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

Date of Decision: 2nd June, 2022

+ **W.P.(C) 9026/2022**

SHREYA YADAV

..... Petitioner

Through: Mr. Ravi Kumar, Advocate with Mr. Rohit Pratap Singh and Mr. Anurag Nasiar, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo, Advocate with Ms. Sarika Soam (Legal Consultant) for Respondent No. 1-NTA.
Mr. Piyush Beriwal, Sr. P.C. with Mr. Rishav Dubey, G.P. for Respondent No. 2.
Mr. T. Singhdev, Advocate with Mr. Abhijit Chakravarty, Advocate for Respondent No.3.

WITH

+ **W.P.(C) 9165/2022**

DISHA JOSHI

.....Petitioner

Through: Mr. Ravi Kumar, Advocate with Mr. Rohit Pratap Singh and Mr. Anurag Nasiar, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo, Advocate with Ms.



Sarika Soam (Legal Consultant) for Respondent No. 1-NTA.

Ms. Geetanjali Tyagi (G.P) with Mr. Abhishek Gupta, Advocate for Respondent No. 2.

Mr. T. Singhdev, Advocate with Mr. Abhijit Chakravarty, Advocate for Respondent No.3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. On the basis of a mere apprehension, Petitioners have approached this Court for directions that in their opinion would pre-empt tampering of Optical Mark Recognition [**“OMR”**] answer sheets in the forthcoming National Eligibility cum Entrance Examination-2022 (Undergraduate) [**“NEET”**]. The reliefs sought are as follows:

(i) Direct the Respondent 1, 2 & 3 to appropriately secure the image of the OMR answer sheet of Petitioner at Petitioner's exam centre, immediately after completion of the NEET – 2022 examination by Petitioner with further direction to transmit the image of the OMR answer sheet to the mobile number (XXXXXXXXXX) of parents of Petitioner in presence of Petitioner,

(ii) Direct the filing of the image of NEET-2022 OMR answer sheet of Petitioner in present proceedings through the counsel for respondents, within a day of obtaining such image.”

2. As the grounds urged and reliefs sought are identical, a common order is being passed in these two petitions.

Brief Facts:

3. Ms. Shreya Yadav [the sole Petitioner in W.P.(C) 9026/2022], and Ms. Disha Joshi [the sole Petitioner in W.P.(C) 9165/2022] have appeared in



previous years' NEET examinations, but were unable to get admission on the basis of their respective scores.

4. The case canvassed by Mr. Ravi Kumar, counsel for Petitioners, is that the Petitioners have been wrongly shown to have secured extremely low marks in the NEET-2020 exam, despite having performed at par with the best candidates across the country in the mock examinations. He alleges that the National Testing Agency (“NTA”) [Respondent No. 1 in both the matters], which conducts the NEET examination, has forged and fabricated OMR sheets of the Petitioners in the past, and therefore in the forthcoming NEET-2022, directions should be issued to rule out any possibility of tampering with the OMR sheets. This, he submits, can be easily accomplished by way of the directions sought in the petitions. He submits that such directions would cause no prejudice to the Respondents and only aid the Petitioners in proving their case, which has been set forth in writ petitions pertaining to NEET examination conducted in the previous years, which are pending disposal. Mr. Kumar also argues that Petitioners' apprehension is founded on their unfortunate past experience and facts that are in the public domain. He emphasises that it is not uncommon that answer sheets of meritorious students are swapped with other students, and places reliance upon the orders passed in the above-stated writ petitions filed by Petitioners, which are pending disposal. Mr. Kumar fervently argues that Petitioners have no faith in the NTA, and thus protective directions are extremely necessary to secure the image of their respective OMR answer sheets in the forthcoming NEET-2022 examination.



5. He further relies on an order dated 09th December, 2020 passed by the High Court of Judicature at Madras,¹ wherein the Court had made observations raising concerns regarding the issue of manipulation of OMR sheets, which is also being urged before this Court. Thereafter, *vide* judgment dated 01st March 2021,² the Court therein had ordered an investigation by the CB-CID and the DIG, CB-CID into the allegations made therein, and the candidate was permitted to sit for counselling, subject to the outcome of the investigation.

6. It is also pointed out that tampering/ swapping of OMR sheets also occurred in previous years' NEET examinations, and Petitioners have impugned the same in writ petitions bearing W.P.(C.) 10319/2020 [wherein Shreya Yadav and Disha Joshi are Petitioners No. 13 and 5 respectively out of 14 Petitioners],³ and W.P.(C) 12268/2021 [wherein Disha Joshi is the sole Petitioner],⁴ . Mr. Kumar argues that in the said petitions, the Joint Registrar of this Court has also made observations recording manipulation of OMR sheets in the order dated 25th April 2022,⁵ confirming Petitioners' suspicions and demonstrating NTA's *mala fide* therein.

