

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7439 OF 2021

Ankita Sanjay Makasare

... Petitioner

Versus

National Testing Agency and another

... Respondents

.....

Ms. Pooja Thorat for the Petitioner.

Mr. M.M. Padale, AGP for the State.

Mr. D.P. Singh alongwith Mr. Rui Rodrigues for Respondent No.2.

.....

**CORAM : S.J. KATHAWALLA AND
SURENDRA P. TAVADE, JJ.**

**DATED : NOVEMBER 1, 2021.
(Vacation Court)**

P.C. :-

1. The Petitioner has filed the above Writ Petition seeking the following relief :

“(a) call for the relevant records and proceeding from the office of the Respondent Authorities and after going into the legality, validity and propriety of the same direct the Respondent No.1 National Testing Agency to produce the original answer sheet before this Hon’ble Court with further directions that Petitioner’s result should be assessed as per original answer sheet written by her and not scanned copy of the same.”

2. The Petitioner has stated that she passed her SSC Examination from the Maharashtra State Board with 91% and her HSC Examination in March 2020 by securing 80%, in spite of suffering from typhoid at the time of the examination. The Petitioner has stated that the National Eligibility Cum Examination Test (‘NEET’)

2020 was held somewhere in September 2020. The Petitioner appeared for the same. However, due to the pandemic she was not much prepared and decided to reappear for NEET 2021.

3. Respondent No.1 – National Testing Agency is established since 2019 by the Ministry of Human Resources Development (now known as Ministry of Education MoE) with the approval of the Ministry of Health and Family Welfare. Respondent No.2 is the Union of India through its Ministry of Health and Family Welfare.

4. As stated earlier, the Petitioner reappeared for NEET 2021 on 12th September, 2021. According to the Petitioner, since the question paper is allowed to be retained by the students, the Petitioner had made markings on her question paper of all the answers she had opted for when answering the said question paper, so that she could assess its correctness after the examination was over. According to her after verifying the answers she was confident that she would secure a score of 615 out of 720.

5. As per the Rules of the Respondent No.1 - National Testing Agency, the scanned answer sheet of the Petitioner was displayed on 15th October, 2021. Though the scanned answer sheet bears in her own handwriting, her roll number, test booklet number, her name, the names of her parents, a declaration signed by her and also her left thumb impression, she is insisting that the answers marked in the form of black dots on the scanned answer sheet are different from the ones marked by her when compared to the markings made by her in her question paper which she was allowed to

retain and take back home.

6. The Petitioner has filed a complaint stating that she is very confident that there is some mistake made in the scanning of the Optical Mark Recognition ('OMR') answer- sheet of the Petitioner because the options selected by the Petitioner are not displayed in the scanned copy of the OMR answer sheet and the same can be substantiated by her markings on the question paper.

7. The Petitioner has relied on the decision of a Single Judge of the High Court of Kerala passed in Writ Petition (C) No. 22513 of 2021 (L), wherein on a similar complaint made by the petitioner, an enquiry was directed to be instituted.

8. The Advocates appearing for the Respondents submitted that a scanned copy of the OMR answer sheet is already before the Court since the same is annexed by the Petitioner as Exhibit "C" to the Petition. It is submitted that the Petitioner has admitted in the Petition itself that the scanned copy of the OMR answer sheet bears her signature. It is submitted that any student may come forward and submit that the answers marked by the student on the question sheet which is retained by the student does not match with the OMR answer sheet and therefore an enquiry be instituted. It is submitted that this is not possible since it would open flood gates whereby the students may raise grievances of similar nature and thereby delay the entire process of admission to various courses.

9. We have gone through the Petition and annexures thereto. We have perused

the scanned answer sheet of the Petitioner which she has annexed and marked as Exhibit 'C' to the Petition. We have also considered the submissions made by the Advocates for the parties. The scanned answer sheet is reproduced hereunder :

Exhibit - C
112

ANSWER SHEET

ROLL No. 315004486

TEST BOOKLET No. 2655885

N4

Candidate MUST NOT carry ORIGINAL or OFFICE Copy

Answer Sheet No. 2655885

SECTION - I (Group of 10 questions, Mark each question 1 mark)

101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120
121	122	123	124	125	126	127	128	129	130
131	132	133	134	135	136	137	138	139	140
141	142	143	144	145	146	147	148	149	150
151	152	153	154	155	156	157	158	159	160
161	162	163	164	165	166	167	168	169	170
171	172	173	174	175	176	177	178	179	180
181	182	183	184	185	186	187	188	189	190
191	192	193	194	195	196	197	198	199	200

SECTION - II (Group of 10 questions, Mark each question 1 mark)

201	202	203	204	205	206	207	208	209	210
211	212	213	214	215	216	217	218	219	220
221	222	223	224	225	226	227	228	229	230
231	232	233	234	235	236	237	238	239	240
241	242	243	244	245	246	247	248	249	250
251	252	253	254	255	256	257	258	259	260
261	262	263	264	265	266	267	268	269	270
271	272	273	274	275	276	277	278	279	280
281	282	283	284	285	286	287	288	289	290
291	292	293	294	295	296	297	298	299	300

