



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **W.P.(C) 10089/2023**

Date of Decision: **11.08.2023**

IN THE MATTER OF:

SELISHIA MOHANDAS
 D/O SELIJA K.M.
 R/O 101, SRI SAI ENCLAVE,
 JAWAHAR NAGAR
 P.O MALKAPURAM VISHKHAPATNAM,
 ANDHRA PRADESH-530011

..... PETITIONER

Through: Ms.Bina Madhavan, Mr.Lakshay
 Saini and Ms.Sanjana Nair,
 Advocates along with petitioner in
 person.

Versus

UNION OF INDIA
 DEPARTMENT OF HEALTH & FAMILY WELFARE,
 MINISTRY OF HEALTH & FAMILY WELFARE
 3RD & 4TH FLOOR INDIAN RED CROSS SOCIETY BUILDING,
 SANSAD MARG, 1, RED CROSS ROAD,
 SANSAD MARG AREA, NEW DELHI,
 DELHI-110001
 THROUGH ITS DIRECTOR
uoidhc@gmail.com

.... RESPONDENT NO.1

NATIONAL TESTING AGENCY
 FIRST FLOOR, NSIC-MDBP BUILDING
 OKHLA INDUSTRIAL ESTATE, NEW DELHI,
 DELHI-110020
 THROUGH ITS DIRECTOR
neet@nta.nic.in

.... RESPONDENT NO.2

NATIONAL MEDICAL COMMISSION
 POCKET-14, SECTOR-8,

DWARKA PHASE-1
NEW DELHI-110077
THROUGH ITS CHAIRMAN
Officesinghdev1@gmail.com

.... RESPONDENT NO.3

Through: Ms.Abha Malhotra, SR. CGC with
Ms.Amrita Sony, Advocate for R-1.
Mr.Sanjay Khanna, Ms.Pragya
Bhushan, Mr.Karandeep Singh,
Mr.Tarandeep Singh and Mr.Amit
Singh, Advocates for R-2.
Mr.T. Singhdev, Mr.Bhanu Gulati
Mr.Abhijit Chakravarty, Mr.Aabhas
Sukhramani, Mr.Tanishq Srivastava,
Ms.Anum Hussain and
Ms.Ramanpreet Kaur, Advocates for
R-3.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, vide the instant writ petition has prayed for the following reliefs:-

“a) issue writ/writs including a writ in the nature of mandamus directing the Respondent National Testing Agency to produce the original Optical Mark Recognition (OMR) along with the Answer Key Code E3 the Petitioner herein before this Honourable court and consequently recomputed the marks and publish fresh result with fresh rank merit list for National Eligibility-cum-Entrance Test (Undergraduate)-2023;

b) Direct the 1st and 2nd Respondents to allot one MBBS Seat for the academic Year of NEET (UG)-2023 in any Government Medical College Situated in Kerala or Andhra Pradesh.”

2. The case of the petitioner is that she appeared in NEET (UG)-2023

examination conducted by respondent no.2-National Testing Agency (hereinafter referred to as 'NTA'). According to her, on 04.06.2023 the respondent no.2-NTA declared the Provisional Answer Key of NEET (UG)-2023 examination and also directed that the candidates, who have objections to the Answer Key or Recorded Responses, may challenge the same as per the procedure. The Provisional Answer Key was uploaded on the official website of respondent no.2-NTA with the OMR sheet and recorded responses for NEET (UG)-2023 examination. On 06.06.2023, respondent no.2-NTA published the NEET (UG)-2023 examination final answer key on the official website. On 13.06.2023, respondent no.2-NTA declared the final result/ NTA Scores/ Rank of National Eligibility cum Entrance Test (UG)-2023.

3. According to her, the rank of the petitioner was shown to be 351 (All India Rank for Counselling) and total marks obtained were 697 out of 720 with the percentile of 99.9820955. She, therefore, submits that her rank was also recognized by Kerala State Medical Rank List-2023 and Dr. YSR University of Health Sciences, Vijayawada-08 NEET UG Rank wise list of the State of Andhra Pradesh.

