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W.A.No.672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.672 of 2023

K.S.Manoj

.. Appellant

-vs-

1. Union of India represented by
Secretary to Government
Ministry of Human Resource Development
New Delhi.
2. 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
3. The Medical Counselling Committee
Represented by Secretary
All India Quota for Medical UG 2020
Directorate General of Health Services



W.A.No.672 of 2023

Government of India
Room No.348 A, Wing
Nirman Bhavan
New Delhi

4. The Directorate of Medical Education
No.162, Periyar E.V.R.High Road
Kilpauk, Chennai 600010

5. The National Medical Council
Represented by its Secretary
Pocket 14, Sector 8
Dwarka, New Delhi 110077

6. The DIG, CB-CID
No.24, Pantheon Road
Komaleeswaranpet, Egmore
Chennai 600008

.. Respondents

Appeal under Clause 15 of the Letters Patent against the order dated
03.03.2023 passed in W.P.No.15959 of 2020.

For Appellant :: Mr.P.Wilson
Senior Counsel for
Mr.M.Ravi

For Respondents :: Mr.AR.L.Sundaresan
Additional Solicitor General assisted
by Mr.K.Srinivasamurthy for R1
Mr.G.Rajagopalan
Senior Counsel assisted by
Ms.Sunitha Kumari for R2
Mr.J.Ravindran
Additional Advocate General



W.A.No.672 of 2023

assisted by Mrs.M.Sneha
Standing Counsel for R4
Mrs.Shubharanjani Ananth for R5

JUDGMENT

(Judgment of the Court was made by the Hon'ble Acting Chief Justice)

Considering the urgency of the matter, Mr.P.Wilson, learned Senior Counsel appearing for the petitioner/appellant submitted that since the petitioner/appellant, who is continuing in the third year MBBS Course, is suddenly sought to be discharged, he prayed for allowing the C.M.P.No.5712 of 2023 seeking to dispense with the production of the impugned order dated 03.03.2023 passed in W.P.No.15959 of 2020 and requested this Court to take up the appeal urgently for hearing. Therefore, considering the facts and circumstances of the case as well the urgency, the civil miscellaneous petition stands allowed and the appeal itself is taken up for final disposal.

2. In the first round of litigation, K.S.Manoj, a candidate represented by his father and natural guardian Mr.K.Sundararajan, claiming that he



W.A.No.672 of 2023

WEB COPY

secured 594 marks out of 720 marks in the NEET (UG) 2020, as per the score card that was uploaded on 05.10.2020 and which remained in the website till 16.10.2020, was subsequently changed on 17.10.2020 showing the marks coming down to 248, apprehending his non-selection, filed the Writ Petition No.15959 of 2020 for issuance of a 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 respondent's e-mail 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 to 720 marks commensurate with his performance as reflected 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 the counselling for admission to Medical Courses (UG) 2020 with reference to 594 out of 720 marks in NEET (UG) 2020 and accordingly, provide him



W.A.No.672 of 2023

WEB COPY

admission to Medical Course (UG), on the premise that on 16.10.2020, the student's OMR answer sheet was uploaded in the official website of the second respondent with his Roll No.4102202104 with Test Booklet No.2137204 and the Booklet Code No.H3, wherein the name of his parents, signature of the candidate and the signature of the invigilators are all available. When the key answer sheet was published on 16.10.2020 at 5.30 P.M., on careful comparison by way of the appellant's OMR answer sheet downloaded at 10.44 A.M., his score was 594 out of 720 marks. In the meanwhile, when the official declaration of the results were made by the second respondent, the appellant's NEET score was declared as 248, which is not only 50% of his original score as reflected in his OMR answer sheet downloaded from the official website of the second respondent.

