



2024:DHC:4130



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16 April 2024
Pronounced on: 21 May 2024

+ **W.P.(C) 15345/2023, CM APPL. 61559/2023, CM APPL. 61560/2023 and CM APPL. 64009/2023**

DR PRASUNA CHILUKA Petitioner

Through: Mr. Kotla Harshavardhan, Ms.
Mansi Sood and Ms. Gayatri Gupta,
Advocates

versus

**NATIONAL BOARD OF
EXAMINATIONS & ANR.** Respondents

Through: Mr. Kirtiman Singh, Mr. Waize
Ali Noor, Mr. Kartik Baijal and Mr. Aryan
Agrawal, Advocates for NBE

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

% **21.05.2024**

W.P.(C) 15345/2023

1. The petitioner is a doctor, who graduated with an MBBS degree in March 2010 and MD degree in General Medicine on 27 June 2015.

2. In 2015 itself, the petitioner was diagnosed with Lupus Nephritis, for which she was administered high dose intravenous and oral steroids. The treatment, to some extent, continues even as on date. This resulted in the petitioner developing severe steroid toxicity, hirsutism, acne, obesity and myopathy among other complications.



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3. On her medical condition improving to some extent, the petitioner applied for, and was appointed to, the post of Civil Assistant Surgeon Specialist at the District Hospital, Sircilla, Telangana in July 2018. According to the averments in the writ petition, her duties as Civil Assistant Surgeon Specialist involved approximately 30 hours of working per week, which enabled the petitioner to also take care of her own medical problems.

4. The petitioner nonetheless underwent the NEET-SS 2019, conducted by the National Testing Agency (NTA), for entrance into Super Speciality programs. The petitioner elected for the Super Speciality of Medical Gastroenterology. She was ranked 1001. She was, accordingly, admitted to the DrNB program for the Super Speciality of Medical Gastroenterology in the Pushpagiri Institute of Medical Sciences and Research Centre, Tiruvalla, Kerala (hereinafter referred to as "PIMSRC").

5. Consequently, the petitioner took leave from her posting at the District Hospital, Sircilla with effect from 14 September 2019 and joined PIMSRC as DrNB Super Speciality Trainee on 15 September 2019.

6. As a result of deterioration of her health, the petitioner claims to have been constrained to apply to the PIMSRC for eight month's leave starting from 25 November 2019, with loss of pay, so that she could undergo medical treatment and recuperate.



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7. During the above period, the petitioner returned to her hometown at Karimnagar. The writ petition avers that, as she needed a source of income being the sole bread-earner in the family, the petitioner decided to rejoin her duties at the District Hospital, Sircilla, as it merely involved five hours of work a day. The Commissioner, Telangana Vaidya Vidhana Parishad, Hyderabad, allowed the petitioner to join duty at the District Hospital, Sircilla on 28 November 2019, pending disciplinary action.

8. The application submitted by the petitioner to the PIMSRC in November 2019, seeking eight months leave was forwarded by the PIMSRC to the National Board of Examinations in Medical Sciences (NBEMS), which is the competent leave sanctioning authority, on 10 January 2020, with a copy marked to the petitioner.

9. Admittedly, no communication was issued by the NBEMS rejecting the petitioner's request for leave. The petitioner, therefore, claims to have continued to proceed on the belief and assumption that her leave had been sanctioned, especially as she had applied to the PIMSRC before proceeding to leave and the PIMSRC had also forwarded the application to the NBE.

10. It is not in dispute that, despite having thus being made aware of the petitioner's application for leave at least on or around 10 January 2020, the NBEMS never wrote either to the PIMSRC or to the petitioner, during the entire period for which she had sought leave, raising any objection in that regard.



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11. In March 2020, COVID-19 struck. As an immunocompromised patient, the medical condition of the petitioner is claimed to have deteriorated, as a result of which she was unable to rejoin duty with the PIMSRC in time.

12. On 25 August 2020, the PIMSRC wrote to the petitioner opining that it was a good time for her to resume her duties in the PIMSRC after the prescribed stay in quarantine and that postponing her return any further would not serve any purpose.

13. As per the writ petition, in September 2020, the petitioner and her parents were infected with COVID-19. Given her sensitive state of health and prolonged exposure to immunosuppressant medicines, the petitioner was unable to rejoin duty till December 2020.

14. On 7 December 2020, the petitioner returned for duty at the PIMSRC, immediately on lifting of COVID-19 restrictions. She was, however, quarantined for seven days as per protocol, and rejoined training with the PIMSRC on 16 December 2020. She submitted an application and rejoining report, seeking permission to rejoin to the PIMSRC on 16 December 2020. The report was countersigned by the Principal of the PIMSRC on 17 December 2020, permitting her to rejoin.

15. The rejoining report date 16 December 2020, of the petitioner, was forwarded by the PIMSRC to the NBEMS on 28 December 2020.



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16. The petitioner, thereafter, continued with her DrNB training in the PIMSRC and did not seek any further medical leave.

17. On 7 September 2021, the petitioner applied for 20 days' leave from 14 September 2021 to 3 October 2021, as she was getting married. The application was recommended by the PIMSRC and forwarded to the NBEMS, which, *vide* the following letter dated 17/20 December 2021, addressed to the PIMSRC, sanctioned leave as sought by the petitioner:

“NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES

(Autonomous Body under Ministry of Health and Family Welfare,
Govt. of India)

**Mahatma Gandhi Marg (Ring Road), Ansari Nagar, New Delhi
– 110029**

Ref. No: NBE/T &M/C&R/2019/NEET-
SS/1944105999/Gastroenterology 6088-6089 dated 17/20.12.2021
The Head of the Institution
Pushpagiri Institute of Medical Sciences and Research Centre,
Pushpagiri Medical College Hospital,
Tiruvalla - 689101 Kerala

Sub: Leave of Dr. Prasuna CH-reg.

Sir/Madam,

This is in reference to your email dated 05.10.2021 on the subject cited above.

NBE has been made to understand that the above candidate has applied leave on personal grounds from **14.09.2021 to 03.10.2021** and she re-joined on 04.10.2021.

Your kind attention is invited to the prescribed NBEMS leave norms which have been duly communicated to you through web



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notices published on NBEMS website www.natboard.edu.in, in time to time.

As per the revised leave rules dated 20.03.2018 candidates join in or after 2018 can avail Maternity/Paternity leave, as per the Central or State Government policies, whichever is applicable to DNB/FNB training institute. Any leave availed by the DNB/FNB trainee other than the eligible leave mentioned in the revised leave rules dated 20.03.2018 (i.e 30 days per year), shall lead to extension of DNB /FNB training to complete the prescribed duration of training as mentioned in the information bulletin and registration letter.

I am directed to inform you that leave applied by the candidate on personal grounds from **14.09.2021 to 03.10.2021** and her rejoining on 04.10.2021 has been considered and accepted by NBEMS. Please note that leave availed by the candidate other than the eligible leave shall lead to extension of DNB training.

The extension of leave more than a year will lead to cancelation of registration of candidate.

Please note that any further leave beyond NBEMS leave norms availed by the candidate shall invite prior NBEMS approval.

Yours sincerely,
Assistant Director (Medical)
(Training and Monitoring Division)

Copy to:

Dr. Prasuna CH
H. NO. 8-2-386,
Near Brundavan Gardens, Bhagath Nagar, Karim Nagar,
Telangana"

18. The writ petition asserts that, as this leave, as sought by the petitioner, was sanctioned by the NBEMS without any adverse comment made regarding the earlier period of leave of the petitioner from 25 November 2019 to 15 December 2020, of which the NBEMS was made aware, the petitioner proceeded on the premise that the NBEMS had no objection to the earlier leave that she had availed.



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19. The petitioner, thereafter, submitted a proposal for her DrNB thesis, which was accepted and approved by the PIMSRC on 22 December 2021 and was communicated to the petitioner on 22 December 2021.

20. In 2022 and 2023, the petitioner had again to take leave for 15 days from 17 July 2022 to 31 July 2022 and, thereafter, for two more days on 8 and 9 August 2023, owing to her infant daughter initially being affected by COVID-19 and, thereafter being diagnosed with Avascular Necrosis of Femur.

21. The petitioner completed and submitted her thesis to the NBEMS in 2023.

22. On 18 July 2023, the NBEMS wrote to the petitioner thus:

“Acknowledgement for Online Thesis Submission – Trainees

NBE <thesis@natboard.edu.in> Tue, Jul 18, 2023 at 5:36 PM

To: prasuna.chiluka@gmail.com

Thesis Submission Form of Dr.**PRASUNA.CH** and Regn no. DNB:**310-28139-192-224483** is hereby acknowledged.

For assessment of your Thesis, the documents as state below should reach NBEMS within the next 5 working days, preferably through SPEEDPOST.

- Print out of the Fresh Thesis Submission Form duly signed by the Trainee, Guide / Co-Guide, Head of the Department, Head of the Institution (with stamp).
- Hard-bound Thesis along with all relevant enclosures.



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- Declaration cum undertaking for Fresh Thesis duly signed by Trainee, Guide, Co-Guide (if any), Head of the Institution.
- Thesis Protocol (Institutional Ethics Committee (IEC)) clearance certificate.
- Summary of the Thesis.”

23. The thesis protocol of the petitioner was approved by the PIMSRC on 22 July 2023.

24. On 17 August 2023, the NBEMS addressed the following communication to the petitioner, apropos her thesis (eliminating the vernacular portion thereof which is merely a translation of the English):

“NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES

(Autonomous body under Ministry of Health & Family Welfare, Govt. of India)

Ref.No. NBEMS/THESIS/2023/M-230932 Date:17-08-2023

Dr. PRASUNA.CH

Subject: - Modification of Thesis-regarding

Dear Candidate,

“CLINICAL ANALYSIS OF PULMONARY PROFILE IN PATIENTS WITH CIRRHOSIS OF LIVER WITH REFERENCE TO ARTERIAL OXYGEN SATURATION AND PULMNOARY FUNCTION TESTS”

Your Thesis titled **“CLINICAL ANALYSIS OF PULMONARY PROFILE IN PATIENTS WITH CIRRHOSIS OF LIVER WITH REFERENCE TO ARTERIAL OXYGEN SATURATION AND PULMNOARY FUNCTION TESTS”** in the Specialty of “Gastroenterology” has been assessed and cannot be accepted in the present form.



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Modifications as suggested by the Assessor are enclosed herewith. You are directed to submit the revised Hardbound Thesis after incorporating all suggested modifications within a period of 06 weeks from the issuance of this communication. Online modified thesis submission form & guidelines are available on NBEMS website. <https://www.natboard.edu.in/thesisonline/index.php>

It may be noted that the Application for modified thesis is to be submitted ONLY through online mode at <https://www.natboard.edu.in/thesisonline/index.php>.”

