

Abdul Azeez vs Union of India,

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WP(C)/11495/2020

Appellant : Abdul Azeez

Respondent : Union of India,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 WP(C).No.11495 OF 2020(S) PETITIONER: ABDUL AZEEZ, AGED 58 YEARS, S/O. ALI, KUYIPILLYKANDIYIL ,P.O NAARIKUNNI, KOZHIKODE DISTRICT, PIN-627 402 BY ADVS.SRI.HARIS BEERAN SMT.O.A.NURIYA RESPONDENTS: 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HUMAN RESOURCE DEVELOPMENT, SOUTH BLOCK, NEW DELHI -110 000. 2 NATIONAL TESTING AGENCY, REPRESENTED BY ITS DIRECTOR GENERAL, SECTOR 62, NOIDA, UTTAR PRADESH-201309 * ADDL.

R3 MINISTRY OF HEALTH AND FAMILY WELFARE, REPRESENTED BY ITS SECRETARY, NEAR UDYOG BHAWAN METRO STATION, MAULANA AZAD ROAD, NEW DELHI, DELHI-110 011.

* ADDL. R4. MEDICAL COUNCIL OF INDIA, REPRESENTED BY ITS SECRETARY GENERAL, POCKET-14, SECTOR-8, DWARAKA PHASE, NEW DELHI-110 077, INDIA. (*) ADDITIONAL R3 AND R4 ARE IMPEADED AS PER ORDER DATED ** ADDL. R5. THE SECRETARY TO GOVERNMENT, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, NEW DELHI. ** ADDL. R6. THE SECRETARY TO GOVERNMENT, MINISTRY OF CIVIL AVIATION, GOVERNMENT OF INDIA, NEW DELHI. W.P.(C).No.11495/2020 2 ADDL R7. THE SECRETARY TO GOVERNMENT, MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, NEW DELHI.

() ADDL. R5 TO R7 ARE SUO MOTU IMPEADED AS PER ORDER**

DATED 23/06/2020 IN WPC.11495/2020. R1 & R5 TO R7 BY ADVS. SHRI P.VIJAYAKUMAR, ASG OF INDIA SRI.T.C.KRISHNA R2 BY ADV. SRI.NIRMAL S., SC, NATIONAL TESTING AGENCY R4 BY ADV. SRI.TITUS MANI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2020, THE COURT ON 30-06-2020 DELIVERED THE FOLLOWING: W.P.(C).No.11495/2020
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JUDGMENT

S.Manikumar, CJ Claiming himself to be a social worker and member of Kerala Muslim Cultural Centre, Qatar ('KMCC', for short), an organisation engaged in redressing the grievances of Non Resident Keralites living in Gulf countries, the petitioner has filed this public interest writ petition seeking for a writ of mandamus directing the Union of India, represented by its Secretary, Ministry of Human Resource Development, New Delhi and National Testing Agency (NTA), represented by its Director General, Uttar Pradesh (respondent Nos.1 & 2) to sanction examination centres in Qatar as well as in other Gulf Co-operation Council countries for National Eligibility Entrance Test ('NEET', for short) aspirants.

2. Petitioner has also sought for a writ of mandamus, directing

respondents 1 and 2 to defer NEET Examination, till normalcy is restored or a decision is taken on the request of the students for allowing examination centres outside India, to expatriate students in Qatar as well as in other Gulf Co-operation Council countries.

3. In the statement of facts, supporting the prayers sought for,

petitioner has contended that National Eligibility-cum-Entrance Test (NEET) (UG-2020) was originally scheduled to be conducted on 3.5.2020. Due to W.P.(C).No.11495/2020 4 extraordinary circumstances that arose from COVID-19 pandemic, by public notice dated 27.03.2020, examination was postponed. Petitioner has further submitted that examinations for admissions to premier higher educational institutions in India are conducted by the National Testing Agency (NTA), an independent organisation established under Ministry of Human Resource Development. Petitioner has further submitted that for admission to MBBS/BDS courses and other undergraduate medical courses in approved/organised Medical/Dental & other colleges or institutions in India, NEET (UG-2020) examination is conducted by the 2nd respondent, NTA.

4. Petitioner has further submitted that NTA has decided to

reschedule NEET (UG-2020) examination to 26.07.2020. Exhibit-P1 notice dated 22.05.2020, states that the dates of downloading admit cards, including roll numbers and Centre of Examination will be displayed within 15 days before the conduct of examination in the official website of NTA.

5. According to the petitioner, the cause of action for filing the

instant public interest writ petition is that there are many expatriate students, who want to take up NEET examination and consequently, seek admissions in medical colleges, and for that purpose, attended coaching classes. They spent a lot of money and when they were eagerly waiting to take part in the examinations, the Central Government unexpectedly W.P.(C).No.11495/2020 5 declared the lockdown on 24.03.2020. There was a travel ban to and from India prohibiting the

movement of Indian nationals, including students, who wanted to appear for the entrance examinations.

6. On 5.5.2020, Ministry of Home Affairs, issued the Standard

Operating Protocol (SOP) for the movement of Indian nationals stranded outside the country. One of the protocol was inclusion of category of persons who could be immediately evacuated from outside India. As per the protocol priority was given to compelling cases in distress, including workers/labourers, who have been laid off, short term visa holders faced with expiry of visas, persons with medical emergency/pregnant women/elderly, those required to return to India due to death of family members and students. According to the petitioner, the number of students aspiring to take part in NEET exam from Qatar alone is around 300.

