



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	22.12.2021
PRONOUNCED ON	:	25.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.1221 OF 2021

AND

C.M.P.NO.7816 OF 2021

National Testing Agency,
(National eligibility-cum-Entrance Test (UG)-2020)
Rep. By Secretary,
Department of Higher Education, MHRD,
NSIC - MDPP Building,
Okla Industrial Estate Phase III,
New Delhi - 110 020

.. Appellant/2nd Respondent

vs

1. K.S.Manoj (Minor)
Rep. By Father & Natural Guardian

...1st Respondent/Petitioner

2. Union of India
Rep. By Secretary to Government,
Ministry of Human Resource Development,
New Delhi.

3. The Medical Counselling Committee,
Rep. By Secretary,
All India Quota for Medical UG 2020,
Directorate General of Health Services,
Government of India,
Room No.348, A Wing,
Nirman Bhavan, New Delhi.

4. The Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.



5. The National Medical Council,
Rep. By its Secretary,
Pocket 14 Sector 8,
Dwaraka, New Delhi - 110 077.

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..2 to 5 Respondents/
1, 3 to 5 Respondents

Prayer : Appeal preferred under Clause 15 of Letters Patent against the order dated 01.03.2021 in W.P.No.15959 of 2020.

Prayer in W.P.No.15959 of 2020:-

Writ Petition filed under article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent pertaining to i) National Eligibility Cum Entrance Test (UG) 2020 Score card issued in the name of the Petitioner dated 16/10/2020 ii) Second OMR Answer Sheet issued in the name of the Petitioner downloaded on 17/10/2020 and iii) 2nd Respondents email response dated 26/10/2020 quash the same and to issue directions to the 2nd Respondent to declare the results and rank of the petitioner in NEET (UG) 2020 as 594 of 720 marks commensurate with his performance as reflected in first OMR Anse Sheet uploaded on 16/10/2020 FN and issue consequential directions to the 3rd and 4th Respondents to allow the participation of the petitioner in counselling for admission to Medical Courses (UG) 2020 with reference to 594 out of 720 marks in NEET (UG) 2020 and accordingly provide him admission to Medical Course (UG).

For Appellant : Mr.G.Rajagopalan, Senior Advocate
for M/s.Sunitha Kumari

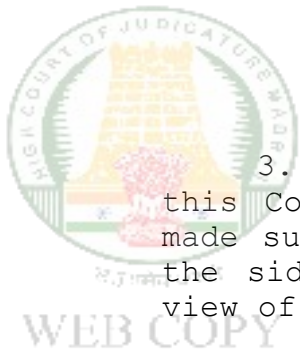
For Respondents : Mr.M.Ravi for R1
Ms.A.Anuradha (ACGSC) for R2
Ms.Shubharanjani Ananth for R5

JUDGMENT

(Per: PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 01.03.2021 recorded on W.P.No.15959 of 2020. This appeal is by the National Testing Agency - the second respondent.

2. Heard Mr.G.Rajagopalan, learned Senior Advocate and Mr.M.Ravi, learned advocate for the first respondent - the writ petitioner.



3. It is noted that both the learned advocates have taken this Court extensively through the material on record and have made submissions on merits. Authorities are also relied by both the sides. The same is not noted in detail in this order, in view of the final order which we intend to pass.

4. Having considered the material on record, this Court finds as under:-

4.1 The writ petitioner has approached this Court invoking Article 226 of the Constitution of India with the prayer to allow him to participate in counselling for admission to Medical Courses (UG) 2020 with reference to 594 out of 720 marks in NEET (UG) 2020 and accordingly provide him admission to Medical Course (UG). It needs to be therefore adjudicated whether the petitioner can be granted admission in the course considering his merit with reference to 594 out of 720 marks in NEET (UG) 2020.

