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

Date of Decision: 21st May, 2021

+ W.P.(C) 1464/2021

ISHA JAISWAL & ORS. Petitioners

Through: Ms. Shruti Dixit, Advocate

versus

NATIONAL TESTING AGENCY
(NTA) & ORS.

..... Respondents

Through: Ms. Seema Dolo, Advocate for
R-1.

Mr. Sushil Kumar Pandey, Sr.
Panel Counsel for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through video conferencing.

1. The petitioners were candidates for admission to engineering colleges through the Joint Entrance Examination (Mains) [hereinafter, "JEE Mains"], conducted by respondent no. 1/National Testing Agency [hereinafter, "NTA"] in January and September 2020. They claim that they were unable to take the examination in the September 2020 session, or were not able to deliver satisfactory performances therein, due to circumstances arising out of the Covid-19 pandemic.

2. The JEE Mains of the year 2021 are now in progress. The

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petitioners however are unable to appear in the 2021 edition of the examination due to the eligibility conditions, which render the 2020 examination their last attempt. They seek an additional opportunity to appear in the examination this year, as they claim their inability to secure a satisfactory result in 2020 was due to factors beyond their control.

3. In the year 2020, the two sessions of the JEE Mains were originally scheduled to be held in January and April 2020. A candidate is permitted to take the examination in one or both sessions. Out of the eight petitioners, six of them appeared in both the sessions. Petitioner no. 1 appeared in one attempt and petitioner no. 4 was unable to appear in either of the two attempts.

4. For the 2021 examination, the NTA proposed to hold the examination in four sessions – in February, March, April and May, 2021. Factually, the examinations scheduled for the February and March, 2021 sessions were held and the examination for April and May, 2021 sessions have been postponed due to the pandemic. The eligibility conditions for the JEE Mains 2021 are set out in the Information Bulletin published by the NTA. The conditions which come in the way of the petitioners from appearing in the 2021 examination are as follows:

“3.1 Age Limit

For appearing in the JEE (Main) 2021, there is no age limit for the candidates. The candidates who have passed the class 12 / equivalent examination in 2019, 2020, or appearing in 2021 irrespective of their age can appear in JEE (Main) 2021 examination. However, the candidates may be required to fulfil the age criteria of the Institute(s)

in which they are desirous of taking admission.

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3.3 Year of Appearance in Qualifying Examination

Only those candidates who have passed Class 12 / equivalent examination in 2019, 2020 or 2021; or those who are appearing in Class 12 / equivalent examination in 2021, are eligible to appear in JEE (Main) 2021.

Candidates who passed Class 12/equivalent examination in 2018 or before as well as those who will appear in such examination in 2022 or later are not eligible to appear in JEE (Main) 2021.

Candidates must note that the IITs permit only two attempts for the JEE (Advanced), i.e. a candidate should have appeared for the Class XII (or equivalent) examination for the first time in either 2020 or 2021, subject to the condition of not having been admitted at an IIT on an earlier occasion. Details may be obtained from the Information Brochure of the JEE (Advanced) 2021. Please see link: <https://home.iitd.ac.in/news-jab.php> <https://jeeadv.ac.in/>.”

5. All the petitioners in the present case, had passed their Class-XII/ equivalent examination prior to 2018 and are, therefore, ineligible for the JEE Mains 2021.
6. The writ petition cites various reasons in support of their claim for an additional attempt, including Covid-19 infections to the candidates and/ or their families, severe floods in some parts of the country, lack of transport due to lockdowns, financial stress due to loss of livelihood, and mental stress and agitation in the unprecedented circumstances of the pandemic.
7. On this basis, the petitioners seek the following reliefs:-

- “A. Issue an appropriate writ, order or direction in the nature thereof directing the Respondent No. 1 and 2 to grant compensatory extra chance to the Petitioners to register and appear in the JEE Main being conducted in 2021 in the months of February, March, April and May;*
- B. Issue an appropriate writ, order or direction in the nature thereof and grant compensatory extra chance to the Petitioners having their last attempts to undertake the JEE Mains, 2020 to register and appear in at least 3 out of the 4 attempts in the current year JEE Mains in 2021;*
- C. Issue appropriate writ, order or direction in the nature thereof directing the Respondents to allow the Petitioners to apply and register for the forthcoming JEE Mains 2021;*
- D. Pass appropriate directions to the concerned authorities for making necessary arrangements to conduct the JEE Mains 2021 enabling the Petitioners herein;*
- E. Pass any other order or direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”*