7. Having regard to the difficulty in taking up air travel to India,

several distressed students from Qatar have sent requests to Union of India, represented by its Secretary, Ministry of Human Resource Development, New Delhi, and National Testing Agency (NTA), represented by its Director General, Uttar Pradesh (respondent Nos.1 & 2) respectively, as well as to the Ambassador of India to conduct examinations at Doha. Similar requests have also been made by expatriates from other Gulf W.P.(C).No.11495/2020 6 countries to respondents 1 & 2, to provide examination centres in Gulf countries for NEET exam. The Hon'ble Chief Minister of Kerala has also requested intervention of the Hon'ble Prime Minister of India for allotting examination centres in UAE and other Gulf countries. The Hon'ble Member of Parliament (Lok Sabha), from Thiruvannanthapuram, Mr. Shashi Tharoor has also forwarded a representation received from nearly 200 Indian students, who are currently based in Qatar and who wish to take part in the NEET examinations, to the first respondent. Sri. K.T.Jaleel, the Hon'ble Minister of Higher Education, Kerala, has also forwarded a representation made by the parents of the students, who are registered for NEET examinations, to sanction examination centres at Qatar and other Gulf countries. However, there is no response to the abovesaid requests.

8. Petitioner has further contended that in an interactive session, the

Director General of NTA, respondent No.2, has responded to the students, who requested for NEET centres outside India, that if situation demands, we will give some provision to students to give exam there. Petitioner has further contended that the National Testing Agency is conducting Joint Entrance Examination (JEE) for engineering admissions, in cities abroad India. Thus, according to the petitioner, there are examination centres outside India. W.P.(C).No.11495/2020 7

9. It is the further case of the petitioner that the decision of the

Central Government to conduct NEET exam in the midst of the above situation is a risky decision. Students, as well as the parents are mentally stressed and as of now, it is highly difficult for them to come to India. If the students reach India, they have to undergo quarantine. Students have been preparing for the NEET exam for several years by paying exorbitant fees to the coaching centres. According to the petitioner, if students in India alone are afforded an opportunity to attend the NEET entrance exams in India, it would be discriminatory. If the students stranded abroad are not provided with centres, to attend NEET exam, it would amount to violation of Articles 14 and 21 of the Constitution of India.

10. Based on the above pleadings, the petitioner has raised the following grounds:

(a) The decision of respondents 1 and 2 to conduct NEET

examinations in India, without affording an opportunity to the students stranded abroad, who wish to attend the examination, is arbitrary, discriminatory and violative of the fundamental rights guaranteed to them under Articles 14, 21 and 21A of the Constitution of India.

(b) NEET is the sole All India entrance Test for admission to

medicine programmes in India and the Central Government, without considering the grievance of the students stranded abroad and without considering the fact that new travel W.P.(C).No.11495/2020 8 restrictions and the COVID-19 related regulations would adversely affect the preparations, performance and participation of students in the examination, arbitrarily made the decision to conduct NEET examinations in India.

(c) Without due consideration and despite repeated

request, the Central Government have leave to chances, the future of the 300 students from Qatar and other expatriate students in other Gulf countries. The students preparing for medical examinations start their preparations atleast two three years before the entrance exam and for that purpose, spend money in coaching institutions. Some students attempt as repeaters and even dedicate an year for attending this exam. The academic year of students would be lost in case, they cannot attend the exam and their seniority in future career will be lost.

11. Learned standing counsel for the 2nd respondent, NTA, has filed a statement, which is extracted hereunder:

A) The NTA has been mandated by the Ministry of Health and Family Welfare to conduct the National- Eligibility-Entrance Test [NEET(UG)] in various cities, in the country as a uniform entrance examination for admission to all the medical courses, in all medical institutions across the country, as per the norms/regulations of the Medical Council of India (MCI).

B) Relevant instructions along with the dates and detailed procedure for application/registration for NEET (UG) 2020 were announced in the information Bulletin published for this exam on the Web Portal: ntaneet.nic.in. The online application for this exam was launched on 02.12.2019 and the last date for W.P.(C).No.11495/2020 9

submission of the online application form was notified as 31.12.2019. However, on account of heavy rush in the submission of applications through the said Web Portal in the last week of the application period, the last date for submission of application term was extended from 31.12.2019 to 06.01.2020, for enabling the aspiring candidates for the NEET

(UG) 2020, The time line for making online payment of

application fee was also extended accordingly upto 07.01.2020. A Public Notice to this effect was also issued in the Exam Portal for the information of all the aspiring candidates, who could not submit their application online earlier.

C) That apart, the facility to carry out the correction (wherever required) was extended to all the candidates in their respective online application form during the period from 15.01.2020 to 31.01.2020. However, based on several requests received from the candidates to change their choice of cities for examination centre due to COVID-19 situation, opportunities were provided to all the candidates (vide Public Notices dated 01.04.2020, 14.04.2020 and 15.05.2020) to carry out change in their choice of cities for their examination centres, in their respective online application form.

D) It is further contended that as per the initial announcement, NEET (UG)-2020 was scheduled to be conducted on 30.05.2020. However, in view of the countrywide lockdown due to COVID-19 pandemic, NEET (UG)-2020 was postponed and the same was announced by NTA through its public notice dated 27th March, 2020. Subsequently, NEET (UG)-2020 has been rescheduled to be held on 26.07.2020 as per Exhibit-P1 public notice dated 20.05.2020.

W.P.(C).No.11495/2020 10 E) In view of the representation received on behalf of candidates held up abroad, especially in Gulf countries, due to travel restrictions, NTA approached the Medical Council of India

(MCI) on 20.05.2020 to consider whether NEET (UG)-2020, could

be conducted in online mode for such candidates living abroad, on the same date and time, as fixed for the students appearing in India. In response, MCI vide letter dated 21.05.2020, opined that NEET (UG) is a uniform entrance examination conducted through Multiple Choice

Questions (MCQ) in paper book format and further stressed that the uniformity of NEET(UG) has to be maintained for all the candidates. The Board of Governors, MCI is of the view that NEET (UG) should not be conducted in online mode for candidates abroad.