4.2 This Court is conscious that when there is difference between the say of a student vis-a-vis that of the State Authorities, more particularly when it is the agency like appellant before this Court, normally the say of the State Authorities is accepted to be true, on the premise that they can not have any interest to take any stand against a student. All the propositions of law are based on this assumption. We would have also followed the same. While considering writ petition, learned Single Judge also kept such proposition in view and had considered the matter. But when more than one Hon'ble Judge of this Court, on independent assessment of the material and circumstances have thought it proper to grant relief to the student, we need to look at the issue with little more seriousness. It is noted that writ petition was examined on different dates before different Benches and at least two Hon'ble Judges of this Court found that there was something wrong in the synchronization of the result of the test conducted by the Agency.

4.3 On 09.12.2020, learned Single Judge recorded the following order:-

"The petitioner in this case right from the beginning was complaining that the OMR / Answer Sheet that was uploaded on 5.10.2020 in the website of the 2nd respondent showed that the petitioner had taken 594 marks in the NEET-2020 Exams and that this position continued in the website upto 16.10.2020. However, this position changed all of a



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sudden on 17.10.2020 and the petitioner noticed that there was a complete change in the OMR Sheet in the same website, wherein the marks came down to 248. This Court directed the original OMR Sheet to be furnished to the learned Standing Counsel appearing on behalf of the 2nd respondent and it was also verified by the petitioner as well as the learned counsel appearing on behalf of the petitioner. On verification they found that the OMR Sheet that has been furnished was the one which was uploaded in the website on 17.10.2020.

2. Initially, this Court was not convinced to dig deep into this issue, since the OMR uploaded in the website of the 2nd respondent was also physically shown to the petitioner after it was furnished by the 2nd respondent. This Court therefore directed the 2nd respondent to file an additional counter affidavit and explain as to how, two OMR Sheets can be uploaded for the very same candidate showing completely different marks.

3. The 2nd respondent filed an additional counter affidavit and reiterated the stand that there was only one OMR Sheet that was uploaded in the website of the 2nd respondent and which reflected that the petitioner had secured 248 marks.

4. The Additional Rejoinder filed by the petitioner based on the account retrieved from the Google Account of the petitioner, changed the entire complexion of this case. On the face of it, these materials substantiates the case of the petitioner that there were two OMR Sheets that were uploaded in the website of the 2nd respondent. The one which was uploaded on 05.10.2020 and which remained in the website till 16.10.2020 and which showed that the petitioner had secured 594 marks in the NEET Exams, has been filed by way of Additional Typed set of papers which contains the various screen shots taken by the petitioner on 11.10.2020 and 12.10.2020. This retrieved Google Account has to be taken on the face of it since it is not possible to manipulate the Google Account, which is not within the control of the petitioner.



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5. It is not known as to how this OMR Sheet completely changed from 17.10.2020 by bringing down the marks of the petitioner from 594 to 248. The petitioner who had informed about his marks to his friends and relatives and was confident that he will get an MBBS Seat, was shell shocked when he found that the subsequent OMR Sheet virtually reduced the marks by 50%.

6. This Court is now really concerned and quite apprehensive as to whether such manipulation of OMR Sheet is a possibility. As it is, anything in an electronic mode is susceptible to manipulation and nobody can rule it out completely. If such manipulation is in fact possible, it is really a danger which requires immediate investigation. During my tenure in this Port Folio, there were several other cases which came up for consideration on the same ground that the OMR Sheet that was uploaded in the website does not truly reflect the actual answers given by the candidates in the Exam. This Court did not go deep into those cases since there was only one OMR Sheet that was available and therefore, this Court did not question that OMR Sheet merely based on the ipse dixit of the candidate. However, this case came as a surprise to this Court and made this Court think that probably there was some truth in the claim made by those students.

7. If manipulations are possible, everything happening in an on-line mode, the OMR Sheet of a bright student can always be swapped with the OMR Sheet of a mediocre student and nobody can really find out the truth unless it is thoroughly enquired. This is only a fear expressed by this Court and this Court fervently hopes that this fear does not ultimately prove to be right. Even if there is a remote chance of manipulating the OMR Sheet, that is a clear harbinger of the malady that it can cause to the entire selection process. This Court is taking this issue very seriously since these candidates are future Doctors and precious lives are involved.

