



2024:DHC:7351



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

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Reserved on: 18.09.2024
Pronounced on: 23.09.2024+ **W.P.(C) 8678/2024****NEERUPAMA THAPA**

.....Petitioner

Through: Mr. Nimish Chib, Mr. Jatin
Rana and Mr. Siddharth
Chaturvedi, Advocates

versus

**NATIONAL BOARD OF EXAMINATIONS IN
MEDICAL SCIENCES & ANR.**

....Respondents

Through: Mr. Sunil J. Mathews, Ms.
Jyoti Rani, Ms. Samanwaya
Rautray and Ms. Yashika
Singh, Advs. for R-1.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The petitioner Neerupama Thapa, by way of present writ petition filed under Article 226 of the Constitution of India, seeks issuance of writ of mandamus or any other writ, order or direction directing the respondents to quash and set aside the decision dated 18.06.2024 *vide* which the candidature of the petitioner for National Eligibility-cum-Entrance Test (Postgraduate), 2024 [*NEET (PG)-2024*] was cancelled and the petitioner was debarred from appearing in the said examination, and to issue admit card to the petitioner



forthwith for appearing in the said examination scheduled for 23.06.2024.

2. **Brief facts of the case**, as disclosed from the petition, are that in the year 2019, the petitioner had completed her MBBS from the University College of Medical Sciences, Bhairahawa, Nepal. It is stated that thereafter, the petitioner had appeared and qualified in the Foreign Medical Graduate Examination (*FMGE*) held in December, 2022. After having qualified the FMGE in December 2022, the petitioner had applied for registration with the Delhi Medical Council. The petitioner was hopeful that before the examination for NEET (PG)-2023 takes place, her name will be registered in the Delhi Medical Council. However, the portal for filing applications for NEET (PG)-2023 had been opened in the meantime and therefore, left with no other option, the petitioner, instead of filing her registration number of the Delhi Medical Council, had filled the acknowledgment receipt issued by the Delhi Medical Council as the petitioner was hopeful that she will get the registration number from the Delhi Medical Council before the conclusion of the examination. However, the respondent no. 1 *vide* e-mail dated 07.08.2023 had canceled the candidature of the petitioner for NEET (PG)-2023, and had declared the acts of the petitioner to be in violation of the examination ethics and UMC guidelines set forth by the NBEMS.

3. It is stated that the petitioner, though had no *mala fide*, accepted her fault of filing application for NEET (PG)-2023 even after not having a registration with any medical council. It is stated that in the meanwhile, the petitioner had received her registration



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number from the Delhi Medical Council on 14.07.2023. Thereafter, the petitioner had applied for the NEET (PG)-2024 as the petitioner had already FMGE and was having registration with the Delhi Medical Council till 2028. While the petitioner was eagerly waiting for her admit card to appear in the examinations of NEET (PG)-2024, the petitioner was shocked to receive an e-mail dated 18.06.2024 whereby the respondent no. 1 apprised the petitioner that she has been debarred from appearing in the NEET (PG)-2024, as a punishment in continuation of NEET (PG)-2023 for which her candidature was canceled previously also.

4. It is further submitted that petitioner had again sent an e-mail dated 20.06.2024 to respondent no. 1, requesting them to permit her to appear in the NEET (PG)-2024. The respondent no. 1 had replied to the said email on 20.06.2024 and relied on their previous stance of debarring the petitioner from appearing in the NEET (PG)-2024 examination. Aggrieved by the actions of the respondents, the petitioner has approached this Court.

