

(2022) 07 DEL CK 0075

In the Delhi High Court

Case No : Civil Writ Petition No. 10620 Of 2022, Civil Miscellaneous Application No. 30761 Of 2022

Vishwanath Kumar & Ors.

APPELLANT

Vs

National Testing Agency & Ors.

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
National Medical Commission Act, 2019 — Section 14
Indian Medical Council Act, 1956 — Section 33

Citation : (2022) 07 DEL CK 0075

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Mamta Sharma, Anubha Srivastva, Apoorv Kurup, Nidhi Mittal, Aparna Arun, Ojaswa Pathak, T. Singhdev, Abhijit Chakravarty, Bhanu Gulati, Michelle B. Das, Sumangla Swami, Aakash Meena, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. As per Section 14 of the National Medical Commission Act, 2019, the National Eligibility-cum-Entrance Test-UG ["NEET (UG)"] has to be conducted as a common and uniform test for admission to undergraduate medical courses in all medical institutions, including those governed under any other law in force. The NEET UG 2022 examination for admission to undergraduate medical courses in all medical institutions in India is scheduled for 17th July 2022. Scarcely three days before the exam, some aspirants desire that the said exam be rescheduled after 4-6 weeks.

2. The extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950 has been invoked seeking the following reliefs:

"I. Directing the respondents to set aside the examination schedule 17.07.2022

of NEET-UG 2022 examination as mentioned in notification dated 06.04.2022 issued by respondent no. 1/national testing agency;

II. Direct the respondents to issue a fresh notification rescheduling date of NEET-UG 2022 examination after considering the grievances raised by the petitioners by way of written representations dated 12.05.2022 and 08.07.2022;

III.. Direct the respondents to conduct NEET-UG 2022 phase 2 for the academic session 2022 considering huge distance of examination centre which range between 150 km to 300 km for thousands of students during the current grave situation caused by flood across nation;

IV. Direct the Respondent no. 1 to 4 to set up a grievances/complaint redressal mechanism to decide all the complaints and grievances raised in respect of examination within a time bound manner;

IV. Any other appropriate direction may be issued in the interest of justice.”

3. Respondent No. 1 – National Testing Agency (“NTA”), vide Public Notice dated 06th April, 2022 [hereinafter, “Notice”], invited applications for NEET UG 2022 examination for admission into various undergraduate medical courses in institutions across India, and declared the date for NEET UG 2022 examination. Several aspirants (including some of the Petitioners herein) made written representations to the Director General of NTA as well as Hon’ble Prime Minister, Health Minister and Education Minister, addressing several issues qua timelines for NEET UG 2022 examination declared in the Notice and inter alia prayed for postponement of the same for a minimum period of six weeks, stating that date of NEET UG 2022 examination is proximate to/ coinciding with other national level entrance examinations (including JEE 2022, CUET 2022, EAMCET 2022) for admission into various undergraduate courses. Several other such representations seeking similar reliefs were also made by other interested parties; however, no action was taken thereon. Aggrieved by the inaction of Respondent-authorities, Petitioners have approached this Court praying for the afore-mentioned reliefs.

CONTENTIONS ADVANCED

ON BEHALF OF PETITIONERS

4. Ms. Mamta Sharma, counsel for Petitioners, has advanced the following submissions:

4.1. Several national level examinations, inter alia, Central University Entrance Test (“CUET”) and Joint Entrance Examination (“JEE”) have been scheduled closely proximate to/ within a gap of one or two days of NEET 2022 examination and the syllabus as well as pattern of all such examinations is completely different. As these examinations are amongst the most challenging and competitive examinations in the country, Petitioners are being gravely prejudiced owing to the concurrent nature in which these examinations are being

conducted, and insufficiency of time to prepare for the same. As per the averments made in the Petition, the schedule for such examinations, is as under:

15.07.2022

CUET Exam for admission to Central Universities in UG Courses

16.07.2022

CUET Exam

17.07.2022

NEET-UG Exam

18.07.2022 19.07.2022 20-21.07.2022

CUET Exam

30.07.2022

JEE Exam

4.2. Petitioners had initially approached the Respondent-authorities for redressal of their grievances; however, Respondent-authorities failed to take an expeditious decision thereon. This created a state of confusion amongst the Petitioners, who were under a legitimate belief that their concerns would be redressed in line with the relief granted for NEET UG 2021 examination.

