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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) No. 8214 OF 2020

IN THE MATTER OF:-

Abdul Azeez

..... Petitioner

Versus

Union of India & Ors.

..... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.2 -
NATIONAL TESTING AGENCY**

I, Binod Kumar Sahu, S/o Raghunath Sahu, age 53 years, working as Joint Director, National Testing Agency, Block C-20/1A/8, Sector-62, IITK, Outreach Centre, Gautam Buddh Nagar, NOIDA-201309 (UP), do hereby solemnly affirm and state as under:-

1. That I am working as Joint Director in the National Testing Agency (an autonomous organization under the Department of Higher Education, Ministry of Human Resource Development, Government of India) and, in my official capacity, I am acquainted with the facts of the present matter. I have been authorized and competent to swear this affidavit on behalf of the National Testing Agency-Applicant.

2. I have gone through the Synopsis, List of Dates and Special Leave Petition filed by the Petitioner and have understood the same.

3. I say that, save and except those, which are matter of record, all the averments, statements and submissions made by Petitioner in the abovementioned Synopsis, List of Dates and Special Leave Petition, until and unless specifically admitted in the present counter affidavit, are denied by the answering respondent.

4. I say that NTA has been established under Societies Registration Act, 1860 as a premier, specialist, autonomous and self-sustained testing organization to conduct entrance examinations for admission/fellowship in Higher Educational Institutions. To assess the competence of candidates for admissions and recruitment has always been a challenge in terms of matching with research based international standards, efficiency, transparency and error free delivery. The answering Respondent is entrusted to address all such issues using best in every field, from test preparation, to delivery and to test marking.

5. I further say that NTA has been established to fulfill following objectives: -

- (a) To conduct efficient, transparent and international standards tests in order to assess the competency of candidates for admission, and recruitment purposes.
- (b) To undertake research on educational, professional and testing systems to identify gaps in the knowledge systems and take steps for bridging them.
- (c) To identify experts and institutions in setting examination questions.
- (d) To produce and disseminate information and research on education and professional development standards.

6. I further say that following are the functions which have been entrusted to NTA: -

- (i) To identify partner institutions with adequate infrastructure from the existing schools and higher education institutions which would facilitate conduct of online examinations without adversely impacting their academic routine.
- (ii) To create a question bank for all subjects using the modern techniques.
- (iii) To establish a strong R&D culture as well as a pool of exporters in different aspects of testing.
- (iv) To help individual colleges and universities in the field of testing and to provide training and advisory services to the institutions in India. To provide quality testing services to the academic institutions in India.
- (v) To develop a state of the art culture of testing in India by using domestic and international expertise. To collaborate with international organizations like ETS to achieve the same.
- (vi) To undertake any other examination that is entrusted to it by the Ministries/Departments of Government of India/State Governments.
- (vii) To undertake the reforms and training of school boards as well as other bodies where the testing standards should be comparable with the entrance examinations.

7. The answering respondent has been mandated by the Ministry of Health and Family Welfare to conduct the National- Eligibility-Entrance Test [NEET (UG)] across the country, as a uniform entrance

examination, for admission to all medical courses in all Medical Institutions, as per the norms/ regulations of the Medical Council of India (MCI).

8. The 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 NEET (UG) 2020 was launched on 02.12.2019 and the last date for submission of the online application form was notified as 31.12.2019. However, on account of heavy rush in the submission of application through the said web portal in the last week of the application period, the last date for submission of application form was extended from 31.12.2019 to 06.01.2020, for enabling aspiring candidates to apply for the NEET (UG) 2020. The timeline for making online payment of application fee was also extended accordingly up to 07.01.2020. A Public Notice to this effect was also issued on the Exam Portal for the information of all aspiring candidates who could not submit their application online earlier.

9. Also the facility to carry out correction (wherever required) was extended to all 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 also provided to all 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.