F) It is further contended that the prayer of the petitioner for further rescheduling of the examination cannot be strictly acceded to, in as much as the situation COVID-19 is still evolving. A close watch is being kept on the situation and appropriate decision as to whether, to hold the exam on 26.07.2020 or on a subsequent date, will have to be taken in due course, if required, in the interest of the candidates, in consultation with Medical Council of India and Ministry of Health and Family Welfare, based on future development. So far as the date of exam is concerned, NEET(UG)-2020 may be conducted on 26.07.2020, if the situation is conducive, or on a subsequent date when the situation stabilizes.

G) Still further, there is no concrete data regarding the number of candidates of NEET(UG)-2020 stranded in the Gulf countries, as there was no provision for examination centres abroad for this exam. However, as per Exhibit-P3, a list of 277 W.P.(C).No.11495/2020 11

students have been furnished. It is not sure whether all these students are registered candidates for NEET (UG)-2020, as it is not possible for the 2nd respondent to ascertain the same without unique application number. The details furnished in Exhibit-P3 would not suffice to ascertain their candidature from the NEET (UG)-2020 database, as there are more than one candidates, with same name.

H) On the contention of the petitioner that under the present condition the candidates are not in a position to travel to India for undertaking NEET (UG) at their allotted centres, due to various restrictions, including travel, 2 nd respondent has contended that the same problem would be faced by the examination personnel, to travel to various countries, with the

examination material, including the cities in the Gulf countries. Also, it would be difficult for NTA to obtain any relaxation of various restrictions from the concerned Governmental authorities in the destination countries, in comparison to our own country, wherever required, for the smooth conduct of the examination.

I) In para 11 of the writ petition, petitioner has stated that the 2nd respondent is conducting Joint Entrance Examination

(JEE) in cities abroad. But, he cannot demand for conducting the

NEET Examination on the ground that there are examination centres in some cities abroad for JEE (Main) 2020. JEE (Main) is conducted in online mode, in various cities in India and outside India, as per the scheme of things. However, NEET (UG) is being conducted in paperback format ever since. Further, the JEE (Main) is a joint entrance examination for admission to Undergraduate Engineering Programs at NITs, IITs, IITs, other

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Centrally Funded Technical institutions (CFTIs). Whereas, NEET(UG) is being conducted as a uniform entrance examination for admission to all the medical courses in all Medical institutions across the country. No parity can be drawn between JEE (Main), which is for a non-medical course and NEET (UG) which is for a medical course. The number of seats in engineering colleges compared with the number of seats in medical colleges within the country, are much more. Thus, medical seats attract stiffer competition, compared to engineering seats. Unlike for JEE (Main), the question papers and other exam materials for NEET (UG) have to be transported from NTA Headquarters to a large number of examination centres in various cities, which would require meticulous planning for safe and secured delivery of the same at the examination centres, on time. Whereas, such rigorous preparations are not required

for JEE (Main), for which, the question papers can be delivered to the Examination Centres half an hour before the examination in a password protected online mode. Comparatively, much more preparations are required to be made for the smooth conduct of the NEET(UG).

J) It is further contended that as per the norms of MCI, NEET

(UG) has to be conducted in single shift on a single day, in order

to obtain the same level of difficulty, in question paper for the all candidates. It is respectfully submitted that around 15 lakhs candidates appear for NEET(UG) every year and 15,97,426 candidates have registered for NEET (UG) 2020, whereas about 8 lakhs candidates appear for JEE(Main). Since, there are large number of candidates (more than 15 lakhs), it is not feasible to conduct NEET (UG) 2020 in online mode, in single shift, for all the candidates, in order to maintain the same difficulty level.

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Therefore, there is no discrimination between the candidates of NEET (UG) and JEE (Main) nor there is any violation of the fundamental rights of the candidates of NEET (UG) as claimed in the writ petition. JEE(Main) and NEET(UG) are two separate class of examinations and, therefore, NEET (UG) cannot be conducted in the same manner as JEE(Main). In the light of the foregoing discussion, it is stated that it is not possible to have examination centres abroad, including in Quit Countries, for NEET(UG) 2020.

12. When the matter came up for admission on 12th June, 2020, we passed the following order:

Instant public interest writ petition is filed for a mandamus to 1st and 2nd respondents to sanction examination centres in Qatar, as well as in other Gulf

countries for the students appearing for National Eligibility Entrance Test (NEET) (UG-2020).

2. On this day when the matter came up for hearing,

Mr.S.Nirmal, learned standing counsel for National Testing Agency, respondent No.2, submitted that National Testing Agency, Uttar Pradesh is conducting examination on behalf of the Health Department.

3. Mr. T.C.Krishna, appearing on behalf of Assistant

Solicitor General for respondent No.1, submitted that Secretary to the Ministry of Health and Family Welfare, New Delhi has to be impleaded as party respondent. Learned standing counsel also submitted that the Medical Council of India (MCI) is the competent authority to prescribe time schedule for conducting examination, National Eligibility

W.P.(C).No.11495/2020 14 Entrance Test (NEET) (UG-2020) and therefore, MCI, is also necessary party. Placing on record the above submissions, learned counsel for petitioner to take steps for impleading the said respondents. Post on 16.6.2020.

13. Subsequently, I.A. No.1 of 2020 has been filed for impleading

the Medical Council of India, represented by its Secretary General and Ministry of Health and Family Welfare, represented by its Secretary, New Delhi, as additional respondents. Since there was no objections, the said application was allowed and accordingly, they were impleaded as additional respondents 3 and 4.

14. On 16.06.2020, taking note of the submission made by learned

counsel for the petitioner that the Ministry of Human Resource Development, Department of Higher Education, New Delhi has issued a letter dated 05.09.2018 empowering NTA to locate examination centres, and after recording the same, we passed the following order.