25. The petitioner submitted a modified thesis as suggested by the NBEMS, which was accepted by the NBEMS *vide* the following acknowledgement dated 13 September 2023:

“From: **NBE** <thesis@natboard.edu.in>
Date: Wed, Sep 13, 2023 at 10:25 AM

Subject: Acknowledgement for Online Thesis Submission –
Trainees

To: prasuna.chiluka@gmail.com

Provisional Submission of Thesis Form of Dr.**PRASUNA.CH** and
Regn no. DNB:**310-28139-192-224483** is hereby acknowledged.

The confirmation of submission of form is subject to verification of uploaded thesis and documents by NBEMS. The deficiency (if any) shall be communicated to candidate through email and candidates thesis dashboard panel. It is suggested to keep watching thesis dashboard for updates regarding your thesis”

26. Prior thereto, on 31 August 2023, the NBEMS issued a public notice inviting applications for the DrNB final theory examination.

27. On 13 September 2023, the PIMSRC issued a provisional DrNB Training Completion Certificate to the petitioner. This was revised twice on 30 September 2023 and 7 October 2023. In each case, the certificate stated that the petitioner would complete the mandatory



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three years of DrNB training on 12 November 2023. The period of leave availed by the petitioner was reflected, in each of the certificates, thus:

Year of Training	Period	Period of Leave	No. of days
First Year	15.09.2019 To 25.10.2021	25.11.2019 to 15.12.2020	387 days
		14.09.2021 to 03.10.2021	20 days
Second Year	26.10.2021 to 09.11.2022	17.07.2022 to 31.07.2022	15 days
		14.10.2022	1 day
Third Year	10.11.2022 to till date (30.09.2023)	08.08.2023 to 09.08.2023	2 days

28. It may be noted, here, that, of the above leaves availed by the petitioners, formal approval from the NBEMS was accorded only for the leave of 20 days availed from 14 September 2021 to 3 October 2021, though the applications for leave for all other periods were also submitted well in advance and in accordance with the procedure prescribed in that regard.

29. On 14 September 2023, the petitioner applied for appearing in DrNB theory examination in Medical Gastroenterology which was to be conducted on 12 to 14 October 2023.

30. On 27 September 2023, a system generated response was received by the petitioner from the NBEMS requiring the petitioner to upload “NBE approval or supportive documents in case of extension of DNB training”. The petitioner thereupon wrote to the NBEMS on 2 October 2023, seeking regularization of the periods of leave availed



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by her.

31. The NBEMS, on 4 October 2023, issued a show cause notice to the petitioner, intimating her that she had not appeared in the minimum required numbers of Formative Assessment Tests (FATs) during the period of her DrNB training, which was mandatory for appearing in the DrNB final examination. The petitioner responded on 6 October 2023 informing NBEMS that she had appeared in the FATs conducted by the PIMSRC in July 2021 and in March and April 2023, which rendered her eligible for appearing in the DrNB theory examination, as the information bulletin for the said examination required mandatory appearance in at least two FATs in the case of students of Super Speciality courses, such as the petitioner.

32. The writ petition emphasises the fact that, even at this stage, no adverse observation regarding any period of leave availed by the petitioner was made by the NBEMS.

33. A day prior to the DrNB final theory examination, which was to be conducted on 12 October 2023, the NBE, on 11 October 2023 addressed the following communications to the petitioner:

“NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES

(Autonomous Body under Ministry of Health and Family Welfare,
Govt. of India)

**Mahatma Gandhi Marg (Ring Road), Ansari Nagar, New Delhi
– 110029**

Ref. No: NBEMS/T&M/C&R/NEET-SS/2019/1944105999/32242,
32243 dated 11.10.2023



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DR. PRASUNA CH
H. NO. 8-2-386,
NEAR BRUNDAVA GARDENS, BHAGATH NAGAR,
KARIM NAGAR, TELANGANA

Sub: Cancellation of Candidature with NBEMS-reg.

Sir/Madam,

You have been allotted DrNB seat in the specialty of Gastroenterology through stray round of NEET-SS 2019 counseling at **Pushpagiri Institute of Medical Sciences and Research Centre, Pushpagiri Medical College Hospital, Tiruvalla - 689101 Kerala.**

Kindly refer to the TCC (Provisional) dated 13.09.2023, which mentioned training completion details and leave availed during the tenure. The matter has been examined by NBEMS and it has been noted that you had availed total 486 leaves during entire training period. In this regard your attention is invited to NB EMS leave norms whereas it is mentioned that:-

“A DNBIFN/3 Trainees can avail a maximum of 30 days of leave in a year excluding regular duty off I Gazetted holidays as per hospital I institute calendar I policy.

As per the revised leave rules dated 20.03.2018 candidates join in or after 2018 can avail Maternity I Paternity leave, as per the Central or State Government policies, whichever is applicable to DNB/FNB training institute.

Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB IFNB training (If the extension of leave of more than a year will lead to cancellation of candidature). The training institute has to forward such requests to NBEMS along with the leave records of the candidate since his/her joining and supportive documents (if any) through the Head of the Institute with their recommendation/comments.”

“Unauthorized absence from DNBIFNB training for more than 7 days may lead to Cancellation of registration and discontinuation of the DNBIFNB training and rejoining shall not be permitted.”

In view of the above, this is to inform you that your candidature to pursue Dr NB training in the specialty of Gastroenterology at Pushpagiri Institute of Medical Sciences and Research Centre,



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Tiruvalla, Kerala for 2019 admission session stands
CANCELLED.

The matter has been closed and no further communication shall be
entertained in this regard.

This issues with the approval of the competent authority.

Yours sincerely,

Sd

(Rashmi Munjal)

Assistant Director

Counseling & Registration

Training and Monitoring Division

Copy to:

The Head of the Institution

Pushpagiri Institute of Medical Sciences and Research Centre,

Pushpagiri Medical College Hospital,

Tiruvalla - 689101 Kerala

**NATIONAL BOARD OF EXAMINATIONS IN MEDICAL
SCIENCES**

(Autonomous Body under Ministry of Health and Family Welfare,
Govt. of India)

**Mahatma Gandhi Marg (Ring Road), Ansari Nagar, New Delhi
– 110029**

Ref. No: NBEMS/DoEC/51016/X/October 2023/2321048237/
2023/32324 dated 11/10/2023

DR. PRASUNA CH

H. NO. 8-2-386,

NEAR BRUNDAVA GARDENS,

KATTARMPUR, KARIM NAGAR,

TELANGANA 505001

8977176500

**Sub: Regarding DNB/DrNB-FINAL Theory Examination
October 2023 Session**

Dear Candidate,



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Refer your application for DNB/DrNB Final Theory Examination - October 2023 bearing Application ID **2321048237** in the specialty of **MEDICAL GASTROENTEROLOGY**.

Since your registration for DNB training has been cancelled by NBEMS vide letter No **NBEMS/T&M/C&R/NEET-SS/2019/1944105999/32242-43** dated **11.10.2023**, you are not eligible to appear in DNB Final Examination - October 2023.

In view of the above, I am directed to inform you that your application for DNB/DrNB Final Theory Examination - October 2023 cannot be considered and admit card for DNB/DrNB Final Theory Examination - October 2023 not be issued to you.

Yours sincerely,

Sd

Dr. Devender

Assistant Director (M.)

Department of Examination – Conduct

34. Paradoxically, thereafter, on 16 October 2023, the NBEMS issued a certificate to the petitioner certifying that her thesis had been accepted towards partial fulfilment with the award of DrNB Gastroenterology.

35. It is in these circumstances that the petitioner has approached this Court by means of the present writ petition seeking issuance of an appropriate writ for quashing and setting aside the decision to cancel the DrNB candidature of the petitioner as contained in the letter dated 11 October 2023 extracted in para 33 (*supra*) and for consequential relief.

36. The NBEMS has filed a counter affidavit. The prayer of the petitioner has been contested on various grounds.



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37. It is sought to be contended, *inter alia*, thus:

(i) The petitioner joined DrNB training without disclosing the fact that she was employed as Civil Assistant Surgeon Specialist at the District Hospital Sircilla.

(ii) The “FAQ”¹ published on the website of the MCC which conducted the NEET SS 2019 clearly stated that, if a candidate was employed with another organization, she, or he, had to furnish a No Objection Certificate (NOC)/Relieving Letter, issued by her, or his, employer before joining the institute where the DrNB training was to be undertaken.

(iii) No such NOC from the District Hospital Sircilla, or from the Government of Telangana, was furnished by the petitioner before joining DrNB training.

(iv) The petitioner was, therefore, ineligible to pursue the DrNB course, thereby entitling the NBEMS to cancel the petitioner’s candidature.

(v) While seeking leave on medical grounds *vide* her application dated 25 November 2019, and remaining away from DrNB training till 16 December 2020, the petitioner, in the intervening period, resumed her services as Assistant Civil Surgeon in the District Hospital, Sircilla on 28 November 2019,

¹ Frequently Asked Questions



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where she discharged her duties.

(vi) The petitioner had proceeded on leave without any prior approval of the NBEMS, which was mandatory.

(vii) Clause 8.6 of the Registration Letter dated 22 June 2020 issued to the petitioner by the NBEMS registering her for DrNB training, which dealt with the extension of DrNB training on availment of leave by a candidate for 30 days per year specifically went on to state, in Clause 8.7, that extension of DrNB training was permissible only in extraordinary circumstances with prior approval of the NBE, and was neither automatic nor to be granted as a matter of routine.

(viii) The petitioner was never granted approval for any period of leave except the period of 20 days, which she sought in order to attend her marriage.

(ix) Even in the approval letter dated 20 December 2021 of the NBEMS approving the leave sought by the petitioner on the ground of her marriage from 14 September 2021 to 3 October 2021, it was specifically stated that extension of leave for more than a year would lead to cancellation of the petitioner's candidature.

(x) As the petitioner had, in her application seeking leave, never disclosed the earlier leave availed by her, the NBEMS



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failed to note the said fact and inadvertently approved the 20 days leave period sought by the petitioner in 2021.

38. The NBEMS further avers that it was only in the examination application submitted by the petitioner that the NBEMS became aware of the total leave that the petitioner had availed. It is further asserted that the NBEMS never approved rejoining of the petitioner with PIMSRC on 16 December 2020. It is further pointed out that even while initially applying for eight months leave, the petitioner *suo moto* extended leave for four more months without any approval from the NBEMS and without seeking any such approval either. The NBEMS submits that it cannot keep track of the leave availed by thousands of candidates who undertake the DrNB course and it is for the candidate concerned to keep the NBEMS abreast of the leave that she or he has availed.

39. Pointing out that consistency in training is essential for building up and comprehensive understanding of patient care and long interruption in training, as in the case of the petitioner, impedes the progress of the candidate as required by the prescribed curriculum and affects the essential learning components of the training program, the NBEMS submits that the decision to cancel the petitioner's candidature was perfectly justified.

