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

% *Judgment Delivered on: 07.07.2025*

\+ W.P.(C) 384/2025 & CM APPL. 1827/2025, 4425/2025, 16730/2025

DR AASTHA RAJ .....Petitioner

Through: Mr. Apoorv Kurup, Sr. Adv. with Ms. Priya Mittal and Ms. Nidhi Mittal, Advs.

versus

NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES .....Respondent

Through: Mr. Sunil J. Mathews, Ms. Jyoti Chib and Ms. Yashika Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The petitioner in the present petition has assailed the impugned order dated 29.10.2024 whereby the petitioner has been communicated that the Examination Ethics Committee of National Board of Examinations in Medical Sciences (NBEMS), after thorough investigation and careful consideration of evidences available on record; response to the show cause notice and applicable UMC guidelines has found the petitioner in gross violation of the examination ethics and UMC guidelines set forth by NBEMS. Accordingly, penalty of cancellation of petitioner's candidature for NBEMS Diploma Final Examination of June 2024 and further debarring the petitioner from appearing in any NBEMS Examination for two years i.e. 04 sessions of biannual exams and 02 sessions of annual exams, was imposed on the petitioner.

2. The case set out in the present petition is that the petitioner is a qualified MBBS doctor, who graduated from Lady Hardinge Medical College and Hospital, New Delhi in her first attempt and secured an All India Rank of 8,720 in the NEET PG Examination and subsequently joined the NBEMS Diploma Program in the Department of Radio Diagnosis.

3. The petitioner appeared for the NBEMS Diploma in Radio Diagnosis Final Theory Examination on 14th June, 2024 at Visakhapatnam, Andhra Pradesh. She had opted for the aforesaid examination centre as her in-laws are residing in Vishakhapatnam. The examination was to be held on 14th to 16th June, 2024. The exam time was 02:00 p.m. to 05:00 p.m. whereas reporting time was 12:00 p.m. to 01:30 p.m. The petitioner appeared for Paper I on 14th June, 2024 at Vishakhapatnam Centre under CCTV surveillance.

4. Upon reaching her allotted desk, the petitioner found the computer to be non-functional and raised her hand for assistance, and two invigilators (one male and one female) approached her speaking in Telugu. The petitioner unable to understand their language politely requested for communication in English or Hindi. She explained the issue with the computer, and after an unsuccessful attempt to fix it, she was shifted to another computer.

5. During the examination on 14.06.2024, the petitioner faced significant discomfort due to inappropriate actions and behaviour of the invigilators. These included constant disturbances, repeated instructions to stop writing, intrusive physical searches including physical frisking, documents verification etc., all done under CCTV Surveillance. No prohibited items

were found in petitioner's possession. It is alleged that these actions were resorted to, possibly taking offence of petitioner's inability to understand Telugu and her simple request for communication in Hindi or English.

6. On the second day on 15.06.2024, the petitioner faced similar issues. The same computer desk/table which had been allotted to her on 14.06.2024 was assigned again to her. The computer was not functioning properly and the petitioner raised her hand to inform the invigilator that the computer display was turning blue and was not showing the question paper. The invigilator tapped the CPU, Key Board, Mouse and made the computer functional, however, after sometime the same invigilator returned and shifted the petitioner to another computer due to non-functioning of the computer.

7. By the end of exam, the petitioner was the last candidate in the room along with male invigilator as all other candidates and other female staff had left. The invigilator stood behind the petitioner, engaged her in personal conversation asking inappropriate questions about her background, her choice of Vishakhapatnam as the main centre and how she planned to return in the rain.

8. However, on 16.06.2024, unlike the previous dates, the petitioner did not experience any technical malfunctions and the examination proceeded without any disruptions.

9. Following the incidents on 14th and 15th June, 2024, the petitioner submitted a written complaint through the NBEMS Communication Web Portal on 25th June, 2024 detailing the harassment and disruption she faced including loss of time due to non-functional equipment and inappropriate

conduct of the invigilators. However, no action was taken by the respondent nor petitioner received any reply to the said complaint.

10. However, the petitioner had received an email dated 06.07.2024 from the official NBEMS email address whereby the petitioner was explicitly informed that her query/complaint had not been answered within 10 days and she may escalate her complaint to the head of the concerned department.