8. In the counter-affidavit filed by the NTA, it has been contended that the NTA has taken a policy decision in which the interference of the writ court is not warranted. The petitioners having chosen not to challenge the eligibility conditions contained in the Information Bulletin, and in fact (in six out of eight cases) having participated in the examination, the NTA has urged that the relief sought by them would be to the detriment of other candidates. Factually, it has been averred that during the NTA made special arrangements to mitigate

the hardship caused to Covid-affected candidates, it created a dedicated e-mail account to which such candidates were directed (by the JEE helpline) to submit their grievances. 59 candidates approached the NTA in this respect and a further examination was conducted on 24.09.2020 in which 52 of those 59 candidates participated. The decision of the Supreme Court dated 24.02.2021 in W.P.(C) 1410/2020 [*Rachna & Ors. vs. Union of India & Anr.*] has been annexed to the counter-affidavit, wherein the Supreme Court declined an additional opportunity in favour of candidates whose last attempt for the UPSC examination was in the year 2020.

9. I have heard Ms. Shruti Dixit, learned counsel for the petitioners, and Ms. Seema Dolo, learned counsel for the NTA.

10. Ms. Dixit has taken me to the contents of the writ petition and urged that in the circumstances mentioned therein, the petitioners ought to be granted one further attempt to clear the JEE in 2021. She submits that relatively small number of last-attempt candidates would not lead to any material detriment to other candidates in the 2021 examination.

11. Ms. Dolo, learned counsel for the NTA, on the other hand cited extensively the judgment of the Supreme Court in *Rachna (supra)*, which according to her renders the petitioners' case untenable. Ms. Dolo states that the petitioners did not approach the help desk of the JEE Mains examination in time and were therefore unable to participate in the examination on 24.09.2020. They in fact approached the JEE help desk only in October, 2020, after the special examination had already been conducted.

12. Having heard learned counsel for the parties, and considered the judgment of the Supreme Court in *Rachna* (supra), I am of the view that the relief sought by the petitioners in this case cannot be granted. Ms. Dolo is right in contending that the principal arguments raised in the present petition are very much akin to the submissions rejected by the Supreme Court in *Rachna*.

13. The question which arose in *Rachna* related to the Civil Services Preliminary Examination [“CS exam”] conducted by the Union Public Service Commission on 04.10.2020. The petitioners before the Supreme Court were candidates who were barred from future attempts due to the limitation on the age of candidates or on the number of attempts. The Court noted the submissions that the imposition of the lockdown in March, 2020 had led to impediments in preparation for the examination, difficulties in transportation etc. The Court however ultimately accepted the contention of the respondents *inter alia* to the effect that the grant of additional time to the candidates who had already crossed the bar of the last attempt, would be to the detriment of the candidates appearing in the next ensuing session of the examination.

14. The Supreme Court, after noticing the impact of the pandemic on every individual of the society (in paragraphs 26 to 30 of the judgment), held as follows:

“33. The syllabus of the preliminary examination has not changed since 2015 and after the Rules 2020 were notified by the 1st respondent for Civil Services Exam 2020, the notice, in the first instance, was published on 12th February 2020 and the scheduled date

of the examination was fixed on 31st May, 2020 but because of the unprecedented situation of Covid-19 pandemic, the Commission took a policy decision to defer the examination and in the changed situation, after there was a relaxation in the lockdown, ultimately on 5th June, 2020 took a decision to hold the examination on 4th October 2020 and, therefore, instead of three months, the candidates got additional five months (i.e. eight months) to which one ordinarily can prepare for appearing in the examination in terms of the scheme of Rules 2020.

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35. This court cannot lose sight of the fact that apart from the present Examination 2020, it has been brought to the notice of this Court that remedial measures were adopted for the candidates who had participated in the various examinations/recruitment tests held for Central services by the Commission at the given point of time during the Covid 19 pandemic and apart from that, the State Commissions/recruiting agencies must have conducted their examinations/recruitment tests for various services and merely because the present petitioners made a complaint to this Court, cannot be taken into isolation for the purpose of seeking additional chance/attempt in the backdrop of Covid-19 pandemic, which has been faced by not only the candidates appeared in Examination 2020 but by the candidates appeared in the various examinations/recruitment tests held by the State Commissions or by other recruiting agencies and by and large, every member of the society in one way or the other but that does not in any manner give legitimate right to the petitioners to claim additional benefit/attempt which is otherwise not permissible under the scheme of Rules 2020.