Rival Contentions

40. I have heard Mr. Kotla Harshavardhan on behalf of the



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petitioner and Mr. Kritiman Singh on behalf of the NBEMS, at length. Written submissions have also been tendered by learned counsel.

41. Mr. Harshavardhan submits that, besides the fact that it was issued to the petitioner one day before the DrNB Final Theory examination to be held on 12 October 2023, the impugned communication, cancelling the petitioner's DrNB candidature, did not disclose proper application of mind either. It is submitted that the decision to cancel the petitioner's DrNB candidature is purely mechanical.

42. Mr. Harshavardhan further submits that, during oral arguments in Court, Mr. Kirtiman Singh has advanced an altogether new ground to support cancellation of the petitioner's DrNB candidature, which finds no place in the impugned order of cancellation, viz., that the petitioner was performing her duties as Civil Assistant Surgeon Specialist at the District Hospital, Sircilla during the period for which she desired to be treated as on leave. Besides the fact that such a new ground cannot be urged to support the impugned order, Mr. Harshavardhan submits that, even on merits, this cannot constitute a basis to cancel the petitioner's DrNB candidature. It is pointed out that the inability of the petitioner to continue with her DrNB training at PIMSRC was only because the nature of duties was unduly strenuous and, as a patient of Lupus Nephritis, she was not in a position to devote such long hours for work. Having therefore proceeded to her home town, she had to find means to sustain herself, which was why she rejoined duties at the District Hospital, Sircilla. The working hours



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in the District Hospital, Sircilla were far more relaxed than in the DrNB training course, so that she was in a position to undertake it and sustain herself during her period of recuperation.

43. Mr. Harshavardhan also seeks to point out that, out of the total period of three years of DrNB training that the petitioner was required to undergo, she has already completed 2 years and 332 days and only 33 days of training remain. The applicable Rules permit her to complete the said training upto 31 December 2024 in order to be entitled to be awarded the DrNB qualification. So long as she was in a position to complete the required mandatory training till 31 December 2024, the petitioner was eligible to undertake the DrNB Final Theory examination to be conducted from 15 to 17 May 2024 and was not required to be relegated to the next examination to be conducted in January 2025. He points out that there is no dispute that the petitioner would complete her DrNB training much before 31 December 2024.

44. The Leave Rules did not contain any provision by which, solely on the ground of the extension of leave that the petitioner had to avail, the DrNB candidature of the petitioner could have been cancelled. Reliance was being placed by the NBEMS on the response to Question 11 in the FAQs appended to the Leave Rules, which read thus:

“11) What is the maximum period of leave of any kind which can be allowed to a DNB/FNB trainees? What is the impact if such limit is exceeded?

Ans. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duty off / Gazetted holidays as



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per hospital / institute calendar / policy. Any Leave availed by the DNB/FNB Trainees other than the eligible shall lead to extension of DNB /FNB training. Under normal circumstances leave of one year will not be carried forward to the next year. However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE. NBE shall consider such requests on merit, provided the seat is not carried over and compromise with training of existing trainees in the Department. If the extension of leave more than a year will lead to cancellation of candidature.”

45. Though the answer to Question 11 in the FAQs envisaged cancellation of candidature in the case of extension of leave for more than a year, the Leave Rules themselves did not contain any such provision. A dispensation not contained in the Leave Rules could not be added in the FAQs and even if, it was so added, would not be of any legal or binding effect. Moreover, the FAQs were published on 18 November 2019, more than 18 months after the Leave Rules were published on 20 March 2018 and nearly two months after the petitioner had joined her DrNB on 15 September 2019. The FAQs were not therefore strictly speaking an annexure or appendix to the Leave Rules. Besides they could not have been made retrospectively applicable to the petitioner who had joined her DNB course prior thereto. The stipulation that extension of leave for more than a year would result in cancellation of the DrNB candidature did not find place even in the Information Bulletin for the 2023 examination undertaken by the petitioner.

46. Moreover, Mr. Harshavardhan submits that the use of the expression “may” in the answer to FAQ 11 indicated that the cancellation of the DrNB candidature was not an inexorable



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consequence of extension of leave of the candidate beyond one year. The provision was permissive and entrusted the NBEMS with discretion. That discretion was required to be exercised judiciously and keeping in mind the facts of the case. The impugned decision to cancel the petitioner's DrNB candidature does not reflect judicious exercise of discretion.

47. Besides, the petitioner had *vide* her application dated 25 November 2019 sought leave of eight months as she was suffering from Lupus Nephritis. Rule 6 of the Leave Rules required the application to be submitted to the Hospital where she was undergoing her DrNB training. The Leave application was duly submitted by the petitioner to the PIMSRC and was also forwarded to the NBEMS on 10 January 2020. The inability of the petitioner to rejoin in November 2019 was only because owing to her medical pre-disposition, she fell within the highly vulnerable category of persons likely to contract COVID-19 which she actually suffered, resulting in her able to rejoin only on 16 December 2020. These facts were also intimated to the NBEMS by Respondent 2 on 28 December 2020.

48. The NBEMS, however, did not condescend to respond to any of these communications, because of which, submits Mr. Harshavardhan, the petitioner proceeded on the *bona fide* belief that her period of leave had been regularized. This belief was strengthened by the fact that when she subsequently sought leave to attend to her marriage, it was granted by the NBEMS with no caveats and with no reference to the earlier period of leave availed by her. It is pointed out in this



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regard that in its counter affidavit filed by way of response to this writ petition, Respondent 1 has acknowledged the fact that it had indeed received the emails dated 10 January 2020 and 16 December 2020 but has pleaded the “incoherent situation during the COVID-19” as the justification for not processing the said mails. Besides, thereafter, the NBEMS actively permitted the petitioner to participate in the requisite formalities in connection with her DrNB course including payment of fees, participation in the Formative Assessment Tests (FATs) in 2022 and proposal, modification and final approval of her thesis. All these factors contributed to the *bona fide* belief of the petitioner that the period of her leave from 25 November 2019 to 15 December 2020 stood acknowledged and granted by the NBEMS.

49. Apropos the allegation in the counter affidavit that, at the time of obtaining admission to the DrNB course, the petitioner had concealed the fact that she was employed as a Civil Assistant Surgeon Specialist with the District Hospital, Sircilla, Mr. Harshavardhan submits that this is not a ground on which the petitioner’s DrNB candidature was cancelled. That apart on merits, he points out that this contention has been answered by him in paras 3 and 4 of the rejoinder filed by the petitioner in the present proceedings which read thus :

“3. The preliminary objection raised by the Respondent No.1 in the Reply is that the Petitioner allegedly failed to disclose the fact that she was in service as ‘Civil Assistant Surgeon Specialist (General Medicine)’ at the District Hospital, Sircilla at the time of her admission to the DrNB course at the Respondent No. 2 institute. At the outset, it is reiterated at the risk of repetition that the issue of non-disclosure of prior employment is not a ground for cancellation of the Petitioner’s candidature in the Impugned Cancellation Letter and the Respondent No. 1 cannot now seek to rely on the same to justify



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the cancellation of her candidature. It is pertinent to note that in fact, it is the Petitioner who has herself made specific disclosures with regard to her employment with the Government of Telangana in the instant Petition, in order to come with clean hands before this Hon'ble Court.

4. While it is admitted that the Petitioner did not submit any 'No Objection Certificate' (NOC) from the District Hospital, Sircilla/Government of Telangana before joining the DrNB course at the Respondent No. 2 institute or during the biometric and certificate verification, it is submitted that the same was on account of the same never having been asked for, nor forming part of the documents to be submitted at the time of counselling. It is categorically and specifically denied that the Petitioner intentionally did not disclose the position to the Respondent No.1, as alleged or otherwise. In fact, even the document check-list for the biometric and certificate verification (@Page 31 of Annexure R-3 along with the Reply) does not contain a 2 column for NOC/relieving letter. Further, the options given in the declaration and certification list (@Page 32 of Annexure R-3 along with the Reply) were also unclear and created confusion in so far as both, option 1 (not pursuing any other post-graduate medical course other than this DNBSS course and nor ever under any bond) and option 2 (under a bond/ employed) were applicable to the Petitioner, even though the question was framed as an either/or question. In view of this, the Petitioner herein ticked the most relevant box (being option 1) to the best of her understanding, without any mala fide intention. Even otherwise, such a requirement was not previously mentioned in the email received by the Petitioner with regard to attending the biometric and documents verification nor was such a document asked for by the Respondent No. 2 at any time. Therefore, the Petitioner was under the bona fide belief that she was not required to submit any other document at the relevant time..."

50. Mr. Harshavardhan submits therefore that the decision to cancel the petitioner's DrNB candidature was unsustainable in law and also taken without affording the petitioner a prior opportunity of personal hearing, a day prior to her DrNB Final Theory examination. For all these reasons, he submits that decision is liable to be set aside.



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Submissions of Mr. Kirtiman Singh in response

51. Mr. Kirtiman laid great emphasis during arguments on the fact that, having sought long leave on 25 November 2019 on the ground that she was suffering from a debilitating illness and having proceeded to her home town, she went ahead on 26 November 2019, to apply to the Sircilla Hospital to rejoin her duties there as Civil Assistant Surgeon Specialist. This submits, Mr. Kirtiman Singh, reflects clear want of *bona fides*. The petitioner's contention that she was unable to pursue her DrNB training at PIMSRC on account of her medical condition cannot, therefore, be believed. He submits it could not be accepted that the petitioner was unable to pursue her DrNB training in PIMSRC but was fit enough to work as Civil Assistant Surgeon Specialist at the Sircilla Hospital.

52. Mr. Kirtiman Singh further submits that the petitioner was also guilty of having concealed, at the time of her obtaining admission to her DrNB course, the fact that she was already employed as Civil Assistant Surgeon Specialist at Sircilla. He refers to another FAQ issued by the NBE, particularly, to the following question and answer:

“Q. What if I am employed and wish to attend the counselling?”

A. You can attend the counselling and opt for a seat also, however, if a candidate is employed or under any kind of bond, he/she has to furnish a ‘No Objection Certificate and/or Relieving letter’ issued by competent authority of concerned University /Employer at the time of joining the allotted institute.”

53. Despite the above requirement, Mr. Kirtiman Singh submits that the petitioner neither informed the NBEMS about her prior



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employment with the District Hospital, Sircilla, nor obtained an NOC from the said Hospital before joining her DrNB training at PIMSRC. Mr. Kirtiman Singh relies on the judgment of the Division Bench of this Court in **Dr. Vivek Kumar v. NBE**², for the proposition that non-submission of the NOC from an employment at the time of obtaining admission to an examination could constitute a justifiable basis for cancelling the admission.

54. While acknowledging that this is not a ground on which the petitioner's DrNB candidature was cancelled, Mr. Kirtiman Singh cites the judgment of the Supreme Court in **PRP Exports v. Chief Secretary, Government of Tamil Nadu**³, to contend that as it was a fact which came to light subsequently, this Court could take judicial notice thereof.

