

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.4193 OF 2024

Between:

Dr Mohammed Ateeq Ur Rahman

... Petitioner

And

National Board of Examinations in
Medical Sciences (NBEMS) & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

**_____
SUREPALLI NANDA, J**

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.4193 OF 2024**

% 03.06.2024

Between:

Dr Mohammed Ateeq Ur Rahman

... **Petitioner**

And

\$ National Board of Examinations in
Medical Sciences (NBEMS) & others

... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Mr P.V.Krishnaiah

^ Counsel for the Respondents : Dy Solicitor General of India

? **Cases Referred:**

1. (2021) 6 SCC 771
2. (1998) 8 SCC 1
3. (2021) SCC ONLINE SC 801

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.4193 OF 2024

ORDER:

Heard Mr.P.V.Krishnaiah, the learned counsel appearing on behalf of the Petitioner, and Mr Gadi Praveen Kumar, the learned Deputy Solicitor General of India appearing on behalf of the respondents.

2. The petitioner approached the Court seeking prayer as under:

"...declaring the Clause 6.6 (para 8) Declaration of DNB/DrNB Final Examination Result (para 8) of DNB/DrNB Final Examination October 2023 Information Bulletin and consequential communication sent by the 2nd respondent by e-mail dated 23.01.2024 in so far as it relates not conducting re-evaluation of the answer scripts of the petitioner with roll No.2325051050 for the Examinations for Super Specialties in the DNB/DrNB Final Examination October 2023 as arbitrary, illegal, discriminatory, unconstitutional violating Article 14, 19, 21 of the Constitution of India and set aside the same and issue consequential direction directing the respondents to forthwith conduct the re-evaluation of the answer scripts of Petitioner with roll No.2325051050 for the Examinations for Super specialties DNB/DrNB

Final Examination October 2023 by appointing second examiners and declaring the result of the petitioner afresh and take appropriate further action including issuing the certificates for DrNB (Super Specialty), Or in the alternative: Declare the result of the petitioner after conducting valuation/assessment by the second examiner and based on the average mark of the earlier assessment made by the first examiner and second assessment made by the second examiner by directing the respondents to conduct assessment/valuation by the second examiner of the answer sheets of the petitioner and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case."

3. PERUSED THE RECORD :

A. Counter affidavit filed on behalf of the respondents, and in particular, paras 6, 7 and 8, read as under:

"6. It is submitted that the petitioner has scored 143 marks out of 300 in theory examination. In terms of the Information Bulletin clause 5.2.1, "Grace marks of up to 2% of maximum marks i.e. 6/300 shall be given only to the candidates falling in the zone of consideration i.e. securing between 144-149 marks out of 300." **Since he has scored 143 marks, he is not eligible for grace marks.**

7. It is submitted that the information bulletin further provides under clause 6.6 that there shall be a provision for re-evaluation of unassessed answer(s) only, in a rare event of an answer(s) being wrongly marked as NOT ATTEMPTED by the assessor. Request for re-**evaluation of an unassessed answer(s) can be made through the Communication Web Portal of NBEMS within 45 calendar days of the declaration of theory result of the concerned specialty.** An administrative fee of Rs. 500/- per paper shall be charged for the same which can be paid online through NBEMS website. Requests for re-evaluation of an unassessed answer(s) made after 45 calendar days of the declaration of theory result shall not be entertained. **There shall be no re-evaluation of already assessed answers.**

8. It is submitted that the petitioner request for digital copies of answer scripts has been received at Communication web portal on 09.01.2024 and the same has been provided to him on 23.01.2024. The answer scripts of the petitioner have no unassessed question and all the 10 questions in all the three papers of DrNB Cardiology have been evaluated by the assessors. All his answers have been assessed and awarded marks for all the questions in all the three papers. **No question has been awarded as NA - "Not attempted" by the assessors. Accordingly, he does not qualify for provisions under clause 6.6. The said clause 6.6**

further clarifies that there shall be no re-evaluation o already assessed answers.