36. So far as the instant case is concerned, there are limited attempts for the candidates who appeared in the general category and the scheme of Rules 2020 does not

provide any discretion to the 1st respondent to grant relaxation either in attempt or in age and any exercise of discretion which does not vest with the 1st respondent, if exercised, may go in contravention to the scheme of Rules 2020.

37. *Taking note of the order of this Court dated 30th September, 2020 passed in Writ Petition(Civil) No. 1012 of 2020 in the earlier proceedings, this Court has shown some sympathy for the candidates who were having their last attempt and were also likely to become age barred for next examination, if any indulgence could be shown to them. In compliance of the order of this Court, the 1st respondent has made endeavour to find out a way which is possible to give solace to such candidates and placed it before this Court that too with reservation that there is a possibility in providing one extra attempt for the candidates who had availed the last and final attempt in Examination 2020 provided they are within their respective age brackets as provided under Rule 6 of the Rules 2020. After the proposal was placed on record, even the petitioners/intervenors inter se made their submission to the Court that the proposal which has been placed by the 1st respondent for consideration of this Court according to them is discriminatory and is in violation of Article 14 of the Constitution.*

38. *We do find substance in what being urged by learned counsel for the petitioners inter se in questioning the decision placed by 1st respondent for our consideration. If an additional attempt remains restricted to the last attemptees for the reason that they had suffered during Covid 19 pandemic, all attemptees irrespective of the nature of attempt (i.e. 1st, 2nd etc.) who appeared in Examination 2020 must have faced the same consequences as being faced by the writ petitioners and each one of them have suffered in one way or the other during the Covid-19 pandemic. At the same time, this reasoning would equally apply to those who have crossed the upper age barrier. More so, when no discretion is left*

with the 1st respondent to grant relaxation in the age bracket to the candidates other than provided under Rule 6 of the scheme of Rules 2020 which indeed the present petitioners are not entitled to claim as a matter of right and that apart, those who have withdrawn their forms either because of lack of preparation or because of some personal reasons but have crossed the upper age limit to appear in CSE 2021, they would also be equally entitled to claim and no distinction could be made whether the candidate has appeared in the Examination 2020 and availed the last attempt or attempts is still available at his disposal or has crossed the upper age limit.

39. *We do find substance that any concession either in attempt or age is not available under the scheme of Rules 2020, at the same time, proposal which has been placed by the 1st respondent before us apart from complaint made inter se by the petitioners/intervenors themselves of being discriminatory in character, we are also of the view that it is advisable to avoid this situation and any relaxation which is not permissible either in attempt or age under the scheme of Rules 2020 apart from being in contravention to the rules, it may be discriminatory and it is advisable not to exercise discretion in implementing what being proposed by the 1st respondent in compliance of the order of this Court dated 30th September, 2020.*

40. *The thrust of submission of learned counsel for the petitioners was that discretion has been exercised by the respondent as a matter of policy in the earlier selections and the present petitioners have a legitimate expectation that the Government must exercise its discretion to overcome the unprecedented situation which the petitioners have faced while appearing in the Examination 2020 and their right of fair consideration and effective participation in the selection process has been denied to them which is in violation of Articles 14 and 21 of the Constitution.*

41. *The submission, in our view, is without substance*

for the reason that the policy decisions which had been taken by the executive on earlier occasions of which a reference has been made always depend on the facts and circumstances at the given point of time and has to be tested independently in the circumstances in which it has been exercised by the competent authority or the 1st respondent as in the instant case.

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“46. It has been brought to our notice that not only the petitioners/intervenors before this Court, but there are large number of candidates who appeared in the various examinations in the year 2020 during Covid 19 pandemic and everyone must have faced some constraints/impediments/inconvenience in one way or the other and this Court can take a judicial notice that these petitioners have appeared in the same pattern of examination in the previous years since the year 2015 and what is being claimed and prayed for under the guise of Covid 19 pandemic is nothing but a lame excuse in taking additional attempt to participate in the Civil Service Examination 2021 to be held in future and we find no substance in either of the submissions which has been made before us.

