

Matter Listed on.24.08.2020

[SECTION: XI-A]

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL/ORIGINAL/APPELLATE/JURISDICTION

SLP (C) 8214 OF 2020

Abdul Azeez

PETITINOER

VERSUS

Union of india & Ors

RESPONDENT

PROOF OF SERVICE THROUGH EMAIL

Sr.No	DESCRIPTION	COPIE'S	COURT FEES
1	Reply affidavit on behalf of the Respondent No.4 (MCI)	1	Nil
2			
3	Ms.Pallavi Pratap Adv.		
4	Mr.Rupesh Kumar Adv.		
5			
6			
7			
8			Nil

Date.21.08.2020

(GAURAV SHARMA)
ADVOCATE FOR RESPONDENT No. 4
H.No.837 Sec-29 Noida Mob.9818304902
(Code:1836) Clerk - Puspender I.C.3488
-Ravi I.C. 5939 Mo No.8447620070
Mob.9711003797

IN THE HON'BLE SUPREME COURT OF INDIA
Appellate Civil Jurisdiction

Special Leave Petition (C) No. 8214 OF 2020

IN THE MATTER OF:

Abdul Azeez

... Petitioner

Versus

Union of India
& Ors.

... Respondents

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Gautam Sharma
Advocate for Respondent No.4

New Delhi
Dated: 21.08 2020.

IN THE HON'BLE SUPREME COURT OF INDIA
Appellate Civil Jurisdiction

Special Leave Petition (C) No. 8214 OF 2020

IN THE MATTER OF:

Abdul Azeez

...Petitioner

Versus

Union of India
& Ors.

...Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 4.
- BOARD OF GOVERNORS IN SUPERSESSION OF MCI

I, Shikhar Ranjan, aged 49 Years, S/o. Late Shri L.N. Sinha, working as Law officer, Medical Council of India, New Delhi, do hereby solemnly affirm and states as under: -

1. That at present, I am working as Law Officer in the Medical Council of India and as such in my official capacity I am acquainted with the facts and circumstances of the present case and thus competent and authorized to swear and depose this affidavit.

2

2. I have read the contents of the present petition under reply and I say that the contents therein to the extent they are inconsistent with the submissions hereinafter made in this affidavit are incorrect and are denied. Unless any averment or contention is specifically admitted or traversed, the same may be treated as denied. It is submitted that the answering respondent is filing this reply affidavit in response to the notice issued by this Hon'ble Court in the present matter and craves leave of this Hon'ble Court to file detailed para-wise counter affidavit in due course or as and when directed by this Hon'ble Court.
3. The present petition has been filed by the petitioner, inter alia, being aggrieved by the impugned judgment dated 30.06.2020, passed by the Hon'ble High Court of Kerala at Ernakulum in W.P (C) No. 11495/2020, whereby, the Hon'ble High Court dismissed the writ petitioner preferred by the petitioner.

4. It is submitted that the petitioner had approached the Hon'ble Court by way of Public Interest Litigation bearing W.P. (C) No. 11495/2020, inter-alia, seeking direction to the respondents, therein, to sanction examination centers in Qatar as well as in other Gulf Cooperation Council Countries for National Eligibility Entrance Test (NEET) aspirants for the present academic year and to issue a writ of mandamus directing the respondents to defer the NEET examination till normalcy is restored or a decision is taken on the request of students for allowing examination centers outside India to expatriate students in Qatar as well as in other Gulf Cooperation Council countries.
5. It is most humbly submitted that the MCI is a statutory body constituted under the provisions of the Indian Medical Council Act, 1956 (hereinafter referred to as the Act) and has been given the responsibility of discharging the duty of maintenance of the highest

standards of medical education. The Hon'ble Supreme Court in the case of State of Kerala Vs. T.P. Roshna (1979) SCC 580 had held as under :-

“.....The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.....”

6. In discharge of its statutory obligations towards maintenance of highest standards in medical education in the country, by virtue of provisions of Section 33 of the Act, the MCI has been empowered with the prior approval of the Central Govt. to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses. It is submitted that the MCI further lays down in detail the course content, the duration,

distribution of teaching and training days on various subjects and also for conduct of examination etc.