3. Challenging the NEET score declared as 248 by the second respondent, Mr.P.Wilson, learned Senior Counsel appearing for the appellant pleaded that since the OMR answer sheet uploaded in the website of the second respondent was physically shown to the appellant, after it was



W.A.No.672 of 2023

WEB COPY

furnished by the second respondent, the learned single Judge directed the second respondent to file an additional counter affidavit explaining as to how two OMR sheets were made available in respect of the very same candidate with two marks, namely, 594 in the NEET (UG) 2020 uploaded on 05.10.2020 and another OMR sheet showing the marks as 248 on 17.10.2020. When the second respondent filed the additional counter affidavit reiterating the stand that there was only one OMR sheet that was uploaded in the website of the second respondent, reflecting that the appellant had secured 248 marks, considering the future career of the appellant, the learned single Judge, vide the order dated 09.12.2020, taking note of the problems cropped up to the appellant by issuing two OMR score cards, permitted the respondents to conduct an investigation and file a report before this Court and simultaneously issued an interim direction to the 3rd and 4th respondents to permit the appellant to participate in the counselling for admission to the medical UG course by taking into the marks of the appellant as 594 out of 720 marks. By virtue of the order passed dated 09.12.2020, the appellant is continuing his MBBS course in the third year



W.A.No.672 of 2023

WEB COPY

presently. Finally the learned single Judge also disposed of the writ petition ordering for investigation by the CBCID and DIG-CBCID by suo motu impleading them as parties, by order dated 01.03.2021. Aggrieved by the order directing investigation, W.A.No.1221 of 2021 was filed by the second respondent. In the meanwhile, as the appellant had tried to participate in the counselling for admission to the medical course with reference to 594 marks out of 720 marks in the NEET (UG) 2020 and to provide him admission to the medical course, whereas the declaration about his merit at 594 marks out of 720 is neither granted nor rejected, the Division Bench, agreeing with the appeal filed by the second respondent that no final decision was recorded by the learned single Judge on the prayer to participate in the counselling for admission to the medical course, which was the main prayer in the writ petition, thought it fit to remand the matter back with a request to the learned single Judge to first record the final direction qua the said prayer with a further direction to continue the interim order allowing the appellant to continue his studies. Holding so, the matter was remanded back to the learned single Judge. Aggrieved by the order of remand, the matter was



W.A.No.672 of 2023

WEB COPY

again taken to the Supreme Court in SLP(C) No.3253 of 2022 by the second respondent and the Hon'ble Apex Court in its order dated 29.08.2022, staying the direction for investigation by the CBCID, pending further orders of the learned single Judge, disposed of the SLP with a request to the learned single Judge to dispose of the petition preferably within a period of two months and also further observed that the admission granted to the appellant at Thoothukudi Medical College to be continued subject to the result of the writ petition.

4. On remand, the learned single Judge, by the impugned order dated 03.03.2023, has dismissed the writ petition, considering the original OMR sheet produced before the Court along with the reports given by the Joint Director of National Testing Agency and the forensic laboratory at Chandigarh, noting that the appellant had admitted his signature in the attendance sheet and comparing those signatures with the signatures in the OMR sheet, agreeing with the appellant's original OMR sheet produced by the second respondent, showing only 248 marks out of 720 marks, instead



W.A.No.672 of 2023

WEB COPY

of 594 marks, came to the conclusion that the attempts made by the appellant seeking examination of the screen shots by a cyber expert or by the CB CID, would not be a prudent step to be taken, in the absence of specific denial of the original OMR sheet produced before the Court. Aggrieved thereby, the present appeal has been filed.

5. Mr.P.Wilson, learned Senior Counsel appearing for the appellant submitted that it would be highly impossible for the second respondent to maintain two OMR sheets. As a matter of fact, when the appellant's results were declared on 16.10.2020, his OMR answer sheet was uploaded in the official website of the second respondent with Roll No.4102202104 with Test Booklet No.2137204 and the Booklet Code No.H3, the same was also downloaded by the appellant on 16.10.2020 at 10.44 A.M., the appellant's NEET score was also arrived at 594 out of 720 marks. Within a short time when the appellant downloaded and compared the key answers, the NEET score was once again declared as 248 in the official website of the second respondent. Due to Covid-19 pandemic situation, it was not feasible for the