11. Despite multiple follow-ups, the complaint of the petitioner remained unanswered. On 06.09.2024, the petitioner received a show cause notice *via* email from the respondent accusing her of unfair means and asking her to submit a reply by 10.09.2024. The show cause notice dated 06.09.2024 mentions that "*It has been reported by NBEMS appointed appraiser that you are* ***found in possession of chits under the answer booklet*** *during the conduct of Paper-I of NBEMS Diploma June 2024 Theory Examination in the specialty of Radio Diagnosis held on 14th June 2024. When questioned by the invigilator and during the frisking done by the security guard, you are reported to have swallowed the chits"…….."Further, it has been reported by the NBEMS appointed appraiser on 15th June 2024, you have asked the names of the invigilators and appointed appraiser in the examination and your behaviour was apparently threatening*".

12. The petitioner submitted her reply dated 09.09.2024 and refuted all the allegations. On 29.10.2024, the petitioner received impugned letter/order imposing severe penalties including cancellation of her candidature for June 2024 Examination and a two years debarment from appearing in any NBEMS Examination.

13. The respondent filed its counter-affidavit *inter alia* alleging as under:

"11. That as far as the contents of the Para. No. 2.7 & 2.8 of the Writ Petition are concerned, the contents of the same are vehemently denied. ***It is submitted that the Petitioner was assigned System No. C021 and reached the designated desk at approximately 1:24 PM. At around 1:50 PM, the Petitioner informed one of the female appraisers that the assigned system was non-functional. In response, two female appraisers attempted to address the issue. Subsequently, a male appraiser approached the system, and the issue was resolved within a few seconds.*** *It is highlighted that the male appraiser stood near the Petitioner for only a few seconds, during which no communication between the male appraiser and the Petitioner was observed. Furthermore, the entire incident occurred between 1:50 PM and 1:54 PM, prior to the commencement of the examination at 2:00 PM. Therefore, the technical issue did not impact the Petitioner's examination time.*

It is pertinent to mention that the Petitioner continued to write her examination on the assigned computer system for the entirety of one hour, from 2:00PM to 3:00PM, without any interference or disturbance from the appraisers. The appraisers approached the Petitioner solely for the purpose of completing examination formalities, including obtaining the invigilator's signature and verifying the candidate's identity. These formalities were concluded within a matter of seconds and did not disrupt the Petitioner's examination. The same can be substantiated through the CCTV recording being produced before the Hon' ble High Court.

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13.That as far as the contents of Para. No.2.10-2.17 of the writ petition are concerned, the contents of the same are vehemently denied. It is submitted that approximately 30 minutes prior to the conclusion of the examination, the appraisers present in the examination hall developed a suspicion that the petitioner might be engaging in unfair practices. Consequently, the appraisers heightened their vigilance and closely monitored the petitioner. As part of this process, the Petitioner's belongings were duly inspected due to the suspicion raised. However, these actions were carried out discreetly and in a manner that won't cause disturbance to the

petitioner, who continued to write her examination without interruption, or to any other candidate in the examination hall.

It is highlighted that the appraiser reported the petitioner to be engaging in unfair practices by allegedly being in possession of chits hidden beneath the answer booklet. Upon confrontation, the petitioner was reported to have swallowed the said chits. Following this incident, the petitioner was promptly checked by a female security guard a process which lasted less than one minute, after which she was permitted to return to her assigned desk. Subsequently, the male appraiser and the observer were called to assess the situation. In accordance with the procedure, the petitioner was asked to provide a written statement regarding the incident. After completing this formality, the petitioner was allowed to resume writing her examination.

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24. That as far as the contents of Para no.2.40-2.46 of the writ petition are concerned, the contents of the same are denied to the extent that they do not form the part of the record. It is submitted that NBEMS appointed appraiser reported that during the conduct of Paper –I of the NBEMS Diploma June 2024 theory examination in the specialty of Radio Diagnosis, held on 14.06.2024, the petitioner was found in possession of chits concealed under her answer booklet. It was further reported that upon being confronted, the petitioner swallowed the chits. In her written statement taken on the day of the examination, while the petitioner denied using the chits for cheating, the statements provided by the exam functionaries substantiate that the petitioner had engaged in unfair means during the examination.

Additionally, it was reported by the NBEMS appointed appraiser that on 15.06.2024, the petitioner along with an acquaintance, approached and sought the names of the invigilators and the appraiser involved in the examination. The petitioner's behaviour during this interaction was reportedly intimidating.

It is submitted that as per the NBEMS Unfair Means Guidelines explicitly stated in the information bulleting for the NBEMS

Diploma June 2024 examination, the following acts constitute unfair means:

a. Possession of any note-book(s), notes, chits, or other unauthorized material related to the subject of the examination paper.

b. Swallowing, running away with, or destroying any note, or material found with the candidate.

c. Having anything written on clothing, body, desks, tables, or instruments such as set squares, protractors, blotting paper, or question papers

d. Threatening any officials involved in the conduct of the examination or other candidates.

e. Attempting, directly or indirectly, to influence or pressurize an examiner, official, or staff connected with the examination, whether at the Board, the office of the technology partner, or their residences.

