

(2021) 08 DEL CK 0088

In the Delhi High Court

Case No : Civil Writ Petition No. 8429 Of 2021, Civil Miscellaneous Application No. 26090 Of 2021

Arman Sindhu

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2021) 08 DEL CK 0088

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sanjay Sharawat, Farman Ali, Akshat Singh, Athar Raza Farooquei, T.Singhdev, Michelle B.Das, Abhijit Chakravarty, Sumangla Swami, Kirtiman Singh

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. The petitioner is a doctor. He has completed the MBBS course from Rohilkhand Medical College, Bareilly, Uttar Pradesh and wishes to pursue a

post graduate degree. The grievance with which he has approached the Court is that the respondents have fixed 30.09.2021 as the last date for

completion of the compulsory one-year rotational internship to enable a candidate to participate in the National Eligibility cum Entrance Test (Post

Graduate) [hereinafter, "NEET-PG"] examination to be held on 11.09.2021. The petitioner will complete his internship only on 25.10.2021, and

therefore seeks a direction upon the respondents to extend the date of completion of internship from 30.09.2021 to 31.10.2021.

2. Mr. Sanjay Sharawat, learned counsel for the petitioner, submitted that this year, due to circumstances arising out of the Coronavirus pandemic, the

NEET-PG examination, which is normally held in the month of January, has been postponed to 11.09.2021. According to him, the schedule laid down

by the respondents is entirely consistent with completion of the internship by 31.10.2021 or even later. He submits that such a modification would not

disturb the proposed schedule, and would enure to the benefit of several candidates whose internship will not be completed by 30.09.2021, but soon after.

3. In support of this contention, Mr. Sharawat drew my attention to the Medical Council of India Postgraduate Medical Education Regulations, 2000

[hereinafter, 'PGMER'] wherein the schedule for completion of the admission process for post graduate medical courses has been laid down.

This schedule provides that the entrance examination be conducted by 10th January and result be declared by the end of January. Counselling is to be

conducted in three rounds between 12th March and 8th May, with 31st May being the last date of joining. In conjunction with this schedule, Mr.

Sharawat submitted that the last date for completion of internship for the purposes of eligibility for writing the NEET-PG examination is fixed as

31.03.2021.

4. In the wake of the Coronavirus pandemic, by a notification dated 07.04.2020, the Medical Council of India, now the National Medical Commission

[respondent no. 2 herein] [hereinafter, 'NMC'], extended the last date for completion of internship to 30.04.2021.

5. By a notice dated 23.02.2021, the National Board of Examinations [hereinafter, 'NBE'] [respondent no 3 herein] fixed the NEET-PG

examination for 18.04.2021 and the results were to be declared on 31.05.2021. At this time, the NBE also issued an examination information bulletin,

in which it was provided that the last date for completion of internship was extended to 30.06.2021.

6. Due to the intervening outbreak of the second wave of COVID-19 pandemic in the country, the examination was not held on 18.04.2021. The

Ministry of Health and Family Welfare, Government of India issued a letter dated 03.05.2021 to the State Governments stating that the NEET-PG

examination was being postponed and would not be held prior to 31.08.2021. The aforesaid letter also called upon the States to utilize prospective

NEET-PG candidates in the COVID-19 workforce. According to the petitioner, he

has also been serving in COVID-19 related duties since April, 2021.

7. The NEET-PG examination has now been scheduled for 11.09.2021 by a notice dated 13.07.2021 issued by the NBE. By a further notice dated 06.08.2021, the NBE has decided to open a second phase for registration of candidates between 16.08.2021 to 20.08.2021, and to extend the cut-off date for completion of internship to 30.09.2021.

8. It is in these circumstances that the petitioner has filed this writ petition for the following reliefs:-

â??[a] Issue a writ of mandamus and direct the Respondents to extend the date of completion of internship from 30.09.2021 to 31.10.2021

for the purpose of NEET-PG-2021 Examination scheduled to take place on 11.09.2021; and

[b] Consequently issue a writ of mandamus and direct the Respondents to permit the Petitioner to submit his application to enable him to

appear in the NEET-PG-2021 Examination scheduled to take place on 11.09.2021 with all consequential benefits depending upon outcome

of result of said exam; and

[c] Pass any other and further order(s) as may be deemed fit.â??

9. Mr. Farman Ali, Mr. T. Singhdev and Mr. Kirtiman Singh, learned counsel, entered appearance on advance notice on behalf of the Union of India,

the NMC and the NBE respectively.