Respondent's Contentions:

¹ In W.P No. 15959/2020 and WMP No. 19859/2020 titled *K. S. Manoj v. UOI and Ors.*

² *Id.*

³ Seeking, *inter alia*, quashing of notices dated 27.09.2020 and 05.10.2020 issued by NTA providing for procedure to challenge the OMR sheet; direction to R-1 to refund amount of 51,000/-, direct R-3 to allow Petitioner to register for counselling process; direct R-1 to provide original OMR sheets of Petitioner; etc.

⁴ Seeking, *inter alia*, declaration of impugned OMR sheet for NEET-2021 as fabricated; allow physical examination of the OMR Sheet along with OMR sheet of 10 highest securing candidates; Direction to Respondent for admission of Petitioner to any affiliated institution, declare a seat vacant for petitioner till final disposal of the case, etc.

⁵ In W.P.(C) 12251/2021 titled *Sabareesh Rajan v. NTA*, which is tagged along with W.P.(C) 12268/2021.



7. Ms. Seema Dolo, counsel for NTA, has drawn the attention of this Court to the order dated 13th May 2022,⁶ wherein the Court, declined to pass an interim direction for Petitioners' admission in the next academic session in MBBS course. The said order reads as follows:

"1. The present applications have been filed by the petitioners inter-alia seeking a direction to respondents to grant admission to them in the MBBS course in the next academic session in any institution under the administrative control of the Respondent no. 1 & 4.

xx ... xx ... xx

4. Having considered the submissions of the parties, I find absolutely no merit in the present applications. These applications are premised on the petitioners' belief that the OMR sheets were in fact changed by the respondents. This allegation has neither been established nor can be established in these proceedings without evidence including expert evidence being led in this regard. Even otherwise merely because the colour of the OMR sheets may have faded with the passage of time, it cannot be said that the OMR sheets have been actually changed or tampered. Therefore, the prayer of the petitioners for grant of performance in the NEET UG exam cannot be accepted.

5. The applications being wholly misconceived are, accordingly, dismissed.

W.P.(C) 12251/2021, W.P.(C) 12268/2021, W.P.(C) 12285/2021 &
W.P.(C)12332/2021

*6. On the last date, the matter was directed to be listed before the learned Joint Registrar so that the original OMR sheets can be produced by the respondents for perusal by the learned counsel for the petitioners. **No direction was however issued either for taking the said OMR sheets on record or for the learned Joint Registrar to record the submissions of the learned counsel for the petitioners in respect of his observations on the OMR sheets.** The OMR sheets have however been taken on record and the submissions of the parties qua the OMR sheets have been recorded by the learned Joint Registrar, may be under a mistaken belief. Be that as it may, since the OMR sheets have now been placed on record, this Court will, on the next date, consider passing appropriate orders regarding the maintainability of the writ petition or granting any relief to the petitioner after perusing the said OMR sheets.*

7. List on the date already fixed i.e. 08.07.2022, on which date the Registry will ensure that the OMR sheets and all other accompanying documents which have been taken on record pursuant to the order passed by the learned Joint

⁶ Id.



Registrar are produced before the Court. 8. In the meanwhile, the petitioners who have already filled their application form for the NEET UG exam, 2022 may, without prejudice to their rights and contentions in the present petitions, appear in the said exam."

Analysis:

8. Upon a perusal of the order dated 13th May 2022 extracted above, it can be that the Court has specifically recorded that the Joint Registrar had mistakenly recorded the submissions of the counsel for Petitioners with respect to the OMR sheets and erred in taking the OMR sheets on record. Therefore, the observations of the Joint Registrar cannot be held to be a conclusive and thus no reliance can be placed on the said order of the Joint Registrar to seek reliefs as prayed for.

9. The afore-noted order was then carried up in appeal by the Petitioners therein, and came to be decided by a Division Bench of this Court in LPA No. 354/2022 on 26th May 2022, in the following terms:

"(...)

3. The present appeal is directed against the order dated 13.05.2022 passed in the writ petition preferred by the appellant in W.P.(C) No. 12251/2021.

4. By the impugned order, the learned Single Judge has rejected the prayer made by the appellant/ writ petitioner to seek interim direction that he be granted admission to the MBBS Course for the Academic Session 2022-23.

5. The said prayer was premised on the allegation that the OMR sheets of the appellant had been replaced by the respondent to the disadvantage of the appellant.

6. The learned Single Judge has found that the said allegation is a factual allegation which cannot be determined in writ proceedings, much less at the interim stage.

7. In any event, we find absolutely no merit in the said claim of the appellant for the reason that the appellant cannot assume that even if his OMR sheets were replaced – as alleged by him, his so called original sheets would have qualified him in the NEET UG Exam.