5. Inviting attention of this Court to the order of the Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi, dated 5 th September, 2018, Mr. Haris Beeran, learned counsel for petitioner, submitted that National Testing Agency (NTA) is the competent authority to locate

**examination centres and power has been conferred on them.
Order**

dated 5th September, 2018 relied upon by the learned counsel for petitioner is reproduced herewith: W.P.(C).No.11495/2020 15 F.No. 35-5/2017-TS.I Government of India Ministry of Human Resource Development Department of Higher Education Technical Section - I Shastri Bhawan, New Delhi Dated 5th September, 2018

ORDER

Subject : Creation of National Testing Agency (NTA) for conducting of entrance examinations for higher education institutions - reg. ----- In pursuance of the Budget Announcement 2017-18 (Para 52) and subsequent approval of the Union Cabinet in its meeting held on 10-1-2017 National Testing Agency (NTA) has been established as an autonomous and self-sustained premier testing organisation to conduct entrance examinations for higher educational institutions in the country. Accordingly, NTA has been registered as a Society under the Societies (Registration) Act, 1860 vide Registration No. S/ND/914/2018 dated 15-05-2018.

2.NTA will initially conduct those examinations which are currently being conducted by Central Board of Secondary Education (CBSE) as well as the CMAT and GPAT as entrusted by All India Council for Technical Education (AICTE) so that these agencies are relieved of the responsibility of conducting these examinations and can focus on their

core activities. NTA will adopt technology and the best global practices to bring in high reliability, transparency, and standardized difficulty levels for assessing the aptitude, intelligence and problem-solving abilities of the students.

3.The NTA will start with UGC-NET in December 2018 whereas other examinations will be taken up from 2019 onwards. It will conduct the examinations in Computer Based Testing (CBT) mode at least twice a year, thereby giving adequate opportunity to candidates to bring out their best. In order to serve the requirements of the rural students, it will locate the examination centres at sub-district/district level and will provide hands-on training to the students, as far as possible. As far as NEET(UG) is concerned, it shall be conducted in the manner prescribed by the Ministry of Health and Family Welfare.

4.The administrative structure of NTA includes its General Body chaired by an eminent educationist appointed by the Government of India and will comprise nominees from the Indian Institutes of W.P.(C).No.11495/2020 16 Technology (IITs), National Institutes of Technology (NITS), Indian Institutes of Management (IIMs), Indian Institutes of Science Education and Research (IISERS), Central Universities

(CUs) and experts from the field of testing as its Members. However, the initial members of the General Body are as follows:-

Sl.No.	Name	Designation	Occupation
1	Shjir.R.Subrahmanyam	Chairman	Secretary, Department of Higher Education, MHRD
2	Dr.S.S.Sandhu	Member	Additional Secretary (Technical Education) Department of Higher Education, MHRD
3	Ms.Darshana	Member	Joint Secretary & Financial Momaya Dabral Adviser, Department of Higher Education, MHRD
4	Ms.Anita Karwal	Member	Chairman, Central Board of Secondary Education (CBSE)
5	Shri.Vineet Joshi	Member	Director Genral, National Testing Secretary Agency(NTA)
6	Dr.Abhay Karandikar		

Member Director, IIT, Kanpur 7 Shri.Anil Kumar Member Director (Finance), Department of Higher Education, MHRD 8 Shri.Prashant Agarwal Member Director (IITs), Department of Higher Education, MHRD

5. The Director General of NTA, in the rank and pay equivalent to

the Joint Secretary to Government of India will be its Chief Executive Officer, who shall be assisted by 9 verticals in the rank and pay equivalent to a Director in the Government of India, each spearheading 9 wings of NTA. NTA will fill up all these positions on deputation basis in accordance with its operational requirements. 6.The Government of India shall give directions to the NTA and the General Body in respect of its policies and the NTA shall be bound to comply with such directions. 7.If at any time difficulty arises in the functioning of the NTA because of any lacunae in the Memorandum of Association or in the rules, or the failure of any of their provisions to operate, the Government of India shall have powers to give directions to resolve the difficulty and such directions shall be binding on officers and authorities of the NTA. 8.NTA, as per the decision of the Cabinet will be given a one-time grant of Rs.25 crore to start its operation. Thereafter, it will be financially self-sustainable.

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9.The registered office of NTA in at Department of Higher Education, Ministry of Human Resource Development, West Block- 1, Wing No. 6, 2nd Floor, R. K. Puram, New Delhi- 110066, while the correspondence address is National Testing Agency, Outreach Centre of Indian Institute of Technology Kanpur, C Block, Sector 62, Gautam Buddh Nagar, Noida, Uttar Pradesh-201309.

Sd/- (Pranhant Agarwal) Director(IITs) Ph: 23073271 To,

- 1.The Prime Minister's Office (Shri Brijesh Pandey, Deputy Secretary)
- 2.The Cabinet Secretariat (Shri S. G. P. Verghese, Director) w.r.f. their

OM No. No.38/CM/2017(i) dated 13-11-2017 3.The Chief Executive Officer, NITI Aayog 4.The Secretaries of all Ministries/Departments of the Government of India, as per standard list. 5.Chief Secretaries/Administrators of all States/Union Territories, as per standard list. 6.Directors of all IITs 7.Director, IISc, Bangalore 8.Directors of all NITs 9.Directors of all IIMs 10.Dircctors of all IISERs 11.Directors of all IIITs 12.Vice Chancellors of All Central Universities 13.Chairman, University Grants Commission (UGC), New Delhi 14.Chairman, All India Council for Technical Education(AICTE), New Delhi 15.Chairman, Central Board of Secondary Education (CBSE), New Delhi

6. Reading of the above indicates that Ministry of Human

Resource Development, Department of Higher Education, has issued an order dated 5th September, 2018 empowering the National Testing Agency to locate examination centres at sub-district/district levels and to provide hands on training to the students as far as possible. In so far as NEET (UG)-2020 is concerned, the order dated 5 th September, 2018 states that the test shall be conducted in the manner prescribed by the Ministry of Health and Family Welfare, thus indicating that conduct of examinations for NEET (UG) is different.