8. In view of the above, there shall be a direction to the 2nd respondent to thoroughly



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consider the entire materials that have been placed by the petitioner and conduct an Investigation and a Report shall be filed before this Court. The Report must explain as to how two OMR Sheets containing the name of the petitioner was uploaded in the website and how it was completely in variance. It gives an opportunity to the 2nd respondent to plug the leak, if there is one.

9. The next round of counseling is commencing from tomorrow. The petitioner cannot be made to wait till the Report is received from the 2nd respondent, since all the seats by then will get filled up. Therefore, there shall be an interim direction to the 3rd and 4th respondents to permit the petitioner to participate in the counseling for admission to the Medical UG Course by taking the marks of the petitioner in NEET Exam as 594 marks. Ultimately, if the petitioner secures a seat, the same shall not be finalised and the results shall be kept in a sealed cover, awaiting the final orders in this Writ Petition.

10. The Report of the 2nd respondent shall be sent in a sealed cover to this Court. Post this case on 23.12.2020 and the Report shall reach this Court, by then."

4.4 Thereafter, the matter was considered by another Bench on 11.01.2021. The following order was passed on that day:-

"Mr.G.Masilamani, learned Senior Counsel, assisted by Mr.G.Nagarajan, learned Counsel appearing for the 2nd respondent has demonstrated that the screen-shots relied by the petitioner from 05.10.2020 to 16.10.2020 showing more marks to the petitioner are fabricated ones and that there is only one OMR Sheet, which would expose that the petitioner has secured 248 marks and not more than that.

2. However, Mr.Ravi, learned counsel for the petitioner, after getting instructions from the petitioner and his parents, submits that the petitioner has not tampered any document, as claimed by the respondents and this Court can even order for an investigation, by any agency. According to



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him, the respondents are attempting to justify their second OMR sheet uploaded on 17.10.2020 and the truth can be ascertained only by a thorough investigation. He also pointed out certain lacunas on the counter filed by the respondents and requested for the copy of the report relied by the respondents. He also requested for an investigation and if it reveals in the investigation the petitioner has committed any fraud by manipulating the screenshots, then the petitioner is prepared to face the consequence of criminal trial and on the contrary, if it is found that a mistake has been committed by the respondents, then the benefit must be given to the petitioner.

3. Mr. Abdul Saleem, the learned Counsel for the 3rd Respondent submits that pursuant to the earlier orders of this Court, the petitioner was called for Counselling and has been allotted at Tuticorin Medical College. However, the petitioner has not been admitted in the College, waiting for the outcome of the writ petition.

4. In view of the paucity of time and considering the fact that the report, as directed by this Court, has been filed only today, this Court is inclined to order for an interim arrangement for admission, subject to the outcome of this writ petition.

5. Post the matter on 21.01.2021, for deciding the further course of action, as to the necessity and ordering of an investigation by an independent agency. It is made clear that if an investigation is ordered and the investigation reveals that any manipulation has been committed by the petitioner, not only the petitioner, but his parents will also be held responsible and have to face the legal consequences. Needless to state that the petitioner can neither take any advantage on the admission obtained in the college, which was made pursuant to the order of this Court, nor can claim any refund of the fee paid at the time of admission. He is also liable to pay the discontinued fee. The petitioner and his parents, who are also present before this



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Court, virtually, agreed for the aforesaid terms.

6. Since the issue involved in the writ petition is yet to be decided, on the case and counter claims, by ordering an investigation, this Court, as an interim arrangement, extends the benefit to the petitioner, based on the marks on the screen-shots relied by him, for admission in the Tuticorin Medical College, where the petitioner has already been selected pursuant to the earlier directions of this Court.

7. Accordingly, an interim direction is given to the third respondent to admit the petitioner at Tuticorin Medical College, where the petitioner has already been selected. It is made clear that this admission is subject to the result of the writ petition. Since the cut-off date is 15.01.2021, Mr. Abdul Saleem, the learned Counsel for the 3rd respondent is directed to communicate this order to the 3rd respondent to admit the petitioner in the College, subject to the result of the Writ petition.

