



2023 : DHC : 7990-DB



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

% *Date of Decision: 1st November, 2023*

+ **W.P.(C) 10326/2021 & CM APPL. 31787/2021**

**ASSOCIATION OF DIPLOMATE OF NATIONAL BOARD
DOCTORS & ANR. Petitioners**

Through: Mr. Sourabh Gupta, Mr. Puneet
Yadav, Ms. Ananya Gupta &
Mr. Ujjwal Choudhary,
Advocates.

versus

NATIONAL MEDICAL COMMISSION & ORS.

..... Respondents

Through: Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Mr. Bhanu Gulati,
Mr. Tanishq Srivastava, Mr.
Aabhaas Sukhramani, Mr.
Anum Hussain & Mr.
Ramanpreet Kaur, Advocates
for R-1.

Mr. Ravi Prakash, CGSC with
Ms. Usha Jamnal, Adv. for UoI.
Mr. Harpreet Singh, SSC with
Mr. Jatin Kumar Gaur & Mr.
Gurpreet Singh Gulati,
Advocates for R-4.

Mr. Kirtiman Singh, Mr. Waize
Ali Noor, Mr. Varun Rajawat,
Ms. Shreya V. Mehra & Ms.
Akshita J., Advs. for NBE.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN



VIBHU BAKHRU, J.

1. The petitioners have filed the present petition, *inter alia*, impugning notifications dated 15.01.2021, 15.02.2021 and 19.08.2021 (hereafter '**impugned notifications**'), issued by Respondent No. 2 (National Board of Examinations – hereafter '**NBE**'), whereby Goods and Services Tax (hereafter '**GST**') at the rate of 18% was collected from DNB candidates along with the course fees.

2. According to the petitioners, GST was not payable on the course fee and, therefore, collection of GST was erroneous. This Court was informed that there is no dispute that GST is not chargeable on the course fee and that NBE had wrongfully collected GST. The said issue is also clarified by the GST Council.

3. In the aforesaid circumstances, this Court had passed the following order on 19.05.2023:

“

1. *The petitioner has filed the present petition, impugning the notifications dated 15.01.2021, 15.02.2021 and 19.08.2021, issued by the National Board of Examination (“NBE”), to the extent that the candidates have been directed to deposit the fees as well as Goods and Services Tax with NBE .*

2. *Paragraph Nos. 3 and 4 of the notification dated 15.01.2021 reads as under:*

“3. *The annual course fee payable by an NBE trainee is as follows:*

<i>Fee</i>	<i>GST @ 18 %</i>	<i>Total</i>
<i>Rs.</i> <i>1,25,000/-</i>	<i>Rs. 22,500/-</i>	<i>Rs.</i> <i>1,47,500/-*</i>

**Payment gateway charges shall be borne by the NBE trainee*



4. The entire annual course fee is to be paid as one single transaction. Further, it is to be noted that the payment of GST, presently @ 18%, is mandatory as per government directives.”

3. Thereafter, the NBE issued another notice dated 15.02.2021, clarifying that the annual course fee would be applicable for all programmes. The said notification is set out below:

“Dated: 15.02.2021

NOTICE

Kind Attn.: NBE accredited hospitals and all NBE trainees.

Subject : Clarification regarding payment of annual course fee by NBE trainees directly to NBE. Refer Public Notice dt. 15.01.2021.

• NBE is in receipt of several queries regarding submissions of annual course fee. It is hereby clarified that the following annual course fee shall be applicable for all ongoing Broad Speciality (DNB), Super Speciality (DrNB) and Fellowship (FNB) trainees irrespective of the year of their joining.

Fee	GST @ 18 %	Total
Rs. 1,25,000/-	Rs. 22,500/-	Rs. 1,47,500/-

• Annual course fee is payable to NBE at the commencement of each academic year.

• Annual course fee shall be transferred to concerned hospital as per notice dt. 15.01.2021.

