

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12792 OF 2023

Dr. Shyamsundar s/o Kashiram Patil
Age:- 49 years, Occ. Medical Practitioner,
R/o Shree Nagar, Barshi Road, Latur,
Tq. & Dist. Latur

... PETITIONER

VERSUS

- 1) The Union of India
Through its Secretary,
Ministry of Health and Family
Welfare Department,
New Delhi
- 2) National Board of Examinations
In Medical Sciences,
Mahatma Gandhi Road,
Rind Road, Ansari Nagar,
New Delhi – 110029

...RESPONDENTS

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Mr. S. S. Tope, Advocate for Petitioner
Mr. A. G. Talhar, D.S.G.I. for Respondent No.1
Mr. N. S. Chaudhari, Advocate for Respondent No.2

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 31.10.2023.

ORAL JUDGMENT (Per- Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard

finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses (B) and (C) as under:-

“(B) By issuing appropriate writ, order direction in the nature of writ, kindly direct the respondent No.2 to conduct the examination of the petitioner i.e. National Eligibility Cum Entrance Test-Super speciality 2023.

“(C) Pending hearing and final disposal of this writ petition, the respondent No.2 may kindly be restrained from declaring the result of examination i.e. National Eligibility Cum Entrance Test-Super speciality 2023.”

3. The Petitioner has averred that he has acquired the qualification of M.D. (Medicine) from the Grant Medical College, Mumbai. He commenced his medical practice in Latur and is a well known medical practitioner in that town. He applied for the D.M. (Doctor of Medicine) entrance exam in 2022. He has succeeded in the said entrance test for a super speciality post for the year 2022. He was not comfortable in joining the college that was allotted to him and, therefore, he decided not to join the said college and re-appear for the same examination in 2023.

4. It is undisputed that the Petitioner applied online for the

National Board of Examinations in Medical Sciences for the D. M. entrance exam. The documents that he uploaded on the website consist of a captured photo, an uploaded photo, his digital signature, the left hand thumb impression, proof of NMC/SMC/Medical Council Registration Certificate. On uploading the appropriate information, he was issued with the National Eligibility Cum Entrance Test admit card. The examination was scheduled on 29.09.2023 at iON Digital Zone, iDZ LB Nagar, which is in Ranga Reddy, Hyderabad, State of Telangana. The reporting time at the examination centre was 7.00 a.m. The entrance gate was to be closed at 8.30 a.m. The examination was to commence at 9.00 a.m. and was to conclude at 11.30 a.m.

5. It is contended that the Petitioner reported for the examination at the exam center. While seeking an entry into the exam hall, it was noticed that he was not carrying the permanent registration certificate, issued by the Medical Council. It is contended that he requested the authorities to allow him to enter the examination hall only on the strength of the admit card. The examination authorities demanded the copy of the registration certificate, citing the instructions mentioned on the admit card. The

Petitioner is said to have conveyed to them that he can show the soft copy of his Medical Council registration certificate as he carried the photograph of the said certificate in his mobile phone. Since such devices were not permitted to be carried by a candidate to the examination hall, he went back to the parking lot and collected the cell phone and came back to the examination hall. However, as he was late and as the cellular phone device was not permitted to be brought into the exam centre, the authorities insisted that he should produce the certificate of registration with the Medical Council. For this reason, the Petitioner was late and was disallowed from appearing for the examination.

6. The strenuous contention of the learned Advocate for the Petitioner can be summarised as under:-

- (a) The Petitioner had successfully uploaded the material details required for the acceptance of the examination form.
- (b) The relevant documents were considered while approving the examination form and while issuing the admit card to the satisfaction of the authorities. The proof of his registration with a medical council was also uploaded as a document.

(c) Based on the above, the Petitioner was issued with an admit card.

(d) Once a candidate has an admit card, the authorities should not insist on production of any other document.

(e) It is the lapse on the part of the examination authorities in not allowing the Petitioner to appear for the exam and, therefore, the concerned authorities should be directed to conduct a special examination for the Petitioner and until such examination is conducted and the answer sheets of the Petitioner are scrutinized by the concerned examiner, the results of the examination should not be announced.