55. Mr. Kirtiman Singh also disputes the petitioner's contention that the stipulation that extension of leave for more than a year could result *ipso facto* in the cancellation of her DrNB candidature, could not be enforced upon her as it was only contained in a FAQ and not in the Leave Rules. For the proposition that the FAQs also constituted part of the applicable Rules, Mr. Kirtiman Singh places reliance on paras 43 to 46 and 102 of **Prakash Gupta v. S.E.B.I.**⁴; paras 14 and 27 of **Neeraj Sharma v. U.O.I.**⁵; paras 37 and 38 of **Vishal Dahiya v. Medical Counselling Committee**⁶ and paras 26, 54, 59 and 61 of

² 2020 SCC Online Del 725

³ (2014) 13 SCC 692

⁴ (2021) 17 SCC 451

⁵ 2023 SCC Online Del 923

⁶ 2022 SCC Online Del 477



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Defsys Solutions Private Ltd. v. UOI⁷.

56. Besides, submits Mr. Kirtiman Singh, the request for extension of DrNB training on the ground of availment of leave in excess of 30 days per year was, as per the registration letter dated 22 June 2020 issued to the petitioner, a matter to be considered by the NBEMS on merits, provided the seat was not carried over and granting the request did not compromise with training of existing trainees in the department. It was not, therefore, a matter of right.

57. Mr. Kirtiman Singh seeks to submit that the NBEMS could not maintain constant watch over the leave availed by several thousands of candidates registered with it nor could it be expected to minutely scan every communication submitted to it and refute any content therein, contrary to the Rules. Reliance is placed in this context on the judgment of a Division Bench of this Court in ***National Board of Examinations v. Dr. Rajani Sinha***⁸. At the same time, it is acknowledged that the said decision was carried to the Supreme Court by way of SLP in which, by order dated 22 August 2022, the Supreme Court has kept open the issue of the correctness of the manner in which the Division Bench interpreted the relevant rules and regulations pertaining to leave.

58. Mr. Kirtiman Singh submits finally relying on the decisions in ***Dr. Sharddha Saxena v. State of M.P.***⁹; ***Dr. Manjunath M. v. Guru***

⁷ 2023 SCC Online Del 5544

⁸ 2021 SCC Online Del 2719

⁹ 2018 (4) MPLJ 360



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Gobind Singh Indraprastha University¹⁰; Damini Sonkar v. U.O.I.¹¹,
that Courts ought not to interfere with well considered decisions to
proceed against candidates who have been absent from training or
from duties without leave.

Analysis

Re: Ground for cancellation of DrNB candidature of the petitioner

59. The impugned order dated 11 October 2023, which cancelled the petitioner's DrNB candidature, is predicated on one sole ground, which was that the petitioner had remained absent on leave for a total period of 486 days during her training period, of which there was no authorisation for a period of 387 days. Thus, the sole ground on which the impugned order dated 11 October 2023 cancelled the petitioner's DrNB candidature was of unauthorised absence for more than seven days.

60. In the counter affidavit filed by way of response to the writ petition and during oral arguments, the NBEMS has advanced two other grounds to defend the cancellation of the petitioner's DrNB candidature. The first is that the petitioner, having sought eight months' leave starting from 25 November 2019, *vide* her application dated 25 November 2019, on the ground that her clinical condition did not allow her to continue with the DrNB training, proceeded to join

¹⁰ 2021 SCC Online Del 4533

¹¹ 2023 SCC Online Del 1784



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duty as Civil Assistant Surgeon Specialist at the Sircilla Hospital on 28 November 2019. This, according to Mr. Kirtiman Singh, indicates that the petitioner was *not* unable, in fact, to continue with her DrNB training but basically wanted to rejoin at the Sircilla Hospital. The ground on which leave was sought by the petitioner w.e.f. 25 November 2019, from continuing with her DrNB. training was, therefore, in his submission, not believable.

61. The second ground, which does not find place in the impugned order dated 11 October 2023, but which has been urged both in the counter affidavit as well as by Mr. Kirtiman Singh in Court, is that, at the time of joining of her DrNB course, the petitioner had concealed the fact that she was already employed as Civil Assistant Surgeon Specialist at the Sircilla Hospital. Additionally, it is sought to be submitted that the petitioner had not produced an NOC from the Sircilla Hospital, as was required by the FAQs published on the website of the NBEMS, before joining DrNB training.

62. Are these grounds available to the NBEMS?

63. As far back as in 1978, a Constitution Bench of the Supreme Court, speaking through V.R. Krishna Iyer J., held, in ***Mohinder Singh Gill v. Chief Election Commissioner***¹², that an executive order, under challenge before the Court, has to be supported on the reasons contained in the order, and by none else. The order cannot be sought to be “improved” by providing additional reasons in the counter



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affidavit filed by way of response to the challenge. Reliance was placed, in this context, on an equally classic decision, authored by Vivian Bose J., in **Commissioner of Police v. Gordhandas Bhanji**¹³. Paras 8 of the report in **Mohinder Singh Gill**, which encapsulates this legal position, reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in **Commr. of Police, Bombay v. Gordhandas Bhanji**:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

64. **Mohinder Singh Gill** has been followed by the Supreme Court in case after case, including **Bahadur Singh Lakhubahi Govil v. Jagdishbhai M Kamalaya**¹⁴, **Hindustan Petroleum Corporation v. Darius Shapur Chenai**¹⁵, **Bangalore Development Authority v. R. Hanumaih**¹⁶, **K.K. Bhalla v. State of MP**¹⁷, **Ashoka Smokeless Coal**

¹² (1978) 1 SCC 405

¹³ AIR 1952 SC 16

¹⁴ (2004) 2 SCC 65

¹⁵ (2005) 7 SCC 627

¹⁶ (2005) 12 SCC 508

¹⁷ (2006) 3 SCC 581



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*Industries Pvt Ltd v. UOI*¹⁸, *State of Punjab v. Banddeep Singh*¹⁹, *Haryana Urban Dev. Authority v. Orchid Infrastructure Developers Pvt Ltd*²⁰, *Opto Circuit India Ltd v. Axis Bank*²¹, *The Andhra Pradesh Industrial Infrastructure Corporation Limited v. S.N. Raj Kumar*²², *Pancham Chand v. State of Himachal Pradesh*²³, *Girish Vyas v. The State of Maharashtra*²⁴, *Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority*²⁵ and *United Air Travel Services v. Union of India*²⁶.

65. The principle that an order, whether executive or quasi-judicial, has to stand, or fall, on the reasons contained in that order, and that it is not open to the party defending the order before the court to provide additional reasons to support it, may therefore be treated as fossilized in the law.

66. Applying this principle, the only ground which is open to the NBEMS, to support the impugned order dated 11 October 2023, is the reason contained in that order, and none other. The only reason contained in the impugned order dated 11 October 2023 is that the petitioner remained absent on leave without authorisation for more than the maximum period envisaged in that regard. Such unauthorised absence, according to the impugned order, would necessarily visit the

¹⁸ (2007) 2 SCC 640

¹⁹ (2016) 1 SCC 724

²⁰ (2017) 4 SCC 243

²¹ (2021) 6 SCC 707

²² (2018) 6 SCC 410

²³ (2008) 7 SCC 117

²⁴ (2012) 3 SCC 619

²⁵ (2013) 10 SCC 95

²⁶ (2018) 8 SCC 141



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petitioner with cancellation of her DrNB candidature.

67. The supplementary grounds urged in the counter affidavit, viz. that the plea of illness was untrue as the petitioner had joined duty at the District Hospital, Sircilla, and that the petitioner had failed to disclose the fact of her earlier employment at the District Hospital Sircilla, before joining her DrNB course or obtain an NOC from the said hospital, being outside the impugned order dated 11 October 2023 cannot, applying the ***Mohinder Singh Gill*** dictum, be urged by the respondent as grounds on which the impugned order can be sought to be defended.

68. This Court, in examining the correctness of the impugned order, is therefore, strictly speaking, only required to consider whether cancellation of the petitioner's DrNB candidature could have been justified on the ground of her unauthorised absence. Though I have, hereinafter, also examined the other two grounds urged by the NBEMS in its counter affidavit as well, that is only because the said grounds were urged, and not because they are available to the NBEMS as grounds to support the impugned order.

Provisions for cancellation of DrNB candidature on the ground of avilment of excess leave

69. It goes without saying that cancellation of candidature of a medical student is an extreme act. It wipes out, in one fell swoop, years of study that the student has undertaken. It can, therefore, be supported only on grounds on which cancellation of candidature is



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permissible by the applicable Rules.

70. The leave rules applicable to the petitioner, and to the DrNB course which she was pursuing, read thus:

“LEAVE RULES FOR DNB/FNB TRAINEES

Attention: All NBE Accredited Hospitals/ Institutes/Medical Colleges and DNB/FNB Trainees

The following revised leave rules shall apply to the candidates, those who join on or after 2018. Those who joined before 2018, the old leave rule shall be applicable.

1. DNB/FNB Trainees are entitled to avail leave during the course of DNB/FNB training as per the Leave Rules prescribed by NBE.
2. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duty off/ Gazetted holidays as per hospital/institute calendar/policy. This leave shall be processed at the institutional level.
3. Any kind of study leave is not permissible to DNB/FNB Trainees.
4. Under normal circumstances leave of one year should not be carried forward to the next year. However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE.
5. Unauthorized absence from DNB/FNB training for more than 7 days may lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted.
6. Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB /FNB training. The training institute has to forward such requests to NBE along with the leave records of the candidate since his/her joining and supporting documents (if any) through the Head of the Institute with their recommendation/comments. NBE shall consider such requests on merit provided the seat is not carried over and compromise with training of existing trainees in the Department.



7. Any extension of DNB/FNB training beyond the scheduled completion date of training is permissible only under extraordinary circumstances with prior approval of NBE. Such extension is neither automatic nor shall be granted as a matter of routine.

8. DNB/FNB trainees are required to complete their training by a prescribed cutoff date (as per information bulletin of Exit exam) for being eligible to DNB/FNB Exit examination.

9. The eligibility for DNB/FNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin.”

71. The Leave Rules, and the FAQs applicable thereto, envisage cancellation of DNB/DrNB candidature in two circumstances, which are to be found in Rule 5 and the answer to FAQ 11²⁷.

72. Rule 5 of the Leave Rules provides that over 7 days’ unauthorized absence from DNB training *may* lead to cancellation of DNB registration. The answer to FAQ 11 states, on the other hand, that leave in excess of the eligible maximum under the Leave Rules would result in extension of DNB/DrNB training by a corresponding period, and that if the extension is of more than a year, it “*will* lead to cancelation of candidature”.

73. Mr. Kirtiman Singh has sought to invoke, against the petitioner, both Rule 5 of the Leave Rules and the answer to FAQ 11.