W.P.(C).No.11495/2020 18 While that be so, it is desirable to have the views of the Ministry of Health and Family Welfare, as regards the conduct of NEET (UG), 2020.

7. Though Mr. Nirmal S., learned standing counsel for National

Testing Agency, submitted that petitioner has not furnished the details of the registration numbers (list of students appearing for NEET (UG) - 2020), it is the categoric submission of Mr. Haris Beeran, learned counsel for petitioner, that all the students included in the list, have applied and provided with registration numbers. According to him, so far as the students in Qatar is concerned, the details could not be furnished.

We are of the view that NTA can verify the details from the date available with them.

8. Mr. Nirmal S., learned standing counsel for National Testing

Agency, is directed to get instructions on the averments and the reliefs sought for. Added further, NTA is directed to ascertain as to whether the students in Ext.P13 have applied/registered for NEET (UG), 2020 with NTA.

9. Learned counsel for petitioner submitted that not only

students in Qatar are affected by the threat of recent COVID-19 pandemic, but also the students in other Arab countries, and unless the Government of India, Ministry of Health and Family Welfare and Medical Council of India take a co-ordinated decision, interests of the students will suffer. The examination is scheduled on 26.7.2020. NTA is directed to furnish the details of the students who have registered abroad.

10. As regards the difficulty expressed by the students, in

taking part in the examination, in the absence of the decision taken by the Ministry of Health and Family Welfare or Medical Council of India as the case may be, and the time taken for getting the travel W.P.(C).No.11495/2020 19 documents, we direct the respondents to file statement/affidavit as the case may be, by 23.6.2020. Post on 23.6.2020.

15. Medical Council of India has filed a statement dated 18.06.2020.

Taking note of the stand of Medical Council of India that examination should be conducted only in India by the National Testing Agency and it cannot be conducted through online mode, the suggestion of the learned counsel for Medical Council of India, as to whether priority can be given to those, who have registered themselves to take up the All Indian Entrance Examination (NEET) to travel, and to ascertain the response from the Ministry of Home Affairs, Ministry of External Affairs as well as the Ministry of Civil Aviation, Government of India, in exercise of the powers under Article 226 of the Constitution of India, we suo motu impleaded

the Secretaries of the Home Affairs, External Affairs and Civil Aviation, Government of India, as additional respondents to the writ petition. We also directed the learned ASG to take notice on behalf of additional respondents and respond.

16. On 26.06.2020, when the matter came up for further hearing,

learned counsel for the Central Government, read out the instructions received by him from the Joint Secretary and Protector General of Emigrants, Ministry of External Affairs, New Delhi, which are reproduced: W.P.(C).No.11495/2020 20 VBM flights include students and other compelling cases. Our Missions would try their best to accommodate Indian students and OCI students (if they fall within the MHA SOP guidelines) appearing in NEET exam.

17. Inviting our attention to the public notice dated 22.05.2020,

learned counsel for the petitioner submitted that the Director General of National Testing Agency (respondent No.2), has rescheduled the date for NEET examination from 03.05.2020 to 26.07.2020. Said public notice is extracted hereunder: PUBLIC NOTICE Dated : 22.05.2020 Subject: Rescheduling of National Eligibility cum Entrance Test (NEET)(UG)-2020 from 03.05.2020 (Sunday) to 26.07.2020 (Sunday) from 2.00 PM to 5.00 PM. The National Eligibility cum Entrance Test (NEET)(UG)-2020 which was to be conducted on 03.05.2020 (Sunday) has to be postponed due to the extraordinary circumstances arising from COVID-19 pandemic. A Public Notice dated 27.3.2020 was issued in this regard. The National Testing Agency (NTA) has now decided that the rescheduled National Eligibility cum Entrance Test (NEET) (UG)-2020 will be held on 26.7.2020 (Sunday) from 2.00PM. to 5.00 PM. The dates of downloading of Admit Cards indicating Roll Number and Centre of Examination will be displayed 15 days before the conduct of examination on the official W.P.(C).No.11495/2020 21 websites of NTA (www.nta.ac.in) and NEET (UG)-2020 (ntaneet.nic.in). The candidates and their parents are advised to keep visiting the above websites for latest updates. For further clarifications related to NEET (UG)-2020, the candidates can also contact at 8287471852, 8178359845, 9650173668, 9599676953 and 8882356803 or mail at neet@nta.ac.in

18. Inviting our attention to the Standard Operating Protocol dated

5.5.2020 issued by the Ministry of Home Affairs, Government of India, New Delhi, for the movement of Indian nationals, who are stranded outside the country and the specified persons to travel abroad, Mr. Harish Beeran, learned counsel for the petitioner, submitted that till 5.5.2020, there was a total prohibition of international travel of passengers. Only from 5.5.2020 onwards, there were some relaxations. He further submitted that taking note of Indian nationals, who need to visit India due to medical emergencies or death of a family member, Ministry of Home Affairs, Government of New Delhi, facilitated their movement. As per clause (ii) of the SOP, Indian nationals have to travel to India by non-scheduled commercial flights, to be arranged by the Ministry of Civil Aviation (MOCA), and naval ships, to be arranged by the Department of Military Affairs (DMA). Priority has been given to the compelling cases, in distress, including migrant workers/labourers, who were laid off, short term visa W.P.(C).No.11495/2020 22 holders faced with expiry of visas, persons with medical emergency, pregnant women, elderly, those required to return to India due to death of family member, and students. According to the learned counsel, students who have settled in Qatar and in several other Gulf countries, are unable to return to India to take up NEET examination, in view of the abovesaid Standard Operating Protocol. The Government or the Court, giving due regard to the guidelines of the Government, can issue directions for inclusion of students, who have registered themselves for taking up NEET examination.