Call on 21.01.2021."

4.5 Finally, on 01.03.2021 the petition is disposed of by giving various directions including for investigation. Para 29 & 30 of order dated 01.03.2021 read as under:-

"29.The learned counsel appearing for the second respondent has produced the original OMR Sheet of the petitioner along with attendance sheet. Registry is directed to keep the same in a sealed cover and hand it over to the Investigating Agency. Registry shall get an acknowledgment from the concerned Investigating Agency and the same shall form part of the files. In view of cut off date for admission in MBBS Course, by interim order dated 09.12.2020, the petitioner was permitted for counselling and also directed to be admitted at Thoothukkudi Medical College, subject to the result of the Writ Petition. It is made clear that the continuation of the petitioner's studies at Thoothukudi Medical College is subject to the outcome of the investigation.



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30. With the above observations, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed. Post this matter for reporting compliance on 02.06.2021."

4.6 The conjoint consideration of the above would lead to a situation that, though the consequential direction of admitting the petitioner in the medical course is given, the condition precedent thereto is not granted while finally disposing of the petition. The said admission was made subject to outcome of the investigation, however the authorities are aggrieved by the said investigation and had prayed for stay of investigation which the Bench had granted earlier. It is this deadlock like situation, which needs to be addressed. As noted above, the petitioner had prayed to participate in counselling for admission to Medical Courses (UG) 2020 with reference to 594 out of 720 marks in NEET (UG) 2020 and accordingly provide him admission to Medical Course (UG). The declaration about his merit at 594 marks out of 720 is neither granted nor rejected. Though there are many reasons and to some extent even findings in favour of the writ petitioner, as such, no final decision is recorded by learned Single Judge on that prayer which is the main prayer in the writ petition. For this reason, it would be just and proper to request learned Single Judge to first record the final direction qua the said prayer. For that purpose, this appeal needs to be disposed of with direction to the Registry to place the matter before learned Single Judge for adjudication of the prayer. The interim protection granted by learned Single Judge which has operated in favour of the petitioner all throughout, also needs to be continued till the disposal of the petition. The stay granted qua the investigation, at the request of the appellant Agency, on this appeal, may also be continued till the writ petition is taken up for further consideration by learned Single Judge leaving it open to the Bench to consider continuing / vacating it, after hearing the parties.

5. As noted in para 3 above, though number of submissions are made before us, since the matter is ultimately being sent back to learned Single Judge for the reasons recorded above, answering any of the arguments raised by either side may prejudice any of the parties which would not be proper. For that reason, those submissions and the authorities are not discussed leaving it to be gone into when the writ petition is taken up for consideration for final declaration qua the main prayer which is yet to be adjudicated.

6. For the above reasons, the following order is passed.



6.1 Registry is directed to place the writ petition before learned Single Judge for adjudication of the main prayer, as noted above.

6.2 The interim protection granted by learned Single Judge in favour of the petitioner vide order dated 11.01.2021 which has operated all throughout, shall continue till the disposal of the petition.

6.3 The stay granted qua the investigation, at the request of the appellant Agency, on this appeal, shall continue till the writ petition is taken up for further consideration by learned Single Judge leaving it open to the Bench to consider continuing / vacating it, after hearing the parties.

6.4 This appeal is disposed of in above terms. No costs. Consequently, C.M.P would not survive and is disposed of accordingly.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssm

To :

1. The Secretary to Government,
Union of India
Ministry of Human Resource Development,
New Delhi.
2. The Secretary,
The Medical Counselling Committee,
All India Quota for Medical UG 2020,
Directorate General of Health Services,
Government of India, Room No.348, A Wing,
Nirman Bhavan, New Delhi.
3. The Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
4. The Secretary,
The National Medical Council,
Pocket 14 Sector 8,
Dwaraka, New Delhi - 110 077.



Copy To

The Section Officer,
Writ Section,
High Court, Madras.

+1cc to M/s.Sunitha Kumari, Advocate, S.R.No.4176

W.A.No.1221 of 2021

CP (CO)
RLP (07/02/2022)