W.A.No.672 of 2023

WEB COPY

appellant to travel to New Delhi to make any representation to consider the error/lapse committed by the second respondent in declaring the appellant's NEET score. Having uploaded the appellant's original OMR sheet on 16.10.2020 F.N., which in comparison with the key answers uploaded by the second respondent, clearly reveal the actual marks secured by the appellant as 594, the wrong result of 248 marks ought not to have been declared by the second respondent. The act of the second respondent uploading the second OMR sheet in the name of the appellant on 17.10.2020 to match the wrong marks in the results declared on 16.10.2020 is highly illegal. When this irregularity was properly noticed by the learned single Judge and ordered for suitable investigation against the second respondent, the Hon'ble Apex Court only stayed the operation of that direction to investigate the said irregularities by the CBCID. When the appellant is ready for any investigation, it is not known why the appeal was filed by the second respondent before the Division Bench. Finally the learned Senior Counsel argued that when the appellant was allowed to continue his MBBS course for the past three years by all the Courts, the



W.A.No.672 of 2023

WEB COPY

balance of convenience demands that the same interim order should be allowed to continue till the matter is finally decided by this Court. Taking support from the judgment of the Apex Court in *Padum Kumar v. State of Uttar Pradesh*, (2020) 3 SCC 35, Mr.Wilson contended that when the appellant has denied his signature in the OMR answer sheet produced by the respondent, relying upon the expert report, without any opportunity to the appellant to cross examine, would be totally unsafe. Hence, the appeal is to be allowed by setting aside the impugned order, failing which the appellant would be forced to face untold misery.

6. Mr.G.Rajagopalan, learned Senior Counsel appearing for the second respondent, refuting the submissions made by the learned Senior Counsel appearing for the appellant, submitted that when the signature in the OMR sheets and the recorded response of the candidates were uploaded on the official website of the second respondent on 05.10.2020, a public notice was issued informing all the candidates that the scanned image of OMR answer sheets and the recorded statements of the candidates will be



W.A.No.672 of 2023

WEB COPY

uploaded in the website. Therefore, it is wrong to contend before this Court that a fresh scanned image of OMR answer sheet were uploaded on 16.10.2020 or 17.10.2020 as alleged by the appellant. When the information and the documents were only uploaded on 16.10.2020, no OMR answer sheet of any candidate including the appellant was uploaded afresh on 16.10.2020 or 17.10.2020 and the appellant had falsely contended that his OMR answer sheet was uploaded on 16.10.2020. More importantly, the appellant after more than 40 days of filing the writ petition, produced the incomplete, non legible photographs of the screen shots on 09.12.2020 in the additional typedset of papers. Since there was a direction by this Court to produce the original OMR answer sheet of the appellant, the same was also produced before this Court for verification. This apart, when there was an order passed on 09.12.2020 directing the second respondent to thoroughly consider the entire materials and conduct investigation and to file a report before the Court, in compliance with the said direction, the inquiring authority, considering various documents including the final answer keys of the booklet; screen shots took by the appellant on



W.A.No.672 of 2023

WEB COPY

11.10.2020 at 7.12 A.M; which was earlier deleted and subsequently retrieved from his google account; various screen shots took by the appellant on 11.10.2020; screen shot taken by the appellant on 12.10.2020 at 2.36 P.M; history of the appellant's visit to the already logged in website; the report was made ready with a finding that only one OMR answer sheet of the appellant was uploaded on 05.10.2020 on the official website, hosted on NIC server. The existence of two OMR answer sheets could not be established from the records of the second respondent. There was no record in either the NTA or NIC server to confirm that the OMR answer sheet attached by the appellant at page 1, 2, 5 of the documents dated 05.10.2020 was uploaded on the official website of the NPA hosted on NIC server. Therefore, there was no change in the records. Mr.Rajagopalan, concluding his arguments, submitted that when there was only one test booklet and one original answer sheet which was assigned to every candidate with pre-printed matching “test booklet code and a unique test booklet number”, as alleged by the appellant, two test booklets and two OMR sheets were not issued to anyone. This was also accepted by the investigating team.



W.A.No.672 of 2023

WEB COPY

Therefore, there is no merit in the writ appeal, hence the same should be dismissed, the learned Senior Counsel pleaded.

7. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the first respondent submitted that when the National Testing Agency has issued one OMR answer sheet with the OMR Bar Code and Serial No.2137204 in the name of K.S.Manoj and the appellant also has signed the attendance sheet issued to him on 13.09.2020, which reflects the said serial number, there was no other OMR answer sheet issued on any other date. The said OMR answer sheet alone was uploaded against the said roll number showing his mark at 248 out of 720. Therefore, there is no discrepancy in the evaluation system conducted by the NTA for the NEET UG 2020. Arguing further, the learned Additional Solicitor General pleaded that when the OMR sheet of the appellant has not been modified by the NTA at any point of time, claiming 594 marks out of 720 marks on the basis of a forged OMR answer sheet that his total marks had been 594 out of 720, is not only unbelievable, it is highly unimaginable.



W.A.No.672 of 2023

WEB COPY

8. We also find merits on the said submissions. The appellant filed the writ petition complaining that after publishing the results, his answer sheet was uploaded on 16.10.2020 in the official website of the second respondent showing his mark as 594 out of 720 and on the same date, this has been reduced to 248 which is less than 50% of his original score as reflected in the OMR answer sheet uploaded in the official website of the second respondent and the matter was examined both in the first round and subsequently on remand by the Hon'ble Apex Court in its order dated 29.08.2022. Finally when a direction was issued on 09.12.2020 to the second respondent to thoroughly consider the entire materials and conduct an investigation and report the same before the learned single Judge, the investigation team has examined the following documents:-

“a.A copy of the Petition dated October 2020 filed by the Petitioner in the matter.

b.A copy of Rejoinder Affidavit dated December 2020 of the Petition to the Additional Counter Affidavit of 2nd Respondent, the National Testing Agency (NTA).

c.The following documents attached to the



W.A.No.672 of 2023

copy of the Index to Typed Set of Documents dated 27.10.2020 filed by the Petitioner in relation to his Petition in the matter:-

i.At Page No.1, an OMR Sheet has been attached which the Petitioner has claimed as his OMR Answer Sheet and as per his claim the same was uploaded in the official website of the 2nd Respondent on 16.10.2020.

ii.At Page No.2, Final Answer Keys of the Booklet Code H3 as per which the result of NEET (UG) 2020 has been declared on 16.10.2020.

iii.At Page No.3, the Score Card of the Petitioner (with Roll No.4102202104, Application No.200410282612) containing total marks of 248, NEET All India Rank of 418900, which the petitioner claims that he had downloaded from the official website of Respondent No.2 on 17.10.2020 has been enclosed.

iv.At Page No.4, another OMR Answer Sheet of the Petitioner, which is claimed by the Petitioner being uploaded on 17.10.2020 on the official website of 2nd Respondent.

v.At Page No.4A, screen shot email of the petitioner-s dated 17.10.2020 to the 2nd Respondent.

vi.At Page No.5, 2nd Respondent-s mail dated 22.10.2020 requesting the Petitioner to send his Application No.



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W.A.No.672 of 2023

vii.At Page No.6, Petitioner-s mail dated 22.10.2020 to the 2nd Respondent.

viii.At Page No.7, 2nd Respondent-s response email dated 26.10.2020.

d.The following documents attached to the copy of the Index to Additional Typed Set of Documents dated 09.12.2020 filed by the Petitioner as Exhibits to his rejoinder affidavit in the matter:-

i.At Page 1, a screen shot took by the petitioner on 11.10.2020 at 07:12 AM (which was earlier deleted and now retrieved from his Google Account).

ii.At Page 2, various screen shots took by the Petitioner on 11.10.2020.

iii.At Page 3, a screen shot took by the Petitioner on 12.10.2020 at 02.36 PM (which was earlier deleted and now retrieved from his Google Account).

iv.At Page 4, a History of Petitioner-s visit to the already logged in website.

e.A copy of the Counter Affidavit of Respondent No.2 to the Petition.

f.A copy of the Additional Counter Affidavit of Respondent No.2 in the matter.

g.A Statement of the Chief Secrecy Officer (CSO) of NTA (Annexure~1) along with a certified



