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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6042 OF 2021

Vaishnavi Vijay Bhopale & Anr. Petitioners

Vs.

National Testing Agency & Ors. Respondents

Ms. Pooja V. Thorat a/w. Mr. Hrishikesh S. Shinde,
Mr.Gajanan Kukde for the Petitioners.

Mr. R. A. Rodrigues a/w. Mr. D. P. Singh for Respondents
No.1 and 2

Mr. S. Anchan for Respondents No.3 and 5

Ms. Kavita N. Solunke, AGP for Respondent No.4.

**CORAM: R.D.DHANUKA &
ABHAY AHUJA, JJ.**

DATED : OCTOBER 20, 2021

P.C.

1 Rule.

The learned counsel for Respondents No.1 and 2 and
the learned counsel for Respondents No. 3 and 5 waive
service. The learned AGP waives service for the Respondent
State.

By consent, the petition is heard finally.

2 By this petition under Article 226 of the Constitution of India, the Petitioners seek an order and direction against Respondent No.1 to re-examine Petitioners No.1 and 2 by conducting a separate NEET examination before declaration of result for the purpose of admission to under-graduate courses for the academic year 2021-22 with further direction to declare the result of re-examination of Petitioners along with the result of NEET examination held on 12.09.2021.

3 The Petitioners appeared for the said examination on 12.09.2021. It is the case of the Petitioners that both the Petitioners had secured 92% and 91% respectively in their SSC examination from the Maharashtra State Board and thereafter passed the HSC examination in March 2020 by securing 80% and 87%, respectively. Every class had 12 candidates for the purpose of writing the examination and 2 Examiners for the same. According to the Petitioners, both the Petitioners were allotted same class-room. All 12 students were distributed in two rows having sufficient distance between each other. Every row had six candidates sitting one behind another. The Petitioners No.1 and 2 were sitting in the same row. One Ms. Rajeshri Lamkane and Ms. Pranali Pawar were appointed as examiners/invigilators for the class-room allotted to the Petitioners.

4 According to the Petitioners the Examiner started distributing the question paper and answer booklet only at 2.05 pm. i.e. 5 minutes later than the timing of the examination and opened all the sealed covers at the

professors desk and mixed all the question paper booklets and answer paper booklets. One examiner started distributing question paper booklets separately to all the students and other examiner started distributing answer sheet booklets. As a result, for six candidates in one row got the question paper booklet and the answer sheet booklet with the same CODE and specific 7 digit serial number. However, for the 6 students in the other row due to the error committed by the Invigilator, Petitioner No.1 got question paper booklet of CODE 04 and answer paper booklet of CODE P4 and Petitioner No.2 question paper booklet of CODE P4 and answer sheet booklet of CODE 04. When the Petitioners realized this mistake on the part of the Invigilator, the Petitioners pointed out this mistake to the Invigilator. It is the case of the Petitioners that the Examiners, however, threatened the Petitioners with dire consequences of reporting them for causing nuisance and disturbance in the examination hall and thereby committing unfair practice if they further protested.

5 The Petitioners started answering the questions at 4.15 - 4.30 pm. Time to complete the paper was 3.00 hrs. expiring at 5.00 pm. It is the case of the Petitioners that, accordingly, the Petitioners being in confusion and anxiety caused due to the blunder caused by the Invigilator, could not complete the paper.

6 The learned counsel for the Petitioner invited our attention to clause 7 of the Test Booklet Code, which reads thus:

“7. The CODE for this Booklet is P4. Make sure that the CODE printed on the Original Copy of the Answer Sheet is the same as that on this Test Booklet. In case of discrepancy, the candidate should immediately report the matter to the Invigilator for replacement of both the Test Booklet and the Answer Sheet.”

7 She also invited our attention to the letter dated 14.09.2021 received from the Senior Director of Respondent No.2 to the Dy. Commissioner admitting their mistake while distributing the test booklets and OMR sheets and tendering the apology for the said mistake. She also invited our attention to the letter dated 15.09.2021 from Respondent No.2 to the dy. Commissioner. It is submitted that because of the mistake committed by Respondent No.2, the Petitioner should not suffer.

8 This court, vide order dated 28.09.2021, after making various observations directed Respondents No.1 and 2 not to declare the results of Petitioners No.1 and 2 for the examination held on 12.09.2021 and also produce the original question papers and corresponding answer sheets for perusal of this Court on the next date to verify the authenticity of the grievance made by the Petitioners in this petition and pass further orders.

9 The Respondent No.1, however, did not comply with the directions issued by this court. On 07.10.2021, the learned counsel for Respondents No.1 and 2 made a statement that Respondents No.1 and 2 have sought various information from Respondent no.3 on the representation made by the Petitioners in the petition and more

particularly on the alleged discrepancy in question paper and answer sheet booklet.