5. **Learned counsel appearing on behalf of the petitioner** states that the impugned act of the respondents of debarring the petitioner from appearing in the NEET (PG)-2024 examination is totally against the principles of natural justice. It is argued that the respondents have very arbitrarily extended the punishment of cancellation of candidature of NEET (PG)-2023 on the basis of their whims and fancies without applying any reasoning whatsoever. It is further argued that the respondents have acted in total violation of Article 20(2) of the Constitution of India which prohibits punishing an



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individual for a wrong more than once. i.e., double jeopardy. The respondents had already canceled the candidature of the petitioner in the NEET (PG)-2023 examination and had closed the case by giving a warning to the petitioner to stay careful in future. It is also submitted that after having canceled the candidature for the NEET (PG)-2023, there was no occasion for the respondents to again debar the petitioner from appearing in the NEET (PG)-2024. Learned counsel for the petitioner states that because the petitioner's candidature was cancelled for NEET (PG)-2023 on the ground that the petitioner was not holding a valid registration with the Delhi Medical Council, but the petitioner has since then got registered with the Delhi Medical Council and therefore, for having completed all requirements, the petitioner is eligible to appear in the NEET (PG)-2024. It is submitted that the respondents in their e-mail dated 07.08.2023, by which her candidature was cancelled, had nowhere stated that the petitioner will be debarred from appearing in the NEET (PG)-2024 examination as well. It is also argued that it has not been considered by the respondents that, as on date, the petitioner has a valid FMGE Certificate and a valid registration from Delhi Medical Council and the petitioner had never committed any fraud or illegal activity. Lastly, it is argued that the respondents have failed to consider and have been unsympathetic to the fact that the petitioner comes from a very remote place of the country and has put in years of hard work reaching the present stage and ignoring these facts, the candidature of the petitioner has been rejected without affording the petitioner an opportunity of hearing



6. **Learned counsel appearing on behalf of respondent no. 1 i.e. NBEMS**, on the other hand, submits that while examining the application of the petitioner for NEET (PG)-2023, an '*unfair means case*' was registered against the petitioner by the respondent. It is argued that the Examination Ethics Committee of NBEMS had examined all the materials on record and found the petitioner, alongwith other candidates, guilty of resorting to unfair means as they had furnished false information while applying for NEET (PG)-2023. It is stated that after considering all the facts and circumstances, the Examinations Ethics Committee had imposed the penalty of debarring the petitioner from appearing in NEET (PG)-2023 as well as 2024.

7. It is submitted that on 18.06.2024, while examining the applications for NEET (PG)-2024, it came to light that although the petitioner herein had been debarred from appearing in NEET (PG)-2024 in addition to the NEET (PG)-2023 by the Examination Ethics Committee but inadvertently, she had been communicated penalty only with respect to NEET (PG)-2023. It is submitted that accordingly, respondent no. 1 *vide* impugned communication dated 18.06.2024 had conveyed the decision of the Examination Ethics Committee and informed the petitioner that in addition to the cancellation for NEET (PG)-2023, she is also debarred from appearing in the subsequent NEET (PG)-2024. Learned counsel further argues that the inadvertent error while communicating the decision of the Examination Ethics Committee *qua* the petitioner cannot ensure any benefit to the petitioner who has been found guilty



of resorting to '*unfair means*' by furnishing false information while applying for NEET (PG)-2023. It is stated that even otherwise, the impugned communication dated 18.06.2024 does not levy any fresh penalty and merely reiterates the earlier decision taken by the Committee.

8. It is stated that the present case pertains to an 'unfair means case' registered against the petitioner wherein the petitioner has been found guilty of submitting 'false information' to the respondents in order to show herself as 'eligible' for NEET (PG)-2023 and on account thereof, a punishment has been imposed upon the petitioner by the Examination Ethics Committee. It is argued that the involvement of the petitioner in 'unfair means case', in an All India Level Post Graduate Medical Entrance Examination is detrimental to public health and the same clearly disentitles the petitioner to claim any kind of relief whatsoever. Therefore, it is prayed on these grounds that the present writ petition be dismissed.

9. This Court has **heard** arguments addressed by both the parties, and has perused the material placed on record.

10. The grievance of the petitioner, essentially, pertains to cancellation of her candidature for NEET (PG)-2024 in an alleged arbitrary manner on the ground that she was involved in using 'unfair means' while applying for NEET (PG)-2023, for which she has already been debarred once from appearing in NEET (PG) in the year 2023.