74. It is appropriate, therefore, to address them individually.

²⁷ Refer para 44 *supra*



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Can the answer to FAQ 11 be cited as a justification for the impugned decision?

75. What is the status of a stipulation contained in a FAQ? Can an additional liability be casted on the citizen in an answer to a FAQ, which finds no place in the substantive Rules to which the FAQ relates?

76. FAQs are merely Frequently Asked Questions. The answers provided to FAQs are merely intended to dispel doubts regarding the actual import of the rules themselves. It is not permissible, in my view, to introduce, in the answer to an FAQ, seeking a clarification regarding the Rules, an element, or a stipulation, which finds no place in the Rules.

77. Before advertng to the decisions cited by Mr. Kirtiman Singh in this regard, the sequitur of this proposition must be understood.

78. Rules, it is trite, may be supplemented, but cannot be supplanted, by executive instructions.²⁸ A dispensation which is provided in an executive instruction, in excess of the rule, *cannot be used against the citizen, but binds the authority issuing the instruction to the extent it is beneficial to the citizen*. In other words, while a citizen can claim the benefit of a beneficial dispensation contained in an executive instruction, even if the instruction transcends the Rule, the authority issuing the instruction cannot enforce it against a citizen,

²⁸ Senior Superintendent of Post Offices v. Izhar Hussain, (1989) 4 SCC 318; State of Maharashtra v. Jagannath Achyut Karandikar, 1989 Supp (1) SCC 393



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if it is prejudicial to the citizen concerned.

79. Expressed otherwise, if the Rule contains a certain stipulation, and an additional benefit is conferred by an executive instruction, beyond the stipulation contained in the Rules, the authority issuing the executive instruction is bound thereby, and cannot refuse to confer the benefit to the citizen on the ground that it is contained only in an executive instruction. If the authority is of the view that the benefit conferred by executive instruction was wrongly conferred as it travelled beyond the rules, the instruction itself has to be withdrawn or rescinded. So long as it is in place, the authority concerned is bound by it, to the extent it benefits the citizen.

80. If, however, something is contained in an executive instruction which is not contained in the rule, and which is prejudicial to the citizen, it is open to a citizen against whom the executive instruction is being sought to be enforced to argue that the concerned dispensation cannot be enforced as it travels beyond the Rule.

81. Plainly expressed, the executive authority is empowered to confer a benefit to a citizen even by executive instructions, even where the field is otherwise occupied by Rules, but cannot enforce a liability against a citizen, which the Rules do not contemplate, by an executive instruction.

82. This is because no principle of equitable estoppel can be invoked against a citizen, whereas it applies with full force against the



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authority in favour of the citizen. If, therefore, the executive instruction contains something which is to the benefit of the citizen, the author of the instruction is bound by that dispensation, applying the principle of equitable estoppel, even though it is a dispensation not to be found in the Rule.

83. To support his reliance on the FAQs, Mr. Kirtiman Singh has placed reliance on the judgment of the Supreme Court in ***Prakash Gupta***, and of this Court in ***Neeraj Sharma, Vishal Dahiya and Defsys Solutions***.

Prakash Gupta

84. The relevant paragraphs in ***Prakash Gupta*** may be reproduced thus:

“43. In a Circular dated 20-4-2007, SEBI issued guidelines for consent orders under Sections 15-T of the SEBI Act and Section 23-A of the Depositories Act, 1996, and for compounding of offences under Section 24-A of the SEBI Act, Section 22-A of the Depositories Act and Section 23-N of the Securities Contracts (Regulation) Act, 1956. It noted that compounding of an offence “may cover appropriate prosecution cases filed by SEBI before the criminal courts” and “can take place after filing criminal complaint by SEBI”. Finally, it notes the procedure to be followed by an accused person while seeking compounding, in the following terms:

“Any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI's Mumbai office (address is given above) which will forward the application/request to be placed before the High-Powered Committee. *The terms of compounding as recommended by the Committee and approved by the Panel of WTM's would be placed before the court by the Prosecution Division by*



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way of written submissions or application, as appropriate, for passing orders as the court deems fit.”

(emphasis supplied)

44. Accompanying this circular were certain frequently asked questions (“FAQ”) issued by SEBI. The relevant ones are extracted below:

“Q.6. What is the objective of Compounding of Offence?

A. Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc. in return for payment of compounding charges.

Q. 14. At what stage Compounding of Offence can take place?

A. At any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding.

Q. 16. What is the process for passing consent orders/compounding of offences?

A. ... Any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI's Mumbai office which will forward the application/request to be placed before the High-Powered Committee. The terms of compounding as recommended by the Committee and approved by the competent authority would be placed before the court by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit...

Q. 23. What will be the consequences of non-acceptance?

A. ... In cases where SEBI is not inclined to accept Settlement/Compounding of offence, SEBI would file its objections before SAT/Court for consideration.”



45. SEBI amended the Circular dated 20-4-2007 through a Circular dated 25-5-2012. While the circular primarily issues new guidelines in relations to consent orders, it also provides a list of offences which SEBI shall not settle, which includes:

“(ii) Serious fraudulent and unfair trade practices which, in the opinion of the Board, cause substantial losses to investors and/or affects their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors;”

46. A combined reading of the two circulars and FAQs issued by SEBI clarifies the following : *firstly*, a party can seek compounding under Section 24-A at any stage once the criminal complaint has been filed by SEBI; *secondly*, the party shall have to file the application for compounding before the court where the criminal complaint is pending; *thirdly*, a copy of the application for compounding must also be sent to SEBI, which will place it before HPAC [Constituted under Circular dated 25-5-2012 to “consist of a retired Judge of a High Court and three other external experts, as may be decided by the Board from time to time”.] ; and *fourthly*, HPAC's decision on the application, be it an acceptance or an objection, shall be placed by SEBI before the appropriate court, which will have to pass appropriate orders. Hence, this makes it abundantly clear that while HPAC's decision on a party's application for compounding under Section 24-A must be placed before the appropriate court, the final decision must remain in the domain of the court.”

85. Unlike the present case, the Supreme Court, in **Prakash Gupta**, was not concerned with FAQs which contained a dispensation not to be found in the Rules to which the FAQs pertained. Besides, the FAQs were accompanying a Circular issued by the SEBI, so that their stature was the same as that of the circular, both being administrative instructions.

86. The Circular dated 20 April 2007, issued by the SEBI provided that



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- (i) a party who wished to compound an offence was required to file an appropriate application before the court where the complaint instituted by the SEBI was pending,
- (ii) a copy of the application was required to be addressed to the Prosecution Division, Enforcement Department of the Mumbai office of the SEBI,
- (iii) the Prosecution Division was required to forward the application to the High-Powered Committee (HPC),
- (iv) the HPC was required to recommend the terms of compounding,
- (v) the terms of compounding were to be approved by the panels of WTMs²⁹ and
- (vi) the terms of compounding thus recommended by the HPC and approved by the WTMs' panel were to be placed before the court by the Prosecution Division of the SEBI and
- (vii) the court was, thereafter, to pass such orders on the compounding application as it deemed fit.

87. Questions 6, 14, 16 and 23 of the FAQs merely reiterated the position already available in the Circular, further setting out the objective of compounding of offence and the state at which the application for compounding could be made.

88. The Supreme Court, therefore, in para 46 of the report encapsulated the position which emerged from the Circular read with the FAQs and observed, in conclusion, that, while the HPC's decision



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on the compounding application would be placed before the Court, the ultimate decision on the application was to be taken up by the Court.

89. Inasmuch as **Prakash Gupta** did not involve a situation in which the FAQs in issue introduced a limitation or a handicap not to be found in the Circular in respect of which they were issued, the decision cannot assist the NBEMS in the present case.

90. Besides, the Supreme Court has specifically noted, in para 44 of the report in **Prakash Gupta**, that the FAQs were *accompanying* the Circular dated 20 April 2007. They, therefore, were in the nature of an adjunct to the Circular. As against that, in the present case, the Leave Rules were published on 20 March 2018 and FAQs were published on 18 November 2019, almost 18 months after the Leave Rules. They did not, therefore, strictly speaking, *accompany* the Leave Rules, unlike the FAQs in **Prakash Gupta**.

91. There is also substance in the submission of Mr. Harshavardhan, in this context, that the FAQs could not have been applied against the petitioner, as they had been issued two months after the petitioner had joined her DrNB course.

Neeraj Sharma

92. **Neeraj Sharma** was a case in which the application filled in by the petitioner itself stipulated that the applying candidates had to abide

²⁹ **Whole Time Members**



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by the FAQs. Moreover, the Division Bench of this Court noted that, on the application form, there was a hyperlink directly taking the candidate to FAQs. It was in these circumstances that the court rejected the contention that the FAQs were not binding as they were not part of the application. Para 27 of the report may, in this context, be reproduced thus:

“27. The contention of learned counsel for the respondent that FAQs do not form part of the application form, in our view cannot be sustained for the reason that the advertisement itself stipulates that the candidates have to abide by the FAQs on the website and there is a hyperlink taking the candidates directly to the FAQs. Clearly, by providing the hyperlink in the advertisement itself, respondents have made all the terms and conditions of the FAQ a part of the application process.

93. In the present case, no such circumstances exist. The decision in *Neeraj Sharma* cannot, therefore, be of any help to the NBEMS. If anything, it may be deduced, from *Neeraj Sharma*, that, in the absence of any specific indicator that the FAQs would bind the candidate concerned, they cannot be regarded as binding.

Vishal Dahiya

94. *Vishal Dahiya* was a judgment of a learned Single Judge of this Court. Paras 37 and 38 of the said decision read thus:

“37. In the present case, both the institutions in question, have all along been described as Central Institutes both by the respondent no. 1 and respondent no. 2, this was made clear as early as on 10.06.2021 when the respondent no. 2 issued its Information Bulletin, and was reiterated in the Information Brochure issued by respondent no. 1 on 03.10.2021. It is also undisputed that these institutes are funded and maintained by the Central Government. In my view, this position that in all Central Institutions, admissions against seats reserved for the OBC was meant to be only for those



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in the Central OBC list was, therefore, crystal clear to everyone right from the beginning. Moreover, all the candidates were also well aware that in all central institutes including the *VMMC & SJH*, *ABVIMS & RML*, *ESIC*, *BASAIDARAPUR*, it was only the central OBC list which was being followed for Under Graduate courses from NEET-PG 2020 itself. At the same time, it cannot be denied that FAQ no. 50 as initially notified on 03.10.2021, and thereafter, on 10.01.2022 sought to convey otherwise. Undoubtedly, the impression sought to be given was that the admission against OBC seats in the institutional preference seats would be as per the Delhi OBC list; this was however, changed on 12.01.2022. While the respondent no. 1 claims it was a mistake which was corrected, the petitioners contend otherwise. The changes in FAQ no. 50 are mentioned hereinbelow:

NEET-PG Information Bulletin & Counselling Scheme on Respondent No. 1's website before 13.1.2022	NEET-PG Information Bulletin & Counselling Scheme on Respondent No. 1's website on 13.1.2022
Q. No. 50 : What is the criteria for OBC reservation in Central Institutes of IP University?	Q. No. 50 : What is the criteria for OBC reservation in Central Institutes of IP University?
Ans : There will be provision for OBC candidates of state quota of IP University to exercise their right of OBC reservation in IP University seats while they will be treated as UR (General Category) in All India Quota.	Ans: The rules of Central Institutes/University and the OBC list as per Central Rules will apply.