19. On the above oral submissions and taking note of the suggestion

of learned counsel for Medical Council of India, as stated above, we have suo motu impleaded the Secretaries of the Home Affairs, External Affairs, and Civil Aviation, Government of India, as additional respondents to the writ petition. We also directed the learned ASG to take notice on behalf of additional respondents and recorded the reply of the Ministry of External Affairs.

20. Now let us consider the statement of Medical Council of India,

respondent No.4, as regards the manner in which NEET exam is conducted and the location of centres abroad. Statement dated 18.06.20210 is extracted

A) It is contended that Medical Council of India (MCI) is a body constituted and established under the Act with the objective, inter alia, to regulate medical education in the country, to formulate regulations and guidelines with regard to uniform standards and conduct of medical education in India and to provide for registration to the individuals who qualify as doctors from recognized Institutions in India or abroad, which is included in the Schedule to the Act. The regulations are framed by the MCI under Section 33 of the Act, with the prior approval of the Central Government, and all such regulations are statutory in character, and have been held to be binding and mandatory by the Hon'ble Supreme Court. B) It is submitted that the Regulations on Graduate Medical Regulation (Amendment) 2010, and Postgraduate Medical Education Regions 2010 provide that admissions to MBBS and Post Graduate Medical Courses shall be on the basis of a common entrance examination. The aforesaid Regulations, were challenged before the Hon'ble Supreme Court and the Hon'ble Apex Court in *Christian Medical College, Vellore v. Union of India* [(2013) 14 SCC 539] had quashed the aforesaid Regulations.

C) Aggrieved by the above judgment, MCI and the Central Government filed Review Petitions and the Hon'ble Apex Court in *Medical Council of India v. Christian Medical College* [(2016) 4 SCC 342] was pleased to allow the review petitions and set aside the judgment under review, and directed the matter to be heard de novo. Further, the Hon'ble Apex Court in judgment dated 29.04.2020 in *Christian Medical College Vellore Association v. Union of India* [TC No.98 of 2012] has upheld the constitutional validity of the National Eligibility-cum-Entrance Test.

D) It is further contended that Section 100 of the Indian Medical Council Act, 1956 has been inserted vide amendment dated 04.08.2016, which provides for uniform entrance examination for undergraduate and postgraduate medicine course. National Eligibility-cum-Entrance Test (NEET) for MBBS course has been successfully conducted in 2016, 2017, 2018 and 2019, in pursuance of the aforesaid legislative mandate and judicial pronouncements. It is further contended that the NEET process shall continue in the same mode and manner as it has taken place in previous years, i.e., 2016, 2017, 2018 and 2019.

E) It is further contended that NEET is a uniform entrance examination and the same is being conducted through Multiple Choice Questions (MCQ) in paper book format given to all the candidates. This uniformity has to be maintained for all the candidates. Accordingly, Board of Governors, MCI is of the view that this examination should only be conducted in India, by National Testing Agency (NTA) on the same date and time within the country to ensure its sanctity.

F) It is further contended that the National Testing Agency vide its letter dated 20.05.2020 requested the Board of Governors, MCI, to identify whether the NEET(UG)-2020 could be conducted in online mode by NTA for such candidates in the respective cities, abroad on the same date and time (1ST) as fixed for the students appearing in India. The Board of Governors, MCI, vide letter dated 21.05.2020 clarified as under: "The National Eligibility-cum-Entrance Test (NEET) is a uniform entrance examination. This examination is conducted through Multiple Choice Questions (MCQ) in paper book format given to all candidates. This uniformity

W.P.(C).No.11495/2020 25 has to be maintained for all candidates. Accordingly, the BOG, MCI is of the view that his examination should not be conducted in online mode by National Testing Agency (NTA) for candidates abroad." In view of

the above, it is prayed that the petitioner is not entitled to the relief sought for and, therefore, this petition is liable to be dismissed.

21. Along with the statement, Medical Council has also produced

Annexure-R4(a) letter dated 20.05.2020 issued by the National Testing Agency, which is extracted hereunder: "D.O. No.NTA/NEET(UG)/2020/1 Dated 20.05.2020 Dear Sir, The NEET (UG)-2020, which was to be conducted on 3.05.2020, as a uniform entrance examination for admission to all medical courses in all medical institutions across the country, had to be postponed due to the extraordinary circumstances arising from COVID-

19. A Public Notice in this regard was issued on 27.03.2020. Now, the NEET(UG)-2020 has been rescheduled to be

held on 26.7.2020. Its result may accordingly declared by

25.08.2020. The dates for counseling may be fixed by DGHS thereafter. There are a number of candidates living abroad (middle east), Singapore etc.) who have registered themselves W.P.(C).No.11495/2020 26

for appearing in NEET(UG)-2020 in India, as currently there are no NEET(UG) centres outside India. However, we have now received requests from several such candidates to conduct the NEET(UG)-2020 for them in their respective cities abroad, as under the restrictions on account of COVID-19 pandemic, the flights have been cancelled and requirement of compulsory quarantine has been imposed by many countries.

Therefore, MCI may like to consider whether the NEET(UG)-2020 could be conducted in online mode by NTA for such candidates in their respective cities abroad on the same date and time (IST) as fixed for the students appearing in India.