7. The learned Advocate appearing on behalf of Respondent No.2 has relied on the affidavit-in-reply of Dr. Vinay. Gupta, Additional Director (Medical), National Board of Examination, Medical Sciences, New Delhi dated 25.10.2023. He has raised an objection as regards the maintainability of this Petition by relying upon the judgment delivered by the Hon'ble Supreme Court (three Judges Bench), in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others – (1994) 4 SCC 711*, to contend that the cause of action would not lie before the Aurangabad Bench of the Bombay

High Court and this Petition deserves to be dismissed. He further draws our attention to paragraph Nos. 5, 6, 7 and 8 of the affidavit-in-reply, which read as under:-

“5. It is respectfully submitted that, the Technology Partner of NBEMS has confirmed on the basis of CCTV Footages that, the candidate (petitioner) reported on time to the Test Centre, however, he didn't carry either the Hard copy of Soft copy of "Permanent Registration Certificate", issued by Medical Council for Medical Qualification, even after being remanded, multiple times, to show even the soft copy but he failed to produce the certificate.

6. It is respectfully submitted that, NBEMS appointed Appraiser has also reported in his report that, one of the candidate was denied the entry due to non-production of registration certificate. Report from NBEMS appointed appraiser is enclosed herewith as Annexure-R2.

7. It is respectfully submitted that, in view of non-production of required documents, as per Clause No.3.5, 6.1.2 and 6.12.2 of Information Bulletin, which the petitioner has not produced. NBEMS appointed Appraiser and Venue Head did not allow him entry into the Test Centre after the gate closure time.

8. It is respectfully submitted that, the results of NEET-SS 2023 are already declared.

8. It is submitted that the results of NEET SS 2023 are already declared.

9. The learned Advocate, therefore, submits that as the Petitioner is a senior Doctor and has an experience of more than 30 years, he should have observed the requirements as were set out by way of specific instructions to all the candidates as regards the type of the documents in physical form which were required to be brought along for the examination. When the Petitioner himself has forgotten to carry the document, he cannot blame the authorities for having disallowed him from appearing for the examination.

10. The Petitioner has relied upon the order passed by this Court at the Principal Seat in ***Writ Petition No.6384 of 2023 dated 01.06.2023, filed by Dhanashree N. Jagtap Vs. Union of India and others.***

11. The Petitioner has also cited a judgment delivered on 20.10.2021 at the Principal Seat in ***Writ Petition No.6042 of 2021 (Vaishnavi Vijay Bhopale and another Vs. National Testing Agency and others)***, wherein two students were permitted to take special exams with a direction to the authorities to make arrangements for conducting such exams. He, however, points out that, today itself he has received the knowledge that this judgment has been quashed by

the Hon'ble Supreme Court. He is unable to furnish further details.

12. It does not require any debate that as a result of technological advancement and development, there are instances when students have resorted to various methods/tactics of manufacturing admit cards, identity cards, hacking websites and carrying air-pods or electronic earbuds in the examination hall, in order to resort to malpractices in the examinations. We are reminded of the movie 'Munnabhai MBBS', and it would not be too much to say that there are several candidates who resort to such practices. There are instances when the results of the NEET-UG and PG exams are hacked by hackers, results are manufactured and higher scores in the examination results are published on such fictitious websites.

13. The examination authority in the present case i.e. Respondent No.2, has been consistently informing the candidates as to what documents they should be carrying along with them to the examination hall and which are the electronic instruments and gadgets that are to be left behind and are not to be carried to the hall. It would be advantageous to reproduce the important instructions printed behind the National Eligibility cum Entrance Test, super-speciality 2023 admit card published by the National Board of