38. Though, the petitioners are justified in urging that they were misled by answer to FAQ no. 50, which was changed only on 12.01.2022 to exclude them, the fact remains that all other clauses, of both the brochure of respondent no. 1, and the Information Bulletin of respondent no. 2 clearly indicated that in these two institutes, described as Central Institutes, it was the Central OBC List which would be applicable, both for the AIQ and Institutional seats. The brochure and bulletin have to be read as a whole and compositely; merely because there was an error in the answer to one of the many FAQs, which error too was amended before the petitioners were to undertake their choice filling, cannot unfortunately, come to their aid.”



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95. The issue before this Court in **Vishal Dahiya** was, therefore, whether a change in the FAQ, which was earlier favourable to the citizen, which operated to his prejudice, could be implemented against him. This Court held otherwise, rejecting the contention of the MCC that the change was only clarificatory. **Vishal Dahiya** also did not, therefore, deal with a situation in which the FAQ provided for a prejudicial dispensation, against the citizen, not to be found in the rules.

Defsys Solutions

96. **Defsys Solutions** also dealt with a situation in which the Coordinate Bench of this Court interpreted the FAQs so as to be beneficial to the citizen concerned and in sync with the law.

97. None of the judgments cited by Mr. Kirtiman Singh, therefore, permit invocation of a provision in the FAQs which operates to the prejudice of the candidate or citizen concerned, and which is not to be found in the rules, for the clarification of which the FAQs had been issued.

98. FAQs, in essence, are clarificatory. They cannot independently foist, on the citizen, liabilities beyond those which find place in the Rules to which the FAQs pertain.

99. Even if the rules are not statutory *stricto sensu*, that would nonetheless not justify invocation of a dispensation contained in FAQs



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which is not to be found in the rules. This is for the simple reason that the FAQs are intended to dispel doubts which remain despite the rules. A handicap, not to be found in the Rules, cannot be introduced by the FAQs.

100. At the cost of reiteration, however, it must be noted that a beneficial dispensation provided in the FAQs would, however, bind the authority concerned, applying the principle of equitable estoppel.

101. There is no provision in the Leave Rules which envisages cancellation of the DrNB candidature of a candidate on the ground that the period of extended leave exceeds one year. The stipulation that extension of leave of more than a year would lead to cancellation of candidature is exclusively to be found in the answer to FAQ 11, and is not to be seen anywhere in the Leave Rules. Inasmuch as the Leave Rules do not so provide, the NBEMS could not seek to justify the cancellation of the petitioner's DrNB candidature on the ground that the period of extended training sought by her on account of the leave that she had availed, exceeded one year.

Rule 5 of the Leave Rules

102. While FAQ 11 deals with extension of training, on account of avilment of leave in excess of the eligible maximum limit of 30 days in a year (subject to clubbing), and envisages cancellation of the DNB candidature if the extended period of training is of more than a year, Rule 5 of the Leave Rules deals with unauthorized absence from



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training, and provides that unauthorised absence from DNB training for more than seven days *may* lead to cancellation of registration and discontinuation of the DNB training.

103. The invocation of this Rule against the petitioner, in my opinion, is unjustified both in law and on facts.

In law

104. Rule 5 employs the word “may”. It is obvious that the word “may” has been deliberately used. If unauthorized absence from training of over seven days were *ipso facto* to lead to cancellation of the DNB candidature, Rule 5 would have said so. It, however, does not. Rule 5 states that over seven days’ unauthorized absence *may* lead to cancellation of DNB candidature. The use of the word “may” is clearly intended to clothe the NBEMS with an element of discretion, to examine, on a case to case basis, whether the absence was such as would, or would not, justify discontinuation of the DNB training of the candidate and cancellation of the candidate’s DNB registration.

105. Where a provision clothes an administrative or executive authority with discretion, a dual responsibility is cast on the authority. The authority is required, in the first place, *to exercise the discretion vested in it*. Any blind or uninformed decision, bereft of exercise of discretion would, therefore, *ipso facto* stand vitiated. Secondly, the exercise of discretion has to be *judicious*. It has necessarily to



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disclose conscious application of mind, resulting in an informed decision that that the punitive action that is being taken is the only one which, in the circumstances, is appropriate.

106. It is not open to the authority implementing Rule 5 of the Leave Rules, therefore, to merely state that the candidate has been absent from DNB training without authorisation for more than seven days and, on that basis, cancel the candidate's DNB candidature.

107. That, however, is precisely what the impugned order dated 11 October 2023 does.

108. The circumstances in which the candidate remained absent have to be borne in mind. An overall and holistic approach has to be adopted, keeping in mind not only the consideration of ensuring that standards of medical education are maintained but also the equitable considerations which would weigh in favour of the candidate.

109. The impugned order dated 11 October 2023 does not disclose any such application of mind. The order merely notes the fact that the petitioner had availed 486 days of leave during her training period. Thereafter, the impugned order quotes Rule 5 and proceeds to "inform" the petitioner that her DrNB candidature has been cancelled.

110. The impugned order, therefore, clearly misinterprets Rule 5 of the Leave Rules as envisaging, as an inexorable sequitur to the petitioner having remained absent from training without due



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authorisation, the cancellation of her DrNB candidature. That, however, is not what Rule 5 contemplates. It states that unauthorised absence from DrNB for more than seven days *may* lead to cancellation of registration.

111. The tenor of the impugned order clearly states that the NBEMS, in issuing it, has remained oblivious to the fact that an element of discretion was built into Rule 5 of the Leave Rules, which it had to exercise in a judicious manner. That judicious exercise is lacking, in the impugned order dated 11 October 2023.

112. It cannot, therefore, be said that the impugned order has been issued in sync with Rule 5 of the Leave Rules.

Re: Argument that the petitioner, after seeking leave from her DrNB training, proceeded to join duty at the District Hospital, Sircilla

113. Before proceeding to examine what the appropriate outcome of a judicious exercise of discretion as envisaged by Rule 5 would be, in the facts of the present case, one may dispose of the most emphatic contention of Mr. Kirtiman Singh.

114. Mr. Kirtiman Singh takes serious exception to the petitioner joining duty as Civil Assistant Surgeon Specialist in the District Hospital, Sircilla on 28 November 2019, after having applied to the PIMSRC for 8 months' leave starting 25 November 2019 on the ground that her clinical condition did not allow her to continue to pursue her DrNB training. This, according to Mr. Kirtiman Singh,



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indicates that the plea of clinical inability to pursue her DrNB training, as advanced by the petitioner, was not believable.

115. I have already observed that, as this is not a ground on which the impugned order dated 11 October 2023 came to be passed, it is equally not available to the NBEMS as a ground to defend the issuance of the impugned order.

116. Nonetheless, even on merits, the contention does not appear to me to be well founded. The petitioner has filed, with the present petition, her entire medical record. She has been under treatment of the Nizam's Institute of Medical Sciences, Hyderabad, which is a reputed institution.

117. A perusal of the medical record reveals that the petitioner was indeed a patient of Lupus Nephritis. It is no part of the duty of this Court, exercising Article 226 jurisdiction, to return a finding on merit on the petitioner's medical condition. Suffice it, however, to state that, in the entire counter affidavit filed by the NBEMS, there is no traversal to the petitioner's submission that she was indeed suffering from Lupus Nephritis.

118. In fact, the counter affidavit does not even contain any specific traversal to the petitioner's contention that she was not clinically in a position to continue with her DrNB training in November 2019. The PIMSRC has also certified, on 21 November 2019, that the petitioner was suffering from Lupus Nephritis since 2015 and was on



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immunosuppressants. The correctness of this certificate is also not questioned in the counter affidavit filed by the respondent. Yet another document, which the petitioner has placed on record and the correctness of which is not disputed in the counter affidavit, is a medical certificate requisition form of Nizam's Institute of Medical Sciences, which diagnoses the petitioner as suffering from System Lupus Erythematosus, specifically from Lupus Nephritis. It is certified, in the said certificate, that the petitioner was on regular follow-up in the OPD of the Nizam's Institute of Medical Sciences for treatment of her Lupus Nephritis.

119. In the counter affidavit filed by NBEMS, the averments regarding the petitioner's state of health are to be found in the following paragraphs:

“18. Without prejudice to the above, it is submitted that the Petitioner herein by way of her application 25.11.2019 has sought leave on medical grounds whereas the Petitioner had resumed her services on 28.11.2019. This position ex-facie establishes that the Petitioner herein has misrepresented to the answering Respondent while seeking leave on medical grounds and thereafter the Petitioner remained unauthorizedly absent up till 16.12.2020.

24. As submitted above, the Petitioner submitted an application dated 25.11.2019 for leave which was forwarded by the Respondent No. 2 vide email dated 10.01.2020 to the answering Respondent. It is the respectful submission of the answering Respondent that the Petitioner had not submitted and thereby failed in disclosing any supportive documents / medical certificates justifying the need of medical leave for a prolonged period of 8 months.”

120. There is, therefore, no reason to disbelieve the petitioner's assertion that, owing to her clinical condition, she was actually not in



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a position to continue with her DrNB training in November 2019.

121. In fact, there is really no occasion for this Court to return any subjective finding in this regard, for the simple reason that the NBEMS, despite having been forwarded the petitioner's leave application, never chose, at any stage, till the filing of the counter affidavit in the present case, to dispute the petitioner's assertion that she was actually not in a position to attend to continue with her DrNB training in November 201 and was in need of long leave.

122. In the counter affidavit, the respondent has acknowledged the receipt of the petitioner's leave application. Having done so, all that the counter affidavit proceeds to state is that the application could not be processed owing to "the incoherent situation during the COVID-19". No details of the said "incoherent situation" are provided. The COVID-19 pandemic more or less came to an end (hopefully) towards the end of 2021 or the beginning of 2022. Even thereafter, the NBEMS never chose to question the *bona fides* of the petitioner's request for leave, submitted on 25 November 2019. It is only in the counter affidavit filed in the present writ petition that such a stand has been adopted.

123. The court is, therefore, constrained to treat this assertion of the respondent as nothing more than an afterthought. Having never questioned the petitioner's assertion that she was not clinically in a position to continue with her DrNB training after 25 November 2019, till she re-joined on 16 December 2020, the respondent cannot be



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heard to contend, for the first time in the counter affidavit, that her plea of clinical inability to attend to her DrNB training was false or not believable.

