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

% **Decided on : 08.08.2024**

+ **W.P.(C) 9412/2024 & CM APPL. 38625/2024**

CHHANIYARA DHARMENDRA PRAFULBHAI ..Petitioner

Through: Ms. Urvashi Bhatia and Mr.
Paras Joshi, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Apoorv Kurup, Ms. Gauri
Goburdhun and Mr. Rishabh
Dubey (GP) for R-1
Mr. Kirtiman Singh, CGSC
with Mr. Waize Ali Noor, Mr.
Varun Rajawat, Mr. Ranjeev
Khatana, Mr. Varun Pratap
Singh, Mr. Kartik Baijal, , Mr.
Maulik Khurana, Advocates
for R-2 and R-3
Mr. T Singhdev, Mr. Aabhaas
Sukhramani, Mr. Abhijit
Chakravarty, Ms. Anum
Hussain, Mr. Bhanu Gulati,
Mr. Tanishq Srivastava, Mr.
Sourabh Kumar and Ms.
Ramanpreet Kaur, Advocates
for R-4

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)



1. The petitioner Dr. Chhaniyara Dharmendra Prafulbhai, 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 alongwith e-mail dated 20.06.2024 *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 11.08.2024.

2. **Brief facts of the case**, as disclosed from the petition, are that in the year 2019, the petitioner had completed his MBBS from the University of Northern Philippines – College of Medicine, Tamag, Vigan City. In the year 2020, the petitioner had completed his compulsory rotatory internship. It is stated that after completion of MBBS as well as internship, the petitioner had applied for the Foreign Medical Graduate Examination ['FMGE'], introduced under Screening Test Regulations, 2002, which is a necessary licensure examination for Foreign Medical Graduates. It is stated that as per the existing rules of the National Board of Examinations for Medical Sciences ['NBEMS'], FMGE is a prerequisite for an Indian citizen/Overseas citizen of India possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with Medical Council of India or any State Medical Council on or after 15.03.2002. It is stated that the FMGE December 2022 Session, as



per the original notification, was scheduled to take place on 04.12.2022, however, the same had got postponed and re-scheduled for 20.01.2023. It is submitted that the result of the FMGE December 2022 examination was announced on 03.02.2023, and thereafter, the petitioner had registered himself in the register of the Delhi Medical Council.

3. The petitioner states that, in the meanwhile, on 07.01.2023, respondent no. 2 i.e. NBEMS had invited applications for NEET (PG)-2023 and as per the said notice, online submission of the application form was to commence from 07.01.2023 and end on 27.01.2023. The petitioner accordingly applied for NEET (PG)-2023, without going through the relevant rules. It is stated that the prerequisite of the said exam was that a candidate must have cleared the FMGE before applying for NEET (PG)-2023 and registered himself in the State or National Medical Council. It is stated that though the petitioner did clear the FMGE, but at the time of filling up the form for NEET (PG)-2023, the result of FMGE had not been announced and the petitioner had not been registered with any medical council. It is stated that on 05.06.2023, i.e. the date of issuance of admit cards for the NEET (PG)-2023, the petitioner received an email from respondent no. 2 in which the petitioner had been issued show cause and an unfair means case had been registered against him. He was directed to reply to the show cause by 12.06.2023. On 10.06.2023, the petitioner had replied to the show cause notice stating his bonafide mistake as well as stating that such a mistake would not be repeated in the future. The petitioner states that on 07.08.2023, he



had received an email vide which he was informed that after thorough investigation and careful consideration of the evidence available on record and applicable UMC guidelines, the examination ethics committee had found the petitioner to be in violation of the examination ethics and decided to impose the penalty of ‘cancelling the candidature of the petitioner for NEET (PG)-2023’. Furthermore, he was warned not to indulge in such unethical activities in future.