Examinations in Medical Sciences, as under:-

- “1. The admit card is subject to the condition that if ineligibility is detected at any stage, the candidature shall be cancelled.
2. Check the particulars in the admit card carefully. Error, if any, is to be reported to NBEMS.
3. Entry to the examination hall without the admit card is not permitted.
4. Candidates must bring to the test centre the following documents:
 - * Printed copy of admit card with photo pasted on it.
 - * Permanent Registration Certificate issued by a medical council for medical qualification.
 - * All of the authorized photo IDs details of which have been provided in the application form (must be original and valid/non-expired): PAN card/Voter ID/Passport/ Driving license/ Aadhar card (with Photograph). Government issued photo ID MUST be produced in ORIGINAL HARD COPY. Photocopies/ Scanned copies in mobile phones are NOT acceptable. As candidates can not carry the mobile device inside the test centre, documents stored in digilocker can not be shown inside the test centre.
5. Please maintain silence and discipline during the examination. Use of any unfair means or improper conduct will lead to debarment of the candidate from the examination. This may also force appropriate legal action against him/her.
6. Use of all electronic devices, including cell phones, pagers, calculators, pen drives, tablets, is strictly prohibited at the examination venue. Since examination centres do not have a provision for safekeeping of such devices, candidates are advised not to carry them to the examination venue. You must not also carry pens and pencils.
7. To check against possible impersonation, authorities will be verifying the identity and genuineness of a candidate by taking their photograph, thumb impression or by any other means at the examination centre.
8. Should a candidate have any queries/doubts she/he may please call for the invigilator by raising their hand.
9. The candidate is not permitted to make a late entry or exit early from the examination centre.
10. Each candidate must follow instructions displayed on the computer screen while taking the examination.

11. List of prohibited items at the test centre:
 - * Any stationery item like textual material (printed or written), notes, plastic pouch, calculator, pen, writing pad, pen drives, eraser, etc.
 - * Any electronic device like mobile phone, Bluetooth, earphones, microphone, pager, wrist watch/health band, calculator, electronic pen/scanner etc.
 - * All ornaments like bracelets, ring, earrings, nose-pin, chain/necklace, pendants, necklace with pendants, badge, brooch etc.
 - * Other items like wallet, goggles, handbags, belt, cap, gloves etc.
 - * Any eatable item opened or packed, soft drinks, water bottles etc.
 - * Any other item which could be used for unfair means, for hiding communication devices like wireless/Bluetooth devices, spy camera etc.
12. No arrangement will be made at the centres for keeping any articles/items belonging to the candidates.
13. Candidates are advised to refrain from tattooing their fingers with henna/colours to avoid difficulties in finger biometric based registration for the test.
14. All candidates are required to go through the admit card and report discrepancies, if any, to NBEMS at its communication web portal (CWP)

NOTE: The admit card containing 2 pages MUST be printed on a single A4 size white paper (BACK TO BACK).

14. Our attention is also drawn to the NEET-SS 2023 information bulletin running into 83 pages. There are several directions and instructions set out in the said document as to how a candidate is to conduct himself while participating in the examination. Every candidate appearing for the examination shall be deemed to have read the information for candidates, from Clause 2.1 onwards. Several contingencies are cited, which would result in

disqualifying or debarring a candidate. Clause 6.12 of the bulletin indicates the documents which a candidate 'MUST' carry (the word 'MUST' is typed in capital), indicating the mandate behind the requirement for producing the physical documents before entering the examination centre. 6.12.2 mandates that a photocopy of permanent SMC/MCI/NMC registration will be tendered by the candidate, which will be retained by the test centre. Besides such document, one of the Government issued photo IDs, like PAR card/ driving license/ voter ID/Passport/ Aadhar card with photograph, should be carried by the candidate.

15. Clause 6.14 indicates that candidates without valid ID proof would not be allowed to enter the examination premises. Clause 6.15 indicates that an 'unfair means' case shall be registered against the candidates producing false/forged documents/ID proofs.

16. Below Clause 6.16, a list of items are mentioned, which would not be allowed to be taken beyond the security check point under any circumstances and which include various electronic gadgets as well as ornaments, goggles, wallets, water bottles, eatable items, fast-food, soft drinks or any such items which can be used as an unfair mean for hiding communication devices, like wireless,

bluetooth devices, spy camera, etc.

17. Below 6.17, the candidates are indicated as to which are those documents that are to be carried in physical form. The candidates appearing for the exam are also directed to read the admit card carefully for items which are required to be carried inside the examination centre.

18. We quite foresee the purpose and object behind the mechanism designed by the examination authorities to ensure that the examination is conducted in a fair manner. They intend to ensure that a proxy candidate or a candidate resorting to unfair means does not participate in the examination. The list of documents that are required to be carried by the candidates in physical form, is apparently with the intention that the examination authorities are not required to rely upon a solitary document as a test of the identity of the student, since one or two documents can be manufactured/doctored and that the entire list of the documents which the authorities scrutinize while permitting the entry of a candidate, are not forged.

