

(2023) 07 KL CK 0024

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16285 Of 2023

Minha Sadique

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Citation : (2023) 07 KL CK 0024

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : Nandagopal S.Kurup, Abhiram T.K., Titus Mani Vettom, Nirmal S, S. Manu

Final Decision : Disposed Of

Judgement

Gopinath P, J

1. Petitioner has approached this Court, seeking the following reliefs:-

"I. Issue a writ of mandamus or other appropriate writ or order directing the third respondent to conduct a fresh examination of the National Eligibility Cum Entrance Test for the petitioner, for the academic year 2023-24, in the interest of justice;

II. Issue a writ of mandamus or other appropriate writ or order directing and the third respondent to permit the petitioner to appear and participate in the National Eligibility Cum Entrance Test that is to be held in the State of Manipur for the academic year 2023-24, in the interest of justice."

2. When this matter came up for consideration on 03.06.2023, this Court issued the following order:-

"The petitioner is a student who appeared for the National Eligibility cum-Entrance Examination for Under Graduate courses (NEET-UG) which was conducted by the 3rd respondent on the 7th of May 2023. The time of the examination was from 2.00 P.M to 5.20 P.M. It is the case of the petitioner that

the test booklet issued to the petitioner at the examination hall did not contain four pages of the chemistry section. It is the case of the petitioner that though the petitioner immediately brought this matter to the notice of the invigilators and the test booklet of the petitioner had been taken away at 2.20 p.m, the petitioner was provided with a new test booklet bearing code No.6226752 only at 3.30 p.m. The petitioner was provided extra time (30 minutes) and was permitted to write the examination till 5.50 p.m. It is the case of the petitioner that after 5.50 P.M the invigilators asked the petitioner to stop writing the examination and took away her OMR sheet. She was also asked to write a declaration that she had no complaints regarding the conduct of the examination.

2. The learned counsel for the petitioner would submit that the test was from 2 p.m till 5.20 p.m and the petitioner was not in a position to avail of the entire time as the new test booklet was supplied to her only at 3.30 p.m. It is submitted that immediately after the examination, the petitioner's father sent an E-mail to the 2nd respondent regarding the matter. Further representations were also made, as is evident from Exts.P7 & P8. The petitioner has then approached this Court through the above writ petition seeking a writ of Mandamus to the 3rd respondent to conduct a fresh examination for the petitioner. Alternatively, the petitioner also prays a direction to the 3rd respondent to permit the petitioner to appear and participate in NEET (UG)-2023 Examination to be held separately for the students of Manipur, in the interest of justice. The learned counsel appearing for the petitioner submits that the High Court of Judicature at Mumbai had, through an order dated 01-06-2023 in W.P No.6384/2023, granted relief to a student who suffered an injury owing to rush at the exam venue and had permitted that student to take part along with the students of Manipur in the examination scheduled for the students from Manipur on 06-06-2023.

3. The learned Standing Counsel appearing for respondents 3 and 4 has obtained instructions and filed a statement. It is pointed out with reference to the contents of the statement that the petitioner had reported the fact that certain pages of the booklet were missing only at 2.20 p.m. It is submitted that 30 minutes after the matter was reported, the petitioner was issued with a fresh test booklet, and she was also provided 30 minutes at the end of the scheduled exam time to compensate for the time taken to replace the booklet. The reports submitted by the Centre Superintendent and another official, which are on record as Annexure-R3 (a) and R3 (b), along with the declaration given by the petitioner as Annexure-R3 (C) are referred to and it is pointed out that the petitioner has no case for grant of reliefs sought for in this writ petition. It is submitted that the order of the Bombay High Court appears to have been issued based on concession. It is submitted that the authorities intend to file an appeal against the said order, and therefore the said order cannot, for more reasons than one be taken as any precedent for seeking similar relief. It is submitted that the Rajasthan High Court had rejected a similar request through judgment dated 30-05-2023 in CWP No.7495/2023. It is further pointed out that the Division Bench of the Punjab and Haryana High Court had also rejected a request by a

student to be permitted to write the examination along with the students of Manipur, which is scheduled to be held on 06- 06-2023. It is pointed out that the Punjab and Haryana High Court only directed consideration of representation through an order dated 31-05- 2023 in CWP12366/2023.