4. The petitioner now states that on 16.04.2024, respondent no. 2 had invited applications for NEET (PG)-2024, pursuant to which, the petitioner had duly submitted his application. On 18.06.2024 i.e. on the date of issuance of admit cards, the petitioner had again received an email from respondent no. 3 i.e. Head, Department of Examination Centre of NBEMS, intimating the petitioner that in continuation of the previous punishment, they have decided to debar the petitioner for NEET (PG)-2024, for the offence committed in NEET PG 2023. On 19.06.2024, the petitioner had raised a grievance on the Online Communication portal of respondent no. 2. Thereafter, the petitioner had received an e-mail on 20.06.2024 from respondent no. 2, wherein it was reiterated that the petitioner had been debarred for appearing in NEET (PG)-2024. It is stated that on 23.06.2024, the NEET (PG)-2024 was scheduled to take place, however, the same got cancelled one day prior by the Government of India. Thereafter, on 05.07.2024, a Notification was issued by the NBEMS announcing the new date of conducting of NEET (PG)-2024 as 11.08.2024.

5. In these facts and circumstances, the petitioner has approached this Court. In the present case, notice was issued on 11.07.2024.



Reply has been filed on behalf of respondent no. 2 and 3. The petitioner and the respondent no. 2 and 3 have also placed on record their respective written submissions.

6. **Learned counsel appearing on behalf of the petitioner** states that the finding of the Examination Ethics Committee, that the petitioner is guilty of breach and violation of Clause 4.10 of Information Bulletin, NEET (PG)-2023 and Clause 9.30 of FMGE December 2022, is not being challenged or disputed by the petitioner, and that the decision communicated to the petitioner was final and binding. However, it is argued that the NBEMS had sent an email dated 07.08.2023 to the petitioner *vide* which the decision of the Examination Ethics Committee was communicated to him, wherein it was categorically stated that the penalty imposed by the Committee against the petitioner, i.e. Cancellation of candidature for NEET (PG)-2023 was after a thorough investigation and careful consideration of the evidence available on record and applicable UMC guidelines. It is submitted that the decision communicated to the petitioner was in no manner, a preliminary finding, and contents and language of the email reflected the final and binding decision of the Committee. It is argued that the said email did not even remotely mention the probability of imposition of any further penalty.

7. It is argued by learned counsel for the petitioner that after a lapse of almost one year, the respondent no. 3 *vide* email dated 18.06.2024 communicated to the petitioner that in continuation of email dated 07.08.2023, he was “debarred from appearing in the next NEET PG conducted after the NEET-PG in which the offence has



been committed”. It is stated that it is the fundamental right of every citizen to be informed fully about any punishment or penalty or fine imposed upon him under any law, rules, or regulations thereof. It is further submitted that the sole defence of the respondents is that the communication dated 07.08.2023, informing the petitioner of his debarment from NEET (PG)-2023 only, was an inadvertent error, and that the email dated 18.06.2024 merely informed the petitioner of the actual punishment awarded by the Committee. It is stated that in other words, the respondents are seeking to explain and condone their own inadvertent error while retrospectively enhancing the penalty imposed upon the petitioner and penalizing him. It is submitted that had the petitioner been made aware at the relevant time about his debarment from NEET (PG)-2024, he would have challenged the same as per the law. However, the respondents misled the petitioner about the penalty being imposed upon him, thereby, preventing him from exercising his fundamental rights.

8. It is submitted that the petitioner legitimately expected that he would be allowed to appear for the NEET (PG)-2024 since the email dated 07.08.2023 specifically debarred him from appearing in only the 2023 examination and was completely silent about any other punishment or penalty. It is argued on behalf of the petitioner that in the present case, it is an admitted fact that at no point in time was the petitioner informed that the penalty imposed by the respondent extended to NEET (PG)-2024. It is stated that this being the case, the respondents cannot debar the petitioner from the said exam by violating his fundamental and constitutional rights.



9. **Learned CGSC appearing on behalf of respondent no. 2 and 3**, 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.

