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

Date of Decision: 8th July, 2022

+ W.P.(C) 12251/2021, CM APPLs. 38335/2021 & 23070/2022

SABAREESH RAJAN

..... Petitioner

Through: Mr. Ravi Kumar and Mr. Rohit Pratap
Singh, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo and Ms. Sarika,
Advocates for R-1.
Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Ms. Bhanu Gulati,
Ms. Michelle B. Das and
Ms. Sumangla Swami, Advocates for
R-3.

+ W.P.(C) 12268/2021 & CM APPL. 23064/2022

DISHA JOSHI

..... Petitioner

Through: Mr. Ravi Kumar and Mr. Rohit Pratap
Singh, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo and Ms. Sarika,
Advocates for R-1.
Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Ms. Bhanu Gulati,
Ms. Michelle B. Das and
Ms. Sumangla Swami, Advocates for
R-3.



+ W.P.(C) 12285/2021 & CM APPL. 23067/2022

SONAM

..... Petitioner

Through: Mr. Ravi Kumar and Mr. Rohit Pratap
Singh, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo and Ms. Sarika,
Advocates for R-1.
Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Ms. Bhanu Gulati,
Ms. Michelle B. Das and
Ms. Sumangla Swami, Advocates for
R-3.

+ W.P.(C) 12332/2021 & CM APPL. 23065/2022

RIMJHIM GOSWAMI

..... Petitioner

Through: Mr. Ravi Kumar and Mr. Rohit Pratap
Singh, Advocates.

versus

NATIONAL TESTING AGENCY & ORS.

..... Respondents

Through: Ms. Seema Dolo and Ms. Sarika,
Advocates for R-1.
Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Ms. Bhanu Gulati,
Ms. Michelle B. Das and
Ms. Sumangla Swami, Advocates for
R-3.



**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

THE CONTROVERSY - OMR SHEETS

1. Petitioners are aspirants of National Eligibility Entrance Test (UG) [NEET 2020]. NEET Examination is conducted via pen and paper-based mode in Multiple Choice Questions (“MCQ”) format. The candidates are required to fill their responses to the questions by filling/ shading the corresponding circle on Optical Mark Recognition (“OMR”) sheets – which is then used to digitally read answers/ information. Apart from the responses, candidates are also required to fill in personal details and affix their signature and thumb impression for identification. These OMR sheets are provided to candidates at examination centre at the time of examination.

BRIEF FACTS

2. Since the grounds of challenge and reliefs urged in the present petitions are nearly identical, the same are being decided by way of a common order. Petitioners appeared in NEET 2020 held on 12th September, 2020, but were unable to secure admission on the basis of their scores. Contending that their OMR sheets have been tampered with, they moved the Supreme Court seeking quashing of the results. The Supreme Court, *vide* order dated 03rd December, 2020, declined to entertain Petitioners’ grievance and directed them to approach the High Court under Article 226



of the Constitution of India, 1950.¹ Pursuant thereto, Petitioners filed a writ petition on 11th December, 2020 before this Court to challenge results of NEET 2020 Examination – which is pending adjudication before this Court.²

3. In the meanwhile, Petitioners appeared for NEET 2021 Examination on 12th September, 2021. After the examination, Respondent No. 1 – National Testing Agency (“NTA”) published the scanned images of OMR sheets of all candidates, including those of the Petitioners, in accordance with Clause 13.1 of the Information Bulletin of NEET 2021, which reads as under:

“13.1 Display of OMR sheets and responses on the website and challenging the grading of questions on OMR

13.1.1. After the conduct of the examination, NTA will display the scanned images of OMR Answer Sheets and recorded responses by the machine, of all candidates on the website (<https://neet.nta.nic.in/>). The exact date of display of scanned images of OMR Answer Sheets shall be communicated after the examination on the NTA website.

13.1.2 Applicants will be given an opportunity to submit representation against the OMR grading by paying a non-refundable processing fee of Rs. 200/- per question challenged.

13.1.3. Representations made by the candidates against the OMR grading will be verified by the NTA from the actual record and the same will be updated in the data if challenges are found to be correct. However, no intimation in this regard will be sent to an individual candidate.

13.1.4. Applicants are advised to visit the website <https://neet.nta.nic.in/> for viewing and downloading the image of the OMR Answer Sheet by the candidates.”

4. This time again, in respect of NEET 2021 Examination, Petitioners proclaim that their OMR sheets have been forged by Respondents, and those which have been uploaded on the website after the said examination are

¹ In W.P.[C] 1255 / 2020 dated 3rd December, 2020.

