

ITEM NO.34 Court 5 (Video Conferencing) SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).17027/2021

(Arising out of impugned final judgment and order dated 20-10-2021
in WP No.6042/2021 passed by the High Court Of Judicature At
Bombay)

NATIONAL TESTING AGENCY

Petitioner(s)

VERSUS

VAISHANAVI VIJAY BHOPALE & ORS.

Respondent(s)

(With applns for exemption from filing c/c of the impugned judgt)

Date : 12-11-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Tushar Mehta, SG
 Mr. Rupesh Kumar, Adv.
 Ms. Neelam Sharma, Adv.
 Ms. Pankhuri Shrivastava, Adv.
 Mr. Gurmeet Singh Makker, Adv.

Mr. Rupesh Kumar, AOR

For Respondent(s) Mr. Sudhanshu S. Choudhari, AOR
 Ms. Pooja Thorat, Adv.
 Mr. Mahesh P. Shinde, Adv.
 Ms. Rucha A Pande, Adv.

Mr. Shashibhushan P. Adgaonkar, Adv.
Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.

Mr. Abhikalp Pratap Singh, AOR
Mr. Prateek Badhwar, Adv.
Ms. Aadya Yadav, Adv.
Ms. Naina Yadav, Adv.
Mr. Himanshu Tripathi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Respondent Nos. 1 and 2 had filed a writ petition before the High Court of Judicature at Bombay seeking a direction to the petitioner to re-examine them by conducting a separate NEET examination before the declaration of results for admission to undergraduate medical courses for the academic year 2021-2022. Respondent Nos.1 and 2 appeared in NEET (UG) Examination conducted on 12.09.2021 and were in the same room. At the time of distribution of the question papers and the answer booklet, there was a mix up and different booklets and answer sheets which did not match the code were given to them. As per the instructions to the students, respondent Nos. 1 and 2 reported the mix up between the answer sheet and the booklet to the invigilators. The invigilators did not rectify the mistake pointed out by respondent Nos.1 and 2 and within the short time that was left, respondent Nos. 1 and 2 answered as many questions as they could. Pursuant to order dated 07.10.2021 passed by the High Court in the writ petition filed by respondent 1 and 2, a suggestion was made on behalf of the appellant that the answer key shall be implemented for scoring/evaluation of the 6 candidates in whose cases there was a mix up in distribution of the test booklet code and OMR sheet as per the sequence of questions given in the test booklet code as attempted by them.

On 20.10.2021, the High Court disposed of the writ petition directing the petitioner to hold a fresh examination for respondent Nos. 1 and 2 and declare the results within a period of two weeks from the date of the order. Aggrieved thereby, the appellant has filed this Special Leave Petition.

On 28.10.2021, this Court stayed the impugned judgment of the High Court till further orders. On that day, we requested the Ld. Solicitor General of India to suggest the course of action to be adopted in respect of respondent Nos.1 and 2 who have suffered due to the fault of the invigilators.

We are informed that the results of NEET UG 2021-2022 have been announced. The Ld. Solicitor General submitted that the answer sheets of respondent Nos.1 and 2 have been corrected on the basis of the suggestion that was given by the petitioner to the High Court. Without insisting on the test booklet code and OMR sheets being different, the answers given by the petitioners have been evaluated. He submitted that a fresh examination to be conducted for respondent Nos.1 and 2 as directed by the High Court would set a bad precedent. Another candidate has approached the High Court and the writ petition is pending. Mr. Sudhanshu Choudhary, learned counsel appearing for respondent Nos. 1 and 2 relied upon the order of the High Court to submit that undisputedly, there was an error committed

by the invigilators in distribution of the paper booklet and the answer sheets. After having accepted that there was a mistake committed by the invigilator, respondent Nos.1 and 2 who have an excellent academic record should not be made to suffer. The attempt made by the respondent Nos. 1 and 2 within the limited time that was available to them was under severe stress. He requested that this Court should not interfere with the direction given by the High Court to the petitioner to conduct a fresh examination for respondent Nos.1 and 2.

There is no dispute that there was a mix up in distribution of the answer sheets and the test booklet where the code is different. Realising that a wrong answer given to a question would attract negative marks and also relying upon the instructions given to the candidates, respondent Nos. 1 and 2 pointed out to the invigilators that the correct answer sheet with a proper code has to be provided to them.

We have perused the answer sheets of respondent Nos. 1 and 2 and the marks given to respondent Nos. 1 and 2 from the material furnished by the learned Solicitor General on 28.10.2021. They have attempted most of the questions. No negative marks have been given to them. We find substance in the submissions of Mr. Choudhary that due to the loss of precious time, respondent Nos. 1 and 2 could not answer all the questions and we also appreciate the mental state of

mind of respondent Nos. 1 and 2 due to the confusion.

Though, we sympathize with the cause of respondent Nos.1 and 2, we find it difficult to direct re-examination for them alone. Therefore, we set aside the direction given by the High Court to the petitioner to conduct re-examination for respondent Nos.1 and 2.

The Special Leave Petition is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master