4.3. Respondent-authorities provided the candidates only three months' time to prepare, as opposed to the previous practice of at least five months, as the dates of NEET UG 2022 were notified only in April 2022 vide the Notice.

4.4. The new academic session will tentatively not start before 2023, and a delay of four to six weeks in conducting the NEET UG 2022 will not wholly disrupt the admission procedure and consequent formalities. Declaration of premature dates and abrupt reduction in preparation time for Petitioners would impair their future prospects.

4.5. Reliance is also placed on an order of a co-ordinate bench of this Court in Mohd. Anas & Ors. v. National Testing Agency and Ors. [Mohd. Anas & Ors. v. National Testing Agency and Ors. in W.P.(C) 12954/2021 dated 17th November, 2021.], whereby Petitioners therein had sought issuance of directions to Respondents to conduct NEET UG 2021 in a second phase, in line with the practice espoused for JEE examinations – so as to grant another opportunity to candidates who had not performed well to improve upon their scores. The Court disposed of the said petition with the directions to Respondents to consider the said writ petition as a representation and take “an appropriate decision thereupon in their own discretion”.

4.6. Unable to handle the extreme pressure, and owing to uncertainty and unorganized schedule of examinations, around 17 students have committed

suicide, leaving their families in a state of shock and despair. Multiple news articles and clippings have been placed on record to this effect.

4.7. The torrential flood situation across the nation has affected major states across the country and several authorities have decided to postpone their examinations. In light thereof, Respondents should be directed to reschedule NEET UG 2022.

ON BEHALF OF RESPONDENTS

5. On the other hand, Mr. T. Singhdev, counsel for Respondent No. 2 – National Medical Commission (“NMC”) and Mr. Apoorv Kurup, counsel for Respondent No. 1 – National Testing Agency (“NTA”), oppose the Petitioners request, and contend as follows:

5.1. Postponement of NEET 2022 would disrupt the entire academic cycle set under the Regulations on Graduate Medical Education, 2015 [hereinafter, “Regulations, 2015”] framed by the Central Government under Section 33 of the Indian Medical Council Act, 1956. The same has also been noted by the Supreme Court in *Ashish Ranjan and Ors. v. Union of India and Ors* (2016) 11 SCC 225., which reads as under:

Sl. Nos.

Schedule of admission

Seats to be filled by the Central Government through the All-India Entrance Examination

Seats to be filled up by the State Government/ Institution

1.

Conduct of entrance examination

Between 1st to 7th May

Between 10th to 17th May

2.

Declaration of the result of the qualifying exam/ entrance exam.

By 1st June

By 1st June

3.

1st round of counselling/ admission

To be over by 25th June

Between 6th July to 15th July

4.

Last date for joining the allotted college and the course.

By 5th July

By 22nd August

5.

2nd round of counselling/ admission for vacancies.

Between 23rd July to 30th July

Between 10th to 22nd August

6.

Last date of joining for the 2nd round of counselling/ admission.

By 9th August

By 28th August

7.

Commencement of academic session/ term.

1st of August

1st of August

8.

Last date up to which students can be admitted/ joined against vacancies arising due to any reasons.

By 31st August

5.2. The Regulations, 2015 mandate that the conducting of entrance exams must be completed between 10th to 17th May of each year. Due to the COVID-19 pandemic and ensuing adverse circumstances, NEET UG 2020 and NEET UG 2021 were delayed, which resulted in disruption of the entire examination schedule set for the respective academic sessions. He submits that since NEET UG 2021 was conducted in the month of September, 2021, counselling for the same could only be completed by April, 2022, which has become problematic for conducting admission process and classes for newer batches. Consequently, considering that COVID-19 pandemic situation has gotten better and a semblance of normalcy is being restored, Respondents are attempting to correct the academic cycle for the academic session commencing from 2023. Thus, a delay in conducting NEET UG 2022 would be detrimental to the public at large. To this extent, reliance is placed on the judgements in Ashish Ranjan (Supra), Dr. R Dinesh Kumar Reddy

and Ors v. Medical Counselling Committee and Ors. 2022 SCC OnLine SC 616., Association of MD Physicians v. National Board of Examinations and Ors. In W.P. (C) 5908/2021 dated 11th June, 2021. to state that no legal right exists in favour of Petitioners to seek postponement of NEET 2022.

