

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16498 of 2024

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Akanksha Smita D/o Bhairaw Nand Sharma @ Bhairaw Nand Sharma
Resident of Village Hardia, P.S. Mehandia, District- Arwal, Bihar.

... .. Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
2. The Secretary, Department of Higher Education, Ministry of Education, Government of India, New Delhi.
3. The Director, National Board of Examinations in Medical Sciences, Medical Enclave, Ansari Nagar, New Delhi.
4. The Executive Director, National Board of Examinations in Medical Sciences, Medical Enclave, Ansari Nagar, New Delhi.
5. The Additional Director (M), National Board of Examinations in Medical Sciences, Medical Enclave, Ansari Nagar, New Delhi.
6. The Secretary (I/C), National Board of Examinations in Medical Sciences, Medical Enclave, Ansari Nagar, New Delhi.
7. The Secretary, National Medical Commission, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bhairaw Nand Sharma, Adv.
For the NBEMS	:	Mr. Jitendra Kumar Rai, Adv.
For NMC	:	Mr. Kumar Priya Ranjan, Sr. SC.
		Mr. Sudarshan Bharadwaj, Adv.
		Mr. Sandeep Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

6/ 14-07-2025

Heard Mr. Bhairaw Nand Sharma, learned counsel for the petitioner, Mr. Jitendra Kumar, learned counsel appearing for National Board of Examinations in Medical Sciences and Mr. Kumar Priya Ranjan, learned counsel representing the National Medical Commission.

2. The present writ application has been filed for quashing the order dated 04.10.2024 contained in Annexure P/5



issued by the Respondent No.5 on the ground that the impugned order was passed without due consideration of the representation filed by the petitioner on 06.09.2024 and without taking into consideration the order dated 28.08.2024 passed by this Court in CWJC No. 12456 of 2024 (Annexure P/3). The petitioner has further prayed for a direction to the Respondents to conduct re-evaluation/re-checking/scrutiny of the OMR/Answer sheet of the petitioner in the Foreign Medical Graduate Examination, June 2024 (FMGE, June 2024), particularly after uploading the corresponding question paper, Answer key and OMR sheet of the petitioner. Additionally, the prayer of the petitioner is for a direction to reduce the qualifying/pass marks to 147 or less in line with the relaxation granted in NEET-PG entrance examinations.

3. An Interlocutory Application no. 01 of 2025 has been filed by the petitioner praying therein for a direction to the Respondents to conduct re-evaluation and rechecking of the OMR answer sheet of the petitioner by constituting an expert committee comprising doctors/professors from AIIMS, New Delhi or any other reputed medical institution or college and to ensure that such evaluation is carried out in the presence of the petitioner.



4. The brief fact arising out of the present petition is that the petitioner after successfully passing the 10+2 examination, took admission in the MBBS course at Nobel Medical College, Biratnagar, Nepal which is affiliated with Kathmandu University, Kathmandu, Nepal. The petitioner has duly completed the MBBS course along with the mandatory one-year rotating internship and was awarded the MBBS degree in 2024 by the Nobel Medical College, Biratnagar, Nepal. After completing the said course, the petitioner applied for Foreign Medical Graduate Examination (hereinafter 'FMGE') in June, 2024, which is a statutory requirement under law for obtaining registration with the Medical Council of India [now National Medical Commission (Hereinafter, 'NMC')].

5. Learned counsel for the petitioner submits that the petitioner appeared in Foreign Medical Graduate Examination held in June, 2024 and as per petitioner's own evaluation and performance in the examination, she expected to secure more than 160 marks out of 300. However, to her utter surprise, the petitioner was declared failed having been awarded only 147 marks. 150 is the pass marks out of 300. Learned counsel further submits that several questions in said examination of FMGE June, 2024 were of a higher difficulty



level akin to that of DM/M.Ch/NEET-SS level entrance examinations, which is beyond the expected standard for 'FMGE'. More than twelve questions were either wrong or had two correct answers, each supported by authoritative textbooks authored by different standard authors/publishers.

6. The petitioner submitted a representation before the concerned respondent authorities for redressal of her grievance and seeking re-evaluation/re-checking of her OMR answer-sheet. Since no action was taken on the representation of the petitioner, the petitioner was compelled to file writ application bearing CWJC No. 12456 of 2024 which was disposed of *vide* order dated 28.08.2024 with a direction to the petitioner to file a fresh representation along with all supporting documents before the National Board of Examinations in Medical Sciences, Medical Enclave, Ansari Nagar, New Delhi (Respondent No.3 herein). The Respondent No.3 was further directed to dispose of the said representation by passing a reasoned and speaking order within three weeks after affording a proper opportunity of hearing to the petitioner.