124. If that be so, the NBEMS cannot take exception to the fact that the petitioner was working at the District Hospital in Sircilla during the said period of leave.

125. There is no known legal principle to the effect that, if leave is taken on the ground of medical incapacity to continue with the nature of the duties that the employee has to discharge, the employee must, during the period of leave, sit at home. Such cases, it may be noted, may be of various types. It is not as though the petitioner sought leave on the pretext of a leg injury and was seen running a cross-country sprint during the period of leave. The petitioner's specific contention, in the writ petition, is that the duties which she was required to perform in connection with her DrNB training were arduous and that, given her clinical condition, she was not in a position to undertake those duties. As already noted, this contention of the petitioner has not been disputed on facts at any stage, even in the counter affidavit filed by way of response to the present writ petition.

126. That being so, if the petitioner desired, instead of staying at home during the period of her leave, to work in the Sircilla hospital which, according to her, was much less arduous, that fact cannot be pleaded as a ground to doubt the *bona fides* of her request for leave.



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There is no requirement in the law that the petitioner had to necessarily stay at home during the period of her leave.

127. There is no rebuttal or traversal, in the counter affidavit, of the specific assertion in the writ petition that the nature of duties at the Sircilla hospital were in fact much less arduous than the duties that the petitioner had to discharge as a DrNB trainee.

128. In that view of the matter, Mr. Kirtiman Singh's objection, based on the fact that the petitioner continued with her duty at the Sircilla hospital during the period of her leave, in my opinion, lacks substance. There was, to reiterate, no legal proscription on the petitioner rejoining duties at the Sircilla hospital during the period of her leave. No such proscription has been brought to my notice by Mr. Kirtiman Singh either.

129. The fact that she did so, therefore, cannot be cited as a justification for cancelling her DrNB candidature.

Justification of the impugned decision on facts

130. The facts that emerge are as follows.

131. Having undergone DrNB training for little over two months, the petitioner applied to the PIMSRC for eight months' leave on 25 November 2019, as she was suffering from Lupus Nephritis. *No credible challenge to the assertion of the petitioner that she was*



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indeed suffering from Lupus Nephritis, which stands certified even by the PIMSRC, has been laid by the respondents.

132. The application of the petitioner was forwarded by the PIMSRC to the NBEMS on 10 January 2020. The receipt of the application stands acknowledged by the NBEMS in the counter affidavit. The counter affidavit also acknowledges the fact that the *NBEMS took no decision on the said application*. Though this is stated to be on account of the “incoherent situation” during COVID-19, no details in that regard are forthcoming. Be that as it may, the fact remains that, having received the application, the NBEMS did not choose to refuse the request.

133. The petitioner returned for duty on 7 December 2020, after having also suffered COVID-19 as an immunocompromised patient, and resumed duty after a week’s quarantine on 16 December 2020. *The rejoining report of the petitioner, dated 16 December 2020, was also forwarded by the PIMSRC to the NBEMS on 28 December 2020, but NBEMS did not choose to respond.*

134. No further medical leave was sought by the petitioner.

135. The petitioner applied for 20 days’ further leave from 14 September 2021 to 3 October 2021, as she was getting married. The NBEMS sanctioned the leave. *While doing so, no remark was made by the NBEMS regarding the earlier period of leave availed by the petitioner from 25 November 2019 till 15 December 2020. After*



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availing the said leave, the petitioner returned and continued with her DrNB training.

136. The petitioner submitted her DrNB thesis to the NBEMS in 2023. The NBEMS, *vide* communication dated 18 July 2023, required the petitioner to submit certain documents, so that her thesis could be assessed. *Vide* further communication dated 17 August 2023, the NBEMS suggested certain modifications to the petitioner's thesis. The modified thesis was submitted by the petitioner to the NBEMS on 13 September 2023.

137. On 4 October 2023, the NBEMS issued a show cause notice to the petitioner disputing her right to appear in the DrNB final theory examination *as she had not undertaken the minimum required number of FATs. The show cause notice made no reference to any unauthorized absence, by the petitioner, from her DrNB training.* By her response dated 6 October 2023, the petitioner pointed out that she had, in fact, appeared in the prescribed number of FATs in July 2021 and, March and April 2023. *Till that date, there was no communication from the NBEMS either to the petitioner or to the PIMSRC, stating that the petitioner had been on unauthorized absence from the training or that, on that ground, her DrNB candidature was liable to be cancelled.*

138. It is in the backdrop of these facts that, on 11 October 2023, a day prior to the DrNB final theory examination of the petitioner, the impugned order was issued cancelling the petitioner's DrNB



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candidature.

139. The facts speak for themselves. Having chosen to remain completely silent regarding the petitioner's period of absence from training from 25 November 2019 till 15 December 2020, and having, thereafter, acted *vis-à-vis* the petitioner, in a manner which would convey, to anyone in her place, that the NBEMS had no misgivings regarding the petitioner's DrNB candidature, it was clearly not open to the NBEMS to, at the nth hour, a day prior to the petitioner's DrNB final theory examination, cancel her DrNB candidature altogether.

140. The only ground on which the petitioner's DrNB candidature was cancelled, was that she had availed a total of 486 days' leave. The impugned order dated 11 October 2023 does not even obliquely seek to allege that the petitioner was not in fact unwell or that she had misstated facts while applying for leave. The only ground urged is that no prior approval of the NBEMS had been obtained while proceeding on leave. The legitimacy of this ground, as a justification for cancellation of DrNB candidature has to be assessed in the backdrop of the above facts.

141. Besides the above, it is also required to be borne in mind that the petitioner has not chosen, on the ground of her illness, to escape any training that she was required to undergo. In fact, the petitioner has completed nearly all her training, with only 33 days' training left.

142. The NBEMS chose to remain silent, despite admittedly having



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received the petitioner's leave application dated 25 November 2019, and her joining report dated 16 December 2020, and thereafter, having acted at all times as though the petitioner was legitimately entitled to continue and complete her DrNB training, to the extent of suggesting modifications in the thesis submitted by the petitioner. It would, in my considered opinion, be not only unfair but an outright travesty of justice to uphold the decision of the NBEMS to, a day prior to the petitioner's final theory examination, cancel her DrNB candidature.

143. Even on facts, therefore, I am of the opinion that the cancellation of the petitioner's DrNB cancellation has resulted in injustice to her. This Court is unwilling to lend its seal of approval thereto.

Violation of the principles of natural justice

144. Cancellation of the DrNB candidature of the petitioner, especially at the last minute when she was at the threshold of attempting her final DrNB theory examination, could not have been effected without strict compliance with the principles of natural justice. This would require not only issuance of a show cause notice, calling on the petitioner to show cause against the proposed cancellation, but also an opportunity of personal hearing, so as to enable the petitioner to explain her case. The show cause notice would, moreover, have to set out the precise ground, or grounds, on which cancellation of the petitioner's DrNB candidature was contemplated, and the NBEMS would be bound thereby. It is not



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permissible for the NBEMS to, in the order of cancellation, introduce a ground which does not find place in the show cause notice.

145. Insofar as the requirement of a personal hearing is concerned, this Court has, in its recent decision in *Mount Columbus School v. CBSE*³⁰, examined the legal position, and, with all due humility, the following passages from the said decision are extracted:

“50. Even otherwise, it is well settled in administrative law that a decision which entails serious civil consequences has to be preceded by compliance with the principle of *audi alterum partem*, even if the statutory provision does not expressly so required. That the requirement of grant of an opportunity of hearing in such cases has necessarily to be read into the statute, is the law which follows from a long line of decisions. A Division Bench of the High Court of Orissa felicitously expressed the principle thus, in *Narayan Chandra Jena v. State Transport Authority*³¹:

“It is true that Sec. 50³² in terms does not provide for granting an opportunity to be heard. But the *audi alteram partem* rule is of universal application and law is well settled that when a statute is silent regarding observance of the principles of natural justice, the rule shall be read into the statute as an inbuilt provision. The rule must be held to be a necessary postulate in all cases where a decision is to be taken affecting a person's rights or interest unless such rule is specifically excluded by the relevant statute. It is also well settled that failure to observe natural justice cannot be justified merely because the authority vested with the powers to decide is of the opinion that granting of such opportunity would be an exercise in futility since the person to be condemned can have nothing more to add. Non-observance of

³⁰ 2024 SCC OnLine Del 2778

³¹ AIR 1987 Ori 163

³² Reference is to Section 50 of the erstwhile Motor Vehicles Act, 1939, which reads:

“50. **Procedure of Regional Transport Authority in considering application for contract carriage permit.** – A Regional Transport Authority shall, in considering an application for a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest ; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.



natural justice is itself a prejudice and independent proof of prejudice due to denial of natural justice is unnecessary.”

This, and several other pronouncements to the said effect, were relied upon by a Division Bench of the High Court of Punjab & Haryana (speaking through Swatanter Kumar, J., as he then was) in **Ram Niwas Bansal v. State Bank of Patiala**³³, to hold that the requirement of compliance with *audi alteram partem* is to be read into every provision, the enforcement of which entails civil consequences, even if the provision is itself silent in that regard, unless the statute provides otherwise.

51. **J.T. (India) Exports v. U.O.I.**³⁴, rendered by a Full Bench of this Court, is also relevant. Division Benches of this Court were divergent on the issue of whether the third proviso to Section 4-M of the Imports & Exports (Control) Act, 1947 required grant of an opportunity of personal hearing before deciding whether to waive penalty in full or in part. Significantly, the Full Bench noted, at the very outset, the earlier decision of the Supreme Court in **U.O.I. v. Jesus Sales Corporation**³⁵ which, dealing with the same provision, held that, in every case, it could not be held that failure to grant personal hearing was fatal. Nonetheless, the Full Bench proceeded, in paras 13 and 15 of its judgment, to hold thus, apropos that the requirement of grant of an opportunity of hearing; thus:

“13. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is *nemo judex in causa sua* or *nemo debet esse judex in propria causa sua* as stated in (1605) 12 C R 114, that is, 'no man shall be a judge in his own cause'. Coke used the form '*aliquis non debet esse judex in propria causa quia non potest esse judex at pars*' (**Co. Litt. 1418**), that is, 'no man ought to be a judge in his own cause, because he cannot act as Judge and at the

³³ (1999) 11 LLJ 126 (P & H)

³⁴ 94 (2001) DLT 301 (FB)

³⁵ (1996) 4 SCC 69



same time be a party;. The form '*nemo potest esse simul actor et judex*', that is, 'no one can be at once suitor and judge' is also at times used. The second rule and that is the rule with which we are concerned in this case is '*audi alteram partem*', that is, 'hear the other side'. At times and particularly in continental countries, the form '*audietur at alteram pars*' is used, meaning very much the same thing, A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely '*qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit*' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See **Bosewell' case**³⁶): or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'.

