

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(Civil) NO. _____ of 2021

IN THE MATTER OF:

Association Of MD Physicians

...Petitioner

Versus

National Board of Examinations & Ors.

...Respondents

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5.	Writ petition under article 226 of the Constitution of India seeking an appropriate writ and direction setting aside the time schedule for conduct of the June 2021 FMGE as contained in the Notice dated 15.04.2021 and the Information Bulletin dated 16.04.2021, titled 'Foreign Medical Graduate Exam Screening Test Information Bulletin December 2020 Session,' published by the NBE/ Respondent No. 01, along with Affidavit.	10-25
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ANNEXURE P-5. The list also mentions the status of vaccination of such candidates.

- t. Pertinently more than 40 members of the Petitioner Association are to appear in the FMG Examination on 18.06.2021 of which approximately 30 candidates will have to travel to another city to appear in the examination.
- u. Further while only one-fourth of such members of the Petitioner Association have received 1st dose of the Covid-19 vaccines, there is only one such candidate/member who has been fully vaccinated.
- v. It is also unfortunate to submit that some of such candidates/members of the Petitioner Association also have covid-19 patients in their respective families whom such candidates need to take care of.
- w. On 04.05.2021, the President of the Petitioner Association, on behalf of its FMG members who were aggrieved, approached Prof. Pawanindra Lal, Executive Director of NBE, by way of a representation, requesting Respondent No.1 to postpone FMGE June 2021. However, no response has been received by the Petitioner to such representation. A copy of the representation made by the Petitioner Association to NBE is annexed herein as

ANNEXURE P-6.

- 6. In view of the aforesaid and being aggrieved by the inaction and lack of response by the Respondents herein on the representation made by the Petitioner requesting postponement of the FMG Examination June 2021, the Petitioner is preferring the present Petition on the following, grounds which are each without prejudice to the other:
 - a. FOR THAT in light of the Covid-19 pandemic, it is neither safe, nor feasible for a such large number of candidates to appear for the FMG Examination to be conducted in June 2021. A list of examinations that have been postponed, as per news reports, available at <https://www.freepressjournal.in/india/click-here-for-latest-updates-on-jee-mains-jee-advanced-neetset-mht-cet-viteee-met-uceed-cucet-and-other-entrance-exams>, owing to the

second wave of the pandemic is as below (such list is not exhaustive):

- i. NEET PG 2021 (likely to be held in August);
- ii. AIIMS Nursing Entrance Examination scheduled for 27.06.2021 stands postponed with no date announced as on date of filing;
- iii. CLAT (Common Law Admission Test) 2021 – scheduled for 13.06.2021 postponed with no date announced as on date of filing;
- iv. AILET (Admission test for National Law University Delhi) scheduled for 20.06.2021 postponed with no date announced as on date of filing;
- v. Class XII board exams CBSE (cancelled along with several states also cancelling Class XII equivalent exams);
- vi. JEE Mains (Phases scheduled for April and May);
- vii. JEE Advanced (scheduled for May, now to be held in July first week);
- viii. CUCET (Central University Common Entrance Test)
- ix. WBJEE (likely to be held on 11 July 2021);
- x. BITSAT (BITS Admission Test) scheduled for 24.06.21-29.06.21, postponed to July/ August 2021;
- xi. Karnataka Common Entrance Test (KCET 2021) scheduled for 07.07.2021-08.07.2021 has been postponed to end August;
- xii. Goa Common Entrance Test (GCET 2021) scheduled for mid-June is likely to be conducted on 27.07.2021-28.07.2021.
- xiii. NCHM JEE (National Council of Hotel Management and Catering Technology Joint Entrance Examination) scheduled for 12.06.2021 has been postponed and the last date for applications have been extended till 20.06.2021.