5.3 Additionally, the postponement of NEET 2022 would hinder the entire admission process and cause loss of national resources. 18,72,341 candidates have registered for NEET UG 2022 examination, which is scheduled to be conducted across 497 cities, including 14 cities outside India, at 3570 examination centres. He further places reliance on the orders passed in Sanjan and Ors. v. National testing Agency and Ors. Order dated 06th September, 2021 in W.P.(C) 984/2021., Rajat Jain and Ors. v. UPSC and Anr. Order dated 06th January, 2022 in W.P. (C) 242/2022, and Sayantan Biswas and Ors. v. National Testing Agency and Ors. Order dated 17th August, 2020 in W.P.(C) 812/2020., wherein petitions seeking similar reliefs for several examinations have been dismissed.

ANALYSIS

6. The Court has heard the counsel for the parties at considerable length. At the outset, Ms. Sharma stated the present petition is in a representative capacity. In light of this statement, the Court had queried from her whether the instant petition was in the nature of a Public Interest Litigation, to which, Ms. Sharma then clarified that she espouses only the cause of Petitioners herein. The Court has proceeded to hear the matter on the basis of the afore-noted statement.

7. First and foremost, there is an unexplained and inordinate delay in filing the petition as NEET UG 2022 examination is scheduled only three days from today i.e., on 17th July, 2022. The schedule was fixed by the NTA on 6th April, 2022 itself. Petitioner therefore, had sufficient time to make representations to the concerned authorities, and/ or approach the Court for redressal of their grievances. Petitioners cannot first sleep over their perceived rights and then approach the Court at the eleventh hour, when the examination is just days away. Nonetheless, the Court has given anxious consideration if indeed Petitioners have a genuine ground to seek postponement of NEET UG 2022 examination.

8. Petitioners have urged that the “unorganised schedule” for various entrance examinations, is causing them grave prejudice and hardship in preparing for NEET UG 2022 and other national level examinations. On a specific query, Ms. Sharma was unable to assist the Court with the specific details of Petitioners appearing in NEET UG 2022 as well as CUET examinations, or of those who would face inconvenience in commuting to different examination centres for the two tests, as claimed in the Petition. She however, argues that Petitioners are unwilling to disclose their details before the Court, “in fear” of adverse consequences. Such assertions, in the opinion of the Court, are vague and evasive. The grounds averred by Ms. Sharma are thus groundless.

9. Further, the reliance placed on Mohd. Anas (Supra) by Ms. Sharma is entirely misconceived. In the said order, the Court had directed Respondents to treat the writ petition as a representation and take "an appropriate decision thereupon in their own discretion". This direction cannot be interpreted to mean that the NTA was to pass any speaking order on the same, or that there is non-compliance of the said order.

10. In light of Ms. Sharma's above-noted statement that she is representing the interests of the Petitioner alone, the immediate question that arises in the mind of the Court is whether the desire of the present set of Petitioners is indeed the desire of all NEET UG 2022 aspirants; as it stands, only 15 Petitioners stand before the Court today seeking the afore-noted reliefs. In contrast, around 18,72,341 candidates have registered for NEET UG 2022 examination, of which, Petitioners' number is minuscule. The Court also eagerly considered if any of the Petitioners had a personal/ real cause of action; however, none is discernible and the submissions made are general and unspecific. The only reasons forthcoming for rescheduling the examination are that some students/ aspirants have committed suicide, there are floods in certain parts of the country and the students have insufficient time to prepare for the NEET UG 2022. Therefore, there is no real cause of action warranting interference by this Court. The Court cannot disrupt the admission process which is to be conducted across 497 cities, including 14 cities outside India, at 3570 examination centres, at the asking of the Petitioners. Moreover, admit cards for NEET UG 2022 were released on 12th July, 2022 and over 90% of students are stated to have already downloaded the same, showing their desire to sit for the examination. At this stage any order of the Court is bound to upset the entire examination process – which would have wide ramifications, and thus, unless Petitioners demonstrate arbitrariness in Respondent-authorities' actions, the Court would be extremely reluctant to intervene. In fact, doing so would cause grave prejudice, inconvenience and anxiety to all other aspirants who are willing to abide by the timelines. Conducting an exam of this scale is a huge exercise undertaken by Respondent-authorities, over two to three years of planning, including the involvement of lakhs of candidates and invigilators across thousands of test centres, huge material supplies, transportation and arrangement of signal jammers and CCTV cameras. Delaying such examination, merely a few days before its scheduled date would not disrupt the above-noted process, but also be a huge burden on national resources.