² W.P. (C) 10319/ 2020 titled Muskan Sabharwal & Ors v. National Testing Agency & Ors.



different to those originally submitted by them at the time of examination. Petitioners contend that they never marked the answers which are shown on the uploaded OMR sheets, as displayed on the website. They assert that the sheets are fake/ forged/ fabricated and that NTA, in connivance with Respondent No. 2 [Director General, NTA] and Respondent No. 3 [Joint Director, NTA], knowingly and dishonestly contributed/ acted towards the preparation of such OMR sheets. Petitioners and other candidates have deliberately been coerced towards filling their responses in the OMR sheets using only black and blue ball pens supplied by the Respondents, thereby enabling Respondents to subsequently forge/ fabricate the OMR sheets. The same would not have been possible had Petitioners and other examinees been permitted to use pens having different coloured inks. This is a disingenuous effort on the part of Respondents in as much as a complete criminal design has been etched at the State's expense. Respondents have also failed to adequately explain the differences between the original OMR sheets submitted by Petitioners and the alleged carbon copy thereof uploaded for public view, despite the same being in Respondents' custody throughout, establishing their culpability and complicity.

5. During the course of the proceedings, vide order dated 28th October, 2021, Ms. Seema Dolo, counsel for NTA, was directed to keep carbon copies of the OMR sheets in question in her custody, so that they may be produced before the Court. Later, on 15th December, 2021, noting Petitioners' desire to inspect the OMR sheets which were in the custody of Respondents, the Court permitted inspection before the Joint Registrar. The relevant portions of the said order read as under:



“1. The allegations of the petitioners is that the Optical Mark Recognition ["OMR"] sheets which the respondent-National Testing Agency ["NTA"] claims were filled by the petitioners in the National Eligibility Entrance Test (UG), 2021 are forged and fabricated, and were not the OMR sheets belonging to the petitioners. By an order dated 28.10.2021, Ms. Seema Dolo, learned counsel for the NTA, was directed to keep the carbon copies of the OMR sheets in question in her custody so that they may be produced before the Court. Ms. Dolo states that carbon copies of the OMR sheets are in her custody at this time.

2. The contention of Ms. Dolo is that the petitions raises various disputed questions of fact which are inappropriate for adjudication in writ proceedings. She relies upon a judgment of this Court dated 07.01.2021 in W.P.(C) 6838/2020 [Gaurav Jaiswal through his Legal Guardian vs. Union of India through Ministry of Education/National Testing Agency Anr.] in this connection.

3. Be that as it may, the counter affidavit of the NTA has not yet come on record in order for this Court to determine whether the matter is capable of resolution in writ proceedings. At Ms. Dolo's request, one week's time is granted for bringing the counter affidavit on record.

4. Mr. Ravi Kumar, learned counsel for the petitioners, submits that the OMR sheets in question be sent for forensic examination by the Forensic Science Laboratory at the risk and cost of the petitioners. I am of the view that such an order at this stage is not called for. An order for forensic investigation cannot be made simply on the petitioners contention that these are not their OMR sheets. Once the counter affidavit is filed, the Court will have be able to consider the rival contentions of the parties and take a call as to the appropriate course of action.

5. In the meanwhile, **Mr. Kumar seeks an opportunity to inspect the OMR sheets which are in the possession of Ms. Dolo.** Ms. Dolo submits that she has no objection to inspection of the OMR sheets being carried out in the presence of the Joint Registrar. The persons carrying out the inspection will not be permitted to carry any object (including a pen, pencil etc.) for the inspection.”

[Emphasis Supplied]

6. In terms of the afore-noted directions and order dated 29th March, 2022, Petitioners along with their counsel inspected the OMR sheets on 25th April, 2022. On the said date, Joint Registrar noted certain contentions raised by Petitioners *qua* veracity of the OMR sheets produced by Respondents and ordered that it would be in fitness of things to produce the



documents before the Court for perusal. Later, when the matters came up for hearing before the Court on 13th May, 2022 on applications filed by Petitioners seeking admission in the MBBS course for the academic session 2021-22, it was noted that no direction was given to the Joint Registrar to record the submissions of the counsel in respect of the OMR sheets, or to take them on record. The relevant portion of the said order reads as under:

“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.”

[Emphasis Supplied]

7. Aggrieved by the above-noted order, Petitioners preferred an LPA bearing no. 354/2022 and other connected matters, which were dismissed by a speaking order dated 26th May, 2022, to the following effect:

“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."*

CONTENTIONS ADVANCED

ON BEHALF OF PETITIONERS

8. In the above background, Petitioners now seek issuance of directions against Respondents to allow them admission into any affiliated institute of Respondents, now effectively, for the academic session 2022-23.