22. Annexure-R4(b) letter dated 21.05.2020 produced along with the statement of MCI, is also extracted hereunder: No.MCI-34(1)/Med./2020/101412 Dated 21.05.2020

Dear Dr. Joshi, This is with reference to your D.O. Letter No. NTA/NEET (UG)/2020/1 dated 20.5.2020 regarding conduct of NEET-UG through online mode for candidates living abroad and who are unable to come back due to lock-down/quarantine on account of COVID-19 pandemic. The National Eligibility-cum-Entrance Test (NEET) is a uniform entrance examination. This examination is conducted through Multiple Choice Questions (MCQ) in paper book format given to all candidates. This uniformity has to be maintained for all candidates. According to the BoG, MCI is of the view that this W.P.(C).No.11495/2020 27 examination should not be conducted in online mode by National Testing Agency (NTA) for candidates abroad. Yours sincerely, (Dr. Rakesh Kumar Vats)

23. From the above, it is clear that though NTA, respondent No.2,

has specifically posed a question as to whether, NEET(UG)-2020 can be conducted in online mode, MCI, New Delhi, has replied that it cannot. Though there are several requests and representations forwarded to the Hon'ble Minister for Human Resource Development, New Delhi, from the material on record, it could be deduced that the concerned Ministry dealing with the conduct of NEET exam is the Ministry of Health and Family Welfare, New Delhi, MCI, and not the Ministry of Human Resource Development. But, we find from the material on record that Medical Council of India, who is the competent authority to conduct NEET examinations through NTA, has responded that this examination should not be conducted in online mode by National Testing Agency (NTA) for the candidates abroad. As per the statement of NTA, JEE (Main) is conducted through online mode, in various cities in India and outside, as per the scheme of things, whereas NEET (UG) is being conducted in paperback format, ever since. But, in the case of NEET (UG)-2020, NTA, respondent No.2, has stated that, unlike for JEE (Main), the question papers and other exam W.P.(C).No.11495/2020 28 materials for NEET (UG) have to be transported from NTA Headquarters to a large number of examination centres in various cities, which would require meticulous planning for

safe and secured delivery of the same at the examination centres, on time. Whereas, such rigorous preparations are not required for JEE (Main), for which, the question papers can be delivered to the Examination Centres half an hour before the examination in a password protected online mode. Comparatively, much more preparations are required to be made for the smooth conduct of the NEET(UG).

24. Question to be considered by us is whether, a Court can direct

Medical Council of India or the Government, to constitute examination centres in all the foreign countries, from where the students have registered themselves for taking up NEET examination, or it is for the examining body to decide. MCI is the examining body and NTA is an agency.

25. Before the Delhi High Court, a writ petition has been filed

seeking for a direction to the National Testing Agency, respondent No.2 therein, to allow the petitioner therein to file his application form for participating in the NEET(UG)-2020. Going through the facts summarized, it could be seen that by a public notice dated 02.12.2019, online applications were invited. The last date for submission of applications was on W.P.(C).No.11495/2020 29 31.12.2019 which was extended upto 6.1.2020. Writ petitioner therein failed to submit the application, either on 31.12.2019 or before 6.1.2020. The reason assigned was that his father was not well. The other reason assigned by the writ petitioner was that the Joint Testing Agency have extended the date for correction of the choices of examination centres and the submission of the application for conduct of JEE (Main) Examination- 2020 to 31.05.2020. Considering the rival submissions, writ court dismissed the writ petition. On appeal, while confirming the decision of the writ court, a Hon'ble Division Bench of the Delhi High Court ordered thus:

The two classes of students, namely one class which is desirous to take JEE (Main) Examination-2020, and the other participate in the NEET(UG)-2020 examination, form different distinct classes, and there is a reasonable basis for these different classes not being treated similarly.

As noticed above, the examination for NEET(UG)-2020 is a paper-pen examination and is scheduled for 26.07.2020. Its conduct involves making of arrangements of examination centres, invigilators, and scores of other administrative personal. The Court cannot interfere with such a mammoth exercise to students who failed to submit their applications within the stipulated time.

We, therefore, reject the submission of the appellant premised on discrimination and lack of parity. We find no merit in this appeal. W.P.(C).No.11495/2020 30

26. Though, in our view, the abovesaid decision cannot be said to be

squarely applicable to the facts on hand, but the finding of the Hon'ble Division Bench that the examinations form two different and distinct classes and that there is a reasonable basis for the above different classes not being treated similarly, requires to be taken note of. MCI, in its categorical statement dated 18.06.2020, has made it clear that NEET process shall continue in the same mode and manner, undertaken in the previous years between 2016 and 2019. MCI, in its statement, has also made it clear that NEET is a uniform entrance examination and the same is conducted through Multiple Choice Questions (MCQ) in paper book format given to all the candidates. Accordingly, the Board of Governors, MCI, New Delhi, respondent No.2, is of the view that NEET exam would be conducted in India, by the National Testing Agency (NTA) on the same date, and time, within the country, to ensure its sanctity. The Board of Governors, MCI has also clarified in its letter dated 21.05.2020 that the said examination should not be conducted through online mode by NTA for the candidates abroad.

27. The manner as to how examinations have to be conducted, is

purely within the domain of the examining body viz., Medical Council of India, and whether centres for conducting such examinations should be provided in foreign countries, is in the province of MCI, to decide. MCI, W.P.(C).No.11495/2020 31 New Delhi, respondent No.4, has decided as above. Petitioner has alleged discrimination, in the manner of conducting JEE(Main) - 2020, Common Entrance Examination, applicable to engineering admissions, vis-a-vis Common Entrance

Examination to medical courses.

28. Issue is whether MCI, notwithstanding the decision taken by the

Ministry of Human Resources Development, Government of India, can take an independent decision, and whether the same is arbitrary and violative of Articles 14 and 21 of the Constitution of India. MCI, New Delhi, has stated that there is no possibility for establishing examination centres abroad. Reasoning is as follows:

The National Eligibility-cum-Entrance Test (NEET) is a uniform entrance examination. This examination is conducted through Multiple Choice Questions (MCQ) in paper book format given to all candidates. This uniformity has to be maintained for all candidates. According to the BoG, MCI is of the view that this examination should not be conducted in online mode by National Testing Agency (NTA) for candidates abroad.