10. Mr. Singhdev and Mr. Singh submitted that the writ court ought not to interfere with the cut-off date fixed by the examination conducting

authorities, which has been fixed keeping all the relevant factors in mind. They submit that the petitioner would, in the normal course, not have been

eligible to appear in the NEET-PG examination in 2021, on account of the fact that he would not have completed the internship within the normal

eligibility date of 31.03.2021. As far as the extended schedule for this year is concerned, his internship has been delayed due to the fact, as stated in

the writ petition, that he was unable to take one of his four final year papers in March 2020, for shortage of attendance. Learned counsel point out that

if he had taken all the papers in March 2020, his internship would have concluded before the stipulated date of 30.09.2021 and he would have been

permitted to take the NEET-PG, 2021.

11. Mr. Singh further submitted that the very issue raised in this writ petition has been decided by the Madras High Court in *GA Vishwajeet vs. Union*

of India and Others W.P. (C) 16526/2021; decided on 09.08.2021 against the petitioner. Mr. Singh also cited the judgment of a coordinate bench of

this Court in *Association of MD Physicians vs. National Board of Examinations & Ors.* W.P. (C) 5908/2021; decided on 11.06.2021 in support of his

contention that these are matters beyond the jurisdiction of the writ court and ought to be left to the discretion of the examination conducting authority.

He submitted, relying upon the Supreme Court judgment in *Hirandra Kumar vs. High Court of Judicature at Allahabad* and Anr. 2019 SCC OnLine

SC 254 [W.P. (C) 1343/2018; decided on 29.01.2019] that some apparent arbitrariness in the cut-off date is inherent to the fixation of cut-offs and

does not ordinarily render the date fixed unconstitutional or ultra vires, unless it is shown to be manifestly unreasonable.

12. Mr. Singhdev submitted that the issue raised in the present petition has been considered by this Court, albeit for a prior year, in the decision of a

learned Single Judge in *Ojasvini Agrawal vs. Union of India* W.P. (C) 3054/2020; decided on 13.05.2020, which was also affirmed by the Division

Bench [Vide judgment dated 27.05.2020 in LPA 147/2020]. Against the aforesaid decision, the Supreme Court declined Special Leave to Appeal

[Order dated 22.06.2020 in Special Leave to Appeal (C) No. 7549/2020].

13. Mr. Sharawat sought to counter these judgments by reference to two authorities, one of the Supreme Court and one of the Division Bench of the

Himachal Pradesh High Court. The judgment of the Supreme Court in *M/s. Shiv Shankar Dal Mills and Others vs. State of Haryana and Others*

(1980) 2 SCC 437, although the circumstances in which it arose were admittedly different, was cited to remind this Court of the observation of

Krishna Iyer, J. in paragraph 4:-

“Situations without precedent demand remedies without precedent.”

14. The Division Bench of the Himachal Pradesh High Court in *Raju Thakur vs. State Election Commission and Others* AIR 2017 (NOC 1075) 369

[CWP No. 975/2017; decided on 29.05.2017] dealt with an order postponing the elections to the Shimla Municipal Corporation. Paragraph 57 of the

judgment was placed by Mr. Sharawat:-

57. It is more than settled that legal formulations cannot be enforced divorced from the realities of the fact situation of the case.

Situations without precedent demand remedies without precedent. The extraordinary situation may call for extra-ordinary response and

situational demands.

15. On the strength of these authorities, Mr. Sharawat urged that, in the context of the revised schedule for the examination notified by the

respondents themselves, the Court's powers are sufficient to direct an extension of the cut-off date. He submitted that the present case, in fact,

reveals such arbitrariness in the fixation of the cut-off date as would justify the interference of the writ court, even in terms of the judgments cited by

the respondents. According to Mr. Sharawat, the extension of the eligibility date for completion of internship from 30.09.2021 to 31.10.2021 would

prejudice no one and would not require any modification of the schedule provided. He submitted that the judgment in Ojasvini Agrawal Supra (note 4)

has been rendered in the context of the regulatory schedule under the PGMER, which in any event has been given a go-by. As far as the judgment of

the Madras High Court in GA Vishwajeet Supra (note 1) is concerned, Mr. Sharawat urged that the contentions canvassed in this Court do not appear

to have been placed before the Madras High Court.