9. As is evident from the afore-noted order dated 13th May, 2022, an objection has been raised by Respondents *qua* maintainability of the petition, in light of highly disputed facts emerging from the stand taken by the parties. Mr. Kumar has controverted this and filed written submissions contending that the jurisdiction of the High Court under Article 226 is not ousted, merely because a fact is alleged to be disputed, and thus, this Court in exercise of its extraordinary jurisdiction should take cognizance of the fact that OMR sheets produced by Respondents are fake/ forged/ fabricated. He argues the facts pertaining to the soft copy of OMR sheet supplied by Respondents are, in fact, "undisputed". To buttress this submission, it is argued that:

- (i) Colour of Soft Copy of OMR is Red and completely different



from OMR of other Petitioners. [Annexure P – 12 of Rejoinder].

- (ii) No code is present in the OMR within right side corner vertical bars extending from top to bottom. However, a code is present in OMR of all other Petitioners as for Ms. Disha Joshi (Code: S070306), Ms. Sonam (Code: S205152) and Ms. Rimjhim Goswami (Code: S183989).
- (iii) Yellow and Brown Colour lines present in OMR.
- (iv) Thumb impression of Petitioner is present.

10. Likewise, he submits that facts pertaining to the physical copy are also “undisputed”, which is evident from the following aspects:

- (i) Colour of physical OMR is orange and ditto same as that of all other Petitioners.
- (ii) Surprisingly, a Code is present in physical OMR sheet which was not present in soft copy.
- (iii) OMR sheet has no colour misalignment lines.
- (iv) Thumb impression on OMR is smaller than actual thumb of Petitioner.
- (v) Carbon Copy of Physical OMR and the physical OMR sheet bear no match on symmetry or size.
- (vi) No depressions or impressions of handwriting of Petitioner or Invigilators are formed on the OMR.
- (vii) Alleged misdirected lines and double answers in OMR do not match with the carbon copy.
- (viii) OMR sheet has no wrinkles or smudges and is a fresh piece of paper, without embossed printing.
- (ix) One of the Petitioners’ thumb impression on the OMR sheet is



smaller than the actual impression thumb impression.

11. Notwithstanding his contention that the afore-noted facts are “undisputed”, Mr. Kumar also places reliance upon judgments of the Supreme Court in *ABL International Ltd. and Anr. v. Export Credit Guarantee*,³ *Gunwant Kaur & Ors v. Municipal Committee, Bhatinda*⁴ and *Popatrao Vyankatrao Patil v. State of Maharashtra & Ors.*,⁵ to emphasise that even disputed facts can be looked into by this Court in exercise of its writ jurisdiction.

ON BEHALF OF THE RESPONDENTS

12. On the other hand, Ms. Seema Dolo, counsel for the Respondents, argues that the instant writ petitions should not be entertained, considering that highly disputed questions of fact are involved in light of the assertions made by Petitioners and the grounds urged thereon. That apart, she submits that the entire premise of the petition is completely misconceived and is a figment of Petitioners’ imagination. Petitioners have wrongly perceived that Respondents have an agenda and/ or *mala fide* approach towards Petitioners. The allegations are baseless and cannot be established by the averments made in the petitions. Petitioners have not placed any cogent material or evidence to support their assertions, except for their own belief and inference. Such unsubstantiated allegations are misleading and cannot be a ground for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

³ Appeal (Civil) 5409/1998.

⁴ AIR 1970 SC 802.



ANALYSIS

13. The Court has given due consideration to the submissions advanced by the counsel for the parties. Petitioners have, in clear and unequivocal terms, made an allegation that the OMR sheets are fake/ forged/ fabricated. This factual assertion is emphatically and categorically denied by the Respondents. In light of divergent stands, the controversy *qua* veracity of OMR sheets gives rise to highly disputed facts, which cannot be adjudicated without affording an opportunity to the parties to lead evidence to prove their stand. Petitioners have attempted to demonstrate that there are undisputed facts and the Court should entertain the present petitions. This submission is *ex-facie* contrary to the record. In fact, Petitioners' assertions, as extracted above, which reveal so called "undisputed facts" pertaining to soft and hard copies of the OMR sheets are highly contested allegations – which have been vehemently denied by Respondents. Petitioners contend that the signatures and thumb impressions on the OMR sheets produced by Respondents are not original. Petitioners also argue that the thumb impression on the OMR sheet of a certain Petitioner is smaller than his/ her actual impression. These facts cannot be held to be "undisputed", as is being canvassed by Petitioners and are crucial issues. Whether the OMR sheets contain the original thumb impressions and signatures; and/or whether the impressions on the OMR sheets are indeed smaller than the actual thumb impression; or whether the carbon and physical copies of the OMR sheet match in size or are symmetrical, would entail evidence of an expert to assist

⁵ (2020) 19 SCC 241.



the Court to form an opinion. The Court cannot delve into a line-by-line comparison *qua* the physical copy of OMR sheets with the carbon copy thereof, especially without affording Respondents an opportunity to controvert the objections so raised through evidence.