SECTION - III (Group of 10 questions, Mark each question 1 mark)

301	302	303	304	305	306	307	308	309	310
311	312	313	314	315	316	317	318	319	320
321	322	323	324	325	326	327	328	329	330
331	332	333	334	335	336	337	338	339	340
341	342	343	344	345	346	347	348	349	350
351	352	353	354	355	356	357	358	359	360
361	362	363	364	365	366	367	368	369	370
371	372	373	374	375	376	377	378	379	380
381	382	383	384	385	386	387	388	389	390
391	392	393	394	395	396	397	398	399	400

SECTION - IV (Group of 10 questions, Mark each question 1 mark)

401	402	403	404	405	406	407	408	409	410
411	412	413	414	415	416	417	418	419	420
421	422	423	424	425	426	427	428	429	430
431	432	433	434	435	436	437	438	439	440
441	442	443	444	445	446	447	448	449	450
451	452	453	454	455	456	457	458	459	460
461	462	463	464	465	466	467	468	469	470
471	472	473	474	475	476	477	478	479	480
481	482	483	484	485	486	487	488	489	490
491	492	493	494	495	496	497	498	499	500

SECTION - V (Group of 10 questions, Mark each question 1 mark)

501	502	503	504	505	506	507	508	509	510
511	512	513	514	515	516	517	518	519	520
521	522	523	524	525	526	527	528	529	530
531	532	533	534	535	536	537	538	539	540
541	542	543	544	545	546	547	548	549	550
551	552	553	554	555	556	557	558	559	560
561	562	563	564	565	566	567	568	569	570
571	572	573	574	575	576	577	578	579	580
581	582	583	584	585	586	587	588	589	590
591	592	593	594	595	596	597	598	599	600

SECTION - VI (Group of 10 questions, Mark each question 1 mark)

601	602	603	604	605	606	607	608	609	610
611	612	613	614	615	616	617	618	619	620
621	622	623	624	625	626	627	628	629	630
631	632	633	634	635	636	637	638	639	640
641	642	643	644	645	646	647	648	649	650
651	652	653	654	655	656	657	658	659	660
661	662	663	664	665	666	667	668	669	670
671	672	673	674	675	676	677	678	679	680
681	682	683	684	685	686	687	688	689	690
691	692	693	694	695	696	697	698	699	700

SECTION - VII (Group of 10 questions, Mark each question 1 mark)

701	702	703	704	705	706	707	708	709	710
711	712	713	714	715	716	717	718	719	720
721	722	723	724	725	726	727	728	729	730
731	732	733	734	735	736	737	738	739	740
741	742	743	744	745	746	747	748	749	750
751	752	753	754	755	756	757	758	759	760
761	762	763	764	765	766	767	768	769	770
771	772	773	774	775	776	777	778	779	780
781	782	783	784	785	786	787	788	789	790
791	792	793	794	795	796	797	798	799	800

SECTION - VIII (Group of 10 questions, Mark each question 1 mark)

801	802	803	804	805	806	807	808	809	810
811	812	813	814	815	816	817	818	819	820
821	822	823	824	825	826	827	828	829	830
831	832	833	834	835	836	837	838	839	840
841	842	843	844	845	846	847	848	849	850
851	852	853	854	855	856	857	858	859	860
861	862	863	864	865	866	867	868	869	870
871	872	873	874	875	876	877	878	879	880
881	882	883	884	885	886	887	888	889	890
891	892	893	894	895	896	897	898	899	900

SECTION - IX (Group of 10 questions, Mark each question 1 mark)

901	902	903	904	905	906	907	908	909	910
911	912	913	914	915	916	917	918	919	920
921	922	923	924	925	926	927	928	929	930
931	932	933	934	935	936	937	938	939	940
941	942	943	944	945	946	947	948	949	950
951	952	953	954	955	956	957	958	959	960
961	962	963	964	965	966	967	968	969	970
971	972	973	974	975	976	977	978	979	980
981	982	983	984	985	986	987	988	989	990
991	992	993	994	995	996	997	998	999	1000

SECTION - X (Group of 10 questions, Mark each question 1 mark)

1001	1002	1003	1004	1005	1006	1007	1008	1009	1010
1011	1012	1013	1014	1015	1016	1017	1018	1019	1020
1021	1022	1023	1024	1025	1026	1027	1028	1029	1030
1031	1032	1033	1034	1035	1036	1037	1038	1039	1040
1041	1042	1043	1044	1045	1046	1047	1048	1049	1050
1051	1052	1053	1054	1055	1056	1057	1058	1059	1060
1061	1062	1063	1064	1065	1066	1067	1068	1069	1070
1071	1072	1073	1074	1075	1076	1077	1078	1079	1080
1081	1082	1083	1084	1085	1086	1087	1088	1089	1090
1091	1092	1093	1094	1095	1096	1097	1098	1099	1100

