

(2021) 03 DEL CK 0358

In the Delhi High Court

Case No : Letter Patent Appeal No. 715 Of 2019

National Board Of Examinations

APPELLANT

Vs

Dr. Rajani Sinha & Ors

RESPONDENT

Date of Decision : 26-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0358

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Kirtiman Singh, T. Yasin, Ghanshyam Thakur, Anju Gupta, T. Singhdev

Final Decision : Allowed

Judgement

,

Rajiv Sahai Endlaw, J",

1. This intra-court appeal impugns the judgment dated 1st October, 2019, allowing W.P.(C) No.12477/2018 preferred by the respondent no.1 and",

directing the appellant National Board of Examinations (NBE) to issue a Diplome of National Board (DNB) Degree in the Family Medicine,

specialty, qua the concerned year, in favour of the respondent no.1.",

2. The appeal came up first before the Court on 15th November, 2019, when the same was admitted and after hearing the counsel for the respondent",

no.1 appearing on advance notice on that date, the operation, implementation and execution of the impugned judgment was stayed during the pendency",

of the appeal.,

3. We have heard the counsels.,

4. The facts, not in dispute, are (i) the respondent no.1, a graduate in Medicine

and desirous of a DNB qualification awarded by the appellant NBE,"

participated in the Centralized Entrance Test (CET) of the year 2015 and on being declared successful therein, was registered for training with the",

respondent no.4 Christian Institute of Health, Sciences & Research, Dimapur, Nagaland (Institute), accredited to the appellant NBE and commenced",

her three years training programme, on 24th June, 2015; (ii) the three years mandatory training of the respondent no.1 was to complete on 23rd June,"

2018; (iii) the respondent no.1, subject to completion of her training on or before 30th June, 2018, being the cut-off date prescribed in the",

â??Information Bulletin and Application Form for Diplomate of National Board Final Examination (Broad Specialties) (DNB -FINAL: DECEMBER,

2017) (Practical Only: Mar/Apr/May, 2018)â?, was eligible to appear for the DNB Final Theory Examination held in December, 2017 and DNB",

Practical Examination held in May, 2018 and so appeared in the said examinations, on the basis of DNB Training Completion Certificate (Provisional)",

dated 19th September, 2017 issued by the respondent no.4 Institute, certifying that the respondent no.1 will be completing the mandatory three years",

training on 23rd June, 2018 and had availed of 25.5 daysâ? leave in the year 2015-16, 16.5 daysâ? leave in the year 2016-17 and no leave from 2017",

till the date of issuance of the said Certificate; in the said Certificate, it was also mentioned as under:-",

â??In case Dr. Rajani Sinha is unable to complete her DNB training on or before the cutoff date i.e. 23rd August 2018 towards eligibility,

determination, I understand that the candidature of the candidate shall stand cancelled.â?";",

(iv) the respondent no.4 Institute, vide another letter also dated 19th September, 2017 to the appellant NBE, certified that the respondent no.1 joined",

the course on 24th June, 2015 and was expected to complete the mandatory three years of training by 23rd August, 2018 and requested the appellant",

NBE to allow the respondent no.1 to appear in the DNB Final Theory Examination in December, 2017, as she was eligible therefor; (v) the",

respondent no.1 appeared for both the aforesaid examinations; (vi) however as per the DNB Training Completion Certificate (Final) dated 6th August,"

2018 issued by the respondent no.4 Institute, the respondent no.1 completed the mandatory three years of training on 5th August, 2018, having availed",

of leave of 63 days in the year 2017-18, besides the leave of 42 days mentioned in the DNB Training Completion Certificate (Provisional) dated 19th",

September, 2017 issued earlier, and on the basis whereof the appellant NBE had allowed the respondent no.1 to take the DNB Final Theory",

Examination and DNB Practical Examination; (vii) the respondent no.1 thus had availed of total leave of 105 days during the entire DNB training,

period, instead of the maximum leave of 74 days to which she was entitled; and, (viii) the appellant NBE, vide its letter dated 5th October, 2018,"

informed the respondent no.1 that the respondent no.1, during the three years of training period, having availed of excessive leave resulting in her",

having completed her training only on 5th August, 2018 i.e. after the cut-off date for December, 2017 examination of 30th June, 2018, did not fulfill the",

eligibility criteria as prescribed in the Information Bulletin aforesaid and her candidature for DNB Final Examination 2017 could not be considered and,

that she had been declared ineligible as she failed to satisfy the prescribed eligibility criteria; the respondent no.1 was further informed that,

consequently, her appearance in the DNB Theory Examination held in December, 2017 and DNB Practical Examination held on 18th May, 2018 was",

being treated as null and void; the respondent no.1 was yet further informed that she may however again apply for appearing in the DNB Final,

