

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5724/2022

Miss Sayee d/o Prashant Shelke,
aged 19 years, Occ. Student,
r/o c/o Shelke Hospital, Warud,
Tq. Warud, Dist. Amravati.

...PETITIONER

...VERSUS...

1. The Minister of Education & Minister of Health and Family Welfare, Government of India, through its Secretary, Shastri Bhavan, New Delhi – 110 001.
2. The Director, National Medical Commission (NMC), New Delhi -110 001.
3. The National Testing Agency for NEET (UG) Exam. 2022, through Secretary, Ministry of Education and Ministry of Health & Family Welfare, Government Of India, First Floor, NSIC- MDBP Building, Okhla Industrial Estate, New Delhi – 110020.

...RESPONDENTS

Mr. V. A. Kothale, Advocate for petitioner.
Mr. S. A. Chaudhari, Advocate for respondents.

CORAM:- A. S. CHANDURKAR & ANIL L. PANSARE, JJ.
DATED :- 15.12.2022

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

2. The petitioner has put forth following substantive prayer:

“(i) Order respondents to make available correct score card showing 514 marks out of 720 in substitution to incorrect score card for NEET (UG) exam. 2022 showing 166 marks by respondent no.2 referred vide Annexure P-2.”

3. The petitioner appeared in the NEET (UG) Examination 2022 from Indo Public School, Mardi Road, Amravati Centre on 17.07.2022. According to the petitioner, the answer key was made available by the respondent no.3 on website on 31.08.2022. The petitioner made assessment of her own and found that she has correctly answered 133 questions and incorrectly answered 18 questions and that her expected score is 514 marks. Thereafter, result came to be notified on 07.09.2022 by the respondent no.3. The petitioner was allotted 166 marks as against her expectation of 514 marks. She, therefore, sought clarification by pointing out the alleged error committed by the respondent no.3. The clarification was sought on e-mail. According to the petitioner, the reply sent along with answer sheet was the same as was made available by respondent no.3, which tallies with answer sheet that was available on website. The petitioner made a request to correct the marks but there was no response and hence the present petition.

4. Respondent no.3 has filed affidavit in reply mentioning therein that the answer sheets are specially designed machine gradable sheets named as “OMR” answer sheet. The candidates are required to answer the question by darkening only one circle against each question. The invigilator concerned distributed test booklet and OMR answer sheets which bear the same booklet number and code to the candidates. The candidates were instructed to sign the attendance sheet on receiving the test booklet and the OMR after verifying that the two numbers and the codes are same. The invigilator also has to counter-sign the attendance sheet on handing over the documents to the candidate. The candidates themselves fill their roll number and test booklet number inside the box and mark/bubble the digits accordingly on the OMR/answer sheet. The OMR/answer sheet consist of declaration that such a candidate has signed and confirmed her thumb impression. The same process has been followed in the case of the petitioner and that therefore the petitioner has appended her signature twice on the attendance sheet and the same is counter-signed by the invigilator as per the guidelines. It follows that the petitioner has marked her response only on one OMR/ answer sheet which is then evaluated for the purpose of declaration of the result. As per the record, the petitioner has

attempted 51 answers correctly and 38 incorrectly and ultimately secured 166 marks out of 720 and not 514 marks as alleged.

5. Learned counsel for the petitioner has made an attempt to impress upon the Court that answer sheet has been manipulated, fabricated and tampered. He has referred to the answer sheet Annexure P-1, filed along with the petition. In support, he has drawn our attention to the rejoinder, wherein the grounds to substantiate allegations are made in the following terms:

“1(A) Shape of thumb in Annexure P-1 is of vertically elongated shape whereas thumb impression in Annexure R-II, is of oval nature.

(B) Right side responses in Section A & B does not counter fit with each other and round impression at serial No.127 in Annexure P-1 exactly counter fits with distorted impression in Annexure R-II. So coincidence in this behalf is objectionable.

(C) Response no.171(3), there is line in the circle in Annexure P-1 which fully exists in Annexure R-II response no.171(3) though attempt for question No.171 exist in Annexure P-1 whereas not in Annexure R-II.