10. As per the initial announcement, the NEET (UG) 2020 was scheduled to be conducted on 03.05.2020. However, in view of the countrywide lockdown due to COVID-19 pandemic, the NEET-UG 2020 was postponed and the same was announced by the answering respondent through its Public Notice dated 27.03.2020. Subsequently, the NEET (UG) 2020 was rescheduled for 26.07.2020, vide public notice dated 20.05.2020.

11. In the mean time, the respondent no.2 had received representations from candidates placed abroad viz., Middle East, Singapore etc., who have registered themselves for appearing in NEET (UG) 2020 in India, as currently there are no NEET (UG) centres outside India, to conduct NEET (UG) 2020 for them in their respective cities abroad, due to certain flight restrictions on account of COVID-19 pandemic. The respondent no.2, in turn, asked for a clarification from MCI through its letter dated 20.05.20, the contents of which are reproduced hereunder, in toto, for ready reference: -

“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.

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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 be 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 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 candidate 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.”

12. The MCI has duly responded and, vide letter dated 21.05.20 has clarified that as the examination is conducted through Multiple Choice Questions in paper book format given to all candidates and, uniformity has to be maintained for all candidates, therefore, NEET (UG) examination should not be conducted in online mode by respondent no.2 for candidates abroad. The contents of the said letter dated 21.05.20 of MCI is reproduced hereunder, in toto, for ready reference: -

“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 candidate 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 examination should not be conducted in online mode by National Testing Agency (NTA) for candidates abroad.”

13. The petitioner, thereafter, had filed Writ Petition (Civil) No. 11495 of 2020 in the Hon'ble High Court of Kerala at Ernakulam praying for issuance of a writ of mandamus, or any appropriate writ, order or direction to respondents to sanction examination centres in Qatar as well as in other Gulf Cooperation Council countries for the NEET (National Eligibility Entrance Test) aspirants and, to issue a writ of mandamus or any appropriate writ, order or direction to respondents to defer the NEET examination till normalcy is restored or a decision be taken on the request of the students for allowing Examination Centres outside India to expatriate students in Qatar as well as in other Gulf Cooperation Council countries.

14. The answering respondent submits that the manner as to how examinations have to be conducted is a policy decision and, is, purely

within the domain of the examining body viz., MCI and whether centres for conducting such examination should be provided in foreign countries, is in the province of MCI, to decide. MCI has taken its decision and, there is nothing on record which shows that the said decision of MCI is arbitrary or illegal particularly in the light of fact NEET (UG) is a uniform entrance examination and, to maintain uniformity for all candidates, it has to be conducted at the same time, on the same day, throughout India. It was for this reason that the said examination cannot be conducted in online mode. The answering respondent further submits that the examination cannot be conducted in abroad cities due to the fact, as already stated, NEET (UG) has to be conducted in single shift at the same time, on the same day to maintain uniformity and, further, the questions papers and other exam materials are 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.

15. The answering respondent further submits that the petitioner cannot demand for conducting the NEET (UG) 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, the 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 Centrally Funded Technical Institutions (CFTIs). Whereas, NEET (UG) is being conducted as a uniform entrance examination for admission to

all 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 in comparison to 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 Headquarter to the 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 password protected online mode. Comparatively much more preparations are required to be made for the smooth conduct of the NEET (UG). Also 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 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 lakh candidates appear for JEE(Main). Since there are large number of candidates (more than 15 lacs), it is not feasible to conduct NEET (UG) 2020 in online mode in single shift for all candidates, in order to maintain the same difficulty level. 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. Therefore, NEET (UG) cannot be conducted in the same manner as JEE(Main). In the light of the foregoing, it is respectfully submitted that it is not possible to have examination centres abroad including in Gulf Countries, for NEET-UG 2020. The answering respondent has brought these facts to the notice of the Hon'ble High Court by way of filing statement dated 22.06.2020 pursuant to directions of the Hon'ble High Court.

16. The answering respondent submits that the examination, in the present format, have been successfully conducted in previous years i.e. 2016, 2017, 2018 and 2019 and, therefore, the Hon'ble High Court has rightly held that the same shall be permitted to be continued in the same format for the current year as well.

