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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3005/2020 & CM APPLs. 10418-20/2020
DR. DEVYESH J. PATHAK AND ORS. Petitioner
Through: Mr. Sahil Tagotra, Adv.

versus

NATIONAL BOARD OF EXAMINATION AND ORS.
..... Respondents
Through: Ms. Maninder Acharya, ASG
with Mr. Kirtiman Singh,
Standing Counsel for NBE with
Mr. Waize Ali Noor and Mr.
Viplav Acharya, Advs. for R-
1/NBE
Ms. Maninder Acharya, ASG
with Mr. Anurag Ahluwalia,
CGSC and Mr. Viplav Acharya,
Adv. for R-2/UOI

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

ORDER
% **27.04.2020**

CM APPL. 10419-20/2020

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

W.P.(C) 3005/2020

1. The petitioners, in this writ petition, seek to challenge Public

Notice, dated 4th April, 2020, issued by the National Board of Examination (hereinafter referred to as “the NBE”).

2. The impugned Public Notice observes that, as training of students undergoing the Diplomate of National Board (DNB)/Fellowship of National Board (FNB) programme, conducted by the NBE, has been adversely impacted by the ongoing COVID-2019 pandemic, it has been decided to extend the period of training of all DNB/FNB students, whose tenures were ending between 1st April and 30th June, 2020, in all specialities, by six weeks and until further notice.

3. While doing so, the impugned Public Notice also clarifies that such extension would not interfere with the eligibility of the candidates to appear in their respective exit examinations, and that the candidates would be paid stipend by the hospital as per the stipend guidelines of the NBE.

4. The cut-off date for training completion of the candidates, for the purposes of eligibility for appearance in the DNB final examination, December, 2019, therefore, has been modified to 11th August, 2020.

5. The petitioners are resident doctors, in the third/final year of the training of the DNB course, conducted by the NBE. They joined the DNB course between April and June, 2017, and were scheduled to complete their training between April and June, 2020.

6. Mr. Sahil Tagotra, learned counsel for the petitioner, advances

several grounds, on which he seeks to assail the legality of the impugned Public Notice. These may be enumerated, briefly, thus:

(i) Orders, dated 24th March, 2020 and 15th April, 2020, issued by the Ministry of Home Affairs (MHA), clarify that there would be is no discontinuance of work in hospitals or treatment of patients therein, during the currency of the COVID-2019 pandemic, or imposition of lockdown by the Government in connection therewith. Mr. Tagotra submits, therefore, that the main ground on which the impugned public notice has been issued, i.e., that training of DNB/FNB residents has been adversely impacted by the COVID-2019 pandemic, is essentially a sham ground.

(ii) The impugned Public Notice is discriminatory and violative of Article 14 of the Constitution of India, inasmuch as there has been no extension of training of first and second year students of the DNB course, and hostile discrimination has been practiced, applicable only to final year students, such as the petitioners.

(iii) The impugned Public Notice operates retrospectively, inasmuch as it also covers DNB students who may have completed their training between 1st and 4th April, 2020. Such retrospective application is contrary to the law.

(iv) The impugned Public Notice is, further, void on the ground of uncertainty, as it extends the period of training of DNB/FNB students “by a period of six weeks *and until further*

notice". The use of the words "and until further notice" results in the impugned Public Notice becoming effectively open ended, which is impermissible in law.

(v) The impugned Public Notice has resulted in serious and deleterious consequences to various DNB students. Mr. Tagotra has, in this context, invited my attention to a letter, dated 2nd March, 2020, addressed to Petitioner No. 56, by Fortis Hospital Limited, which offers Petitioner No. 56 appointment as Attending Consultant in the Department of Orthopaedics at Fortis Hospital Limited and requires him to be on board on or before 13th April, 2020. He has also referred me to communication, dated 9th April, 2018, from the NBE to the Bhabha Atomic Research Centre and Hospital, Mumbai, especially to para 3 thereof, which reads thus:

"The candidate has to report to your institute/hospital and to join his/her DNB training latest by 16th April, 2018. No relaxation or extension to above prescribed timelines is permissible under any circumstances."

Mr. Tagotra submits that this recital, as contained in the letter dated 9th April, 2018, militates against the decision, of the NBE, to extend the training of DNB students, and indicates that, even in the perception of the NBE, the period of training of DNB students could not have been extended.

(vi) There is no provision, whereunder the impugned Public Notice, dated 4th April, 2020, could have been issued by the NBE, either in the DNBCETSS Handbook, governing such

issues, or elsewhere. The impugned Public Notice is, therefore, *ultra vires* the powers and authority of the NBE.

(vii) Lastly, Mr. Tagotra draws my attention to a communication, from the Directorate of Health Services, Thiruvananthapuram, Kerala, to the NBE, which seeks exemption of doctors, in the Directorate of Health Services, Kerala, from the application of the impugned Public Notice, dated 4th April, 2020.

7. Having considered, *prima facie*, the above submissions, of Mr. Tagotra, I am unable to convince myself that, on their anvil, any case for grant of *ad interim* relief, in the present proceedings, is made out.