16. Having heard learned counsels for the parties, despite some sympathy for the predicament in which the petitioner finds himself, I am of the view

that relief cannot be granted in this writ petition. The respondents have already extended the cut-off date for completion of the internship, keeping in

mind the COVID-19 pandemic and consequent delay in holding the NEET-PG examination. The writ court cannot take upon itself the task of

administering the examination and fixation of the schedule. As held in the decisions cited by the respondents, there is a degree of inherent randomness

in the fixation of a cut-off date which may, in a given case, cause hardship to a candidate or a group of candidates. That per se does not lead to the

conclusion that the fixation itself is arbitrary. The relief sought by the petitioner would lead to an uncertain and cumbersome situation as there will

always be some candidates who miss the cut-off by a whisker. If this Court were to accede to the petitioner's contentions, the grievances of

those whose internships will be completed soon after 31.10.2021 would then

come to the fore. The impermissibility of such interference with academic assessments has been emphasised in the Division Bench decisions of this Court in Dr. Rajat Duhan and Others vs. All India Institute of Medical Sciences and Others 2019 SCC OnLine Del 11437 [LPA 655/2019; decided on 22.11.2019]; paragraph 8 and National Board of Examinations vs. Dr. Rajani Sinha and Others 2021 SCC OnLine Del 2719 [LPA 715/2019; decided on 15.04.2021]; paragraph 14.

17. The judgment of the coordinate bench in Ojasvini Agrawal Supra (note 4) dealt with a similar situation with regard to the NEET-PG, 2020, wherein it was held as follows:-

22. I may refer, with advantage, in this context, to the judgement of the Supreme Court in Dolly Chhanda v. Chairman, JEE W.P. (C) 16526/2021; decided on 09.08.2021, in which a bench, of three Hon'ble Judges of the Supreme Court, underscored the distinction between possession of requisite qualifications, and submission of proof of possession of requisite qualifications, to secure admission. It has been categorically held, in the said decision, that, in regard to possession of requisite eligibility qualifications, by the cut-off date fixed in that regard, there can be no relaxation. Once, however, a candidate possesses the requisite qualifications, by the stipulated cut-off date, depending on individual facts and circumstances, it might be possible to relax the date by which the candidate is required to submit proof of possession of such qualification. In the present case, 31st March, 2020, stands expressly stipulated as the cut-off date by which any candidate, who seeks to obtain admission to a PG medical course, consequent to the NEET PG 2020 examination, is required to complete her, or his, compulsory internship. There can, therefore, be no relaxation in this regard, least of all by a writ court.

xxxx xxxx xxxx

25. The alternative prayer B, in the writ petition, which seeks extension of the period of completion of one-year internship, by one month, to 30th April, 2020, qua the petitioner, so that the petitioner was able to gain admission this year, too, requires merely to be urged to be rejected. The duty of this Court, while exercising jurisdiction under Article 226 of the Constitution of India, is to administer the law, without

fear or favour, and not to ensure that the petitioners, before it, secure the reliefs they seek, irrespective of the law. Ubi jus, as the time-worn

adage goes, ibi remedium. The right has, therefore, to precede the remedy. Sans an enforceable legal right, there can be no remedy, in law.

The provisions in the Bulletin issued by the NBE, governing the NEET PG 2020 Examination, as extracted hereinabove, reveal repeated

emphasis " to the extent that the Bulletin highlights the said clauses " on the cut-off date of 31st March, 2020, for completion of

compulsory one-year internship, by MBBS candidates. This Court, in exercise of its writ jurisdiction, does not deem it appropriate to tinker

therewith, or to direct that, in the case of the petitioner, the said date should not be treated as sacrosanct. Charity to one, in the teeth of the

law, results in injustice to the multitude." Emphasis supplied.

18. The Division Bench affirmed the judgment of the learned Single Judge with the following observations:-

"13. Completion of internship before 31st March, 2020, is therefore, an essential qualification. There is no power to relax the essential

qualification. This Court, while exercising the jurisdiction under Article 226 of the Constitution of India cannot alter the essential

qualifications prescribed in the Information Bulletin. The argument advanced by Mr.Kachwaha, learned counsel that students who have

completed their internship before commencement of the PG course should also be admitted, cannot be accepted. One more aspect which has

to be borne in mind is that several candidates who did not complete their internship before 31st March, 2020 would not have participated in

the counseling process for the reason that they were aware of the fact that they did not possess the essential qualifications as prescribed.