7. In pursuance thereof, the petitioner filed a fresh representation along with the supporting documents before the Respondent No.3 on 06.09.2024. It has further been



submitted that the petitioner received phone call from the National Board of Examinations (NBE) on 03.10.2024 informing her that a Webinar/Online Personal hearing would be conducted on 04.10.2024 at 11:00 AM before the board. The Webinar was conducted and as per the petitioner, during the said Webinar, the members of the Board did not disclose their identities, nor did they ask any question about the specific grievance raised in the representation. The entire meeting lasted only for 15 minutes without any meaningful engagement or opportunity for the petitioner to be heard. The representation of the petitioner was summarily rejected in mechanical manner.

8. It has further been argued that the petitioner received a mail (Annexure P/5) rejecting her representation by a non-speaking, unreasoned order. In the impugned order, the National Board of Examination (hereinafter 'NBE') has taken stand that the 'FMGE' is a proprietary examination, and as per the Information Bulletin and Non-Disclosure Agreement, particularly Clause 9.7, no request for sharing content of the examination, including answer keys or answer sheets, shall be entertained. By placing reliance on the Screening Test Regulations, 2002, framed under the Indian Medical Council Act, 1956, learned counsel submits that the said Regulations



govern the procedure for allowing Indian citizens or Overseas Citizens of India, who have obtained their primary medical qualifications from foreign institutions, to be provisionally or permanently registered with the erstwhile Medical Council of India (now National Medical Commission) or any State Medical Council. The object and purpose of the screening test is to assess the eligibility and competency of such candidates to practice medicine in India. Nowhere, in the said Regulations, it is stipulated that the examining body, i.e., the National Board of Examinations in Medical Sciences (hereinafter 'NBEMS'), will claim itself to be a 'proprietary authority', nor is there any express provision that precludes the disclosure of question papers or answer keys to the candidates who appear in the examination. The petitioner further submits that she is entitled to grace marks and also entitled to 12 additional marks in view of the fact that 12 questions in the 'FMGE June 2024' were having multiple correct answers as supported by authoritative experts.

9. Learned counsel placed reliance on the judgment passed by the Delhi High Court in the case of *Association of MD Physicians vs. National Board of Examinations, W.P. (C) 918/2021*.



10. Learned counsel appearing for 'NBEMS' argued that pursuant to the representation filed by the petitioner, Board duly constituted a team to look into the matter and informed the petitioner about an online personal hearing, which was conducted on 04.10.2024. After following the said hearing, a reasoned and speaking order, rejecting the petitioner's claim, was passed. He referred to Clause 5.6 of the Information Bulletin of 'FMGE'. Additionally, Clause 9.7 of the same bulletin incorporates a non-disclosure agreement, declaring that the 'FMGE' is a proprietary examination, the content of which including question papers, answer keys, and answer sheets is confidential and owned by 'NBEMS'. As such, the 'NBEMS' shall not entertain any request for disclosure of examination content in any form. In support of his submission, he relied upon the decision of the Division Bench of the Delhi High Court in the case of *All India Foreign Medical Graduate Association v. National Board of Examinations W.P. (C) 6984/2014*), wherein it has been held that non-disclosure of the 'FMGE' question paper and answer key is a valid policy decision and does not warrant interference by the Court.

11. It has further been stated that Clause 10.2 of the bulletin allows candidates to challenge the questions on the



ground of technical error within two calendar days from the date of the examination with supporting medical literature. For FMGE June 2024, this deadline was 08.07.2024. However, the petitioner did not raise any such challenge within the prescribed timeframe. The 'FMGE' question papers are prepared by eminent subject experts in their respective disciplines, in accordance with the MBBS curriculum prescribed by the National Medical Commission (NMC). These questions are further validated by faculty members from various government medical colleges and institutes. It is further submitted that each and every question in the 'FMGE' June 2024 was subjected to post-exam review by a subject matter expert in the relevant field. Based on this expert review, only one question was found to be technically incorrect, and as such, marks for that question were awarded to all candidates including the petitioner.

12. Learned counsel for the Board also referred to the Screening Test Regulations, 2002 and the judgment of the Hon'ble Supreme Court in the case of *Sanjeev Gupta v. Union of India, (2005) 1 SCC 45*, to submit that 'FMGE' is conducted strictly in accordance with statutory provisions and the parameters laid down by the Hon'ble Supreme Court in aforesaid case. He also relied upon the judgment of the Madras



High Court rendered in the case of ***Dr Lokanand Teeka Raman and others v UOI and others*** wherein a similar request for constitution of an independent expert committee to re-evaluate the FMGE examination (2020) was made. The Madras High Court declined such prayer, observing that when a 20 member expert committee has already reviewed the question paper and expressed its findings, it is not within the jurisdiction under Article 226 to appoint another committee to reassess the same. The Court held that it would be beyond its competence to determine which committee's findings were more accurate if a contradictory report were to emerge.