14. *Even if grant of an opportunity is not specifically provided for it has to be read into the unoccupied interstices and unless specifically excluded principles of natural justice have to be applied. Even if a statute is silent and there are no positive words in the Act or Rules spelling out the need to hear the party whose rights and interests are likely to be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise. Reference is accordingly disposed of."*

(Emphasis supplied)

52. The fact that the impugned order was passed with no opportunity of hearing granted to the petitioner, is, therefore, an additional circumstance which would justify its evisceration.

53. **Swadeshi Cotton Mills v. U.O.I.**³⁷, cited by Mr. Gupta, crystallizes this position. Para 18 of the report noted the point that arose for consideration, thus:

"18. Thus, the first point for consideration is whether, as a matter of law, it is necessary, in accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its take-

³⁶ (1605) 6 C R 48

³⁷ (1981) 1 SCC 664



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over under Section 18-AA³⁸.”

The Supreme Court held:

“25. Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of “natural justice” and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

26. Well then, what is “natural justice”? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self-evident and unarguable truth”. [Paul Jackson : *Natural Justice*, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice”. Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. For the purpose of the question posed above, we are primarily concerned with the *first*. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in *Medea*³⁹ that it is unjust to reach a decision without

³⁸ Section 18-AA of the Industries (Development & Regulation) Act, 1951

³⁹ Regarded as the strongest play by Seneca the Younger, written around 50 CE



a full hearing. In *Maneka Gandhi*⁴⁰ case, Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in *Ridge v. Baldwin*⁴¹ it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in *Dr Bina Pani Dei*⁴²; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in *Dr Bina Pani Dei*, was further rubbed out to a vanishing point in *A.K. Kraipak v. Union of India*⁴³, thus:

“If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries.... Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.”

⁴⁰ *Maneka Gandhi v. U.O.I.*, (1978) 1 SCC 248

⁴¹ 1964 AC 40

⁴² *State of Orissa v. Dr Bina Pani Dei*, AIR 1967 SC 1269

⁴³ (1969) 2 SCC 262



29. In *A.K. Kraipak*, the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in *In re H.K. (Infants)*⁴⁴; which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but *acting fairly*. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

30. In the language of V.R. Krishna Iyer, J. (vide *Mohinder Singh Gill*⁴⁵: "... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play ... Its essence is good conscience in a given situation; nothing more — but nothing less."

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in *A.K. Kraipak*). If a statutory provision *either specifically or by inevitable implication* excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see *Union of India v. Col. J.N. Sinha*⁴⁶)

32. The maxim *audi alteram partem* has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is

⁴⁴ 1965 AC 201

⁴⁵ *Mohinder Singh Gill v. Election Commissioner of India*, (1978) 1 SCC 405

⁴⁶ (1970) 2 SCC 458



universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is “a duty lying upon everyone who decides something”, in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, “convenience and justice” — as Lord Atkin felicitously put it — “are often not on speaking terms [General Medical Council v. Spackman⁴⁷]”.

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word “immediate” in Section 18-AA(1). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the Magistrates specified therein to make an *ex parte* conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural

⁴⁷ 1943 AC 627, 638



justice. In *Durayappah v. Fernando*⁴⁸ Lord Upjohn observed that “while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

35. These observations of Lord Upjohn in *Durayappah* were quoted with approval by this Court in *Mohinder Singh Gill*. It is therefore, proposed to notice the same here.

36. In *Mohinder Singh Gill* the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election Commission contended that a prior hearing had, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negated by this

⁴⁸ (1967) 2 AC 337



Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso:

“Once we understand the soul of the rule as fair play in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more — but nothing less. The ‘exceptions’ to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case.”

37. After referring to several decisions, including the observations of Lord Upjohn in ***Durayappah v. Fernando***, the court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected:

“It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient



obligation. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness....

We may not be taken to ... say that situational modifications to notice and hearing are altogether impermissible.... The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient, promotes, not freezes, life's processes, if we may mix metaphors....”

38. The court further emphasised the necessity of striking pragmatic balance between the competing requirements of acting urgently and fairly, thus:

“Should the cardinal principle of ‘hearing’ as condition for decision-making be martyred for the cause of administrative immediacy? We think not. The full panoply may not be there but a manageable minimum may make-do.

In **Wiseman v. Borneman**⁴⁹ there was a hint of the competitive claims of hurry and hearing. Lord Reid said: “Even where the decision has to be reached by a body acting judicially, *there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him.*”

(emphasis added)

We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances.”

⁴⁹ 1971 AC 297



The court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the audi alteram partem rule:

“(Lord Denning M.R., in **Howard v. Borneman**, summarised the observations of the Law Lords in this form.) *No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case.* After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions.... All that we need emphasize is that the *content of natural justice is a dependent variable, not an easy casualty.*

Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. *In its comprehensive connotation everything that*



affects a citizen in his civil life inflicts a civil consequence.”

(emphasis added)

39. In **Maneka Gandhi**, it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

40. The High Court of Australia in **Commissioner of Police v. Tanos**⁵⁰ held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In **Heatley v. Tasmanian Racing & Gaming Commission**⁵¹ the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the commission and show why the proposed long-term order be not made.

41. As pointed out in **Mohinder Singh Gill v. Chief Election Commissioner** and in **Maneka Gandhi v. Union of India** such cases where owing to the compulsion of the fact-situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hearing to the person affected, do not, in reality, constitute an “exception” to the audi alteram partem rule. To call such cases an “exception” is a misnomer because they do not exclude “fair play in action”, but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

⁵⁰ (1958) 98 CLR 383

⁵¹ 14 Aus LR 519



42. “The necessity for speed”, writes Paul Jackson: “may justify immediate action, it will, however, normally allow for a hearing at a later stage”. The possibility of such a hearing — and the adequacy of any later remedy should the initial action prove to have been unjustified — are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought “that because rough, swift or imperfect justice only is available that there ought to be no justice”: ***Pratt v. Wanganui Education Board***.

43. Prof. de Smith, the renowned author of Judicial Review (3rd Edn.) has at p. 170, expressed his views on this aspect of the subject, thus: “Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings.”

44. In short, the general principle – as distinguished from an absolute rule of uniform application – seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided,



courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play “must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands”. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

(Italics in original; underscoring supplied)

54. Compliance with the *audi alteram partem* requirement is, therefore, non-negotiable. In rare cases, and where administrative exigencies or considerations of expedience absolutely proscribe grant of a pre-decisional hearing, an immediate post-decisional hearing may suffice. That, however, is clearly the exception, and cannot be used as an escape route to avoid granting a pre-decisional hearing. Where, therefore, the situation is not so emergent as would justify the hearing to be deferred to the post-decisional stage, the decision, if it entails civil consequences and has not been *preceded* by a hearing, is vitiated in its entirety. The only exception is where the statute *expressly* excludes the requirement of grant of a hearing.”

146. The impugned order does not satisfy these requirements. The show cause notice dated 4 October 2023, which proposed cancellation of her DrNB candidature, made no reference to her absence from DrNB training. The only ground for cancellation, which found place in the said show cause notice, was the petitioner’s alleged failure to undertake the required number of FATs. The petitioner, through her reply dated 6 October 2023, pointed out that the allegation was incorrect, and the NBEMS apparently stood disabused in that regard,



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as this ground finds no place in the impugned order dated 11 October 2023. Unauthorized absence from training, which was the sole ground for cancellation in the impugned order, found no place in the show cause notice which had been issued to the petitioner.

147. Besides, the petitioner was never heard, prior to the passing of the impugned order of cancellation of her DrNB candidature on 11 October 2023. Strict compliance with *audi alteram partem* is, in such a situation, a non-negotiable imperative, as held in ***Swadeshi Cotton Mills***. The failure to hear the petitioner, even by itself, vitiates the impugned order of cancellation of her DrNB candidature.

Concluding remarks:

148. A brief observation. It is often a stock defence taken by the authorities, in cases such as this, that there can be no relaxation of standards in medical education and that, therefore, strict compliance with the stipulated requisites is an indispensable *sine qua non*, for any candidate who is undergoing a course of medical education. The correction of this proposition cannot be gainsaid. Medical professionals deal with human lives. There can, therefore, be no relaxation in standards, nor can there be any leeway granted in the matter of compliance with standards in the matter of attending classes, undergoing training and the like, as, given peculiarities of the medical profession, practical hands-on experience in dealing with patients is often times of greater value than text book knowledge. The Court cannot, therefore, impelled by sympathetic considerations, permit



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relaxation of the prescribed qualifications or experience, where medical professionals are concerned.

149. Absolute and unrelenting strictness, with no relaxation or rigor at any stage is, therefore, the legal imperative.

150. Once, however, a candidate is found to have satisfied the requisite stipulations in the matter of attendance of classes, undergoing of training and the like, the court cannot be unduly hyper-technical while considering the entitlement of such a candidate to emerge as a full-fledged medical professional. In such cases, the Court has to weigh, in the balance, the proclivities of the individual candidate and assess whether it would be in public interest not to allow the candidate to practice as a medical professional.

151. The present case could act as a guiding example in that regard. The petitioner, despite facing a debilitating illness, has emerged out of it and has managed to complete her rigorous DrNB course of training. She has satisfied the requisite number of days of attendance as well as the hours of training, except for 33 remaining days. The fact that she was actually suffering from Lupus Nephritis and was facing severe handicaps even at home is not disputed. The cancellation of the DrNB candidature of such a candidate, especially at a time when her DrNB programme has almost reached its end, would completely destroy her morale. In such cases, the facts matter. Wiping out, with one stroke of the pen, the entire DrNB training that the petitioner has undertaken, despite her physical handicaps, would do no good to her, or to the



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interests of the public at large. The community would also, in the reckoning, lose the services of a possibly dedicated medical super-specialist.

152. While examining and applying the rules in such a case, therefore, the Court has to be pragmatic rather than pedantic.

153. Pragmatically viewed, this Court is convinced that in a space governed by the rule of law and where justice must predominate – as it always must, given that justice, and not law, remains our preambular goal – the cancellation of the petitioner’s DrNB candidature by the impugned order dated 11 October 2023 cannot sustain.

Conclusion

154. For the aforesaid reasons, the impugned order dated 11 October 2023 is quashed and set aside.

155. By order dated 14 May 2024, the petitioner has been allowed to undertake the DrNB final theory examination. The results of the said examination would, therefore, be declared. The petitioner is also entitled to complete her DrNB candidature, subject to the outcome of the DrNB final theory examination, and undertake the remainder of her DrNB training. All consequential reliefs would follow.

156. The writ petition stands allowed accordingly, with no orders as to costs.



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157. These applications do not survive for consideration and are disposed of.

C.HARI SHANKAR, J

MAY 21, 2024
rb/yg/dsn