Any permission granted to the appellant to secure admission in the PG course will amount to changing the rules of the game midstream

which is impermissible and cannot be done by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

14. It is also relevant to note that the appellant has not chosen to challenge the time limits prescribed and fixed in the Information Bulletin.

In any event, she has not made out any case to demonstrate that the procedure prescribed in the Information Bulletin is violative of Article

14 of the Constitution of India and suffers from the vice of arbitrariness. Knowing that she was ineligible to get admission in terms of the

relevant Rules and Regulations, the appellant still proceeded to take part in the counseling conducted for seats reserved under All India

quota and also in the counselling conducted by the State of Uttar Pradesh for filling up the seats which are reserved for State quota.â?

Emphasis supplied.

As noted above, the Supreme Court declined to interfere with the said judgment of the Division Bench Supra (note 6).

19. Although Mr. Sharawat is right in saying that the judgment in Ojasvini Agrawal Supra (note 4) was rendered in the context of the regulatory

regime and not COVID-19 induced extensions, the observations of the Court regarding the limitations on exercise of the writ jurisdiction would equally

apply. In this context, Mr. Sharawat reminded the Court of the plentitude of its powers under Article 226 of the Constitution. However, there are well

developed limitations within which the writ court exercises its discretionary jurisdiction. Mr. Sharawatâ??s reliance upon the observations of Krishna

Iyer, J. in M/s. Shiv Shankar Dal Mills Supra (note 7) and the Himachal Pradesh High Court in Raju Thakur Supra (note 8) cannot come to his aid.

While the Coronavirus pandemic may well be without precedent, the question of whether the writ court can interfere with cut-off dates in academic

matters is not. Indeed, the very question raised in the present petition has been considered and answered in the binding decision of the Division Bench

in Ojasvini Agrawal Supra (note 5).

20. In this context, I may also refer to the judgment of the Madras High Court in GA Vishwajeet Supra (note 1) which deals with the very same

examination which is in issue in this petition, viz., NEET-PG 2021. The petitioner before the Madras High Court will complete his internship by

04.10.2021 â?" he misses the deadline by five days, as compared to 25 days for the present petitioner. The Court noted as follows:-

â??5. The learned counsel for the petitioner submitted that the pandemic situation has brought about a very extra ordinary scenario, where

the students are already suffering and there is a delay in the completion of the internship for the petitioner only due to this situation. The

learned counsel submitted that the respondents must take into consideration the

suffering of the students and one more extension can be given for the completion of the CRRI/Internship. The learned counsel submitted that even though the petitioner cannot claim this as a matter of right, it is always open to the respondents to take into consideration the present situation and sympathetically consider the request made by the petitioner and similarly placed students.

6. This Court is sympathetic to the passionate claim that has been made by the petitioner seeking for the extension of the cut-off date for completion of the internship. However, sympathy by itself cannot be a ground for issuing any positive directions, more particularly, when it comes to education. The cut-off dates are not fixed based on individual claims made and the respondents will have to take into consideration a wide range of options and take a decision. The respondents had in fact taken into consideration the pandemic situation and had extended the time for the completion of the internship from 30.06.2021 up to 30.09.2021. The learned counsel appearing on behalf of the 2nd respondent has made it clear that there is no further scope for extension of the cut-off date beyond 30.09.2021.

7. It will be very difficult for the Courts to interfere into every decision that is taken on the Administrative side and fixing of a cut off date is completely out of the purview of a writ petition filed under article 226 of Constitution of India. The petitioner is trying to project his individual grievance and is seeking for the extension of the cut-off date. However, if such a claim is entertained, it will open flood gates and every student who was not able to complete the internship on or before 30.09.2021, will approach this Court seeking for a similar direction and it will only end up in chaos. Such directions issued by this Court, will directly impact the further process of the respondents 2 and 3 in completing the admission for the PG courses. Therefore, even though this Court has considered the claim made by the petitioner sympathetically, it will be too difficult for this Court to direct the respondents to extend the cut off date.

8. In view of the above discussion, this Court is not in a position to grant the relief as sought for by the petitioner and accordingly, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous

petitions are closed.â??

21. I am in respectful agreement with the view taken by the Madras High Court, which is also consistent with the binding precedents of this Court.

22. For these reasons, the writ petition, alongwith the pending application, is dismissed. There will be no orders as to costs.