising a separate examination/re-examination for the affected candidates was not agreed by JAB; this was similar to the earlier occasion on 17 July 2020 when it was decided to have the examination in the original format (of a single set of questions) after discussions with TCS. Additionally, the JAB also noted the elaborate processes involved in preparing a question paper of a high level and the time taken, as well as the inherent possibility of disputes arising over the difficulty level of an alternate question paper and a normalisation formula. The JAB therefore, decided strongly against having a separate examination/re-examination for JEE (Advanced) 2020, notwithstanding what other examination conducting bodies may opt to do.

The minutes of the 43rd meeting of the IIT Council record that the Council had approved the JAB as the standing mechanism of the IIT system, authorised to frame the policies, rules and regulations of Joint Entrance Examination under the guidance of the IIT Council. Accordingly, the JAB considered relaxation of the eligibility criteria, thereby permitting an extra attempt for those candidates who were unable to appear in JEE (Advanced) 2020 on account of being Covid-19 positive.

The JAB had detailed discussions on the various options open to it for those candidates who were prevented from appearing in JEE (Advanced) 2020 due to restrictions imposed due to Covid-19. After detailed discussion and exploring all possibilities which would address the concerns of the affected candidates, while avoiding prejudice to other candidates, it was decided to allow all the candidates, who had successfully registered to

appear in JEE (Advanced) 2020 but were absent in the exam, to appear in JEE (Advanced) 2021, as a one-time measure. To ensure equal opportunity to all, it was also decided that these candidates will not have to qualify JEE (Main) 2021 and will be allowed to directly appear in JEE (Advanced) 2021 on the basis of their successful registration to appear in JEE (Advanced) 2020. This relaxation of existing eligibility criteria will be in addition to proportionate relaxation of age bar. Further, it was decided that these candidates would be considered in addition to and not as part of the total number of candidates who would qualify from JEE (Main) 2021 for appearing in JEE (Advanced) 2021.”

10. Hence, the Joint Admission Board has taken a view that the principle of merit and fair competition is of foremost importance and noted that the elaborate process involved in preparing a question paper of a high level and the time taken as well as the inherent possibility of disputes arising over the difficulty level of an alternate question paper and a normalisation formula, do not warrant a separate examination/re-examination. Other reasons have also been noted.

11. Heavy reliance was placed by the learned counsel for the petitioner on the order of the Supreme Court dated 12.10.2020 in the case of **CBSE & Anr. vs. T.K. Rangarajan & Ors.**. The said order reads as follows:-

“In view of the circumstances which have necessitated postponement of the examination in the past and in view of the prevailing circumstances, we consider it appropriate to grant permission to the National Testing Agency to conduct a second part of the NEET (UG) 2019 for the COVID affected students and for those in containment zones on 14.10.2020. The result may be declared on 16.10.2020.”

12. It is clear from the above order that it was at the request of CBSE that

the Supreme Court agreed to the above proposition.

13. In the present case, the facts are little different. The concerned Joint Admission Board comprising 46 eminent professors from different IITs have expressed their disapproval of holding examination/re-examination on the grounds as noted above.

14. It is settled legal position that normally, it would be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally. In this context reference may be had to the judgment of the Supreme Court in the case of *Maharashtra State Board of Secondary & Higher Secondary Education & Anr. vs. Paritosh Bhupeshkumar Sheth & Ors., (1984) 4 SCC 27* where the Supreme Court held as follows:-

“29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High

Court while deciding the instant case.”

15. Reference in this context may also be had to the judgment of the Supreme Court in the case of *University of Mysore & Anr. vs. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491 wherein the Court held as follows:-

“12. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the expert with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High

Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.”

16. There are no cogent reasons for this court to interfere in the decision of the Joint Admission Board dated 13.10.2020. There is no merit in the present petition and the same is dismissed. Pending application also stands dismissed.

OCTOBER 19, 2020
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JAYANT NATH, J