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W.A.No.672 of 2023

copy of the Original OMR Answer Sheet of the Petitioner (Annexure ~1A) and a certified copy of the Original Attendance Sheet of the Petitioner (Annexure~1B);

h.A Statement of the Consultant (Exams) of NTA (Annexure~2) along with a certified copy of the Score Card (Annexure~2A) and Calculation Sheet (Annexure~2B) and Procedure followed for Validation of OMR Answer Sheets (Annexure ? 2C).

i).A copy of the Emails dated 08.01.2021 and 09.01.2021 of the National Informatics Centre (NIC) (Annexure~3) received along with a copy of the OMR Sheet (Annexure~3A) bearing Roll No.4102202104, Test Booklet No./ Answer Sheet No.2137204 and a copy of the Score Card (Annexure~3B) of the Petitioner/Candidate bearing Roll No.4102202104 that exist on NIC Server.”

The investigating team has finally come to the conclusion that there was only one OMR answer sheet bearing Bar Code and Serial No.2137204 was issued to the appellant K.S.Manoj having Roll No.4102202104 that was also uploaded only once i.e., on 05.10.2020 on the official website of NTA (www.ntaneet.nic.in) hosted on NIC server.



W.A.No.672 of 2023

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9. The original OMR sheet, attendance sheet and the connected records were also produced before this Court. We have also compared the original OMR sheet along with the screen shot produced by the appellant. A comparison shows that the top portion of both the original OMR sheet and the screen shot, namely, the roll number, test booklet number, the serial number of the booklet, the bar code, the test booklet code are one and the same. Similarly, the bottom portion of the OMR sheet, namely, the mother's name, father's name, candidate's signature, signature of the invigilators are one and the same. It is only the middle portion containing the answers alone differs in both the OMR sheets. The signature in the original has also been sent for forensic expert, who after examination, confirmed that it is the signature of the appellant by comparing with the admitted signature. In that view of the matter, when the original OMR sheet is produced which is clear and pristine, one can only conclude that it is only the downloaded OMR sheet which is manipulated. As far as the middle portion is concerned, at this point of time, to find out whether the manipulation was done by the appellant himself or by any third party and whether it was uploaded in the



W.A.No.672 of 2023

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website will not lead the appellant anywhere, as he is bound to lose the medical seat in any view of the matter.

10. Secondly, dealing with the two different OMR answer sheets containing the name of the appellant, the investigating team came to the conclusion that there cannot be two different OMR answer sheets which is established from the records of the second respondent as well as from the several materials/documents received from the NTA. When the investigating team has submitted its report, after examining the aforementioned documents, holding that there is no record either at NTA or at NIC server to confirm that the OMR sheet attached by the appellant on 27.10.2020 was uploaded in the official website of NTA hosted on NIC server, we are unable to find any merit to accept that the key answer sheet published on 16.10.2020 had shown the appellant's NEET score at 594 out of 720, because the appellant has not produced any convincing documents to accept the said claim and he cannot produce anything contra as the original records were produced before this Court. This was the state of



W.A.No.672 of 2023

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affairs both before the learned single Judge, the Division Bench and also before the Apex Court in the first round and besides, even after the matter was remanded back to the learned single Judge, no such convincing justification has been produced to accept the appellant's case that the OMR sheet uploaded in the official website of the second respondent showed the NEET UG score at 594 out of 720 marks.

11. For all the aforementioned reasons and conclusions, the writ appeal fails and it is dismissed. Consequently, C.M.P.Nos.5870 & 6732 of 2023 are also dismissed. There shall be no order as to costs.

Speaking/Non speaking order

(T.R.,A.C.J.)

(D.B.C.,J.)

Index : yes/no

21.03.2023

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Registry is directed to return the original OMR answer sheet, attendance sheet of the appellant to the learned standing counsel for the 2nd respondent under due acknowledgment, with abundant caution that if for any reason appeal is filed, these documents in original have to be preserved.

SS



W.A.No.672 of 2023

To

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W.A.No.672 of 2023

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W.A.No.672 of 2023

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

SS

W.A.No.672 of 2023

21.03.2023