29. On the above categorical statement of the Medical Council of

India, this Court is of the view that Court cannot issue any directions contrary to the view taken by an expert body viz. MCI. In the case on hand, how to conduct the examinations or whether centres have to be located outside the country, are the issues. We do not want to burden with W.P.(C).No.11495/2020 32 judgments, as to whether a decision of an expert body can be interfered with. At this juncture, we may only observe that the decision of the examining body is carried out by NTA and not otherwise. NTA cannot be directed to act contrary to the decision of MCI. From the material on record, it can be deduced that there are students from Gulf countries, Malaysia, Singapore and many other countries, to take part in the NEET examinations, for admission to medical courses. From the stand of MCI, New Delhi, all the students across the world cannot be provided with examination centres, in each country, thus enabling the students from participating in the examination from various countries.

30. Though the petitioner has made an attempt to espouse the cause

of the students, settled in UAE and other Gulf Co-operation Council countries, and sought for a direction to respondents 1 & 2 to sanction examination centres at Qatar as well as in other Gulf countries for the National Eligibility Entrance Test aspirants, in the light of the discussion made above, the said prayer cannot be granted.

31. Though, by inviting our attention to paragraph (9) of the

statement filed on behalf of NTA, New Delhi, respondent No.2, learned counsel for the petitioner submitted that the issue regarding conduct of examination is alive and the Government is still indecisive, as to whether W.P.(C).No.11495/2020 33 examination should be conducted or not and, therefore, prayed to adjourn this matter, we are not inclined do so. For brevity, paragraph (9) of the statement is extracted hereunder:

It is most respectfully submitted that the prayer of the petitioner for further rescheduling of the examination cannot be strictly acceded to in as much as the situation COVID-19 is still evolving. A close watch is being kept on the situation and appropriate decision as to whether to hold the exam on 26.07.2020 or on a subsequent date, would have to be taken in due course, if required, in the interest of the candidates, in consultation with the Medical Council of India and Ministry of Health and Family Welfare based on future development. So far as the date of exam is concerned, NEET(UG) 2020 may be conducted on 26.07.2020 if the situation is conducive, or on a subsequent date when situation stabilizes.

32. Though, the petitioner has filed an application, not numbered,

seeking for a direction to respondents 5, 6 and 7 - Ministry of Home Affairs represented by its Secretary, Ministry of External Affairs represented by its Secretary, and Ministry of Civil Aviation represented by its Secretary, to operate Special Chartered flights for the students from Qatar and other Gulf Co-operation countries, exclusively for the NEET (UG)-2020 aspirants, for attending NEET examinations scheduled in various cities in India, it is for the students, who have

registered their names for NEET examination, to W.P.(C).No.11495/2020 34 make necessary arrangements with the operators. We cannot issue any directions to the Government or the MCI, as the case may be. The

guidelines issued by the Ministry of Home Affairs, Government of India,

New Delhi enabling the students to travel are in vogue from 5.5.2020 onwards. NTA has fixed the date of NEET (UG-2020) examination on 26.07.2020. There are no materials, as to when the students, intending to take part in NEET(UG) - 2020 examination, have reported the authorities to permit them to travel to India, to take up NEET examination. Ministry of External Affairs, New Delhi has replied thus:

VBM flights include students and other compelling cases. Our Missions would try their best to accommodate Indian students and OCI students (if they fall within the MHA SOP guidelines) appearing in NEET exam.

In the light of the above discussion, we are of the view that the prayers sought for by the petitioner in this public interest writ petition cannot be granted. Writ petition fails and accordingly, dismissed. Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- SHAJI P. CHALY JUDGE krj W.P.(C).No.11495/2020 35 APPENDIX PETITIONER'S/S EXHIBITS: P1: COPY OF NOTICE OF 2ND RESPONDENT DATED 22.05.2020. P2:-COPY OF STANDARD OPERATING PROTOCOL OF MINISTRY OF HOME AFFAIRS DATED 05.05.2020. P3:-COPY OF LIST OF STUDENTS STRANDED IN QATAR AND WHO WITH TO ATTEND NEET EXAM. P4:-COPY OF NEWSPAPER REPORT PUBLISHED IN NEW INDIAN EXPRESS DATED 20.5.2020. P5:-COPY OF NEWSPAPER REPORT PUBLISHED IN NEW INDIAN EXPRESS DATED 19.5.2020. P6:-COPY OF LETTER OF HON'BLE MEMBER OF PARLIAMENT (LOK SABHA) FROM THIRUVANATHAPURAM MR.SASHI THAROOR DATED 16.05.2020. P7: COPY OF LETTER OF HON'BLE MINISTER OF HIGHER EDUCATION, KERALA, MR.K.T JALEEL DATED 14.05.2020. P8: COPY OF REPRESENTATIONS DATED 07.05.2020 TO AMBASSADOR OF INDIA, QATAR. P9: COPY OF REPRESENTATIONS DATED 16.05.2020 TO MINISTRY OF EXTERNAL AFFIARS. P10: COPY OF REPLY RECEIVED FROM 2ND RESPONDENT DATED NIL. P11:-COPY OF NEWS

REPORT PUBLISHED IN TEAM CAREERS 360 DATED 20.05.2020. P12:-COPY OF RELEVANT PAGES OF INFORMATION BULLETIN OF JOINT ENTRNACE EXAMINATIONS. P13:-COPY OF LIST OF CBSE AFFILIATED SCHOOLS LOCATED OUTSIDE INDIA. RESPONDENTS' EXHIBITS:- ANNEX.-R2(A):-COPY OF THE LETTER NO.D.O.NO.NTA/NEET(UG)/ W.P.(C).No.11495/2020 36 ANNEX.-R2(A):-COPY OF THE LETTER NO.MCI-34(1)/MED./2020/ 101412 DATED 21/05/2020. ANNE.-R4(A):-COPY OF LETTER DATED 20-05-2020 ISSUED BY NATIONAL TESTING AGENCY. ANNEX.-R4(B):-COPY OF LETTER MCI-34(1)/MED/2020/101412 dated 21-05-2020. /TRUE COPY// P.A. TO C.J.

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