11. Records of the case reveal that the petitioner had received an email from NBEMS wherein she was informed about the registration



of an unfair means case against her, for furnishing false information.

The extract of email dated 05.06.2023 is as under:

“Dear Candidate,

This has reference to your application for NEET PG 2023 conducted by National Board of Examinations in Medical Sciences, it has come to our notice that you have applied for the NEET PG 2023 exam despite not qualifying in FMGE December 2022.

As per the clause 4.10 mentioned in the Information Bulletin of NEET PG 2022,

“Indian citizens or overseas citizens of India who have obtained their Primary Medical Qualifications from Medical Colleges outside India should have qualified the Foreign Medical Graduate Examination (Screening Test) as per Screening Test Regulations, 2002 which is conducted by National Board of Examinations in Medical Sciences. Further, they should have been registered with the NMC/ the erstwhile Medical Council of India or State Medical Council and should have completed their internship or likely to complete their internship on or before 31st May 2022.”

As per the clause 9.30 of FMGE December 2022,

“Candidate appearing in FMGE is ineligible to appear in any other NBEMS exams till such time the candidate qualifies FMGE and is registered by Medical Council of India/National Medical Commission or State Medical Council, a candidate appearing in FMGE and other exams in the same session by producing false information/ documents is an unfair means case and is to be dealt accordingly.”

Your act of applying for the NEET PG 2023 exam without meeting the necessary eligibility requirements is a clear violation of the established rules and constitutes a breach of fairness and integrity in the examination process. **Accordingly, an unfair means case has been registered against you.** You are hereby given an opportunity through this notice to explain in a written statement as to why an appropriate action as per NBEMS Unfair Means Guidelines should not be taken against you.

Your submissions shall be presented before the NBEMS Examination Ethics Committee (EEC). If no response is received from your end to this notice, the matter shall be decided by the EEC without giving any further opportunities to you and



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appropriate action as per NBEMS guidelines shall be taken in addition to cancellation of your candidature for NEET PG 2023.

Your written statement in this regard should be submitted to the NBEMS latest by **12th June 2023, through return email at neetpg@natboard.edu.in ...**

12. The petitioner herein had submitted her reply to the aforesaid show cause notice on 07.06.2023. Pursuant thereto, the petitioner was communicated the decision of the Examination Ethics Committee, *vide* an email dated 07.08.2023, whereby she was informed that her candidature for NEET (PG)-2023 had been cancelled. The relevant portion of email dated 07.08.2023, sent to the petitioner by NBEMS is extracted hereunder:

“Your act of applying for the NEET PG 2023 exam without meeting the necessary eligibility requirements and submitting false information/declaration in NEET-PG 2023 application form is a clear violation of the established rules and constitutes a breach of fairness and integrity in the examination process. Accordingly, an unfair means case was registered against you.

After a thorough investigation and careful consideration of the evidences available on record and applicable UMC guidelines, the examination Ethics Committee has found you in violation of the examination ethics and Ullr1C guidelines set forth by the NBEMS and therefore decided to impose following penalty:

Cancellation of candidature for NEET-PG 2023

Moreover, you are hereby warned not to indulge in any such unethical activities in future.”

13. The petitioner, now, is aggrieved by the decision of NBEMS to debar her from appearing in NEET (PG)-2024 also, which was communicated to her *vide* an email dated 18.06.2024, the relevant portion of which is extracted hereunder:

“In continuation of trailing email dated 07.08.2023, please be apprised that the NBEMS Examination Ethics Committee has decided the academic penalty as under: "Debarred from



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appearing in the next NEET PG conducted after the NEET-PG in which the offence has been committed." In view of the above, in addition to cancellation of candidature for NEET-PG 2023, you are debarred from appearing in subsequent NEET PG i.e. NEET PG 2024."

14. This Court, *vide* interim order dated 21.06.2024, had allowed the petitioner herein to appear in the NEET (PG)-2024, subject to further orders in this petition.