19. It is undisputed that the Petitioner did not carry the

photostat hard copy of his registration with the Medical Council. He had purportedly made an attempt to fetch his cellular phone in order to show to the authorities a picture of his registration certificate. A cellular phone is not permitted beyond the security point. It was impossible for a candidate to travel with any electronic gadget crossing the security point right up to the examination centre in order to enter the examination room or hall. In this backdrop, the Petitioner was stopped from entering the examination hall after he left the hall and went to a parking place, as contended by him, to fetch his cellular phone.

20. It has also been recorded in the appraisal report by an authorized officer deputed by the examination authorities, namely Dr. V. Janaki, as to the manner in which each student was examined before granting entry into the examination hall. A check list is tendered by her to the examination authorities, copy of which is placed before us, which indicates that she has followed the examination protocol while scrutinising each candidate before granting entry. She has also indicated that the CCTV cameras were installed and registration for test and finger bio-metric, face ID capturing, was also carried out and recorded. While answering one

clause, she has indicated that one candidate (the Petitioner herein) was denied entry to the exam centre on account of not carrying the medical registration certificate. At the end of the report, Dr. Janaki, who is the Professor and H.O.D. of the Department of Anatomy in the Medical College at Koti, Hyderabad, has also set out her suggestions that the examination room temperature was quite high and it would be appropriate to arrange for at least air coolers for the exam going students since they became restless due to the heat in the room.

21. The contention of the Petitioner is that the fact that the Petitioner did not carry the medical registration certificate, should be ignored and though the exams have been conducted and the results have now been declared, a separate arrangement should be made to enable him to appear for the exams. In *Dhanashree N. Jagtap* (supra), this Court at the Principal Seat, did not lay down the law in the order dated 01.06.2023. What transpired during the hearing of the matter was an undisputed position that the Petitioner, while rushing to the examination centre, suffered a mishap in the queue and fell on the ground landing on her right wrist, resulting in dislocation of the wrist joint. She was rushed to a nursing home and with immediate medical examination, an X-ray was done and a medical certificate was issued.

She was offered treatment and was rushed back with the medical certificate. She reported at the examination centre at 1.00 p.m., well within time. The Superintendent and the Supervisor at the examination centre, agreed to provide a Scribe as they had witnessed the incident. The exam started at 2.00 p.m., which was to last for 3 hours and 20 minutes. Almost 40 minutes were lost in arranging for a Scribe and the Petitioner commenced writing of answers at 3.40 p.m. As the examination was halted at the scheduled time at 5.20 p.m., the Petitioner averred that she did not receive those 40 minutes which she had lost as a Scribe was being arranged.

22. It was then noted in paragraph Nos. 7 to 14 as under:-

“7. It is stated in the Petition that although the NEET-UG examination is conducted only once every year, this year due to sudden outbreak of violence in the State of Manipur, for the students of the State of Manipur, the NEET-UG 2023 examination is being held separately and the next date of examination, as pointed out by learned Counsel for Respondents No.1 and 2, is 6th June 2023.

8. The learned Counsel for the Petitioner relies upon the judgment of the Supreme Court in the case of Avani Prakash v National Testing Agency and Ors to contend that this Court may consider granting urgent interim relief to the Petitioner to appear in the examination to be conducted for the students from the State of Manipur, in the interest of justice. Attention of this Court is invited to paragraphs 40 and 45 of the said judgment.