• For any queries, please write to NBE at coursefee@natboard.edu.in”

4. On 19.08.2021, NBE issued another notice in reference to the notices dated 15.01.2021 and 15.02.2021. It appears that the said notification is also interactive one, which enabled the candidates to make the payment through the link as provided in the said notice. The relevant paragraphs of the said notice are set out below:

“1. The annual course fee payable by an NBEMS trainee is as follows:

Fee	GST @ 18 %	Total
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Rs. 1,25,000/-	Rs. 22,500/-	Rs. 1,47,500/- *
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**Payment gateway charges shall be borne by the NBEMS trainee*

2. *The entire annual course fee is to be paid by the trainee as one single transaction. Further, it is to be noted that the payment of GST, presently @ 18%, is mandatory as per Government directives.*
3. *The annual course fee shall be paid by the NBEMS trainees through online mode only by using web portal.*

Click Here for Payment

4. *The prescribed course fee should be remitted through payment gateway provided using a Credit Card / Debit Card / Internet Banking as made available and have been provided on the web page."*

5. *According to the petitioner, GST is not payable on the course fee. This is also confirmed by Respondent No. 3 in the affidavit filed on 09.07.2022.*

6. *It is not disputed that GST is not payable on the course fee. NBE also acknowledges that its demand from the candidates to pay GST on the course fee was erroneous.*

7. *Undisputedly, the candidates are required to be refunded the amount collected as GST.*

8. *However, learned Counsel for NBE submits that the funds collected from various candidates, including the GST collected, are no longer available with NBE. The entire funds have been disbursed to various hospitals.*

9. *In the circumstances, we consider it apposite to direct NBE to file an affidavit disclosing:*

- a. *the names of all candidates from whom course fee and GST was collected;*
- b. *the quantum of course fee and GST separately;*
- c. *the name of the hospital to which such course fee and GST was remitted in respect of each candidate; and*
- d. *the mode and the date of remitting the said funds to the hospital.*

10. *Let the affidavit be filed within a period of six weeks from today.*

11. *List on 05.09.2023.*



12. *Interim orders, if any, to continue."*

4. In compliance with the directions issued in paragraph 9 of the aforesaid order, NBE has filed affidavit dated 25.10.2023 disclosing the number of candidates from whom the course fee and GST was collected, as well as the number of transactions in which the same was collected.

5. A part of GST collected by the NBE is still available with the NBE, however, bulk of GST collected has been remitted to the hospitals along with the course fee.

6. In view of the above, the petitioners' contention that the impugned notifications are liable to set aside, is merited.

7. Mr. Kirtiman Singh, learned counsel appearing for the NBE, on instructions, states that the impugned notifications to the extent that they seek to collect GST on course fee, shall be withdrawn by issuance of a public notice.

8. In view of the above, no further orders are required to be passed in this regard except to restrain NBE from collecting any further GST pursuant to the said notification.

9. The learned counsel for the parties have also suggested further directions to be issued by this Court, which commends to us. The petitioners seek that the directions be implemented within the strict timelines. However, the respondents have some reservations in that regard.

10. Considering the suggestion made by the learned counsel, we



further direct as under:

- i. In cases where the GST amount is available with the NBE, the NBE shall take steps to refund the same to the candidates from whom the said GST was collected, as expeditiously as possible.
- ii. In cases where the GST amount has been transferred to the hospitals and same has not been deposited with the GST authorities, the concerned hospitals shall refrain from doing so and take steps to immediately refund the amount to the candidates from whom the GST was collected.
- iii. In cases where the GST has been deposited with the concerned GST authorities, the concerned hospitals shall take steps to apply for the refund of the said GST.

11. The affidavit filed by NBE indicates that there are two three transactions which have not been traced to the candidates. The NBE shall make all efforts to trace the said transactions to the concerned candidates and upon identifying the candidates, take steps to ensure that the GST collected is refunded to them. In the event, the GST is available with the NBE, it will be refunded to them immediately. In cases where the GST has been transferred to hospitals, the same would abide by the directions as issued above.

12. We request the concerned GST authorities to process such applications as expeditiously as possible. The concerned hospitals, on receipt of the fund from the GST authorities, shall take immediate steps to refund the same to the candidates from whom the GST was



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collected.

13. The NBE shall communicate this order to all the concerned hospitals and ensure that the same is received by them.

14. We also consider it apposite to take all necessary follow-up action for implementation of these orders with liberty to apply, if necessary.

15. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 1, 2023

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