- xiv. ICAI CA Foundation Examination scheduled for June 24-28, 2021 is now postponed to 24.07.2021 onwards;
- xv. SBI Clerk Examination scheduled for 24.06.2021 postponed until further notice;
- xvi. Delhi Subordinate Service Selection Board PGT Tier 1 Examination 2021 scheduled between 08.06.2021-20.06.2021 have been postponed till further notice;

It is clarified that member of the Petitioner, like other FMGs are ready and willing to be part of the COVID-19 workforce, and in this regard have also filed a Petition before the Hon'ble Supreme Court of India, indicating that even 3rd and 4th year MBBS students have been made part of such work-force. However, the Petitioners state that working ad-hoc as part of such work-force (which may be treated as an internship, and which issue is also pending before the Hon'ble Supreme Court in the same Writ Petition) is wholly different from sitting for the FMGE, which would require displacement from their homes, movement and travel, RT-PCR testing, and staying in a city which they would not call home.

- b. FOR THAT Petitioner Association, on behalf of its members who are mandated to travel to other cities to give the exam proposed to be conducted on 18 June 2021, had waited for the Respondent No.1 NBE, and hoped that the Respondents No.2 and 3 would also recognize the impact on thousands of students and their families, and would postpone the examination
- c. FOR THAT the Covid-19 pandemic has spread across the globe with India being one of the worst affected countries, especially during the second wave of the pandemic. It is ostensibly on account of such reason that a large number of competitive examinations, as also qualifying examinations have either been postponed/ cancelled altogether.

- d. FOR THAT second wave of the Covid-19 pandemic hit India in March 2021, and reached its peak in May 2021. While at present the second wave has begun receding, the threat to life and health of every human, including the members of the Petitioner Association posed by Covid-19 virus persists. Moreover, members of the Petitioner were themselves taking care of their family members who tested COVID positive, as also were other FMGs across India, and accordingly had reduced time to prepare for the examination in question.
- e. FOR THAT any such mass examination, which would necessitate avoidable intercity/ interstate movement, along with exposure to hotels/ intra-city travel, among other kinds of exposure, will likely only expedite the arrival of third wave and affect the candidates who are potential healthcare workforce of the country. Such candidates ought to at least be permitted to have the protection of double jabs of vaccines, and for many such candidates who took COVISHIELD, the second jab would be administered only in July 2021.
- f. FOR THAT as per the Ministry of Health and Family Welfare, Government of India, there are 1635993 (sixteen lakh thirty-five thousand, nine hundred and ninety-three) active cases of Covid-19 in India, with over one lakh cases fresh cases being reported every day.
- g. FOR THAT in light of the second wave of the pandemic, all the States in the country have imposed complete or partial lockdowns, weekend curfews and various forms of travel restrictions, including limited or no local transports, and mandatory requirement of negative RT-PCR reports. Such lockdowns make intra-city travel extremely difficult, including access to food/ other requirements in an unknown city.
- h. FOR THAT as aforementioned, a large number of eligible candidates including the members of the Petitioner Association shall be forced to travel to different cities in order to appear for FMGE while undertaking a huge risk to their health and life.

- i. FOR THAT in order to travel to another city or state candidates may be required to undergo RT-PCR tests, which would be an added financial burden on the hitherto unemployed FMGs. In the present situation forcing candidates to travel and to undergo RT-PCR tests not only creates logistical difficulties for the candidates, but it also imposes additional and unreasonable burden on Covid-testing infrastructure of the country which is already spread thinly to cope with the second wave.
- j. FOR THAT it appears from various Covid-19 bulletins issued by various state governments that there are over 2.5 lakh active cases in and around cities/districts notified as centres for FMG Examination - June 2021.
- k. FOR THAT despite best efforts by the central and state governments, only a little over 3% of the total population of India has been fully vaccinated.
- l. FOR THAT the candidates appearing for FMG Examination fall within the age group of 18 to 44 years, for whom the vaccination was permitted only from 01.05.2021. As such most of the Association members/candidates have not received even the first dose of a Covid-19 vaccine.
- m. FOR THAT the pandemic has affected large number of families in India. Many of the candidates are also committed to taking care of their respective families and ensuring their safety during such difficult times. While for some of the candidates it may be difficult to leave their respective family members in such times, it is also to be of concern that all the candidates who do appear for the FMG Examination will certainly put their families, friends, and citizenry in greater risk while appearing for the examination.
- n. FOR THAT apart from Article 21 related reasons, as also Article 14 reasons (being unequal treatment of candidates across examinations), the Respondent ought to postpone the FMGE scheduled for June 2021 on humanitarian grounds itself. It would be appropriate that the time schedule proposed for the

conduct of the examination as contained in the impugned Information Bulletin be struck down, and the FMG Examination June 2021 be postponed for the time being.