13. I have heard learned counsel for the parties.

14. The present writ application has been filed seeking, *inter alia*, a direction upon the respondent National Board of Examinations in Medical Sciences (NBEMS) to re-evaluate/re-check OMR answer sheet of the petitioner in the Foreign Medical Graduate Examination (FMGE), June 2024 session, and further to award grace marks on the ground that certain questions in the said examination were either incorrect or had multiple correct answers.

15. It is the case of the petitioner that she after completing her MBBS from Nobel Medical College, Biratnagar,



Nepal, appeared in the FMGE June 2024 examination and obtained 147 marks out of 300 which is below the pass marks.

16. Clause 5.6 of the Information Bulletin for 'FMGE June 2024' provides that there is no provision for re-totalling, re-evaluation, or award of grace marks. The petitioner had voluntarily registered and appeared for the examination after accepting these conditions, and thus, cannot now challenge the rules of the game after participating in it, as held in the case of *Anupal Singh v State of UP* reported in *2020 (2) SCC 173*, in which it has been held that a candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it after becoming unsuccessful. The petitioner also did not secure the pass marks in the examination held in December, 2024 i.e., after six months. It is to be noted that the 'FMGE' examination is held every six months for the candidates who completed his or her medical course from foreign University.

17. The petitioner reliance upon the decision of Delhi High Court passed in the case of *Association of MD Physicians (supra)* is misplaced. The learned Single Judge Bench of the Delhi High Court held that all candidates be awarded one extra mark for a disputed question, the said



judgment was later overruled by the Division Bench in LPA 225/2021 wherein the Division Bench categorically held that the learned Single Judge had exceeded jurisdiction in awarding marks to all candidates who had selected incorrect answer. It was further held that merely because some candidates were confused or uncertain does not justify a finding of ambiguity or patent error in the question. The matter before this Court is no different. There is no demonstrable ambiguity or manifest error in the questions raised by the petitioner. However, in the present case, the Expert Committee re-verified the questions after examination was completed and found one question technically incorrect and awarded one mark to every candidate.

18. Learned counsel for the petitioner has drawn the Court's attention to Annexure P/4, which contains a representation dated 06.09.2024 submitted by the petitioner pursuant to the order passed by this Court in CWJC No. 12456 of 2024. The said representation *inter alia* contains list of 12 questions which, according to the petitioner, was incorrect or having more than one correct option. Prior to this, the petitioner on 23.07.2024 submitted a representation through E-mail before 'NBEMS' disputing the twelve questions but without any basis.

19. Upon asked by the Court that as to how the



petitioner came to know about the 12 questions having been incorrect and more than one correct option and that too after delay of about 16 days from the date of examination, learned counsel for the petitioner answered that it was based upon personal memory/recollection.

20. The Information Bulletin specifically prescribes that a candidate has to dispute the question within two days of the examination.

21. However, learned counsel submits that the Court may call for the questions in order to substantiate the claim of the petitioner.

22. This Court is of the view that the claim of the petitioner is completely speculative having no concrete basis. The question has been disputed much after the prescribed limit given in the Information Bulletin which is only two days. The period of two days is having a purpose inasmuch as the appearing candidate can have fresh memory of the questions/answers asked in the examination and that may be reproduced by the candidate within the said period of two days of the examination.

23. In contrast, the 'NBEMS' has argued that a Subject Matter Expert Committee conducted a comprehensive



post-examination review of the 'FMGE' June 2024 examination. Only one question was found to be technically incorrect and marks for the same were uniformly awarded to all candidates, including the petitioner. Once such an expert review has already been undertaken, this Court finds no reason to re-open or second-guess that process based upon the speculative claim of the petitioner. Courts have consistently refrained from interfering with academic assessments unless there is a clear case of arbitrariness or *mala fide*. None of which has been shown in the present case.

24. It is also important to be noted that 'FMGE' Examination was conducted in an online mode and as per the Information Bulletin, no question paper or answer key was disclosed to the candidates. In such a scenario, it remains entirely unclear as to on what basis the petitioner has asserted that 12 questions were incorrect and or having more than one correct answer.

25. Further, the confidential and proprietary nature of the 'FMGE' examination, governed by Clause 9.7 of the Information Bulletin and the Non-Disclosure Agreement, prohibits disclosure of the question paper and answer key. This examination policy having proprietary nature may not be



interfered with unless strong case of arbitrariness or *mala fide* is made. The petitioner participated in December, 2024 ‘FMGE’ examination but again failed to obtain the pass marks The petitioner has the opportunity to appear in the future ‘FMGE’ examination as the examination is conducted twice annually.

26. Considering the aforesaid discussions and the policy decision involved in the examination process, this Court finds no merit in the present writ application. Accordingly, the same is dismissed.

(Anil Kumar Sinha, J)

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