14. It is also pertinent to note that in the Petitioner's written submissions, it has been categorically asserted "*that since physical OMR is forged, it cannot bear any finger prints of the Petitioner, provable by forensic*". Not only that, Petitioners had previously requested a direction to send copies of OMR sheets for forensic enquiry – which was also rejected by this Court *vide* order dated 15th December, 2021. This only goes to prove that Petitioners themselves have emphasised and raised facts, which are provable by forensic analysis and require consideration of evidence which is not on record. Therefore, Petitioners' contention that the facts are undisputed is misconceived and untenable.

15. The judgments relied upon by Petitioners and principles laid therein cannot be disputed. Indeed, disputed facts can be adjudicated in writ petitions; it is equally correct that merely because one of the parties to the litigation raises a dispute with regard to the facts of the case, the Court should decline to exercise its extraordinary jurisdiction. Therefore, there can be no absolute bar; but then, each case has to turn on its own facts. In the instant case, as discussed above, the issues raised certainly require examination of further evidence. The allegations of forgery/fabrications cannot be inferred as Petitioners have to be perceived on the basis of their own meticulously examination of evidence.



16. Mr. Kumar also made a fervent request to the Court to send the OMR sheets for forensic analysis; however, the Court is not inclined to grant such a relief and conduct a trial. All the petitions level very serious allegations against NTA; however, there is hardly any cogent material on record supporting such allegations. As of now, the conspiracy alleged against NTA is only a theory and the allegations are nothing but based on conjectures and surmises. While the Court is not suggesting that OMR sheets are tamper proof, but certainly, there is no basis for any opinion to the contrary and cast a doubt on the examination process. Nonetheless, the Court, on a *prima facie* basis, has examined the OMR sheets. The same appear to bear the signatures and thumb impressions of Petitioners, in original. Of course, this is a view formed solely on the basis of ocular examination; however, Mr. Kumar categorically asserts that those are not the original ink signatures or thumb impressions of Petitioners. To this extent he has also placed reliance upon the judgments of ***Ram Prasad v. State of Rajasthan***⁶ and ***Manoj Kumar v. State of Bihar***⁷ to buttress his case for issuance of directions for forensic analysis of the OMR sheets; however, these judgments too do not aid the Petitioners' case. In the absence of an established *prima facie* case, the allegations are based on mere conjecture and surmises – which can never take the place of proof. The Court does not find anything unviable in the system adopted by NTA. On a specific query of the Court as to whether the mechanism adopted by NTA *qua* the OMR sheets had previously been held to be invalid, Mr. Kumar merely places reliance on certain news articles and

⁶ W.P. (C) No. 16497/2021.

⁷ Civil Writ Jurisdiction Case No. 3492/2014.



has failed to cite any decision of the Courts or adjudicatory authority to this extent.

17. That apart, the relief sought in the present petition cannot be granted for the reason that the last date for admissions for the academic session 2021-22 was 28th April, 2021. As it stands, the academic session of 2021-22 is already underway – with classes having commenced since 14th February, 2022. In fact, NEET UG 2022 Examination is scheduled for 17th July, 2022, the registrations whereof have already been closed.

18. In view of the above, the Court is not inclined to entertain the present petition. It is made clear that Petitioners are free to exercise their remedies and seek redressal of their grievances before the civil court or such other appropriate forum in accordance with law. It is therefore, clarified that the observations made hereinabove are on a *prima facie* basis, and a conclusive view on the merits of the case has not been expressed by this Court.

19. The original OMR sheets that were produced and retained in this Court are directed to be returned to NTA. For this purpose, Ms. Dolo shall appear before Joint Registrar (Writ) side on 19th July, 2022. The original OMR sheets shall be preserved in a sealed cover for a period of one year from today, following which, in case no direction to the contrary is made by any court of law, NTA shall be free to proceed weeding such documents out as per their policy and/ or provisions contained in the information bulletin and other extant rules.



20. In the above terms, the present petitions are dismissed along with all pending applications.

SANJEEV NARULA, J

JULY 8, 2022

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(corrected and released on 16th July, 2022)