SECTION - XI (Group of 10 questions, Mark each question 1 mark)

1101	1102	1103	1104	1105	1106	1107	1108	1109	1110
1111	1112	1113	1114	1115	1116	1117	1118	1119	1120
1121	1122	1123	1124	1125	1126	1127	1128	1129	1130
1131	1132	1133	1134	1135	1136	1137	1138	1139	1140
1141	1142	1143	1144	1145	1146	1147	1148	1149	1150
1151	1152	1153	1154	1155	1156	1157	1158	1159	1160
1161	1162	1163	1164	1165	1166	1167	1168	1169	1170
1171	1172	1173	1174	1175	1176	1177	1178	1179	1180
1181	1182	1183	1184	1185	1186	1187	1188	1189	1190
1191	1192	1193	1194	1195	1196	1197	1198	1199	1200

SECTION - XII (Group of 10 questions, Mark each question 1 mark)

1201	1202	1203	1204	1205	1206	1207	1208	1209	1210
1211	1212	1213	1214	1215	1216	1217	1218	1219	1220
1221	1222	1223	1224	1225	1226	1227	1228	1229	1230
1231	1232	1233	1234	1235	1236	1237	1238	1239	1240
1241	1242	1243	1244	1245	1246	1247	1248	1249	1250
1251	1252	1253	1254	1255	1256	1257	1258	1259	1260
1261	1262	1263	1264	1265	1266	1267	1268	1269	1270
1271	1272	1273	1274	1275	1276	1277	1278	1279	1280
1281	1282	1283	1284	1285	1286	1287	1288	1289	1290
1291	1292	1293	1294	1295	1296	1297	1298	1299	1300

SECTION - XIII (Group of 10 questions, Mark each question 1 mark)

1301	1302	1303	1304	1305	1306	1307	1308	1309	1310
1311	1312	1313	1314	1315	1316	1317	1318	1319	1320
1321	1322	1323	1324	1325	1326	1327	1328	1329	1330
1331	1332	1333	1334	1335	1336	1337	1338	1339	1340
1341	1342	1343	1344	1345	1346	1347	1348	1349	1350
1351	1352	1353	1354	1355	1356	1357	1358	1359	1360
1361	1362	1363	1364	1365	1366	1367	1368	1369	1370
1371	1372	1373	1374	1375	1376	1377	1378	1379	1380
1381	1382	1383	1384	1385	1386	1387	1388	1389	1390
1391	1392	1393	1394	1395	1396	1397	1398	1399	1400

SECTION - XIV (Group of 10 questions, Mark each question 1 mark)

1401	1402	1403	1404	1405	1406	1407	1408	1409	1410
1411	1412	1413							

10. The above scanned answer sheet bears the roll number of the Petitioner, her test booklet number, her name, the name of her parents, her left thumb impression, the signature of invigilators with time and the declaration which admittedly bears her signature and reads thus :

“DECLARATION BY CANDIDATE :

I declare that particulars and signature on this OMR Answer Sheet are mine and are same as in Attendance Sheet. I further declare that particulars filled in and signature as well as the circles darkened on this ORIGINAL Copy is same as in OFFICE Copy.

Sd/- 1.55pm

Signature with time and running handwriting.”

11. With all the above admitted material on the scanned answer-sheet, we are not willing to accept that the answers on the scanned OMR answer-sheet are not correct only because the Petitioner states that the answers circled by her on the question paper retained by her has different answers. It cannot be ruled out that any student can fill up the test booklet (question paper) at home and after filling up the correct answers in the manner they desire, on the strength of such markings on the question paper/test booklet, come forward and contend that the answers on the scanned copy of the OMR are incorrect, since the answers on the answer paper retained by the student does not match with the answers/markings which the candidate has made/carried out on the test booklet. If this is allowed, surely we will be opening the flood gates for students to come forward and register their grievance that their answer-sheet does not bear the

answers which they had marked on their test booklet/question paper, despite the fact that the scanned answer sheet bears in their own handwriting, the roll number, test booklet number, their name, the names of their parents, their signatures on the declaration, along with the timing, all of which are undisputed in this case by the Petitioner. In the case of Rithu Sibi (supra) relied upon by the Petitioner, the petitioner had alleged that her signature was manipulated, the roll number of the petitioner in the numerical did not tally with the bubbled portion, the name of the petitioner's mother and father was not written by the petitioner, the name of the petitioner's mother is Mini John C., however in the OMR Sheet it is shown as Mini Johna C., the writing in the OMR Sheet is not that of the petitioner. It is under such circumstances that the Learned Single Judge of the Kerala High Court directed an enquiry/investigation in the matter. The facts in the present case are completely different as compared to the case of Rithu Sibi (supra).

12. In view of the above, we are not inclined to grant the reliefs as sought by the Petitioner in exercise of our extraordinary jurisdiction under Section 226 of the Constitution of India. The above Writ Petition is therefore dismissed.

(SURENDRA P. TAVADE, J.)

(S.J. KATHAWALLA, J.)