Based on these guidelines, an Unfair Means Case (UMC) was registered against the petitioner. A show-cause notice was issued to her on 06.09.2024, providing her an opportunity to submit a written explanation by 10.09.2024 as to why appropriate action, in accordance with the NBEMS Unfair Means Guidelines, should not be taken against her. The petitioner duly submitted her response via email dated 09.09.2024. The matter was subsequently placed before the NBEMS Examination Ethics Committee (EEC) during its meeting held on 17.09.2024. After conducting a thorough investigation and reviewing the available evidence, the petitioner's response to the show-cause notice, and the applicable Unfair Means Guidelines, the EEC found the petitioner in gross violation of the examination ethics and the UMC guidelines established by NBEMS.

In light of these findings, the EEC decided to impose the following penalties on the petitioner:

A. Cancellation of her candidature for the NBEMS Diploma Final Examination, June 2024.

B. Debarring her from appearing in any NBEMS examination for a period of two years, encompassing four sessions of biannual examinations and two sessions of annual examinations.

The decision of the EEC was duly communicated to the petitioner via respondent's letter dated 29.10.204. This submission demonstrates that the respondent has acted in accordance with the principles of natural justice and the prescribed examination guidelines to maintain the sanctity of the examination process. A copy of the Appraiser Report dtd. 16.06.2024 is marked and annexed herewith as Annexure R-3."

(emphasis supplied)

14. When the petition was first taken up for consideration on 16.01.2025, this Court while issuing notice in the petition had directed the respondent/NBEMS to produce the entire record including the CCTV footage for perusal of the Court. The CCTV footage was viewed by the Court on 30.01.2025 in the presence of the learned counsel for the parties. After viewing the CCTV footage, this Court recorded that the CCTV footage on the face of it, does not show chit being swallowed by the petitioner. *Vide* order dated 30.01.2025, the Court also stayed the operation of the impugned order till the disposal of the writ petition.

15. Thereafter, an application being CM APPL. 16730/2025 was filed by the petitioner alleging that despite the stay order, the respondent/NBEMS had notified the schedule for "Diploma Final Practical Examination, December 2024" in which the name of the petitioner has not been mentioned. Accordingly, direction was sought to the respondent/NBEMS to

issue admit card to the petitioner for practical examination and make necessary arrangement to allow the petitioner to appear in the same.

16. In the said application, this Court *vide* order dated 25.03.2025 directed the respondent to conduct practical examination for the petitioner at Delhi Centre.

17. For the sake of completeness, it is noted that the respondent had preferred an intra court appeal being LPA no. 262/2025 against the aforesaid order dated 25.03.2025, however, the same was disposed of by the Division Bench with an observation that the grounds and pleas which may be pleaded shall be considered by the learned Single Judge at the time of final hearing of the writ petition.

18. Mr. Apoorv Kurup, learned Senior Counsel for the petitioner, submits that there is complete non-compliance of the principles of natural justice. Elaborating on his submission, he contends that since undisputedly the entire examination was conducted under CCTV surveillance, the CCTV footage was the best evidence, therefore, the same ought to have been provided to the petitioner. He submits that despite petitioner's request to have access to the relevant CCTV footage to substantiate her claim of mistreatment and to demonstrate that the allegations of unfair means are baseless, CCTV footage was not provided to the petitioner.

19. He invites attention of the Court to the letter dated 28.10.2024, written by the petitioner to the Additional Director (Medical) of respondent/NBEMS wherein it has been urged by the petitioner that her case may be considered by the Exam Ethical Committee in light of the CCTV footage of the

examination. The said letter was sent by speed post on 28.10.2024, as borne out from the postal receipts filed with the petition.

20. He draws attention of the Court to the show cause notice dated 06.09.2024 to contend that in the show cause notice there is reference to the written statement of the petitioner, as well as, some statements of exam functionaries besides a report of NBEMS appointed appraiser, however, copies of these documents were not supplied to the petitioner. He submits that these documents have also been referred to and relied upon in the impugned order dated 29.10.2024, therefore, non-supply of relied upon documents tantamount to non-compliance of principles of natural justice.

21. Inviting attention to Court's order dated 30.01.2025, Mr. Kurup submits that this Court had viewed the CCTV footage given by the respondent, in the presence of the counsel for the parties and the Court patently found that the CCTV footage does not show any chit being swallowed by the petitioner. He, therefore, contends that it is a case of no evidence and the impugned order suffers from perversity.