7. The regulations framed by the MCI with the approval of the Central Govt. u/s 33 of the Act are statutory in character and, therefore, binding and mandatory on all concerned universities, colleges conducting Medicine courses. In this regard, the MCI craves leave to refer to the following judgments of the Hon'ble Supreme Court:

-

- A.) MCI Vs. State of Karnataka- (1998) 6 SCC 131 (para 16 & 24)
- B.) Dr. Preeti Srivastava Vs. State of M.P & Ors.- (1999) 7 SCC 120 (para 55, 56 & 57)

8. The regulations framed by the MCI with the approval of the Central Govt. u/s 33 of the Act are statutory in character and, therefore, binding and mandatory on all concerned universities, colleges conducting Medicine courses.
9. It is submitted that section 10D of the IMC Act, 1956, provides for admission in the medical courses only on the basis of the Uniform Entrance Examination. The

relevant portion of the said section is reproduced hereunder:

“.....

10D. Uniform entrance examination for undergraduate and postgraduate level.—There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:.....”

10. It is most humbly submitted that in order to conduct NEET examination, various authorities including respondent no. 2, answering respondent, Ministry of Health etc., have to work close coordination with each other and it requires proper, in detail, planning which takes a period of about a year. It is submitted that for conducting NEET, the centers have to be identified, after which staff and invigilators are appointed etc. It is submitted that the above planning and execution requires time of atleast a year. It is submitted that the

planning and coordination among the different authorities need to be immaculate in order to maintain secrecy of the question paper and also to avoid possibility of any kind of compromise in the standard of examination.

11. It is submitted that the respondent no. 2, vide its letter dated 20.05.2020, copy whereof is annexed as **ANNEXURE R4/1(Pg.15to-)**, in view of representation received from NEET candidates living in foreign countries, requested the answering respondent to consider whether NEET examination can be conducted online, for such candidates.
12. The above request of the respondent no. 2, was considered by the answering respondent and the answering respondent, after due discussion and deliberation, was of the opinion that NEET is a uniform examination in paper-book format and such uniformity has to be maintained for all candidates. Therefore, the answering respondent decided that NEET cannot be

conducted online, as the same will compromise the uniformity of the examination. The above decision of the answering respondent was communicated to respondent no. 2, vide letter dated 21.05.2020, copy whereof is annexed as **ANNEXURE R- 4/2 (Pg. 16 to 17)**.

13. It is most humbly submitted that the present petition does not deserve indulgence from this Hon'ble Court in view of the fact that the Govt. of India has permitted travel to and from other countries, through "Vande Bharat Mission". It is submitted that the Govt. of India under the said mission permitted Indian Citizens, including Overseas Citizens of India, to come to India by special flights.
14. It is submitted that in order to fairly conduct an examination like NEET, which has to be a uniform examination, it is imperative that the examination is conducted at the same time everywhere, which shall not be possible, if examination is conducted in outside

countries due to various reasons including different time zones, logistical issues, secrecy of test papers being a booklet based examination etc. It is submitted that if the NEET examination is not conducted at the same time everywhere, then the sanctity of the said examination will be lost, as there will be possibility of leakage of question. Further, in case of having separate question papers for different countries, there shall be an issue in respect of uniformity of the questions and their difficulty level. It is submitted that even in the past, while having separate question papers for various languages with respect to same difficulty level of papers there were many petition before this Hon'ble Court alleging that questions in different languages had different difficulty levels and the same cannot be said as uniform entrance examination.

15. It is respectfully submitted that there are also logistical problems in conducting NEET in various countries. It is

submitted that NEET, unlike JEE (mains), is a paper-book examination and not an online examination. Therefore, it shall not be possible to safely distribute / provide question papers at every center across the globe without any possibility of leakage examination paper. It is submitted that, in order to maintain the sanctity of examination and secrecy of question, the question paper of NEET is transported to centers, across the Country, from Head office of respondent no. 2, which requires detailed thought and planning. It is submitted that it is not possible for answering respondent or respondent no. 2, to do such kind of planning to transport question papers across the globe and conduct the examination simultaneously everywhere and moreso, when approximately 16 lac candidates are appearing for examination for the present academic year. The answering respondent has also to ensure proper social distancing for the Health

and safety of the candidates as well as the invigilator and other back-up staff in view of COVID pandemic.