47. The data furnished to this Court by the Commission clearly indicate that various selections have been held by the Commission for Central Services in the year 2020 during Covid 19 pandemic and selections must have been held by State Commissions and other recruiting agencies, if this Court shows indulgence to few who had participated in the Examination 2020, it will set down a precedent and also have cascading effect on examinations in other streams, for which we are dissuaded to exercise plenary powers under Article 142 of the Constitution.”

(Emphasis supplied.)

15. Similar consideration would prevail in the present case also. In the case of the JEE Mains also, there has been no change in the syllabus during the relevant period, although Ms. Dixit states that the structure of the examination relating to the number of questions, etc. has undergone some changes. As in the case of the CS exam, the JEE Mains were also postponed due to the pandemic and remedial measures as submitted in the counter affidavit of NTA were adopted for Covid-affected candidates.

16. The Supreme Court has negated the claim of candidates placed in substantially similar circumstances as the petitioners herein, and has cautioned against interference with the policy decisions in this regard. Relying upon the observations in *Union of India & Others vs. M. Selvakumar & Another* (2017) 3 SCC 504 [paragraph 47], the Court has reiterated the well-settled principle that interference by the writ Court in policy decisions is permissible only for a very limited purpose, i.e. in the event, the policy is found to be absolutely capricious, totally arbitrary or not informed of reasons.

17. Ms. Dixit has sought to distinguish the aforesaid judgment of the Supreme Court on the ground that the CS exam is an examination for entry into public service, whereas the JEE is an examination for entrance into engineering colleges. I am unable to accept that this distinction renders the aforesaid judgment inapplicable to the present case. While the stage at which a candidate takes the JEE and the CS Exam are doubtless different, the principle to be considered remains the same, viz., whether the pandemic entitles a candidate, whose last attempt was taken in 2020, to a further attempt. This question has been

answered in *Rachna*.

18. Ms. Dixit's second point of distinction is that, in the CS exam, a candidate is entitled to skip attempts, subject to the maximum age bar and the maximum number of attempts that he or she might take, whereas in the JEE, the candidate having regard to the year in which he/she completes the Class XII examination, would not be able to skip the 2020 session and take a subsequent examination. I am afraid this submission is also untenable. The imposition of an age limit, coupled with a maximum number of attempts, as in the case of the CS exam, is no different in principle from laying down a criterion based upon the year in which the candidate took the school-leaving examination. In the case of the CS exam, the candidate may choose when to take his/her attempts, subject to the age limit. In the JEE, the only limitation is with regard to the time that has passed after the school-leaving examination. The candidate can choose to take every attempt available to him/ her or to skip any attempts as they consider most beneficial to them.

19. Ms. Dixit has also raised the grievance that as far as the JEE (Advanced) Examination is concerned, the persons taking the last attempt in 2020, were granted an additional opportunity, whereas the same was not done for the candidates in the JEE Mains Examination. Ms. Dolo on the other hand points out that the JEE (Advanced) Examination is taken only by those candidates who have secured a given cut-off rank in the JEE Mains Examination. It is conducted by a different examining body and the number of candidates in the JEE (Advanced) are much less than in the JEE Mains Examination. In the

writ petition also, it has been pointed out that several other examinations were postponed/ cancelled during the relevant period in 2020. These facts are also insufficient to entitle the petitioners to relief in this petition. The fact that a different body had made a different decision for a different examination, does not render the policy decision of the NTA arbitrary or unreasonable, in the facts of the present case. The observations of the Supreme Court in paragraph 45 of the judgment in *Rachna* (supra) make it clear that the executive may take a policy decision based upon prevailing circumstances for better administration, and to meet out the exigencies of time. The Court is called upon to consider the validity of such a decision only when a challenge is made before it. The grant of a relaxation in the past was held by the Court not to constitute an arbitrariness or unreasonableness necessitating the grant of an exemption in the present year also. For similar reasons, the policy decision taken by the testing body in the case of the JEE (Advanced) Examination cannot render the present decision arbitrary or unreasonable. The Supreme Court has also cautioned against a decision which would have a cascading effect on all other examinations which took place in 2020.

20. For the aforesaid reasons, I am of the view that the present petition is covered against the petitioners by the decision in *Rachna* (supra).

21. The petition is, therefore, dismissed. No order as to costs.

PRATEEK JALAN, J

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