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

+ **W.P.(C) 17042/2024**

HUSSAIN KHAN

.....Petitioner

Through: Mr. Yash Prakash, Mr. Ishan Jain and
Mr. Vineet Pandey, Advs.

versus

**NATIONAL BOARD OF EXAMINATION IN MEDICAL
SCIENCES**

.....Respondent

Through: Mr. Siddharth Garg and Ms. Lihzu
Shiney Konyak, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **28.05.2025**

1. The present petition has been filed seeking following reliefs:

- “i. Pass a Writ/order/direction quashing the Impugned communication /order contained in letter dated 29.10.2024 issued by Respondent.*
- ii. Pass a Writ/order/direction in favour of the petitioner and against the respondent thereby directing the respondent to issue FMGE pass certificate to the petitioner.”*

2. The challenge in the present petition is essentially to the impugned order dated 29.10.2024 passed by respondent/NBEMS whereby the candidature of the petitioner was cancelled for FMGE June 2024.

3. Mr. Yash Prakash, learned counsel appearing on behalf of the petitioner invites attention of the court to impugned order to submit that the decision in impugned order is based on certain ‘thorough investigation’; ‘evidences available on record’, as well as, the statement of petitioner. The relevant part of the impugned order reads thus:

“The matter was presented before the NBEMS Examination Ethics Committee in its meeting held on 17/09/2024. After a thorough investigation and careful consideration of the evidences



available on record, your statement recorded by NBEMS and/or response to the show cause letter issued to you 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 FMGE June 2024.***

(emphasis supplied)

4. Mr. Prakash submits that though material like, ‘thorough investigation’ carried, the statement of petitioner and other evidences allegedly available on record were considered, as have been referred to in the impugned order, but no such evidences/documents were furnished to the petitioner along with the Show Cause Notice (‘SCN’) or otherwise.

5. In the above backdrop, Mr. Prakash submits that there is complete violation of principles of natural justice. To further buttress his contention, Mr. Prakash has drawn attention of the Court to SCN dated 10.09.2024. Referring to SCN, he contends that the allegation levelled against the petitioner is of using unfair means and the same is premised on some response analysis, audit log analysis and CCTC footage analysis, but the said material was never furnished to the petitioner. The relevant excerpts of SCN reads as under:

*“This has reference to your appearance in FMGE June 2024 session held on 05th **July 2024** against Roll Number **2411105871** conducted by National Board of Examinations in Medical Sciences at **Pawan Ganga Educational Centre 1**.*

On the basis of incorrect response analysis and audit log analysis followed by CCTV footage analysis of the FMGE June 2024 at Pawan Ganga Educational Centre 1, it has been noted by NBEMS that you were talking and/or peeping into the computer system of other candidates during the conduct of examination.”



XXX

XXX

XXX

Accordingly, an unfair means case has been registered against you. You are hereby given an opportunity through this notice to explain in written statement as to why an appropriate action as per NBEMS Unfair Means Guidelines should not be taken against you.

(emphasis supplied)

6. This Court finds merit in the submission of Mr. Prakash. A perusal of the SCN indicates that the allegation against the petitioner is of using unfair means, which is a serious allegation.

7. The SCN refers to ‘response analysis’; ‘audit log analysis’, as well as, ‘CCTV footage’. Likewise, the impugned order mentions that ‘thorough investigation’ carried; the statement of petitioner and other evidences available on record were considered while passing the said order. However, reading of SCN does not suggest that said material was furnished to the petitioner alongwith SCN.

8. On being asked, Mr. Siddharth Garg, learned counsel appearing on behalf of respondent/NBEMS, has not been able to show that the relevant material and documents which finds mention in SCN, or became basis of passing the impugned order, were supplied to the petitioner either with SCN or anytime thereafter, before passing of impugned order.

9. The attention of Court was drawn by Mr. Garg to self-declaration form filled by petitioner [Annexure R-2], as well as, to a hand written letter stated to be written by the petitioner, to contend that the petitioner had admitted to an act of using unfair means. However, the fact remains that the material and the evidence/documents relied upon by the respondent in SCN as well as in the impugned order, were never supplied to petitioner.



10. Undoubtedly, the impugned order canceling petitioner's candidature for FMGE June 2024 entails civil consequences. Therefore, the material referred to in SCN as well as the impugned order, ought to have been furnished to the petitioner, to elicit reply of the petitioner in respect of such material. It is trite law that basic principle of natural justice requires that the person being proceeded against has to be furnished with copies of the material (whether in the form of documents or statements) gathered against such person which is being relied upon by the authority which is prosecuting such person.¹

11. In view of the above discussion, this Court is of the view that non-furnishing of relevant material referred and relied upon in the show cause notice as well as the impugned order entails infraction of principles of natural justice. Therefore, the impugned order dated 29.10.2024 is unsustainable and is hereby quashed and set aside.

12. The parties are relegated to the stage of show cause notice, and liberty is granted to the respondent to proceed in accordance with law after furnishing the relevant material in the form of documents, statements etc. to the petitioner. The respondent is directed to conclude the proceedings within a period of six weeks from the date of this order.

13. The petition is disposed of in the aforesaid terms.

VIKAS MAHAJAN, J

MAY 28, 2025

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¹ Poonam Jain vs UOI and Ors., 2017 SCC OnLine Del 8872.