16. It is submitted that the respondent No. 2 and 3, as per the scheme of the IMC Act, 1956 and Regulations framed thereunder, has administrative and regulatory power to conduct NEET only in India and take appropriate measures to make sure that the same is conducted without any hindrance as far as possible and at the same time safety of everyone. It is submitted that the respondent no. 2 and 3, shall not have any control over centers located outside India, therefore, it shall not be possible for respondent authorities to make sure that the NEET is conducted smoothly at such centers.
17. It is humbly submitted that as per public notice dated 03.07.2020 issued by respondent no. 2, NEET is scheduled to be conducted on 13.09.2020, therefore now there is less than a month left for conducting NEET for admission in MBBS course for the academic

year 2020-21, hence it shall not be possible either for the answering respondent or respondent no. 2, to do such meticulous planning and arrange the infrastructure for conducting NEET outside India. Copy of public notice mentioning the schedule for conducting NEET is annexed as **ANNEXURE R4/3 (Pg. to 7)**.

18. It is submitted that in order to conduct NEET, even within India, it takes months of coordination, planning and execution. It is submitted that the above task becomes more difficult when, as in the case of present academic year, wherein, around 1600000, candidates are scheduled to take the examination.
19. It is submitted that any more postponement of NEET shall lead to a situation where it shall not be possible for the students to obtain proper education and training in the present academic year as the same shall further disturb the academic calendar.
20. It is pertinent to submit here that this Hon'ble Court, recently in W.P. (C) No. 812/2020 - Sayantan Biswas

vs. National Testing Agency (NTA), wherein, the petitioner sought postponement of NEET and JEE, examinations in view of COVID-19 pandemic, vide order dated 17.08.2020, dismissed the same.

21. It is submitted that in case the NEET is further postponed, it shall lead to a situation where, there shall be too much deviation from the time schedule of the Council, as approved by this Hon'ble Court as well as the academic time schedule. Such drastic deviation from time schedule shall further effect the education being imparted to the students, as well as will impinge upon the subsequent academic years.

In view of the facts stated and submissions made hereinabove the present petition is not maintainable sustainable and deserves to be rejected.

It is prayed accordingly.

14

Mangin
DEPONENT

VERIFICATION

Verified at New Delhi on this the 21th day of August 2020 that the contents of my above affidavit are true to the best of my knowledge and belief and also on the basis of information received from office record and believed to be correct. No part of it is false and nothing material has been concealed therefrom.

Mangin
DEPONENT

डॉ. विनीत जोशी, मा.प्र.सं.
महानिदेशक
Dr. Vineet Joshi, IAS
Director General



राष्ट्रीय परीक्षा एजेंसी
National Testing Agency
EXCELLENCE IN ASSESSMENT

D.O. No. NTA/NEET (UG)/2020/1

Date: 20.05.2020

Dear Sir,

The NEET (UG) -2020, which was to be conducted on 3.05.2020, as a uniform entrance examination for admission to all medical courses in all medical institutions across the country, had to be postponed due to the extraordinary circumstances arising from COVID-19. A Public Notice in this regard was issued on 27.03.2020.

Now, the NEET (UG)-2020 has been rescheduled to be held on 26.07.2020. Its Result may accordingly be declared by 25.08.2020. The dates for Counselling may be fixed by DGHS thereafter.

There are a number of candidates living abroad (middle east, Singapore, etc.) who have registered themselves for appearing in NEET (UG)-2020 in India, as currently there are no NEET (UG) centres outside India. However, we have now received requests from several such candidates to conduct the NEET(UG)-2020 for them in their respective cities abroad, as under the restrictions on account of COVID -19 pandemic, the flights have been cancelled and requirement of compulsory quarantine has been imposed by many countries.

Therefore, MCI may like to consider whether the NEET(UG)-2020 could be conducted in online mode by NTA for such candidates in their respective cities abroad on the same date and time (IST) as fixed for the students appearing in India.

With regards,

Your Sincerely,

DR. VINEET JOSHI

Dr. Rakesh Kumar Vats,
Secretary General,
Medical Council of India (MCI),
Pocket- 14, Sector - 8,
Dwarka Phase -1, New Delhi - 110077.

L.O.
Dr. S. Ramji
Sr. Adv.