Examination.,

5. Impugning the aforesaid communication dated 5th October, 2018, the writ petition from which this appeal arises, was filed.",

6. The writ petition has been allowed, observing/reasoning/holding that",

(i) though between 1st November, 2017 and 9th March, 2018 the respondent no.1 took extra leave on medical ground but with due permission of the",

respondent no.4 Institute; (ii) the result of the DNB Final Theory Examination was declared on 28th March, 2018 and on 2nd May, 2018, the",

respondent no.1 received her admit card for the DNB Final Practical Examination and on the basis of which admit card she appeared in the DNB,

Final Practical Examination; however when results of the final practical examination were declared in June, 2018, her result was withheld; (iii) as per",

the DNB Training Completion Certificate (Final) dated 6th August, 2018 issued by the respondent no.4 Institute, the respondent no.1 completed her",

DNB training on 5th August, 2018; (iv) the respondent no.1 submitted her DNB

Training Completion Certificate (Final) dated 6th August, 2018 with",

the appellant NBE, on 8th August, 2018 and vide e-mail dated 29th August, 2018 submitted explanation to the appellant NBE with regard to the extra",

leave taken by her; (v) the appellant NBE was however not convinced and held the respondent no.1 ineligible and ordered the result of the DNB Final, Theory Examination and DNB Practical Examination, taken by the respondent no.1, as null and void; (vi) the respondent no.1, after passing her CET,"

joined training with the respondent no.4 Institute affiliated with the appellant NBE; (vii) the DNB training in the Family Medicine specialty had to be, completely under the supervision of the respondent no.4 Institute; thus the respondent no.4 Institute was charged with the responsibility of not only, granting leave and maintaining record of the same but to also issue the final certificate to the candidate, concerning completion of DNB training; (viii)",

since the training was conducted by the respondent no.4 Institute affiliated to appellant NBE, the respondent no.4 Institute's understanding of the", scheduled cut-off date as against the one prescribed in the Information Bulletin aforesaid, was of seminal importance from the point of view of the", respondent no.1; (ix) undoubtedly the respondent no.4 Institute, while issuing the DNB Training Completion Certificate (Provisional) dated 19th",

September, 2017, which was an essential precursor to the respondent no.1 being allowed to sit in the DNB Final Theory Examination, indicated that", for determination of her eligibility, the scheduled cut-off date would be 23rd August, 2018; (x) there was no dispute that the respondent no.1 completed", her DNB training before the scheduled cut-off date i.e. 5th August, 2018; (xi) the argument advanced on behalf of the appellant NBE that since the",

provisional DNB Training Completion Certificate (Provisional) dated 19th September, 2017 adverted to the fact that the mandatory three years of", training would get completed on 23rd June, 2018, the appellant NBE was not required to refute what was written in the letter, misses the difference",

between the prescribed cut-off date and the scheduled cut-off date; (xii) the entire training programme of the respondent no.1 proceeded on the basis, that she was required to complete her DNB Training before the scheduled cut-off date as indicated in the DNB Training Completion Certificate,

(Provisional) dated 19th September, 2017; (xiii) the argument on behalf of the appellant NBE, that the respondent no.1 could not have taken leave in",

excess of that which was stipulated, without prior approval of the appellant NBE, had no impact in the facts of the case; (xiv) the burden of",

supervising the training was on the respondent no.4 Institute affiliated to the appellant NBE and the respondent no.1, with regard to availability of",

leave, was rightly guided by the respondent no.4 Institute; (xv) the fact that the respondent no.4 Institute gave leave to the respondent no.1, which",

Cut off date for completion of DNB Training,

30th June, 2018",

DNB COURSE, NO. OF ACADEMIC LEAVE

DNB 3 years Course (Board & Super Specialty), 14 Days

DNB 2 years Course (Post Diploma), 10 Days

DNB Direct 6 years Course, 28 days

10.3 The medical treatment should be taken from the institute/hospital where the candidate is undergoing DNB training. Any deviation from,

this shall be supported with valid grounds and documentation.,

10.4 In case of medical treatment being sought from some other institute/hospital, the medical documents have to be certified by the Head of",

the institute/hospital where the candidate is undergoing DNB training.,

10.5 NBE reserves its rights to verify the authenticity of the documents furnished by the candidate and the institute/hospital regarding,

Medical illness of the candidate and to take a final decision in such matters.,

11. 11(i) Total leave period which can be availed by DNB candidates is $120+28 = 148$ days for 6 years course, $60+14=74$ days for 3 years",

course and $40+10 = 50$ days for 2 years course. This includes all kinds of eligible leave including academic leave. Maternity/Paternity leave,

can be availed separately by eligible candidates. Any kind of leave including medical leave exceeding the aforementioned limit shall lead to,

extension of DNB training. It is clarified that prior approval of NBE is necessary for availing any such leave.,