B) Communication dated 23.01.2023 sent by the 2nd respondent to the petitioner through e-mail, reads as under:

"Madam,

This is with reference to the matter listed today before Hon'ble High Court of Telangana. The WP shared with NBEMS by you is attached herewith.

1. The candidate Mohammad Ateeq Ur Rahman has been declared FAIL in DNB Final Theory Examination Oct 2023. As per Information Bulletin for DNB Final Examination Oct 2023, clause 5.1.2, "An eligible candidate who has qualified the theory examination is permitted to appear in the practical examination. Those who fail to qualify the theory examination are required to reappear in the theory examination of session."

Since the petitioner has failed to qualify the final theory examination, he is not eligible to appear in the practical examination.

2. The petitioner has scored 143 marks out of 300 in theory examination. In terms of the Information Bulletin clause 5.2.1, "Grace marks of up to 2% of maximum marks i.e. 6/300 shall be given only to the candidates falling in the zone of consideration i.e. securing between 144-149 marks out of 300. Since he has scored 143 marks, he is not eligible for grace marks.

3. The information bulletin further provides under clause 6.6 that there shall be a provision for re-evaluation of unassessed answer(s) only, in a rare event of an answer(s) being wrongly marked as NOT ATTEMPTED by the assessor. Request for re-evaluation of an unassessed answer(s) can be made through the Communication Web Portal of NBEMS within 45 calendar days of the declaration of theory result of the concerned specialty. An administrative fee of Rs. 500/- per paper shall be charged for the same which can be paid online through NBEMS website.

His request for digital copies of answer scripts has been received at Communication web portal on 09.01.2024 and he shall be provided with the same today.

The answer scripts of the petitioner have no unassessed question and all questions have been evaluated by the assessors (Screenshots attached). Accordingly, he does not qualify for provisions under clause 6.6. The said clause 6.6 further clarifies that there shall be no re-evaluation of already assessed answers.

4. Further, the practical examination in the specialty of Cardiology has been notified vide notice dated 08.01.2024. A total of 81 candidates are scheduled to appear in the practical examination on 25.01.2024. 17 centres have been engaged. The practical examination in the specialty cannot be delayed presuming that there shall be a case where there shall be any unassessed

question in theory examination. In an event if a candidate qualifies the theory examination through such an assessment of any unassessed question, NBEMS shall arrange the practical examination for him/her.

In view of the above, the Hon'ble court may be requested that the petitioner is not entitled to appear in practical examinations.

4. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:

a) The petitioner completed M.B.B.S, in the year 2012 and subsequently, the petitioner also completed DNB (General Medicine) in the year 2017 and got admission for Super Speciality in Cardiology in the Medical College of **Apollo** Management and the petitioner had been admitted into Doctorate National Board, Super Speciality in Cardiology in the year 2020, in the aforesaid college managed by the Apollo Hospital. After completion of the course/semesters the petitioner appeared for the theory examination with Roll No.2325051050 conducted by the respondents and the respondents through mail on 09.01.2024 at 10:30 AM declared the petitioner's result for the session DNB/DrNB final

theory examination October, 2023 in Cardiology Speciality stating that petitioner failed in the theory examination and the petitioner secured only 143 marks. Subsequently, the petitioner made a request on 10.01.2024 to the respondents for revaluation.

b) It is further the case of the petitioner that the petitioner selected 3 expert doctors (1) Dr. B. Somaraju, (2) Dr. Rajeev Menon and (3) Dr. Rajasekhar and the petitioner requested them to evaluate petitioner's answer script which were evaluated by the examiners appointed by 1st respondent since the petitioner could not secure pass marks. It is further the case of the petitioner that the 3 expert doctors evaluated petitioner's answer scripts and awarded marks as under :