8. The orders dated 24th March, 2020 and 15th April, 2020, issued by the MHA, are, in my view, really tangential to the issue at hand. There is a qualitative and quantitative difference between functioning of hospitals and imparting of training to DNB/FNB students therein. Functioning of hospitals, during the period of the COVID lockdown, or during the currency, in the country, of the COVID pandemic itself cannot, obviously, be equated with the manner in which hospitals function at other times. It is a matter of common knowledge that several hospitals have had to discontinue their normal activities and restrict their activities to treatment of COVID patients, with many hospitals - such as the Trauma Centre, AIIMS and LNJP Hospital – being designated as dedicated COVID Hospitals. Moreover, the workload on doctors, during the period of the present COVID pandemic, even cannot remotely be compared with the workload being

handled by them in normal times. The mere facts that hospitals and medical establishments continue to functioning during the COVID pandemic, therefore, does not, *ipso facto*, lead to the conclusion that training of DNB residents is not adversely impacted, or belie the averment, to that effect, as contained in the impugned public notice, dated 4th April, 2020.

9. This, in fact, constitutes the main ground of challenge in the writ petition. *Prima facie*, I am not convinced.

10. It is not possible for this Court, as a writ court, to return a finding that there is, in fact, no adverse impact on training of DNB/FNB students merely because, even during the currency of the COVID pandemic, hospitals continue to function. The extent to which imparting of training to DNB and FNB students stands impacted by the COVID-2019 crisis, and the altered workload and manner of functioning of hospitals during the currency thereof, is entirely within the province of knowledge of the respondents. There is no reason for this Court to believe that the respondents are, without any justification, averring, in the impugned Public Notice, that the exercise of imparting of training to DNB and FNB students stands impacted during the COVID-2019 pandemic, and the crisis that has arisen as a consequence thereof.

11. The plea of discrimination, as ventilated by Mr. Tagotra, vis-a-vis, first and second year students, too, fails, *prima facie*, to impress.

12. The nature of training, which is required to be imparted to first

and second year DNB students, cannot be automatically equated with the nature of training to be imparted to final year students. Besides, it is not for this Court to return a finding that the plea of difficulty, being faced in imparting training to final year DNB/FNB students, is belied by the fact that there is no extension of training in the case of first and second year students.

13. Besides, as held by the Supreme Court in *State of Haryana v. Ram Kumar Mann*¹, the petitioner has essentially to canvass his own case and, if the respondents are able to satisfy this Court that the impugned Public Notice was issued on legitimate grounds, no plea of adverse discrimination can further the cause of the petitioner.

14. The plea of retrospective application of the impugned public notice, too, does not make out a case for grant of any *ad interim* relief, inasmuch as the impugned Public Notice covers all persons whose tenures are ending between 1st April, 2020 and 30th June, 2020. The mere fact that certain students may have completed their training between 1st and 4th June, 2020, in my view, does not make out a case to stay the operation of the impugned Public Notice.

15. Insofar as the allegedly deleterious consequences of issuing the impugned Public Notice are concerned, while this Court may sympathise with DNB/FNB students who find themselves in such circumstances, the extraordinary and emergent situation, with which the country is faced, and which has necessitated the issuance of the impugned Public Notice, or the validity of the Public Notice, cannot

¹ (1997) 3 SCC 321

be wished away merely because, as a consequence of the impugned Public Notice, certain students may find difficulties in joining jobs to which they have been appointed.

16. Insofar as the letter dated 8th April, 2020, issued by the Directorate of Health Services, Thiruvananthapuram is concerned, that letter is completely irrelevant, as it seeks exemption from the applicability of the impugned Public Notice dated 4th April, 2020, in respect of certain students, and does not impact the legality, or otherwise, of the impugned Public Notice.

17. I have also been informed, by Ms. Maninder Acharya, learned ASG, as well as Mr. Kirtiman Singh, learned Standing Counsel, that the availability of the petitioners, in the hospitals in which they are undergoing training, is essential at this point of time, as, if the petitioners' training is allowed be completed and they leave the hospitals, there will be an exodus of 3156 doctors, which could adversely impact the treatment of patients, COVID sufferers and otherwise, during the currency of the present pandemic. Mr. Tagotra submits, in response, that this is not the ground on which the impugned Public Notice has been issued and that, therefore, this cannot be a ground to defend the impugned Public Notice either.

18. In view of the above discussion, while I am of the opinion that given the pan-India impact of the impugned Public Notice, it would be appropriate to seek a response from the respondents, to the writ petition, no case for grant of any *ad interim* relief, ex parte or otherwise, is made out. It cannot be said that, in view of the above

discussion, a clear *prima facie* case, justifying issuing any interim injunction, has been made out by the petitioners. Nor, in view of the fact that the conclusion of training of the petitioners has merely been extended, can it be contended that the petitioners would suffer any irreparable loss, were injunction as sought not to be granted. Further, given the necessity for optimum availability of doctors during the present COVID pandemic, and bearing in mind the interests patients, the balance of convenience would also militate against grant of interim relief to the petitioners.

19. Accordingly, let notice issue on the writ petition, returnable on 14th May, 2020.

20. Counter affidavit, in response to the writ petition, be positively filed within a period of 10 days with advance copy to the petitioners, who may file rejoinder, if any, thereto, if any, at least one day prior to the next date of hearing.

CM APPL.10418/2020

1. For the reasons contained hereinabove, the prayer for interim relief is rejected.
2. The application is accordingly dismissed.

APRIL 27, 2020
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C.HARI SHANKAR, J