22. He refers to the statement/declaration of the petitioner filed along with the counter-affidavit to contend that the petitioner has categorically denied having done any cheating.

23. He submits that the alleged incident of swallowing of chit is of 14th June, 2024 whereas the petitioner was allowed to write her exam even on 15th and 16th June 2024 as well, which goes to show that the petitioner did not indulge in any unfair means and the complaint is an afterthought.

24. He places reliance on the decision of this Court in ***Mirza Saba Alam Baig vs. University of Delhi & Ors., 2003 SCC OnLine Del 823***, as well as,

on the following two decisions of the Allahabad High Court in - (i) ***Km. Sushma Raghav & Ors. vs. The Secretary (Incharge) the Board of High School and Intermediate Education & Ors., 1995 SCC OnLine All 522***, and (ii) ***Jainendra Kumar Shukla vs. University of Allahabad through its Registrar & Ors., 2008 SCC OnLine All 123***.

25. *Per contra*, Mr. Sunil J. Mathews, learned counsel for the respondent/NBEMS submits that the petitioner was afforded an opportunity of being heard as show cause notice was issued to her on 06.09.2024, to which the petitioner had also submitted her reply *vide* email dated 09.09.2024, therefore, the principles of natural justice stood complied with.

26. He submits that after conducting thorough investigation, reviewing available evidence, the petitioner's response to the show cause notice, as well as, applicable unfair means guidelines, the Examination Ethics Committee found the petitioner to be in gross violation of the examination ethics and UMC guidelines of the respondent/NBEMS, therefore, the impugned order does not warrant any interference.

27. He further submits that on 14.06.2024, the petitioner was relocated around 03:22 p.m. and was made to sit near a pillar because of which she is not visible through any of the cameras as the pillar obstructed the view.

28. I have given my thoughtful consideration to the rival contentions of the learned counsel appearing for the parties.

29. This Court is conscious of the limited scope of the jurisdiction under Article 226 of the Constitution of India. Judicial review is not an appeal from a decision but only a review of the manner in which the decision has been made. Normally, the Court cannot interfere with the findings of fact

arrived at by disciplinary authority except in the case of *mala fides* or perversities i.e. where there is no evidence to support a finding or where the finding is such that anyone acting reasonably or with objectivity could not have arrived at the same or where reasonable opportunity has not been given to a person to defend himself or it if is a case where there has been non-application of mind on part of the disciplinary authority or if the punishment imposed is shocking to the conscience of the Court.[1]

30. The brief description of unfair means in 'proforma 6' *vide* which the appraiser had reported to the respondent, mentions that the petitioner was found copying from written slips and when she was caught red handed, she chewed and swallowed the slips. Then it has been stated that the slips were placed under the answer booklet, and when questioned by the invigilator (female), the petitioner took and put the slips into her chest and later chewed and swallowed when the female security guard was asked to remove from her.

31. It is not in dispute that the examination was conducted under CCTV surveillance, therefore, the CCTV footage was the best evidence to establish the allegations that the petitioner was using unfair means and that she swallowed the chits when confronted by the invigilator. The CCTV footage also assumes relevance, as the petitioner had taken a categorical stand in her statement that she had not done any cheating, and further she had also made a written complaint through the NBEMS Web Portal on 25th June 2024 detailing the harassment and disruption she faced including loss of time due to non-functional equipment and inappropriate conduct of the invigilators.

[1] Rajeev Kumar Bansal v. Union of India, 2012(190) DLT 356

32. Intriguingly, neither copy of the CCTV footage was given to the petitioner alongwith show cause notice nor the Examination Ethics Committee seems to have viewed the CCTV footage before recording an adverse finding against the petitioner, despite petitioner having written a letter dated 28.10.2024 to the Additional Director (Medical) of respondent/NBEMS urging that her case may be considered by the Exam Ethics Committee in light of the CCTV footage of the examination.

33. On a query posed by the Court to Mr. Mathews, he fairly states that in the CCTV footage, the petitioner is not seen swallowing the chits. He, however, contends that the petitioner was relocated around 03:22 p.m. and was made to sit near a pillar because of which she is not visible through any of the cameras as the pillar obstructed the view.