1.	Dr. B. Somaraju	Total 176.5 out of 300 marks
2.	Dr. Rajeev Menon	Total 182 out of 300 marks
3.	Dr. Rajasekhar .V	Total 172 out of 300 marks

c) It is further the case of the petitioner that in response to petitioner's request for re-evaluation of the answer sheets, petitioner received communication dt. 23.01.2024 issued by the 2nd respondent wherein the petitioner had been informed that the petitioner's request for re-evaluation of already assessed answers is not permissible as per Clause 6.6, since

as per Clause 6.6 there shall be a provision for re-evaluation of un-assessed answers only, in a rare event of an answer(s) being wrongly marked as not attempted by the assessor. Moreover, the request for re-evaluation of an un-assessed answer can be made within 45 calendar days of the declaration of theory result of the concerned speciality and Clause 6.6 further clarifies that there shall be no re-evaluation of already assessed answers.

d) It is specifically pleaded by the petitioner that one examiner gave 176.5 marks out 300, second examiner awarded 182 marks out 300, and third examiner awarded 172 marks out of 300 and the average mark will be $530.5/3$ is equal to 176.8 marks, but the earlier examiner gave only 143 marks. Therefore the difference between the marks awarded by the aforesaid examiners and the examiner appointed by the 1st Respondent is more than 33 marks and therefore the petitioner contends that it is appropriate on the part of the respondents to conduct re-evaluation of the answer scripts of the petitioner by other examiners and declare the result of the petitioner afresh or review the earlier result of the petitioner and take appropriate further action to protect Fundamental

Rights of the petitioner under Articles 14, 19 and 21 of the Constitution of India. However, the respondents have sent an e-mail, dated 23.01.2024 denying the re-evaluation of the answer scripts of the petitioner in DNB/DrNB, final Examination October, 2023. Aggrieved by the same, the present writ petition is filed.

5. The learned counsel appearing on behalf of the Petitioner mainly puts-forth the following submissions :

- a) Awarding marks for each question of the petitioner clearly discloses that all the answers of the petitioner are correct, but not wrong.
- b) Once petitioner's answers are not wrong there is no justification in awarding lesser marks for each question.
- c) Petitioner contends that there is defect in the system itself appointing the examiner and asking only one examiner to assess each answer more particularly when there is responsibility to the examiner to give reason for awarding such a lesser mark as well as not awarding higher marks after indicating in what aspect the candidate has not given full answer to a question which carries 5 marks and hence it is

contended that there is a lacuna in the system itself. Since petitioner answered all the 60 questions correctly without giving any wrong answers, therefore awarding lesser marks is unreasonable.

d) It is further contended on behalf of the petitioner that, it is appropriate on the part of the respondents to review the earlier system by consulting with the stake holders and after obtaining suggestions, the respondents shall change the system of assessing the answer scripts of the candidates by allotting the answer scripts to not less than 2 examiners for assessment of the officers and declaring the results based on the average mark of not less than 2 examiners. **Based on the aforesaid submissions the learned counsel for the petitioner contends that the writ petition should be allowed as prayed for.**

6. **The learned counsel appearing on behalf of the respondents placing reliance on the averments made in the counter affidavit filed on behalf of the respondents mainly puts-forth the following submissions :**

- a) Petitioner failed to qualify for the final theory examination therefore petitioner is not eligible to appear in the practical examination.
- b) Petitioner has scored 143 marks out of 300 in theory examination and in terms of the information bulletin Clause 5.2.1, "grace marks upto 2% of maximum marks i.e., 6/300 shall be given only to candidates falling in the zone of consideration i.e., securing between 144 – 149 marks out of 300, since the petitioner had scored 143 marks, he is not eligible for grace marks".
- c) As per Clause 6.6 there shall be no re-evaluation of already assessed answers.
- d) As per petitioner's request, the digital copies of answer scripts had been provided to the petitioner on 23.01.2024.
- e) The answer scripts of the petitioner had no un-assessed questions and all the 10 questions in all the 3 papers of the DrNB Cardiology have been evaluated by the assessors.
- f) No question has been awarded as non-attempted by the petitioner, therefore petitioner failed to qualify for provisions under Clause 6.6.

g) Clause 6.6 further clarifies that there shall be no re-evaluation of already assessed answers.