4. The petitioner was however shocked and surprised while registering herself on the Medical Counselling Committee (MCC) website when she was unable to move to the next step of registration. She then realized that the marks obtained by her were replaced on the website and instead of actual marks i.e. 697 out of 720, she was shown to have obtained 103 marks and, her All India Rank for Counselling was replaced to 1253032 with a percentile of 38.4043724. The petitioner thereafter made a complaint and since no steps were taken, therefore, she has filed the instant writ petition.

5. The respondents have filed their counter affidavit and have explained that the entire case of the petitioner is premised on false and fabricated document.

6. In paragraph 11 onwards of the counter affidavit filed on behalf of respondent no.2 NTA, it has been explained that the OMR sheet relied upon by the petitioner (Annexure-P7) has been tampered and modified. It is stated that the responses provided by the petitioner on the OMR sheet have been deliberately altered and modified with an attempt to claim higher marks in the examination.

7. It is the case of respondent no.2-NTA that the petitioner attempted 56 questions correctly and 121 questions incorrectly and as per the scheme of examination, she has been awarded 04 marks for each correct answer and one mark (-01) has been deducted for every wrong answer. Accordingly, the petitioner has been awarded 103 marks [(56x4)- (121x1)] out of 720. A copy of the final answer key of Test Booklet Code “E3” has been placed on record by respondent no.2 NTA.

8. Paragraph nos. 11 to 15 of the said counter affidavit read as under:-

*“11. That in terms of **Clause 14.2** of the **Information Bulletin** of NEET (UG) 2023, the Provisional Answer Key along with scanned images of the OMR Answer Sheets and Recorded Responses of all the candidates, including the Petitioner, were displayed through the web portal of NEET (UG) 2023 from 04.06.2023 to 06.06.2023 (up to 11:50 PM), for challenging Provisional Answer Key and OMR Answer Sheet Grading. It is pertinent to mention that the scanned images of OMR Answer Sheets of all Candidates were displayed from 04.06.2023 to 06.06.2023 and no change/ modification has been made thereafter. Furthermore, in order to facilitate the candidates, a scanned image of the OMR Answer Sheet has been sent to the registered e-mail address of all the candidates given by them at the time of submission of the Online Application Form of NEET (UG) 2023. A copy of the Public*

*Notice dated 04.06.2023 is annexed herewith as **Annexure R2/5**, and a copy of scanned image of OMR Answer Sheet of the Petitioner is annexed herewith as **Annexure R2/6**.*

*12. That it is pertinent to mention that upon perusal of the OMR Answer Sheet annexed by the petitioner as **Annexure P-7** on **Page No. 153** of the present writ petition as well as the record of NTA, it has become apparent that this particular document (Annexure P-7) has been tampered with and modified. It is submitted that the OMR Answer Sheet at Annexure P-7 appears to be a forged copy of the scanned image of the OMR Answer Sheet originally displayed on the Official website of NEET (UG) 2023 during the challenge period as mentioned in Para 11. As the responses provided by the petitioner on the OMR Answer Sheet have been deliberately altered and modified in an attempt to claim higher marks in the examination.*

*13. That as per the record maintained by the NTA, the petitioner herein i.e. Selishia Mohandas, has attempted 56 questions correctly and 121 questions incorrectly. As per the scheme of examination, she has been awarded 04 marks for each correct answer and one mark (-01) has been deducted for every wrong answer. Accordingly, she has been awarded 103 marks $[(56 \times 4) - (121 \times 1)]$ out of 720. A copy of the Final Answer Key of Test Booklet Code "E3" is annexed herewith as **Annexure R2/7** and copy of the calculation sheet of the petitioner is annexed herewith **Annexure R2/8***

*14. That the combined Results of the examinations conducted on 07.05.2023 GOVT. and 06.06.2023 has been declared on 13.06.2023 on the Official Website of NTA, through Press Release. The result and All India Rank of NEET (UG) have been prepared/ notified by NTA as per the norms/ criteria 10 fixed by the NMC/ DGHS (for MBBS/BDS) and by CCIM (for BAMS/ BSMS/ BUMS) and by CCH (for BHMS). NTA has provided All India Rank to the candidates and the admitting authorities will draw a merit list based on All India Rank for the seats of MBBS/ BDS falling under their jurisdiction. A copy of the Press Release dated 13.06.2023 is annexed herewith as **Annexure R2/9**.*

15. That as per the record of NTA, the result of the petitioner is provides as under:

a. Total Marks-103 marks out of 720

b. Percentile Score

- Physics-57.4430147
- Chemistry-29.7637197
- Biology (Botany & Zoology) -37.1813248
- Total - 38.4043724

c. NEET All India Rank-1253032 and

d. General Category Rank-384577

*Resultantly, the petitioner has not qualified for NEET (UG) 2023 as her score is less than the cut-off declared for the 'General' Category i.e. 50 percentile and 720-137 marks. A copy of the Score Card of the Petitioner 3s annexed herewith as **Annexure R2/10.**"*

9. The respondents have also taken a specific stand that the result of the petitioner was communicated to her through email on 15.06.2023 with CC to the email address of her parents. The respondents have also explained that the altered forged score card relied upon on behalf of the petitioner displays the actual score card which is placed on record by respondent no.2-NTA. The Quick Response (hereinafter referred to as 'QR') Code takes to the official website where the marks awarded by respondent no.2-NTA are reflected. It is, therefore, submitted that if the score card relied upon on behalf of the petitioner is correct; the same must be available on the official website of NTA.

10. Paragraph nos.16 and 17 of the counter affidavit explaining the aforesaid position read as under:-

"16. That the result of the petitioner was also communicated to her through her e-mail ishiamdas@gmail.com on 15.06.2023 with CC to lnpmohandas@gmail.com (email address of parent/guardian) through an auto-generated email. This clarifies that the Petitioner was well informed about her result of NEET (UG) 2023. Therefore, the

*avermment made in the writ petition that another result was displayed to the petitioner on the official website of NEET (UG) 2023 is wrong, fallacious, misleading, and unfounded. The copy of the email dated 15.06.2023 of the result of the petitioner is annexed herewith as **Annexure R2/11**.*

*17. That the actual Score Card displayed on the official website of NEET (UG) 2023 by NTA can be distinguished from the doctored/ forged Score Card relied upon by the candidate, a special verification system in the form of **Quick Response (QR) Code** forms a part of the Score Card issued by NTA.*

When the QR Code on the Score Card (Annexure P-13) is scanned, it leads to the official Results website of NTA. The website displays the actual Score Card of the Petitioner, after entering a verification PIN, having Application No. 230410669685 and Roll No. 1206080293 and Total Marks obtained as 103 marks out of 720. It is pertinent to note that the actual Score Card of the Petitioner indicates a Score of 103 marks out of 720, perfectly aligns with the evaluation of her actual OMR answer sheet with the Final Answer Key of NEET (UG) 2023. Therefore, the Petitioner should be put to strict proof to prove the source and reliability of the Score Card (Annexure P-13)."

11. After filing the counter affidavit when the matter was called out, this court wanted to know the response of the petitioner.
12. Learned counsel appearing on behalf of the petitioner on instructions submits that the petitioner still maintains her stand pleaded in the instant writ petition. She submits that if the original OMR sheet is produced, the same would depict the clear position.
13. In response to the submissions made by learned counsel appearing on behalf of the petitioner, learned counsel appearing on behalf of respondent no.2-NTA has shown this court various documents to substantiate that the stand taken by the petitioner is false and fabricated. Without prejudice, learned counsel for respondent no.2-NTA has also presented the original

OMR sheet of the petitioner.

14. This court has perused the original OMR sheet of the petitioner which has also been shown to the learned counsel for the petitioner. The petitioner present in court also perused the same.