11(ii) The eligibility for DNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective,

information bulletin.,

Eg.- Candidate joining DNB 3 years course in July 2017 admission session on 15th Oct. 2017 shall be completing his/her DNB training on,

14th Oct. 2020 under normal circumstances wherein there is no extension of training. If his/her training is extended due to leave on medical,

grounds or any other reason for 3 months after adjusting eligible leave available in the entire duration of DNB training, the training shall",

be completing on 14th Jan. 2021. If as per the Information Bulletin for Final Examination June 2020, the cutoff date for completion of",

training is 31st Dec.2020, such candidate shall not be eligible for June 2020 Final Examination.â??",

Annexures III and IV prescribe format of the DNB Training Completion Certificate (Provisional) and DNB Training Completion Certificate (Final),

and in which format the Provisional and Final Certificates aforesaid were issued by the respondent no.4 Institute in respect of the respondent no.1.,

11. In view of the aforesaid Rules, we are respectfully unable to agree with the reasoning in the impugned judgment, that since the appellant NBE did",

not immediately respond to the DNB Training Completion Certificate (Provisional) dated 19th September, 2017, inter alia providing that in case the",

respondent no.1 was unable to complete the DNB training on or before the cut-off date of 23rd August, 2018 towards the eligibility determination, her",

candidature shall stand cancelled, the same became binding on the appellant NBE and the appellant NBE could not subsequently refute that the cut-",

off date was 30th June, 2018 and not 23rd August, 2018. It cannot be lost sight of that the appellant NBE is an examining body and is to function not",

as per the ipse dixit of the persons manning it from time to time but as per its Rules and Regulations published from time to time. The said Rules and,

Regulations, in the present case contained in the Information Bulletin for DNB Final Examination-December, 2017, clearly prescribed cut-off date as",

30th June, 2018 and there was no reason for the respondent no.4 Institute to, in the DNB Training Completion Certificate (Provisional) dated 19th",

September, 2017, mention the cut-off date as 23rd August, 2018. The same was clearly a mistake of the respondent no.4 Institute. Merely because",

the appellant NBE did not immediately refute the same and / or merely because the appellant NBE, notwithstanding the said error / mistake in the",

DNB Training Completion Certificate (Provisional) of the respondent no.1, allowed the respondent no.1 to take the examination would not change the",

cut-off date prescribed for all those taking the subject examination, for the respondent no.1. Once an autonomous body, as NBE is, particularly an",

Examining Body, is governed by its Rules and Regulations, it is not open to any person manning the said body, to grant relaxation in the said Rules and", Regulations or to change the same by his / her conduct, express or implied viz. of non-refutation of the error in the certificate aforesaid. This is what", differentiates a society governed by law from a society governed by men. Moreover, the principle in law, of deducing admission from non-refutation, is", otherwise also not an absolute one. It cannot be lost sight of that an Examining Body such as the appellant NBE, holding examinations for thousands if", not lakhs of students, cannot be expected to minutely scan through each and every communication submitted to it and to refute any content contrary to", the Rules. The Rules of examination cannot change merely by stating the wrong in a communication especially when the Examining Body in its Rules, has clearly provided that the entrance to the examination was purely provisional and that the candidature for the examination could be cancelled at any, time as and when finding that the candidate was not eligible to appear in the examination. The reasoning given by the Single Judge is capable of, mischief, playing havoc with the standards of the examination and of being abused by institutes and students. An Examining Body such as the", appellant NBE, is bound by its own Rules and without any provision in the Rule vesting any discretion in it, does not have any discretion to change or", bend the Rules for any candidate.,

12. We have perused the judgments relied upon by the counsel for the respondent no.1 and find that none of them come to the aid of the respondent, no.1. In *Amulya Mysore supra*, the DNB candidate had compensated for the number of days of excess leave, before the cut-off date. In *Teena Peter supra*, the excess leave availed by the DNB candidate had been granted by the appellant NBE, which alone under the Rules is competent therefor. As", distinct therefrom, in the present case, the excess medical leave admittedly taken by the respondent no.1 was without prior approval of appellant NBE.", Once the Rules clearly provide that excess medical leave has to be with prior approval of appellant NBE, neither the respondent no.4 Institute nor the", respondent no.1 could have entertained any doubt with respect thereto and leave, even if granted by respondent no.4 Institute, cannot make the", respondent no.1 eligible for the examination when in accordance with the Rules, she was / is not. We are also unable to agree with the reasoning in",

the impugned judgment, that since the respondent no.4 Institute is accredited to the appellant NBE, the appellant NBE is bound by its act of granting",

medical leave in excess of that provided and without approval of appellant NBE. It has not been reasoned that the appellant NBE has any,

administrative control over the respondent no.4 Institute. Merely because the training imparted by the respondent no.4 Institute meets the parameters,