15. It has been contended on behalf of the petitioner that the email received from the NBEMS on 07.08.2023 had only informed her of her candidature cancellation for NEET (PG)-2023 and did not mention the two-year ban from appearing in NEET (PG) for 2023 and 2024, and that she was informed of this additional penalty almost a year later, just before the 2024 examination. However, respondent no. 1 i.e. NBEMS asserts that the Committee had imposed the penalty of two-year ban in the year 2023 itself, but due to miscommunication and human error, it was not effectively conveyed to the petitioner.

16. To appreciate these rival contentions, the internal findings of the Examination Ethics Committee, which formed the basis of communication to the present petitioner regarding her being disqualified or barred from appearing in the examination, has been perused by this Court, which has been placed on record by respondent No. 1 Annexure R-7 of the reply. The **minutes of the meetings of the Committee, dated 13.06.2023**, read as under:

"Item - VII: Candidates applying for NEET PG with False Information



The committee deliberated the issue at length. Members noted that all of them have resorted to furnish false information regarding their registration with a medical council in NEET PG 2023 and NEET PG 2022 application forms. Members noted that without qualifying the FMGE and having a provisional/permanent registration with a medical council in India, they have applied for NEET PG 2022 /2023. Further, members concluded that making a wrong statement in the NEET PG 2022 and NEET PG 2023 application form is an unfair means as per UMC guidelines. Members were informed that they were declared ineligible for NEET-PG 2022/2023.

The committee unanimously decided to impose the penalty as under:

Debar all of them from appearing in the next NEET PG conducted after the NEET-PG in which the offense has been committed. (List placed as annexure-4)..."

17. From a perusal of the aforesaid minutes of meetings, it is evident that on 13.06.2023, the Committee had reached a conclusion that the petitioner herein shall be barred from appearing in the NEET (PG) examination for the year 2023 i.e. when the offence was committed, as well as for next year i.e. 2024. Therefore, the argument of the learned counsel for the petitioner that the NBEMS has now modified its decision and imposed additional penalty, is without any merit since the minutes of the meetings, extracted hereinabove, clearly disclose that on 13.06.2023 itself, the Committee had imposed the penalty of debarring the present petitioner from appearing in NEET (PG) examination for two years i.e. 2023 and 2024.

18. However, there can be no doubt about the fact that there was a miscommunication on part of NBEMS in communicating the decision of the Examination Ethics Committee, through the e-mail



dated 07.08.2023 which was sent to the petitioner, informing her that the penalty imposed upon her, for use of unfair means, was the cancellation of her candidature for NEET (PG)-2023. But, in the facts and circumstances of the case, this Court does not deem it appropriate to rely solely on the miscommunicated email dated 07.08.2023, which is factually incorrect due to human error and is contrary to the findings of the Examination Ethics Committee given and duly recorded and documented on 13.06.2023 itself. Therefore, it is not as if the findings have been reviewed or fresh and additional findings have been given in the year 2024 to fall under category of being 'reviewed'.

19. The undisputed and unchallenged fact that the petitioner herein had misrepresented that she was eligible to appear in the NEET (PG)-2023, though she was not eligible to appear in the same also weighs in the mind of this Court. In this regard, this Court notes that at the time of applying for NEET (PG)-2023, the petitioner herein, though had appeared for FMGE December 2022 Session, the results/pass certificate of the same had yet not been issued and the petitioner had yet not qualified the same. Further, it is also not in dispute that the petitioner had not been registered with the Delhi Medical Council. Since the petitioner, admittedly, did not fulfill these requirements, which were mandatory in nature, at the time of submitting her application for NEET (PG)-2023, she had indulged in an act of furnishing false information and using 'unfair means'.