15. Learned counsel for the petitioner who appears along with the petitioner in person having perused the original OMR sheet still maintains the stand that the original OMR sheet is not the actual OMR sheet, even the same is a photocopy, and therefore, she reiterates her submissions.

16. This court is shocked with the approach of the petitioner.

17. Respondent no.2-NTA which is a Government Agency conducts examination where lakhs of candidates appear. In the current year of 2023, more than 20 lakhs candidates appeared.

18. The specific submissions have been made by respondent no.2-NTA in its counter affidavit and the original OMR sheet has also been presented. The record produced by the respondents is the official record. There is no reason to doubt the genuineness of the same.

19. There is a presumption in favour of the official record in terms of Section 114 of the Indian Evidence Act, 1872. In absence of any concrete document to rebut the presumption, the correctness of the official record cannot be doubted.

20. There is no reason to believe that respondent no.2-NTA would fabricate or replace the marks obtained by any of the candidates. Respondent no.2-NTA has no personal stake.

21. This court, in the case titled as '**MANTASHA ASGHAR VS. UNION OF INDIA & ORS.**' in **W.P(C) 8863/2023** had dealt with a similar case and while dismissing the petition held the following in paragraph nos. 4, 5, 6, and

7:-

“4. The petitioner, who is also present in person does admits that she has signed the said OMR sheet. She, however, states that the OMR sheet has been replaced.

5. This court is of the considered opinion that such an allegation cannot be entertained in the instant writ petition as the same appears to be an afterthought and is not supported by any evidence. There is no overwriting in the OMR sheet to believe that the answers attempted were tempered with.

6. This court, in Shreya Yadav v. National Testing Agency, had dealt with a similar case and while dismissing the petition, held the following in paragraph nos.12 and 13:

“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.”

7. In the instant case, there is no reason to believe that respondent no.3-NTA which has conducted the examination would particularly fabricate the answer/ OMR sheet of a particular student.

[EMPHASIS SUPPLIED]”

22. The sequence of facts and the material available on record creates genuine doubt against the bonafides of the petitioner. The petitioner is stated to have been allotted a rank by two States. The aforesaid position is also disputed by learned counsel appearing on behalf of respondent no.2-NTA who states that under both merit list even the name of the petitioner does not appear.

23. In response to the said submission, it is stated by learned counsel for the petitioner that earlier the name of the petitioner was appearing, however, on modification of the answer sheet, the same stands deleted.

24. Such a stand is again unacceptable and shocking to the conscience of the court.

25. If the name of the petitioner had ever appeared in the merit list, the same can only be deleted by passing appropriate order or modification. However, at this stage, all those aspects may not have much relevance.

26. This court has compared the original OMR sheet with the OMR sheet relied upon on behalf of the petitioner. It is discernable from the comparison of both OMR sheets that question no.4 is answered by the petitioner in original answer sheet with option no.3. Option no.3 is the incorrect answer. In the original OMR sheet, the petitioner has attempted question no.5 with option no.4. Option no.4 qua question no.5 is the incorrect answer. In the answer sheet relied upon on behalf of the petitioner, question no.5 is stated to have been answered with option no.3. Option no.3 qua question no.5 is the

correct answer.

27. Similar attempts have been made with respect to various other questions. Such as question nos.6, 7, 9, 12, 13, 16, 18, 19, 21 etc.

28. It is to be noted that in OMR sheet relied upon on behalf of the petitioner, a deliberate attempt has been made by the petitioner to manipulate the official record. Such an attempt cannot be tolerated in court of law.

29. Having perused the entire material available on record and in view of the facts and circumstances of the case, this court intended to impose costs of Rs.2,00,000/- against the petitioner and also to send the matter for investigation to the police, however, keeping in mind the tender age of the petitioner and various circumstances such as the pressure of the parents and peers, this court refrains from taking such a view and instead imposes costs of Rs.20,000/- against the petitioner.

30. The instant petition is accordingly disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 11, 2023

nc/ss