9. *When this Petition was called out in morning session, learned Counsel appearing for Respondents No.1 and 2 sought short adjournment to take instructions in the matter. We were of the opinion that in the peculiar facts of the present case, the Respondents may consider granting an opportunity to the Petitioner to appear for the examination.*

10. *Upon instructions, the learned Counsel appearing for Respondents No.1 and 2 submits that the Petitioner can be permitted to appear for the examination afresh, which is to be now conducted for the students of State of Manipur. It is specifically submitted that the Petitioner will be allowed to appear for the examination in all the subjects and that she shall not in any manner rely upon the attempt made by her in the said examination on 7th May 2023. It is further submitted that if this Court is inclined to give any interim directions in the present case, it may not be considered as a precedent for any other cases.*

11. *Considering the positive approach adopted by Respondents No.1 and 2, it would be appropriate that the Petitioner is permitted to appear for the NEET-UG 2023 examination from a Center available for the students from the State of Manipur. We are informed that such a Center is available in the city of Bangalore.*

12. *In view of the above, list this Petition for further consideration on 26th June 2023.*

13. *In the meanwhile, the Petitioner shall be permitted to appear for NEET-UG 2023 examination along with the students from the State of Manipur at a Center at Bangalore city. The Respondents No.1 and 2 shall take appropriate steps to facilitate the Petitioner in taking the said examination. The Petitioner shall file an undertaking within a week from today that she shall not rely upon the attempt she had given on 7th*

May 2023 for the NEET-UG 2023 examination. It is clarified that the Petitioner shall appear for the said examination, subject to further orders in the present Petition and that she shall not claim any equity in that regard.

14. It is further clarified that the result of the Petitioner shall be declared only upon an express order passed by this Court in that regard. The learned Counsel for Respondents No.1 and 2 assures that she shall inform the said Respondents about the order passed today.”

23. It is thus obvious from the order passed in ***Dhanashree N. Jagtap*** (supra), that the Court granted an opportunity to the Respondents to consider whether the Petitioner could be permitted to appear for the exam. On instructions, the Respondents stated that she can be accommodated in another exam which is being conducted for the students of the State of Manipur. This is evident from paragraph Nos.9 and 10 reproduced above. The Court noted the positive approach of the Respondents and as a consenting order, permitted the Petitioner to appear for the exam from a centre available for the students from the State of Manipur, which was held in Bangalore city. It was recorded in paragraph 13, that the Petitioner would not rely on her earlier attempt made on 07.05.2023.

24. In ***Vaishnavi Vijay Bhopale and another*** (supra), this Court at the Principal Seat, permitted the two Petitioners to appear

for the exam and directed the authorities to hold a fresh examination for both of them. We are informed by the learned Advocate for the Petitioner that the said order of this Court has been quashed by the Hon'ble Supreme Court.

25. Considering the above, we do not find that ulterior/oblique motives could be attributed to Respondent No.2 in denying entry to the Petitioner. Had the Petitioner carried the Medical Registration certificate, there was no embargo for him to enter the examination hall. Therefore, laches cannot be attributed to the Respondent authorities and it could only be said that the Petitioner should blame himself for having failed in strictly following the standing instructions for the students. No doubt, he may not have done this deliberately, since he does not derive any advantage. Failure to carry the Medical Registration certificate, was never an advantage to him. Nevertheless, since the refusal of the authorities in permitting the Petitioner to enter the examination hall without the certificate and declining entry to him beyond the security check point while carrying the mobile instrument containing the soft copy of the certificate, cannot be faulted, we do not notice any such attributes, which would taint the conduct of the authorities. Directing the

authorities to hold a fresh examination only for the Petitioner in the above fact situation, in our view, would not be reasonable and appropriate.

26. On the point of maintainability of this Petition, we are assisted by the view expressed by the Hon'ble Supreme Court in the case of *Nasiruddin Vs. State Transport Appellate Tribunal – (1975) 2 SCC 671* and in *M/s. Kusum Ingots and Alloys Ltd. Vs. Union of India and another - 2004 AIR SCW 2766*, which lay down the law that a part of the cause of action at a particular location would entitle a litigant to opt for a Court having jurisdiction over the said location, for the redressal of his grievance.

27. The Petitioner is from the Latur District and a practitioner at the same place. Latur district is amenable to the jurisdiction of the Aurangabad Bench of the Bombay High Court. Though not specifically pleaded, the learned Advocate for the Petitioner informs us that the Petitioner filled in his examination form and completed all the formalities from his Latur Medical Centre and residence. We are, therefore, of the view that, there is no impediment for entertaining this Petition.

28. Therefore, on merits of the claim of the Petitioner, **this Petition is dismissed. Rule is discharged.**

29. No order as to costs.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS