

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WRIT PETITION NO.19791 OF 2021
AND W.M.P.NO.21064 OF 2021

Dr.P.Mehala

... Petitioner

-Vs-

1. The Secretary to Government,
Ministry of Health and Family Welfare
Government of India, New Delhi.
2. The National Board of Examinations in Medical
Sciences (An Autonomous Body under the
Ministry of Health and Family Welfare)
Government of India, represented by the
Assistant Director, Mahatma Gandhi Marg
(Ring Road), Ansari Nagar
New Delhi - 110 029.

... Respondents

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent bearing reference NBEMS/ DOEC/ December 2020/ 2022251542/ 2021/ 5556- 5559 dated 24.08.2021 and quash the same as illegal consequently to pass an order of declaration declaring that the candidature of the petitioner for the DNB final Examination December 2020 under registration number 225 -41132-191 -223144 and Roll Number 2022251542 is valid so as to direct the 2nd respondent to conduct Practical Examination for the DNB course December 2020 within stipulated date prescribed by this Honble Court.

For Petitioner : Mr.C.G.Kumar

For Respondents : Mr.S.N.Parthasarathy
Senior Central Government Standing
Counsel - for R1
Mr.R.Thirunavukkarasu
Standing Counsel - for R2

O R D E R

This writ petition has been filed challenging the proceedings of the second respondent dated 24.08.2021 and for a consequential direction to declare that the candidature of the petitioner for the DNB final examination is valid and for a further direction to the second respondent to conduct the practical examination for the DNB Course within the time prescribed by this Court.

2. The case of the petitioner is that, she joined the Diplomate of National Board (DNB), which is a Post Graduate Masters Degree, on 07.06.2019. The DNB Final Theory Examination was supposed to be conducted during December 2020. However, due to the pandemic situation, the written examinations were conducted by the second respondent only during March 2021. The petitioner took the examination and she cleared the theory part of the course. The next stage is for the petitioner to appear for the practical examination. The second respondent announced that the practical examination will be conducted during August 2021. It is claimed by the petitioner that she also obtained the admit card for appearing in the DNB final practical examination.

3. In the meantime, the petitioner was working at a hospital at Coimbatore. She conceived and she was advised by the hospital to proceed on leave after obtaining a sanction from the second respondent. This advice was given to the petitioner since there was no clarity at that point of time as to whether a pregnant lady can be administered with the vaccine and whether it will have any adverse impact on the child in the womb.

4. Accordingly, the petitioner applied to the second respondent seeking for leave. The second respondent, through the letter dated 30.07.2021, sanctioned the leave applied for by the petitioner for the period from 01.06.2021 to 27.11.2021.

5. The petitioner delivered a child on 19.07.2021 and she was discharged from the hospital on 21.07.2021. Since the final practical examination was slated to be conducted on 28.08.2021, the petitioner made a request to the second respondent to take into consideration the extraordinary circumstances in which she was placed and to permit the petitioner to take the practical examination. The second respondent, through the impugned proceedings dated 24.08.2021, after taking note of Clause 11.6 and 11.7 of the Information Bulletin of DNB, came to a conclusion that the petitioner had not completed the required DNB training before the cut-off date viz., 30.09.2021 and hence the petitioner was found ineligible and as a consequence of the same, her appearance in the DNB Final Theory Examination,

December 2020 was declared as null and void and the admit card that was given to the petitioner to appear for the practical examination was also cancelled / withdrawn. The petitioner was advised to appear in the DNB final examination once again at a future date. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The second respondent has filed a counter affidavit. The stand taken by the second respondent in the counter affidavit is extracted hereunder.

" 4. I state that in terms of Clause 11.6 of Information Bulletin of DNB Final December 2020, any leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB/FNB training. Further as per Clause 11.7, "any extension is permissible only under extraordinary circumstances with prior approval of NBEMS. Such extension is neither automatic nor shall be granted as a matter of routine.

5. I state that the petitioner had furnished a Provisional Training Completion Certificate (PTCC) dated 22.01.2021 when she applied for DNB Final Theory Examination December 2020. According to the submitted PTCC, she had been stated to have availed 40 days leave by then in total. The scheduled date of training completion therefore was 06.06.2021. And after mandatory 3 months of COVID Extension as per the notice dated 18.01.2021 her date of completion as per Provisional Training Completion Certificate was 11.09.2021, which was within the prescribed cut-off date for completion of training december 2020 Session ie., 30.09.2021. Therefore, she was allowed to appear in the DNB Final Theory Examination-2020 Session. It is submitted that the Information Bulletin categorically mentions that the eligibility of the candidate is purely provisional and subject to the fulfillment of eligibility criteria as prescribed by the 2nd respondent.

6. I state that the Petitioner had also availed maternity leave from 01.06.2021 to 27.11.2021 which comes to 180 days. Therefore, the total leave during the training turns out to be 220 days. Even after giving the benefit of maximum autonomous examining body and are governed by their rules and regulations. It is denied that the 2nd respondent acted arbitrarily by declaring the

petitioner as ineligible for the said exam. As already pointed out, it is submitted that 2nd respondent has acted as per the Rules contained in the Information Bulletin. The petitioner herself has acknowledged and undertaken in the Provisional Training Completion Certificate (PTCC) dated 22.01.2021, while applying for the DNB Final Examination December 2020, that if she is unable to complete her DNB training on or before the cut-off date i.e., 30.09.2021, it is understood that her candidature shall stand cancelled for DNB Final Examination December 2020."

7. Heard Mr.C.G.Kumar, learned counsel appearing for the petitioner, Mr.S.N.Parthasarathy, learned Senior Central Government Standing Counsel appearing for the first respondent and Mr.R.Thirunavvukarasu, learned Standing Counsel for the second respondent.

8. The learned Standing Counsel appearing on behalf of the second respondent, apart from reiterating the stand taken in the counter affidavit, also brought to the notice of this Court, the Division Bench judgment of the Delhi High Court in L.P.A.No.715 of 2019 dated 26.03.2021 (National Board of Examinations -vs- Dr.Rajani Sinha and Others). The portions of the judgment relied upon by the learned Standing Counsel are extracted hereunder.

" 11. In view of the aforesaid Rules, we are respectfully unable to agree with the reasoning in the impugned judgment, that since the appellant NBE did not immediately respond to the DNB Training Completion Certificate (Provisional) dated 19th September, 2017, inter alia providing that in case the respondent no.1 was unable to complete the DNB training on or before the cut-off date of 23rd August, 2018 towards the eligibility determination, her candidature shall stand cancelled, the same became binding on the appellant NBE and the appellant NBE could not subsequently refute that the cut-off date was 30th June, 2018 and not 23rd August, 2018. It cannot be lost sight of that the appellant NBE is an examining body and is to function not as per the ipse dixit of the persons manning it from time to time but as per its Rules and Regulations published from time to time. The said Rules and Regulations, in the present case contained in the Information Bulletin for DNB Final Examination-December, 2017, clearly prescribed cut-off date as 30th June, 2018 and there was no reason for the respondent no.4 Institute to, in the DNB

Training Completion Certificate (Provisional) dated 19th September, 2017, mention the cut-off date as 23rd August, 2018. The same was clearly a mistake of the respondent no.4 Institute. Merely because the appellant NBE did not immediately refute the same and / or merely because the appellant NBE, notwithstanding the said error / mistake in the DNB Training Completion Certificate (Provisional) of the respondent no.1, allowed the respondent no.1 to take the examination would not change the cut-off date prescribed for all those taking the subject examination, for the respondent no.1. Once an autonomous body, as NBE is, particularly an Examining Body, is governed by its Rules and Regulations, it is not open to any person manning the said body, to grant relaxation in the said Rules and Regulations or to change the same by his / her conduct, express or implied viz. of non-refutation of the error in the certificate aforesaid. This is what differentiates a society governed by law from a society governed by men. Moreover, the principle in law, of deducing admission from non-refutation, is otherwise also not an absolute one. It cannot be lost sight of that an Examining Body such as the appellant NBE, holding examinations for thousands if not lakhs of students, cannot be expected to minutely scan through each and every communication submitted to it and to refute any content contrary to the Rules. The Rules of examination cannot change merely by stating the wrong in a communication especially when the Examining Body in its Rules has clearly provided that the entrance to the examination was purely provisional and that the candidature for the examination could be cancelled at any time as and when finding that the candidate was not eligible to appear in the examination. The reasoning given by the Single Judge is capable of mischief, playing havoc with the standards of the examination and of being abused by institutes and students. An Examining Body such as the appellant NBE, is bound by its own Rules and without any provision in the Rule vesting any discretion in it, does not have any discretion to change or bend the Rules for any candidate.

12. We have perused the judgments relied upon by the counsel for the respondent no.1 and find that none of them come to the aid the respondent no.1. In Amulya Mysore supra, the DNB candidate had

compensated for the number of days of excess leave, before the cut-off date. In Teena Peter supra, the excess leave availed by the DNB candidate had been granted by the appellant NBE, which alone under the Rules is competent therefor. As distinct therefrom, in the present case, the excess medical leave admittedly taken by the respondent no.1 was without prior approval of appellant NBE. Once the Rules clearly provide that excess medical leave has to be with prior approval of appellant NBE, neither the respondent no.4 Institute nor the respondent no.1 could have entertained any doubt with respect thereto and leave, even if granted by respondent no.4 Institute, cannot make the respondent no.1 eligible for the examination when in accordance with the Rules, she was / is not. We are also unable to agree with the reasoning in the impugned judgment, that since the respondent no.4 Institute is accredited to the appellant NBE, the appellant NBE is bound by its act of granting medical leave in excess of that provided and without approval of appellant NBE. It has not been reasoned that the appellant NBE has any administrative control over the respondent no.4 Institute. Merely because the training imparted by the respondent no.4 Institute meets the parameters of appellant NBE and the appellant NBE has granted accreditation to the respondent no.4 Institute, would not bind the appellant NBE with the leave granted by respondent no.4 Institute in excess of that provided in the Rules to the respondent no.1. It cannot also be lost sight of that the respondent no.1 herself is highly educated, qualified to grant medical care to others and expected to have made herself conversant with the Rules and Regulations of the examination and has to bear the consequences of violation thereof. In Garima Singh supra, there was miscommunication between the hospital and the appellant NBE in relation to the cut-off date due to the implementation of a revised/revamped procedure. As distinct therefrom, in the present case there was no ambiguity as to the prescribed cut-off date being 30th June, 2018 as per the Information Bulletin for DNB Final Examination -December, 2017. N. Siva Krishna supra, rather than supporting the respondent no.1, is against the respondent no.1. Therein also the candidates concerned had availed of excess leave and relief was denied on the ground that the candidates concerned had not completed their training prior to

the cut-off date. In G. Anand Ramamurthy supra, the Supreme Court held that the High Court was not justified in directing the petitioner to hold examinations against its policy, in complete disregard to the mandate of the Courts for not interfering in the academic matters particularly when the interference in the facts of the matter leads to perversity and promotion of illegality. Finally, in Dr. Sajad Ahmed supra, the relief was granted in the light of different facts and circumstances, where a DNB candidate had been admitted in contravention of the relevant guidelines.

13. In the present case there is no manner of doubt that the respondent no.1 did not satisfy the criteria for appearing in the DNB Final Examination 2017 and as per the Rules, her candidature was liable to be cancelled and was rightly cancelled. Once the actions of the appellant NBE are found to be in terms of its Rules, the Court cannot direct the appellant to act in violation thereof or allow relief to the respondent no.1 in violation of the Rules governing her examination. The appellant NBE is expected to uphold the standards of medical qualifications / degrees awarded by it and Courts cannot by their orders, dilute the rigours prescribed for upholding the said standards. A Co-ordinate Bench in Rajat Duhan Vs. All India Institute of Medical Sciences MANU/DE/4003/2019 has reiterated that any eligibility criteria is bound to cause hardship to some set of students, particularly if they are closure to cut-off criteria; however such considerations cannot outweigh with the Court to dilute the standards of academic excellence prescribed by the academicians, who are experts in the field."

9. There is no serious dispute with regard to the facts of the present case and therefore, this Court will straight away get into the main issue that is involved in the present case. As per the Rules, a candidate is eligible for 30 days leave per year. However, Clause 11.7 of the Information Bulletin, which has been extracted at Para 4 of the counter affidavit gives the authority to the National Board of Examinations (NBE) to extend the period of training beyond the scheduled completion under extraordinary circumstances. As a word of caution, it is stated that such an extension should not be automatic and it should not be granted as a matter of routine. The judgment that is cited by the learned counsel appearing on behalf of the second respondent

specifically has dealt with these Rules and has held that the NBE, as an examining body, has to strictly comply with the Rules and it cannot be given an interpretation depending upon the person who is manning the NBE. In short, the Division Bench held that, NBE is bound by its own Rules and it does not have the discretion to change or bend the Rules for any candidate. This proposition of law laid down by the Division Bench is perfectly in line with the settled principles of law and this Court is in respectful agreement with the same.

10. It is therefore necessary for this Court to focus on the facts of the present case and to assess as to whether the above judgment will apply to the facts of the present case and whether the available Rules that govern NBE will enable the condonation of the training period by considering the extraordinary circumstances.