17. The answering respondent states that after hearing all the parties at length and upon consideration the material available on record, the Hon'ble High Court vide Judgment dated 30.06.2020 dismissed the Writ Petition (Civil) No. 11495 of 2020 holding that the prayers sought for by the petitioner in this public interest writ petition cannot be granted, while making following observations:-

- (i) NTA-Respondnet No.2, has specifically posed a question as to whether, NEET (UG)-2020 can be conducted in online mode, to MCI, New Delhi.
- (ii) Medical Council of India, who is the competent authority to conduct NEET examinations through NTA, has responded that this examination should not be conducted on online

examinations. Therefore, NEET (UG) cannot be conducted in the same manner as JEE(Main). In the light of the foregoing, it is respectfully submitted that it is not possible to have examination centres abroad including in Gulf Countries, for NEET-UG 2020. The answering respondent has brought these facts to the notice of the Hon'ble High Court by way of filing statement dated 22.06.2020 pursuant to directions of the Hon'ble High Court.

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- (i) NTA-Respondnet No.2, has specifically posed a question as to whether, NEET (UG)-2020 can be conducted in online mode, to MCI, New Delhi.
- (ii) Medical Council of India, who is the competent authority to conduct NEET examinations through NTA, has responded that this examination should not be conducted on online

mode by National Testing Agency (NTA) for the candidates abroad.

- (iii) 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/ Respondent no.4, has decided as above.
- (iv) The Court cannot issue any directions contrary to the view taken by an expert body viz. MCI.
- (v) We do not want to burden with judgments, as to whether a decision of an export 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. From the material on record, it can be deduced that there are students from Gulf Countreis, Malaysia, Singapore and many other countries, to take part in the NEET examinations, for admission in medical courses. From the stand of MCI, New Delhi, all the students across the world cannot be provided with examination centres in each country, for the purpose the students from participating in the examination from such countries.
- (v) The guidelines issued by the Ministry of Home Affairs, Government of India, New Delhi enabling the students to travel are in vogue from 05.05.2020 onwards.

- (v) Ministry of External Affairs, New Delhi has also replied in this regard as under:

“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.”

- (vi) There is no material, 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.

18. The answering respondent denies that the decision taken by the respondents to conduct NEET examination is violative of Article 14 and 21 of the Constitution of India. It is further denied that the decision taken by the respondents is violating the Right of Education of the Students, which enshrined under Article 21A of the Constitution of India. The answering respondent submits that the petitioner has failed to establish any perversity in the observations made by the Hon'ble High Court in the judgment dated 30.06.2020 and, the Special Leave Petition filed by the petitioner is totally devoid of any substantial question of law so as to call for any interference by this Hon'ble Court under Article 136 of the Constitution of India. The answering respondent, therefore, most respectfully submit that, in light of the facts stated in the preceding paragraphs and submissions made hereinabove, the present Special Leave Petition is liable to be dismissed.

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19. The answering respondent respectfully states that it has now issued Public Notice dated 03.07.2020, rescheduling of NEET (UG) 2020 from 26.07.2020 (Sunday) to 13.09.2020 (Sunday) from 2.00 PM to 5.00 PM. The true copy of the Public Notice dated 03.07.2020 issued by the National Testing Agency-Respondent No.2 is enclosed herewith as **Annexure R-2/1 [Page 159]**

20. I say that no new facts which were not pleaded before the Hon'ble Courts below have been pleaded in this affidavit.

I say that the annexure enclosed with the present counter affidavit is true copy of its original.

B. Sahu

DEPONENT

VERIFICATION:

I, the abovenamed deponent, do hereby verify that the facts stated in paragraphs 1 to 3 of the Counter Affidavit are true to my personal knowledge and the facts stated in paragraphs 4 to 20 of the Counter Affidavit are true to record maintained in the office of the respondent no.2 and submissions made therein are based on legal advice which I received and believe to be true.

Verified at New Delhi on this 11th day of August, 2020.