11. The Court also finds merit in Mr. Singhdev's contention that the timelines, as stipulated in Ashish Ranjan (Supra), have to be adhered to in order to bring the academic sessions back on track after the disruptions caused due to COVID-19 pandemic. Admittedly, while NEET UG 2022 examination was delayed twice before in 2020 and 2021; however, the same was done due to COVID-19 pandemic that wreaked havoc across the country. The circumstances cited cannot, by any stretch of imagination, be equated to the unprecedented dire situation that emerged during the pandemic. In this regard, the observations

made by the Supreme Court and this Court that ultimately life has to go on and lives of students cannot be put in peril and full academic years cannot be put to waste, [Sayantan Biswas v. National Testing Agency in W.P. (C) 812/2020 dated 17th August, 2020.] are of great relevance to the facts and circumstances of the present case. The Courts have invariably always refused to entertain petitions seeking concessions qua timelines of several national-level entrance examinations such as UPSC [Vasireddy Govardhana Sai Prakash & Ors. v. Union Public Service Commission & Ors. in W.P. (C) 1012/2020 dated 30th September, 2020.] [Rajat Jain & Ors. v. Union Public Service Commission & Ors. in W.P. (C) 242/2022 dated 6 th January, 2022.] and FMGE. [In Association of MD Physicians v. National Board of Examinations and Ors., in W.P. (C) 5908/2021 dated 11th June, 2021.] Indeed, as Mr. Singhdev puts it, a delay in conducting the NEET-UG 2022 examination would impact the healthcare sector in the long run. The schedule as contemplated in Ashish Ranjan (Supra), Mr. Singhdev explains, can be achieved only in 2023, and the same would only be possible if the examinations are not postponed, and that also requires the timelines to be curtailed as compared to what was earlier the position. Any direction to reschedule is likely to have cascading effect on the healthcare sector, careers of the aspirants and would also make it difficult to achieve the original timelines. This has weighed heavily with the Court for declining the Petitioners' request.

12. Furthermore, NEET UG examinations are conducted under the aegis of Respondent-authorities, and the schedule for the same is sanctioned by the Central Government in exercise of its powers under a statute. One cannot derogate from a statutory timeline, merely because it is causing hardship to a few. The decision to conduct NEET UG 2022 examination within a stipulated timeline is taken by the Ministry of Health and Family Welfare after much deliberation and is an administrative function and a matter of policy domain, which cannot be interfered with by the Courts, unless it finds manifest arbitrariness. The Respondent-authorities decision to conduct NEET UG 2022 examination according to the schedule cannot be deemed as "manifestly arbitrary", merely because of concurrent/ conflict in dates of NEET UG 2022 with other national level examinations, suicides by some students and a flood-like situation in parts of the country and prior concessions in extending timelines in previous years' examinations.

13. The Court's attention has also been drawn by Mr. Kurup to the fact that there is no overlap between the date of examination between CUET (UG) 2022, JEE (Main) 2022 and NEET (UG) 2022, as has been urged by Petitioners. CUET, which is mandatory for undergraduate admission in Central Universities, is being held over several days and in two phases: firstly, for subjects relating to arts and commerce streams – which are scheduled to take place in July, 2022 (15th, 16th , 19th and 20th July); whereas (ii) subjects relating to science stream are scheduled for the second phase in August, 2022 (4th, 5th, 6th, 7th, 8th and 10th August), and thus, would avoid the conflict in dates with the NEET UG 2022 examination. Further, the dates of JEE (Main) Session-2 are tentatively fixed as

from 21st July to 30th July. In light of the same, the entire basis for Petitioners' claims falls as the concerned examinations are no more closely proximate to/ coinciding with each other.

14. The other prayers in the petition are general in nature and no right or basis is shown to claim such directions, and therefore, cannot be entertained.

15. In light of the aforementioned reasons, the present petition is entirely without merit. Dismissed.