4. The learned counsel would also point out that in terms of the prospectus issued to the petitioner, the test booklet is supplied 15 minutes before the time fixed for the commencement of the examination. It is submitted that there is a clear instruction in the prospectus that the students are required to immediately check the test booklet for any discrepancies. Reference is made in this regard to Clauses 12.1 and 12.16 in the prospectus. It is also pointed out that the report of the Centre Superintendent clearly indicates that the petitioner had voluntarily handed over the OMR answer sheet at 5.50 P.M after completing the examination, and there is no compulsion by the Invigilators.

5. Having heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for respondents 3 and 4, I am inclined to grant an interim order to the petitioner. The reasons which compel me to pass an interim order in favour of the petitioner are the following:-

(i) It is not disputed that there was a discrepancy in the test booklet supplied to the petitioner. Even though the learned counsel for respondents 3 and 4 is right in pointing out that clause 12.16 of the prospectus requires the student to report any discrepancy immediately after receiving the booklet, I cannot overlook the fact that the petitioner is an 18 year old girl who is attempting a highly competitive examination after months of hard work and preparation. One cannot rule out the fact that the students, such as the petitioner, may be extremely tensed and nervous, and the fact that there was a mistake in the test booklet would have completely shaken her. Considering the age of the petitioner and because she was writing a highly competitive examination one also cannot rule out the fact that the petitioner may have missed out to check the test booklet completely before noticing the discrepancy at about 2.20 p.m which is the time at which the petitioner reported discrepancy, according to the averments in the writ petition.

(ii) The declaration obtained from the petitioner at the end of the examination does not prima facie compel me to hold against the petitioner as the petitioner being an 18 year old student would have given any declaration as requested by the Invigilators or any official in charge of the examination without fully comprehending its implications.

(iii) Absolutely no prejudice would be caused to the respondents by issuing an interim order as, admittedly, an examination for the students of Manipur is being held on 06-06-2023 at Bangalore. The petitioner has also undertaken to appear for the test at Bangalore.

6. Therefore pending consideration of the writ petition, I direct respondents 3 and 4 to permit the petitioner to attend the examination to be held at Bangalore

on 06-06-2023 for the students of Manipur. The petitioner will be issued with an admit card to take part in the examination forthwith. It is made clear that if the petitioner attempts to write the examination on 06-06-2023, the results, if any obtained by the petitioner following the examination conducted on 07-05-2023 will stand cancelled, and the petitioner will have no option to claim that the better of the results must be accepted.

The above orders are purely provisional and subject to further orders in the writ petition.”

3. When this matter is taken up for consideration today, it is now reported that following the said order dated 03.06.2023, petitioner participated in the examination held on 06.06.2023. However, the results have not yet been announced.

4. Learned Standing Counsel appearing for the National Testing Agency would submit that the petitioner has now sought for release of results in respect of both the examinations undertaken by the petitioner and this cannot be done, especially in the light of the directions contained in the interim order dated 03.06.2023, that if the petitioner attempts the examination (held on 06.06.2023), the results, if any, obtained by the petitioner, following the earlier examination conducted on 07.05.2023, will stand cancelled. Learned Standing Counsel would submit that the results of the examination will be published without further delay.

5. Having heard the learned counsel appearing for the petitioner, the learned Standing Counsel appearing for the National Testing Agency and the learned Deputy Solicitor General of India appearing for the 1st respondent and the learned Standing Counsel appearing for the National medical Commission, the writ petition will stand disposed of, directing respondent Nos.3 and 4 to declare the results of the petitioner in the NEET-UG examination, held on 06.06.2023, without any further delay, and at any rate, on or before 06.07.2023, considering the fact that the last date for uploading the NEET Result for admission to colleges in Kerala is on 07.07.2023.

The writ petition is disposed of as above.