(D) Annexure P-1 is sent by eMail from nta.neet.nic2022result@gmail.com about which stand of Respondent No.3 is silent without making any comment either by accepting or denying truthfulness

of Annexure-P-1. So credibility of Annexure-R-II is absolutely doubtful.

(E) Annexure-R-II OMR Answer sheet showing 166 response does not bear No.7195514 on right hand side as seen in photograph personally obtained by father of petitioner referred here-in-above as Annexure-P-9.....

(2) As to para No.17 it is made clear that signature obtained on the OMR sheet is not disputed but because of segregation of response sheet of Annexure-P-II without giving carbon copy that is Replica of whole OMR sheet including responses sheet is not delivered to petitioner and it is retained by respondent No.3. So there are every chances for respondent No.3. so contention of Respondent No.3 about correctness of OMR Answer sheet Annexure-R-II is false.

(3) It is made clear that OMR sheet showing 514 score referred in Annexure-P-1 was available upon the Portal neet.nta.nic.in from 31st August to 2nd September 2022 however respondent No.3 deliberately maintained silence by not giving specific reply upon petition para No.3. So investigation in this behalf is necessary.”

6. Learned counsel for respondent no.3, however, has strongly disputed such a status. According to him, respondent no.3 has verified the original OMR sheet as requested by the petitioner and found that 166 marks allotted is correct and proper response

was sent to the petitioner by e-mail. According to him, the answer sheet, Annexure P-1 is not sent by the respondent no.3. He has then referred to the clauses of information bulletin of NEET UG 2022, which deals with unfair means, practice and breach of examination rules, to submit that the petitioner carries blame of playing unfair practice and that therefore she is liable for punishment under Chapter 13 particularly clause 13(1) and 13(2) and that the respondents are all set to initiate penal action against the petitioner.

7. We have given thoughtful consideration to the submissions made by both the sides. There appear many disputed questions of facts as to the manner in which the assessment is made, hacking petitioner's e-mail account and also about tampering with the answer sheet. The petitioner has alleged that her answer sheet has been manipulated and tampered. The respondent no.3 has alleged that the petitioner has flouted examination rules.

8. Mr.Kothale, has requested us to compare two answer sheets. According to him, the manipulation as pleaded in the answer sheet is a mistake visible to the naked eye. We are however not inclined to go into these disputed facts. The remedy

lies somewhere else and the petitioner is at liberty to approach the appropriate forum.

9. The petitioner has even lodged FIR with Police Station, Warud to that effect. The FIR has been lodged alleging hacking of the petitioner's e-mail account on 15.10.2022. According to the petitioner, the matter is under investigation.

9. In the circumstances, we are not inclined to entertain the petition under Article 226 of the Constitution. We, however, hope that Warud Police Station shall conclude the investigation as expeditiously as possible and in the event the petitioner's allegations are found to be made out, we grant liberty to the petitioner to approach the appropriate forum for redressal of her grievance.

10. We accordingly decline to grant any relief to the petitioner. The writ petition is, therefore, dismissed. Original OMR/Answer sheet be returned to Mr. S. A. Chaudhari, learned counsel for respondent nos. 1 to 3.

Rule is discharged. No order as to costs.

(Anil L. Pansare, J.)

(A. S. Chandurkar, J.)

11. After pronouncement of the judgment, Mr.Kothale, learned counsel for the petitioner, submits that the petitioner intends to challenge the order and accordingly makes a request to continue the interim relief granted vide order dated 23.09.2022, by which the petitioner was permitted to take part in the admission process for MBBS First Year Course in the counselling rounds, subject to the final result of this petition.

12. Mr. Chaudhari, learned counsel for the respondents, has opposed the request on the ground that the interim relief was granted subject to outcome of the petition. Since the petition has been dismissed, there arises no question of continuing the interim relief.

13. We have, however, been informed that the petitioner has been admitted in the MBBS Course, pursuant to the interim relief. In the circumstances, we deem it appropriate to extend the interim relief for a period of three weeks, which stands extended accordingly.

(Anil L. Pansare, J.)

(A. S. Chandurkar, J.)