National Testing Agency

(An autonomous organization under the Department of Higher Education, Ministry of Human Resource Development, Government of India)
Address for communication: Block C-20, 1A/8, Sector 62, IITK Outreach Centre, Gautam Buddha Nagar, Noida-201309, Uttar Pradesh (India)
Tele: 0120-2555250 Email: genadmin@nta.ac.in Website: www.nta.ac.in



डॉ. राकेश कुमार वत्स
महासचिव
Dr. R.K. Vats
Secretary General



सत्यमेव जयते

भारतीय आयुर्विज्ञान परिषद
के अधिक्रमण में शासी बोर्ड

पॉकेट - 14, सेक्टर - 8 द्वारका फेज - 1
नई दिल्ली-110 077

BOARD OF GOVERNORS
IN SUPERSESSION OF
MEDICAL COUNCIL OF INDIA
Pocket- 14, Sector- 8, Dwarka Phase - 1,
New Delhi-110077

दूरभाष /Phone : 0091-11-25365075

फैक्स /Fax : 0091-11-25367014

E-mail : secy-mci@nic.in

Website : www.mciindia.org

No.MCI-34(1)/Med./2020/ 101412

Dated: 21.05.2020

Dear *Dr. Joshi,*

This is with reference to your D.O letter No. NTA/NEET (UG)/2020/1 dated 20.5.2020 regarding conduct of NEET-UG through online mode for candidates living abroad and who are unable to come back due to lock-down/quarantine on account of COVID -19 Pandemic.

The National Eligibility-cum- Entrance Test (NEET) is a uniform entrance examination. This examination is conducted through Multiple Choice Questions (MCQ) in paper book format given to all candidates. This uniformity has to be maintained for all candidates. Accordingly, the BoG, MCI is of the view that this examination should not be conducted in online mode by National Testing Agency (NTA) for candidates abroad.

Regards

Yours sincerely

Vatn

(Dr. Rakesh Kumar Vats)

Dr. Vineet Joshi, IAS,
Director General,
National Testing Agency,
NOIDA



PUBLIC NOTICE

Dated: 03.07.2020

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

In view of the current situation arising from COVID-19 pandemic, the National Testing Agency (NTA) has decided that the National Eligibility cum Entrance Test (NEET) (UG)-2020 will now be held on 13.09.2020 (Sunday) from 2.00 PM to 5.00 PM.

The dates of downloading of Admit Cards indicating Roll Number and Centre of Examination will be displayed 15 days before the conduct of examination on the official websites of NTA (www.nta.ac.in) and NEET (UG) -2020 (ntaneet.nic.in).

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

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

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

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

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

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

**DR VINEET JOSHI
(DIRECTOR GENERAL)**

IN THE HON'BLE SUPREME COURT OF INDIA
Appellate Civil Jurisdiction

Special Leave Petition (C) No. 8214 OF 2020

IN THE MATTER OF:

Abdul Azeez

...Petitioner

Versus

Union of India
& Ors.

...Respondents

**APPLICATION FOR EXEMPTION FROM FILING
AFFIDAVIT AND COURT FEES**

TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The present petition has been filed by the petitioner, inter alia, being aggrieved by the impugned judgment dated 30.06.2020, passed by the Hon'ble High Court of Kerala at Ernakulum in W.P (C) No. 11495/2020, whereby, the Hon'ble High Court dismissed the writ petitioner preferred by the petitioner.

2. That the facts pertaining to the present case are set out in detail in the accompanying reply affidavit and are not repeated here for the sake of brevity. The Applicant/answering respondent craves leave of this Hon'ble Court to treat the same as an integral part of the present application as well.
3. That it is submitted that due to the lockdown / restrictions in India due to the world pandemic situation on account of Covid-19 virus, petitioner is unable to submit the duly notarized affidavit alongwith court fee with the accompanying reply affidavit, which will be submitted after the lockdown / restrictions are lifted.
4. Hence, in view of the above, it is humbly prayed that the applicant be exempted from filing duly notarised affidavit and court fees.
5. It is respectfully submitted that the present application is made bona fide and in the interest of justice, and in light of the above this Hon'ble Court may be pleased to allow the present application.

PRAYER

In the facts and circumstances above mentioned the petitioner/applicant most respectfully prays that this Hon'ble Court may be graciously pleased to: -

- a. Exempt the petitioner from duly notarised affidavit along with the court fee and the same shall be permitted to be filed after the lockdown is lifted;
- b. Pass such other or further order(s), which this Hon'ble Court may deem fit, proper and necessary under the circumstances of the case.

AND OR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed on: 21 .08.2020
DRAWN ON : 21 .08.2020
New Delhi

FILED AND DRAWN BY


[GAURAV SHARMA]
ADVOCATE FOR THE RESPONDENT NO.4