of appellant NBE and the appellant NBE has granted accreditation to the respondent no.4 Institute, would not bind the appellant NBE with the leave",

granted by respondent no.4 Institute in excess of that provided in the Rules to the respondent no.1. It cannot also be lost sight of that the respondent,

no.1 herself is highly educated, qualified to grant medical care to others and expected to have made herself conversant with the Rules and Regulations",

of the examination and has to bear the consequences of violation thereof. In *Garima Singh supra*, there was miscommunication between the hospital",

and the appellant NBE in relation to the cut-off date due to the implementation of a revised/revamped procedure. As distinct therefrom, in the present",

case there was no ambiguity as to the prescribed cut-off date being 30th June, 2018 as per the Information Bulletin for DNB Final Examination -",

December, 2017. *N. Siva Krishna supra*, rather than supporting the respondent no.1, is against the respondent no.1. Therein also the candidates",

concerned had availed of excess leave and relief was denied on the ground that the candidates concerned had not completed their training prior to the,

cut-off date. In *G. Anand Ramamurthy supra*, the Supreme Court held that the High Court was not justified in directing the petitioner to hold",

examinations against its policy, in complete disregard to the mandate of the Courts for not interfering in the academic matters particularly when the",

interference in the facts of the matter leads to perversity and promotion of illegality. Finally, in *Dr. Sajad Ahmed supra*, the relief was granted in the",

light of different facts and circumstances, where a DNB candidate had been admitted in contravention of the relevant guidelines.",

13. In the present case there is no manner of doubt that the respondent no.1 did not satisfy the criteria for appearing in the DNB Final Examination,

2017 and as per the Rules, her candidature was liable to be cancelled and was rightly cancelled. Once the actions of the appellant NBE are found to",

be in terms of its Rules, the Court cannot direct the appellant to act in violation thereof or allow relief to the respondent no.1 in violation of the Rules",

governing her examination. The appellant NBE is expected to uphold the standards of medical qualifications / degrees awarded by it and Courts,

cannot by their orders, dilute the rigours prescribed for upholding the said standards. A Co-ordinate Bench in *Rajat Duhan Vs. All India Institute of*",

Medical Sciences MANU/DE/4003/2019 has reiterated that any eligibility criteria is bound to cause hardship to some set of students, particularly if",

they are closure to cut-off criteria; however such considerations cannot outweigh with the Court to dilute the standards of academic excellence,

prescribed by the academicians, who are experts in the field."

14. However since considerable time has passed, we have enquired from the counsel for the respondent no.1, whether the respondent no.1",

participated in the DNB Final Examination for the years 2018, 2019 and 2020, since her candidature for the DNB Final Examination 2017 stood",

cancelled.,

15. The response is in the negative. The only explanation is, that since the respondent no.1 had filed the writ petition and had also succeeded therein",

she did not feel the need to appear again in the examination in which she had already succeeded.,

16. We are unable to agree. It was open to the respondent no.1 to, without prejudice to her rights and contentions in the writ petition and/or in defence",

to this appeal, appear in the DNB Final Examination held in the years 2018, 2019 and 2020. The reluctance of the respondent no.1 to so partake in the",

examination of the subsequent years inspite of the result of the examination of the year 2017 being under a cloud, lends us to believe that the",

respondent no.1 herself does not consider herself competent enough to clear the examination and the clearance of the examination of the year 2017",

for which she was not eligible, was a fluke."

17. The mere fact that respondent no.1 had cleared/passed the DNB Final Theory Examination and DNB Practical Examination of the year 2017,

does not entitle the respondent no.1 to the relief. We, as Judges, take oath to decide cases in accordance with law and not in accordance with our",

individual standards of sympathy. Application of law in the present case does not permit us to disregard the same and grant any relief to the,

respondent no.1. Even otherwise, grant of relief otherwise than in accordance with law but on consideration of sympathy and equity, leads to",

uncertainty and can in future also lead to candidates, similarly placed as the respondent no.1, instead of taking the examination in the following year,"

choosing to litigate. It cannot be lost sight of that the respondent no.1 participated in the examination process on the basis of Rules, Terms and",

Conditions contained in the Information Bulletin for DNB Final Examination-December, 2017 and cannot, after failing to meet the eligibility criteria as",

per the said Terms and Conditions, be permitted to find fault therein. Reference in this regard may be made to the decisions in G. Anand Ramamurthy",

supra, Injamam Ul Hossain Vs. All India Institute of Medical Science MANU/DE/2166/2020 and Edem Sanketh Vs. Union of India",

MANU/DE/2377/2020.,

18. Resultantly the appeal succeeds and is allowed. The judgment under appeal is set aside and the writ petition preferred by the respondent no.1 is,

dismissed.,

However no costs.,