Placing reliance on the aforesaid submissions learned counsel for the respondents contends that the petitioner is not entitled for any relief as prayed for in the present writ petition.

7. DISCUSSION AND CONCLUSION:

A) Relevant instructions pertaining to re-evaluation are extracted hereunder :

6.6. Declaration of DND/DrNB Final Examination Result :

Re-evaluation :

There shall be a provision for re-evaluation of unassessed answer(s) only, in a rare event of an answer(s) being wrongly marked as NOT ATTEMPTED by the assessor. Request for re-evaluation of an unassessed answer(s) can be made through Communication Web Portal of NBEMS within 45 calendar days of the declaration of theory result of the concerned specialty. An administrative fee of Rs. 500/- per paper shall be charged for the same which can be paid online through NBEMS website.

Requests for re-evaluation of an unassessed answer(s) made after 45 calendar days of the declaration of theory

result shall not be entertained. **There shall be no re-evaluation of already assessed answers.**

B) A bare perusal of the relevant guidelines read with the averments made in the counter affidavit filed on behalf of the respondents in particular paras 6, 7 and 8, clearly indicate that the answer scripts of the petitioner have no un-assessed question and all the 10 questions in all the 3 papers of Dr NB Cardiology had been evaluated by the assessors. All the answers of the petitioner had been assessed and marks were awarded for all the questions in all the 3 papers and no question has been marked as “not attempted” by the assessors. Accordingly, this Court opines that as per Clause 6.6 there is a restriction in so far as the grant of relief as prayed for by the petitioner as per the rules in force, since Clause 6.6 clarifies that there shall be no re-evaluation of already assessed answers.

C) The Division Bench of the Apex Court in a judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, referred to Whirlpool Corporation

Vs. Registrar of Trade Marks (reported in (1998) 8 SCC 1) and further the said view had been reiterated by a Full Bench of the Apex Court (3 Judges) in a judgment reported in (2021) SCC Online SC page 801 in Magadh Sugar and Energy Limited Vs. State of Bihar and Others dated 24.09.2021 and in the said judgment it is observed that the principle of law that emerges is that *the power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

8. Taking into consideration :

i) The specific averments made by the petitioner at Para 15, Para 17, and Para 18 of the affidavit filed by the petitioner in support of the present writ petition and duly considering that the petitioner failed in the theory examination for short of 1 mark.

ii) Duly considering the observations of the Apex Court in the judgment referred to and extracted above.

iii) Duly considering that the issue pertains to career of the petitioner and the request of the

petitioner is for re-evaluation of the answer scripts of the petitioner with Roll No.2325051050 for the examinations for Super Specialities DNB/DrNB final examination October 2023 by appointing 2nd examiners and declaring the result of the petitioner afresh.

iv) Duly taking into consideration of the averments made in paras 6, 7 and 8 of the counter affidavit filed on behalf of the respondents.

v) This Court opines that it is for the respondents to consider the said request of the petitioner as an exceptional case duly taking into consideration the specific averments made by the petitioner in the affidavit filed in support of the present writ petition upon petitioner making a written representation to the 2nd respondent to that effect.

vi) The writ petition is disposed of directing the petitioner to make a representation to the respondents herein within one week from the date of receipt of the copy of this order putting forth all the pleas as put-forth in the present writ petition seeking re-evaluation of the answer scripts of the petitioner with Roll

No.2325051050 for the examinations for Super Specialities DNB/DrNB final examination October 2023 by appointing second examiners and declaring the result of the petitioner afresh and the respondent Nos. 1 to 3 are directed to consider the said representation of the petitioner and the case of the petitioner as an exceptional case which however shall not be a precedent in future and pass appropriate orders within a week thereafter and duly communicate the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SUREPALLI NANDA,J

Date: 03.06.2024

Note: L.R.Copy to be marked
(B/o) yvkr/ktm