11. The petitioner appeared in the DNB Final Theory Examinations during March 2021 and she has cleared the examination. The Rules provide that a candidate has to undergo training and in the present case, the scheduled date for the completion of the training was initially fixed as 06.06.2021 and considering the pandemic situation, it was extended by three months and hence, the completion as per the Provisional Training Completion Certificate (PTCC) was 11.09.2021. A person who has fulfilled this criteria alone will be allowed to appear in the final practical examinations. Even if a candidate has cleared the theory examination and is provisionally found eligible, the non-fulfillment of the training period will end in cancellation of the DNB Final Theory Examination and a candidate has to once again take the examination to fulfill the criteria.

12. It is seen from records that, the petitioner availed maternity leave from 01.06.2021 to 27.11.2021 for nearly 180 days. This period, added with the leave that was already taken by the petitioner, worked out to a total leave of 220 days. This was taken into account by the second respondent while issuing the impugned proceedings and the second respondent strictly went by Clause 11.6 of the Information Bulletin of DNB.

13. There would have been absolutely no questions asked if this action had been taken by the second respondent under normal circumstances. The leverage that is given in Clause 11.7 of the Information Bulletin also makes it clear that, the same should not be exercised as a matter of routine and it should be exercised only under extraordinary circumstances. The issue is whether the facts of the present case falls under such extraordinary circumstances.

14. The petitioner, after taking her examination during March 2021, joined for training in G.Kuppusamy Naidu Memorial Hospital at Coimbatore. While so, she conceived. Under normal circumstances, the petitioner would have continued to undergo the training period and such maternity leave is not availed right from the day a woman conceives a child and it is availed only during the last phase of the pregnancy. However, the petitioner was facing a very tricky situation. The vaccination for the COVID-19 had just arrived and there were lots of questions that were raised and one such question was as to whether a pregnant woman can be administered with vaccination. There was no clarity on this issue and no pregnant women wanted to expose themselves to the dangerous virus since this will result in the fatality of the mother and the child in the womb. Therefore, taking into consideration the peculiar situation, the hospital where the petitioner was undergoing the training advised the petitioner to go on leave. Obviously, this advise was given by taking into consideration the precious life of the petitioner and her child in the womb.

15. The petitioner thereafter made an application before the second respondent requesting for maternity leave and the second respondent, through letter dated 30.07.2021 granted / sanctioned leave from 01.06.2021 to 27.11.2021. Of course, while granting the leave, the second respondent made it clear that the eligibility for DNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the Information Bulletin.

16. The petitioner, after delivering the child, made a representation to the second respondent on 11.08.2021 and requested for permitting the petitioner to take her practical examination on 28.08.2021. This request was rejected by the second respondent by taking into consideration Clause 11.6 of the Information Bulletin of DNB.

17. Clause 11.7 of the Information Bulletin of DNB has given powers to the NBE to grant extension of the training period beyond the scheduled completion date of training under extraordinary circumstances. The facts above mentioned clearly demonstrates that, the petitioner was indeed placed under extraordinary circumstances. On the one hand, the Corona Virus was challenging human lives and added to that, the petitioner was also pregnant and she became concerned about her child in the womb and there was no clarity on administering the vaccine to a pregnant woman. This clearly falls under the category of an extraordinary circumstance. The facts of the present case definitely warranted the second respondent to exercise the powers under Clause 11.7 by taking into consideration the extraordinary circumstances and the second respondent ought to

have extended the DNB training period beyond the scheduled completion date of training. This power has to be exercised sparingly and it should not be used as a matter of routine. However, in an appropriate case this power must also be exercised and the authority cannot ignore Clause 11.7 and stick on to Clause 11.6 of the Information Bulletin of DNB. Clause 11.7 is a exception to Clause 11.6 of the Information Bulletin and this exception ought to have been exercised on the facts of the present case.

18. The above discussion leads this Court to come to a conclusion that the impugned proceedings of the second respondent dated 24.08.2021 requires the interference of this Court. Accordingly, the proceedings are hereby quashed. In view of the same, there shall be a direction to the second respondent to permit the petitioner to take the Practical Examination for DNB Course, December 2020. It is made clear that the order passed in the present writ petition cannot be taken as a precedent for all the cases that may arise in future and this Court took into consideration the extraordinary circumstances faced by the petitioner and this order is confined to the peculiar facts and circumstances of the present case.

19. In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

KST

Sub Assistant Registrar

To

1. The Secretary to Government,
Ministry of Health and Family Welfare
Government of India, New Delhi.

2. The Assistant Director
National Board of Examinations in Medical
Sciences (An Autonomous Body under the
Ministry of Health and Family Welfare)
Mahatma Gandhi Marg
(Ring Road), Ansari Nagar, New Delhi - 110 029.

+1cc to Mr.C.G.Kumar, Advocate, S.R.No.50697

W.P.No.19791 of 2021

RSV(CO)
PM/04/10/2021