8. *In our view, the claim of the appellant founded on the aforesaid ground is completely meritless.*

9. *The appeal is, accordingly, dismissed.”*

10. Next, it has also been pointed out by Ms. Dolo that the judgment of Madras High Court dated 01st March 2021 in W.P No. 15959/2020 was carried in appeal before a Division Bench,⁷ wherein, *vide* judgment dated 25th January 2022, the matter was remanded to the Single Judge for adjudication of the main prayer, and the stay granted in earlier orders *qua* investigation was directed to continue till such consideration by the Single Bench. This judgment was then carried up in appeal to the Supreme Court and tagged along with a batch of petitions bearing Special Leave to Appeal (C.) No. 3253/2022, wherein *vide* order dated 04th March 2022, the Apex Court passed the following directions:

“1. Mr Tushar Mehta, Solicitor General, has placed reliance on the report of the investigation which was carried out by the National Testing Agency in pursuance of the order of the High Court dated 9 December 2020 (Annexure P-12). The report indicates as follows:

“a. Only one OMR Answer Sheet (bearing the Bar Code No. 2137204) of the Petitioner/ Candidate : K.S. Manoj (having Roll No.4102202104) was uploaded only once i.e. on 05.10.2020 on the Official Website of NTA (www.ntaneet.nic.in) hosted on NIC Server (Reference: Annexures-3/3A).”

The Solicitor General states that this was confirmed by the National Informatics Centre.

2. Issue notice, returnable on 1 April 2022.

3. Dasti, in addition, is permitted.

4. Pending further orders, there shall be a stay of the operation of the impugned judgment and order of the Division Bench of the High Court of Judicature at Madras dated 25th January 2022. However, the admission which has been granted to the first respondent shall not presently be disturbed, pending further orders of this Court.

5. There shall be a stay of the direction for further investigation by the CB-CID, pending further orders.”

⁷ W.A. No. 1221 of 2021 titled *NTA v. K. S. Manoj (Minor) & Ors.*



11. Besides, the said judgment can be distinguished on facts, as the petitioner therein had two different OMR sheets, which clearly emerges from a reading of the opening paragraphs of the said judgement. The relevant portion is extracted hereinbelow:

“Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari filed Mandamus, calling for the records on the file of the second 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 Sheet issued in the name of the petitioner downloaded on 17.10.2020 and (iii) 2nd respondent's email response dated 26.10.2020, quash the same and to issue directions to the 2nd respondent in first OMR Answer 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 Petitioner:	xx	...	xx	...	xx
For Respondents:	xx	...	xx	...	xx

ORDER

The petitioner, a candidate, who appeared in NEET (UG-2020) filed this writ petition to call for the records relating to the score card issued by the 2nd respondent in the name of the petitioner uploaded on 17.10.2020 and the e-mail response of the respondent dated 26.10.2020, to quash the same and for a consequential direction to the 2nd respondent to declare the results of the petitioner in NEET (UG – 2020) as 594 out of 720 marks as reflected in the first OMR answer sheet uploaded on 16.10.2020.

2. According to the petitioner, he appeared in the NEET examination, 2020. His case is that in the first OMR sheet uploaded by the 2nd respondent on 16.10.2020, the petitioner, on verification with the answer key, found that he secured 594 marks and on the next day, a different OMR sheet was uploaded, reflecting as if the petitioner had secured 248 marks. On the very same day, the petitioner made a representation to the 2nd respondent for which, the 2nd respondent by reply dated 26.10.2020 sent a communication to the petitioner that on verification of the original OMR sheet and score card of the petitioner, it was found that he secured only 248 marks out of 720 and suggested to approach the respondent office to verify the details. Aggrieved over the same, the petitioner had filed this present writ petition on 28.10.2020 and this Court has ordered notice to all the respondents.”

12. That said, the foundation of the prayers sought in the present petition is purely based on conjectures and surmises. Petitioners’ reliance on the orders passed in their pending writs is misplaced, as there is no conclusive



determination therein that OMR sheets of Petitioners have been tampered with. The Division Bench of this Court has also not accepted such a plea. Based on some bitter experiences, it cannot be inferred that there is a 'leak' in the examination system of the Respondent. Merely because Petitioners' results were not as they had expected, the Court cannot conclude that there has been tampering of OMR sheets or that the same would occur in the future. Petitioners' belief is unsubstantiated and whimsical. The allegations pertaining to the previous years is a disputed and contested fact that has not been established in the court of law. Mr. Kumar has also made a bold statement across the bar, stating that the Petitioners would surrender their seats if they do not make it to the list of top-10 rank holders. The court is unimpressed with such frivolous theatrics. This statement is made purely to sway the Court on emotions. That said, the court wishes the very best for them and hopes that they come out with flying colours in the examinations.

13. The upshot of the above discussion is that the instant petitions lack a valid cause of action, and there is no demonstrable breach of any fundamental or legal right to seek the reliefs claimed, which is a prerequisite for the court to entertain a writ petition.

14. In view of the above, the Court finds no merit in the present petitions. Accordingly, the present petitions are dismissed.

SANJEEV NARULA, J

JUNE 2, 2022

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