B. Sahu

DEPONENT



(उच्चतर शिक्षा विभाग, मानव संसाधन विकास मंत्रालय, भारत सरकार के तहत एक स्वायत्त संगठन)

(An autonomous organization under the Department of Higher Education, Ministry of Human Resource Development, Government of India)

PUBLIC NOTICE

Dated: 03.07.2020

Subject: Rescheduling of National Eligibility cum Entrance Test (NEET) (UG)-2020 from 26.07.2020 (Sunday) to 13.09.2020 (Sunday) from 2.00 PM to 5.00 PM and Correction in the Candidate Particulars and Choice of Centre Cities in the Online Application Form of (NEET) (UG)-2020.

In view of the current situation arising from COVID-19 pandemic, the National Testing Agency (NTA) has decided that the National Eligibility cum Entrance Test (NEET) (UG)-2020 will now be held on 13.09.2020 (Sunday) from 2.00 PM 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 websites of NTA (www.nta.ac.in) and NEET (UG) -2020 (ntaneet.nic.in).

On demand from various candidates regarding correction in Candidate Particulars and choice of Centre Cities in the Online Application Forms for NEET (UG)-2020, it is also brought to the notice of all the candidates that the facility for correction in the Candidate Particulars in the Online Application Form including Choice of Centre Cities will be made operational on the website ntaneet.nic.in from 04/07/2020 to 15/07/2020*. The candidates are advised to visit the website and verify their and make necessary corrections wherever required.

**** Corrections in the particulars in the Online Application Forms shall be accepted upto 05.00 PM and submission of fee upto 11.50 PM.**

The NTA will make efforts to allot city of examination to the candidates in order of the choices now opted by them in their Application Form, subject to the availability of capacity in the desired city. However, due to administrative reasons, a different city may be allotted, and the decision of the NTA regarding allotment of Centre City shall be final.

In case, any additional fee payment is required depending on the changes made in the Application Form, the final update will be reflected only after the payment. The requisite (additional) fee, if applicable, can be paid through Credit/Debit Card/ Net Banking/UPI and PAYTM.

The candidates are requested to undertake the correction(s) very carefully as no further chance of correction will be provided to the candidates. The candidates and their parents are advised to keep visiting official websites of NTA (www.nta.ac.in) and (ntaneet.nic.in) for latest updates.

For further clarifications related to NEET (UG)-2020, the candidates can also contact at [8287471852](tel:8287471852), [8178359845](tel:8178359845), [9650173668](tel:9650173668), [9599676953](tel:9599676953) and [8882356803](tel:8882356803) or mail at neet@nta.ac.in

TRUE COPY

DR VINEET JOSHI
(DIRECTOR GENERAL)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. OF 8214 OF 2020

IN THE MATTER OF:

Abdul Azeez ...Petitioner

VERSUS

Union of India & Ors. ...Respondents

APPLICATION FOR EXEMPTION FROM FILING
ORIGINAL DULY SWORN AFFIDAVIT

To

Hon'ble the Chief Justice of India
And His Companion Justices of the
Supreme Court of India

The humble Petition of the
Petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

1. That the Counter Affidavit to the abovementioned Special Leave Petition is sworn by Mr. Binod Kumar Sahu, Joint Director, National Testing Agency, Noida (U.P) is desirous of obtaining order granting exemption from filing the attested Counter Affidavit filed before this Hon'ble Court.

2. That due to the prevailing situation to due rapid spread of the Covid 19 Pandemic, the Counter

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Affidavit filed by the Respondent No.2 could not be attested by the Notary or Oath Commissioner.

3. The Respondent No.2 undertake to file attested Counter Affidavit as soon as the Notaries and Oath Commissioner are easily available and accessible.

4. That, in the interest of justice, the Respondent No.2 may be exempted from filing duly sworn Counter Affidavit.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may gracefully be pleased to:-

- (a) exempt the Respondent No.2 from filing duly attested Counter Affidavit. and/or
- (b) pass any other or further order which Your Lordships may deem fit and proper in the interest of justice.

DRAWN ON & FILED BY

[RUPESH KUMAR]

Advocate for the Respondent No.2

New Delhi

Filed on : 12.08.2020