20. The record reveals that the petitioner herein had filled the following particulars in the NEET (PG)-2023 form:



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**Medical Council Registration Details**

Medical Council Registration Type	Medical Council Registration Number	Name of Medical Council
PROVISIONAL	263086	DELHI MEDICAL COUNCIL

FMG EXAMINATION MARKS

Marks obtained in Foreign Medical Graduate Examination (FMGE)/ Screening Test conducted by NBE MS. (Out of 300).	Year of Passing FMGE	FMGE Roll Number
154	06/2022	2211224669

21. The petitioner herein had mentioned that she had secured 154 marks out of 300 in the FMGE held in June, 2022. However, it has been pointed out to this Court that the petitioner herein had failed in FMGE held in June, 2022 and had secured only 129 marks out of 300, but she had furnished wrong information in her form, extracted above. Further, the petitioner had mentioned the 'acknowledgement receipt number', of the application that she had submitted with the Delhi Medical Council, in place of her registration number of the Delhi Medical Council.

22. Thus, it is not in dispute that the petitioner had not got herself registered with the Delhi Medical Council at the time of filling up the form for NEET (PG)-2023. Similarly, the petitioner herein had also not received her certificate of qualifying the FMGE December 2022 and had furnished wrong information of having qualified FMGE June 2022 despite having failed to qualify the same. Thus, the arguments raised on behalf of the petitioner, that the petitioner herein was already registered with the Delhi Medical Council and had qualified the FMGE, at the time of applying for NEET (PG)-2023, are not only



misleading but also fictitious. The same have to be rejected outrightly, with the warning that this Court is taking a lenient opinion.

23. While dealing with the similar facts and situation, the Division Bench of this Court in case of *Savalia Rajan v. Union of India & Ors. LPA 775/2024*, while dealing with the challenge to the judgment dated 07.08.2024 passed by this Court in a similar case, has held as under:

“9. From the aforesaid, it is apparent that the Appellant has given false registration number, month as well as the year of his passing the FMGE, his marks in the said examination and the name of the Medical Council with whom he was registered. **To say the least, misrepresentation by the Appellant is a serious one.**

10. This Court also finds that the Examinations Ethics Committee of the Respondents vide Minutes of Meeting dated 13th June, 2023 had unanimously decided to impose the penalty of debarring the Appellant as well as similarly placed candidates from appearing ‘in the next NEET PG examination conducted after the NEET-PG in which the offence has been committed’. **Consequently, the Examinations Ethics Committee had taken a decision to debar the Appellant and other similarly situated candidates from appearing in the NEET PG examination not only for the year 2023 but also for the next year i.e. 2024.**

11. This Court is further in agreement with the view of the learned Single Judge that though there was a miscommunication on the part of NBEMS in communicating the decision of the Examinations Ethics Committee through the email dated 07th August, 2023, yet the same being contrary to the decision of the Examinations Ethics Committee cannot be relied upon by the Appellant.

12. **Moreover, when the Court looks at the ‘big picture’, it finds that the alleged misinformation (at page 455 of the paper book), as quoted hereinabove, is not an innocent or minor mistake. It borders on criminality.**

13. Consequently, this Court finds no ground to interfere with the impugned judgment. Accordingly, the same is dismissed along with the applications.”



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24. Therefore, in view of the foregoing discussion, this Court is of the opinion that, as per the relevant rules, the petitioner was considered to have used unfair means of communicating her eligibility despite being ineligible to appear in the NEET (PG)-2023. The factual finding and conclusion of the Examination Ethics Committee dated 13.06.2023 is not ambiguous and it clearly bars the petitioner from appearing in the NEET (PG) for the year 2023 and 2024. This Court finds no occasion to interfere either with the finding of the Examination Ethics Committee dated 13.06.2023 or the impugned email dated 18.06.2024 sent to the petitioner by NBEMS, thereby communicating the decision of Examination Ethics Committee to debar the petitioner from appearing in NEET (PG)-2024. This Court is further of the considered opinion that the email dated 07.08.2023 sent to the present petitioner suffered from a human error, causing some inconvenience to him, which could have been avoided on part of respondent NBEMS by exercising more care and caution. However, this Court cannot come to the aid of the petitioner in the facts and circumstances of this case.

25. In view thereof, the present petition is dismissed.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 23, 2024/A