10 The learned counsel for Respondent No.3 undertook to provide the information as required by Respondents No.1 and 2. On 11.10.2021, this court, after considering the correspondence exchanged between the Respondent No.2 on one hand and Respondents No.3 and 4 on the other hand and other documents whereby Respondent No.3 admitted their mistake. This court recorded that this court is not inclined to accept the suggestion made by the learned counsel for Respondents No.1 and 2 and directed Respondent No.1 and 2 to find out the solution. In the meanwhile, Respondent No.3 and 5 were directed to file affidavit before this court.

11 The matter appeared before this court, today.

12 The learned counsel for Respondents No.1 and 2 tenders written submissions signed by Jt. Director of Respondent No.1 dated 14.10.2021 and would submit that it is not possible for Respondents No.1 and 2 to find out any solution and particularly, permitting the Petitioners to reappear for the examination in view of there being more than 16 lacs students. He submits that there are discrepancies and lack of clarity in the Affidavit in Reply filed by Respondents No.3 and 5 and correspondence exchanged between Respondents No.3 and 5 and Respondents No.1 and 2 and thus the so called explanation given by Respondents No.3 and 5 could not be accepted by Respondent No.1 and 2.

13 In view of the inability of Respondents No.1 and 2 to find out any solution, we have heard the parties at length. Perusal of clause 7 of the Test Booklet Code clearly indicates that the CODE for this Booklet is P4. It was further directed to make sure that the CODE printed on the Original Copy of the Answer Sheet is the same as that of this Test Booklet. In case of discrepancy, the candidate should immediately report the matter to the Invigilator for replacement of both the Test Booklet and the Answer Sheet. Perusal of the record indicates that it is the case of the Petitioner that discrepancies in the booklet i.e. the CODE printed on the original copy of the answer sheet and the test booklet was brought to the notice of Respondent No.3. In view of such discrepancies pointed out, Respondent No.3 addressed two letters i.e. dated 14.09.2021 to the Director of Respondent No.1 and letter dated 15.09.2021 to the Dy. Director of Education accepting their mistake and apologizing for the same. The letters would also indicate that both the students have notified the discrepancies in Test Booklet and OMR Sheets along with four other students. Respondents No.3 and 5 admitted that they have already spoken regarding this discrepancies to the City Coordinator Mr. Shivanand. In the letter dated 14.09.2021, Respondent No.1 has also admitted that Respondents No.3 and 5 were performing the invigilator duty for the first time in NEET and in a hurry six booklets fell down and the test booklets were mixed with different OMR sheets. They realized their mistake only at around 2.30 pm and could not inform their Center Superintendent in time. They assured that it was not

deliberate mistake. By the said letters, Respondents No.2 and 3 requested Respondent No.1 to help these students by evaluating the OMR sheets as it is the matter of their future.

14 Though Respondents No.1 and 2 tried to point out some inconsistencies in the letter addressed by Respondent No.5 and filed by Respondents No.2 and 3, we are inclined to take into consideration the correspondence by which the discrepancies were brought to the notice of Respondent No.1, being Exhibit "F" to the petition. In the Affidavit in Reply filed by Respondents No.3 and 5, more or less, these facts have been admitted that they have also wanted to find out a viable solution for the students in spite of the inadvertence of the Invigilators. In fact, it has been admitted in the Affidavit in Reply that there was a mix up / mismatch with respect to the Test Booklet and the OMR Sheets. Respondents No.1 and 2 have not made any independent enquiry on the contents of those two letters addressed by Respondents No.3 and 5 till date.

15 For the aforesaid reasons, we are of the view that the Petitioner shall not suffer because of the mistake on the part of Respondents No.3 and 5.

16 We, accordingly, pass the following order:

- a. The petition is made absolute in terms of prayer clause (b).
- b. The Respondents No.1 and 2 are directed to hold a fresh examination of the Petitioners for the

Academic Year 2021-2022 and declare the result within a period of two weeks from today.

c. Respondents No.1 and 2 shall give 48 hrs. clear notice to the Petitioners about the date of examination and the center allotted to the Petitioners.

d. Respondents No.1 and 2 will issue the admit card or permission as is required for the purpose of appearing for the examination directed to be held, in advance.

e. It is made clear that this order shall not be treated as a precedent in any other matter.

f. Before parting, we also advise Respondents No.1 and 2 to frame appropriate Rules / guidelines for providing remedial measures in case of such difficulties that may arise in similar situations, in future, keeping in mind the interest and future of such students.

g. No order as to costs.

h. Writ Petition is allowed in aforesaid terms.

i. Rule is made absolute accordingly.

j. Parties to act on an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D.DHANUKA, J.)