10. 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, he had been communicated penalty only with respect to NEET (PG)-2023. It is submitted that accordingly, the respondent *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, he is also debarred from appearing in the subsequent NEET (PG)-2024. Learned CGSC 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.

11. 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 respondent in order to show himself 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.

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

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

14. Records of the case reveal that the petitioner herein had submitted his application, in the month of January 2023, for appearing in NEET (PG)-2023. However, on 05.06.2023, the



petitioner had received an email from NBEMS wherein he was informed about the registration of an unfair means case against him, 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 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 ...**

15. The petitioner herein had submitted his reply to the aforesaid show cause notice. Pursuant thereto, the petitioner was communicated the decision of the Examination Ethics Committee, *vide* an email dated 07.08.2023, whereby he was informed that his candidature for NEET (PG)-2023 had been cancelled. The relevant portion of email dated 07.08.2023, sent to the petitioner by NBEMS, reads as under:

“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 UMC 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.”

16. The petitioner, now, is aggrieved by the decision of NBEMS to debar him from appearing in NEET (PG)-2024 also, which was communicated to him *vide* an email dated 18.06.2024, which reads as under:

“Dear Candidate,

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 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.

This is for your kind information”

17. The petitioner thereafter had raised his grievance with the respondent no. 3 *vide* an email dated 19.06.2024 and in response to the same, respondent no. 3 had sent an email dated 20.06.2024 to the petitioner herein, reiterating the fact that he had been debarred from appearing in NEET (PG)-2024 as communicated to him previously *vide* emails dated 07.08.2023 and 18.06.2024. The contents of email dated 20.06.2024 are extracted hereunder:

“This is with reference to your application for NEET PG 2024 Session bearing Application ID **PG24006454**.

It is reiterated that a case of unfair means was registered against you for your indulgence in Unfair practices during conduct of NEET PG 2023. Your attention is also invited to NBEMS email dated **07.08.2023 and 18.06.2024** whereby the decision of the Examination Ethics Committee (EEC) was communicated to you. In view of the said decision of EEC, you are ineligible to appear in NEET PG 2024.

Accordingly, I am directed to inform you that your application bearing ID **PG24006454** for NEET-PG 2024 has been rejected and admit card for NEET PG 2024 shall not be issued to you.

Further, you are advised not to canvas with NBEMS for issuance of admit card.

This is for your kind information.”

18. It has been contended on behalf of the petitioner that an email from the NBEMS on 07.08.2023 only informed him of his



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 he was informed of this additional penalty almost a year later, just before the 2024 examination. However, the respondent 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.

19. To appreciate these rival contentions, the internal findings of the Examination Ethics Committee, which formed the basis of communication to the present petitioner regarding him being disqualified or barred from appearing in the examination, has been perused by this Court, which has been placed on record by respondent no. 2 and 3 by way of Annexure R7 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)..."

20. 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.

21. 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 him that the penalty imposed upon him, for use of unfair means, was the cancellation of his 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'.

22. The undisputed and unchallenged fact that the petitioner herein had misrepresented that he was eligible to appear in the NEET (PG)-2023, though he 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 of the same had yet not been declared and the petitioner had yet not qualified the same. Further, since the results of FMGE had not been declared, he could not have got himself registered with either a State Medical Council or Medical Council of India. However, the petitioner, admittedly, did not fulfill these requirements, which were mandatory in nature, at the time of submitting his application for NEET (PG)-2023, and therefore, he had indulged in an act of furnishing false information and using 'unfair means'.

23. Thus, as per the relevant rules, the petitioner was considered to have used unfair means of communicating his eligibility despite being ineligible to appear in the said examination. 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. It is also pertinent to mention that the petitioner has not challenged the correctness of him being held guilty of using unfair means in this case, which is even otherwise a matter of record.



24. Therefore, in view of the foregoing discussion, 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 and 20.06.2024 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 alongwith pending applications, if any.

26. Order be given *dasti* under the signatures of court master.

27. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 8, 2024/ns