

05 21.06.2024
NB Ct. 17

WPA 15845 of 2024

Fiona Majumdar
-vs-
The Union of India & ors.

Mr. Kallol Basu,
Mr. Suman Banerjee,
Ms. Atreya Chakraborty.
...for the petitioner.

Mr. Sunit Kr. Roy.
...for the N.M.C.

Mr. U. S. Menon,
Mr. Abhirup Chakraborty.
...for the respondent nos.2&3.

Mr. Rajendra Banerjee,
Mr. Arijit Majumder.
...for the Union of India.

This is an application for sitting in the retest for NEET UG 2024 to be held on 23.06.2024.

Before signing the order dictated in Court in the afternoon, the writ petition and the orders passed by this Court and by the Hon'ble Supreme Court were carefully perused. The entire orders had not been placed by the parties. It was found necessary to seek certain clarifications from the learned counsels. Accordingly, the verbal direction passed in the morning to permit the petitioner to sit in the examination on Sunday as an interim measure, albeit without creating any equity in her favour, is recalled. Upon notice, the matter is again taken up for hearing today at 6.30pm.

A pen drive containing relevant footage and a copy of the order passed by the Hon'ble Supreme Court on 20.06.2024 in

Transfer Petition (Civil) No.1602 of 2024, as filed in Court, had been taken on record.

Copies of further orders passed by the Hon'ble Apex Court in other matters connected to NEET UG 2024 are now taken on record.

Learned counsel for the petitioner submits that the petitioner lost about 1½ hours of examination time due to torn OMR sheet. The direction passed by the Single Bench upon the High Power Committee was not complied with. The petitioner should be permitted to sit for the Sunday's examination.

Learned counsel for the respondent nos. 2 and 3 denies the allegations and submits that if at all, the petitioner did not lose more than 10/12 minutes on the issue she raised. There was damage on a small portion at the top. A report was sent to the Committee as per Court's direction. Sunday's tests are as per Court's order. Upon query, it is clarified that if a proper case is made out or a Court passes a direction, further re-tests can be directed. Learned counsel relies on orders passed in similar other applications filed before the Hon'ble Apex Court regarding compensation for loss of time, among other things.

Although the Hon'ble Apex Court was pleased only to grant stay in the matters before it in Transfer Petition No. 1602 of 2024, it cannot be lost sight that these applications involve the larger issue of grant of grace marks for loss of time in the examination, among other things.

Even as per direction passed in the SLP Civil No.368 of 2024, retest was directed for a particular number of examinees. Although, the notice issued by the NTA did not refer specifically

to the decision of the Hon'ble Apex Court, it was nevertheless published in pursuance of the Court's order.

It is germane to mention what the Hon'ble Supreme Court had held in Writ Petition (Civil) No.368 of 2024 on 13.06.2024 is set out below:

“Having considered the submissions and the material placed on record, this Court finds that the recommendations made by the Committee on 12th June, 2024 after deliberations held on 10th, 11th and 12th June, 2024, are fair, reasonable and justified. Accordingly, the respondent NTA may proceed for holding the re-test as indicated above.

Considering the aforesaid, we dispose of Writ Petition (Civil) No.366 of 2024.

Pending application(s), if any, shall stand disposed of.

In so far as Writ Petition (Civil) No.368 of 2024 is concerned, so far as the issue of the compensatory marks is concerned, the same stands closed however, with respect to the other issues, the represented respondents will file their response within two weeks. Issue notice to the unrepresented respondents, returnable on 08th July, 2024.”

Therefore, it is abundantly clear that the scope of the examination that is to take place on Sunday i.e. on 23.06.2024 is quite limited. It is confined to the 1563 number of examinees whose case was considered by the Committee and thereafter by the Hon'ble Apex Court.

It is nevertheless true that a coordinate Bench of this Court on 06.06.2024 in WPA 1502 of 2024 directed the High Powered Committee to look into the grievance of the petitioner

within a stipulated period. The period has not expired. The petitioner shall be at liberty to pursue her relief in respect of the same.

After all, it is an admitted fact that there was some damage in the OMR sheet for which the petitioner was not to be blamed.

As has now been clarified by the learned counsel for the NTA that if an appropriate case is made out or if there is an order passed by a Court, the authorities can retest a candidate.

The Hon'ble Supreme Court is in seisin of matters concerning compensation for loss of time during examination and has made certain findings in an application.

The petitioner is at liberty to take appropriate steps in this regard.

Accordingly, no further order need be passed by this Court at this stage.

Therefore, the writ petition is disposed of without any further order even as to costs.

However, the original OMR sheet, the relevant CCTV footage and the relevant records shall be preserved for a period of one year from this date for any other relief that the petition might seek.

Parties to act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)