- o. FOR THAT recognising the threat posed by the second wave of the pandemic, the Medical Education Division of the Ministry of Health and Family Welfare had decided and informed the Respondent No.1 to postpone the NEET-PG 2021 exam. Similarly, the Government of India has decided to cancel the Class XII Standard Board Examinations considering the health and safety of lakhs of students across the country.
- p. FOR THAT in light of the ongoing pandemic various other examinations, internal assessments, entrance and qualifying tests, and recruitment examinations have either been postpone or cancelled. This includes the Joint Entrance Examination - Advance 2021, NEET – UG 2021, the Common Law Admission Test – 2021, recruitment tests conducted by Union Public Service Commission, and various state departments.
- q. FOR THAT conducting FMGE screening test while simultaneously cancelling/postponing other examinations is wholly arbitrary and unreasonable. It is settled law that arbitrariness is antithetical to equality, and it is this fundamental right to life and to equality that the Petitioner seeks to espouse, on behalf of its members.
- r. FOR THAT the actions of the Respondents puts the Right to life and Right to freedom of profession in a cross-fire, wherein the members of the Petitioner Association have to put one of the rights at risk in order to attempt to exercise the other.
- s. FOR THAT the Respondents have also failed to consider and notify provisions for candidates who may have applied but may not be able to appear for the FMG Examination June 2021 in as much as Section 2.18 and Section 3 of the Information Bulletin states that the exorbitant examination fee (Rs 7,080/-) shall neither be refunded nor carried forward to any future exams.

- t. FOR THAT while the Respondent has made a bona fide attempt to allow candidates with symptoms of Covid-19, but not diagnosed positive, to appear for the examination in Isolation Labs (**Section 6.11 of the Information Bulletin**). However, this further aggravates the risk for the remaining candidates, invigilators, and other persons involved in conduct of the examination to contract the Covid-19 virus.
 - u. FOR THAT as per Section 6.20 of the Information bulletin the Respondents shall undertake capturing of Finger Biometrics of the candidates on the day of examination which also creates the possibility of transmission of Covid-19 virus through the device that will be used to capture the biometrics.
 - v. FOR THAT due to the second wave which was at its peak hardly one month prior to scheduled date of examination, many eligible candidates have not had the opportunity to prepare sufficiently for the examination.
 - w. Other such grounds as the Petitioner craves to raise at the time of hearing.
7. That the Petitioner craves the liberty to add/amend/alter grounds in the present Petition. The annexures accompanying the present Petition are true copies/typed copies of their respective originals.
 8. That no other similar Petition has been filed by the Petitioners before any court/ quasi-judicial authority. The Petitioner has otherwise no other alternative efficacious remedy under the circumstances except to file the present Petition. The Respondents are located within the territorial jurisdiction of this Hon'ble Court, and have submitted to the jurisdiction of the Courts at New Delhi. Hence the present Petition is maintainable.

PRAYER

In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue an Appropriate Writ, Order or Direction, in the nature of a Writ of Mandamus, under Article 226 of the Constitution setting aside the time schedule for conduct of the June 2021 FMGE as contained in the Notice dated 15.04.2021 and the Information Bulletin dated 16.04.2021, titled 'Foreign Medical Graduate Exam Screening Test Information Bulletin December 2020 Session,' published by the NBE/ Respondent No. 01 and all consequences thereof;
- b) Issue an appropriate Writ, Order or Direction, in the mature of a Writ of Mandamus, under Article 226 of the Constitution of India, directing the Respondent No.1 to conduct the examination at a time conducive for such examination, but no earlier than six (6) weeks from the date when the examination was originally scheduled.
- c) pass such further order(s) as may be deemed fit and proper in facts and circumstances of the present case, in the interest of justice.

PETITIONER

THROUGH


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NEW DELHI