34. As noted above, the CCTV footage was viewed by this Court on 30.01.2025 at the stage of passing an interim order, and after viewing the same the Court observed as under:

> ***"7. The Court has viewed the CCTV Footage in presence of the learned counsel for the parties. The CCTV footage on the face of it, does not show any chit being swallowed by the petitioner.*** *The CCTV Footage also shows that there were certain examiners / appraisers surroundings the petitioners at various points of time….."*
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> (emphasis supplied)

35. The judgment was reserved by this Court on 31.05.2025. The CCTV footage was not available on the Court's record, therefore, the matter was listed again for clarification on 02.07.2025. The CCTV footage of 14.06.2024 was produced by the learned counsel for the respondent on

02.07.2025, and it was viewed again in open court in the presence of the learned counsel for the parties. The CCTV footage was also taken on record.

36. The Court undertook the exercise of viewing the CCTV footage only for the limited purpose of ascertaining as to whether it is a case of no evidence or is it a case where anyone acting reasonably could have arrived at impugned decision, on the basis of available evidence which has been brought on record. Ideally the Examination Ethics Committee should have viewed and examined the CCTV footage before passing the impugned decision since serious allegations of using of unfair means and swallowing of chits have been made against the petitioner, however, it seems that the said course was not adopted.

37. The CCTV footage shows that the petitioner's seat is clearly visible in the footage recorded from Cam-05 on 14.06.2024, and the view is not obstructed by any pillar as contended by Mr. Mathews. Further, the said CCTV footage from timestamp 16.33 to 16.41, which is indubitably the relevant period, makes it is evident that the petitioner is not seen putting the chits into her chest and later chewing and swallowing the same, as alleged. The respondent's counsel has also not been able to pin-point out any footage wherefrom it could be seen that the petitioner, when confronted, chewed and swallowed the chits.

38. The allegations in the report of the appraiser in *proforma 6* and the finding of the Examination Ethics Committee, are thus, not supported by any evidence. Clearly, it is a case of no evidence. At this stage, reference to the decision in ***Km. Sushma Raghav*** (supra) may be apposite. In the said case, the High Court of Allahabad while dealing with the allegations of unfair

means under somewhat similar circumstances observed that if the conclusion in regard to imposition of penalty for the use of unfair means is established to be based on mere suspicion or based on no evidence, the interference by the Court may be called for. The relevant excerpt from the decision reads thus:

> *"10. However, a stigma of using unfair means is of a far reaching consequences and visits the examinee with serious evil consequences. While it should not be lost sight of that in matters of enforcement of discipline this Court must be very slow in interference as the authorities incharge of education whose duty it is to conduct examination fairly and properly know best how to deal with a particular situation yet* ***it has to be kept in mind that if the conclusion in regard to imposition of penalty for the use of unfair means is established to be based on mere suspicion or based on no evidence or on conclusion which no reasonable person could have reached or is vitiated on account of denial of principle of natural justice or any other similar ground, interference by this Court may be called for****."*
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> (emphasis supplied)

39. There is another facet to the controversy. The stigma of indulging in unfair means can adversely affect the career of petitioner and thus, has serious civil consequences, therefore, the respondent ought to have the afforded a meaningful opportunity to the petitioner by furnishing all the documents including the written statement of the petitioner, available statements of exam functionaries, report of the appraiser, CCTV footage etc. which are either referred to and relied upon in the show cause notice, as well as, in the impugned order dated 29.10.204, or are otherwise relevant. It seems that the said documents were not supplied to the petitioner alongwith the show cause notice. So far as statements of exam functionaries are

concerned, the same have not been placed on record even along with the counter-affidavit. Therefore, there is a non-compliance of principles of natural justice. Reference in this regard may be had to the decision of Division Bench of this Court in ***Poonam Jain vs. Union of India & Ors***., ***2017 SCC OnLine Del 8872***, wherein it was held as under:

> *"1.* ***The short point involved in these petitions is that neither of the Petitioners has been furnished with the copies of the documents relied upon in the Show Cause Notice ('SCN') issued to them by the Respondents.*** *Both the petitioners seek copies of the documents and their statements referred to in the SCN to enable them to file a reply to the SCN.*
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> *xxxx xxxx xxxx*
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> *10. As regards the contention that a SCN is not required to be issued, it is obvious that the Department itself recognises the importance of complying with the rules of natural justice and has therefore rightly issued the SCN to the Petitioners, which has to be responded to by them.* ***Indeed, for an effective response, the Petitioners would be required not merely to be 'shown' the material relied upon in the SCN but with copies thereof. This would include their own statements, documents seized during the search and documents gathered from other sources including statements of bank accounts, relied upon against them to be provided copies thereof. Such a requirement inheres in the principles of natural justice and would be applicable even if the statute governing the proceedings does not specifically mandate it."***
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> (emphasis supplied)

40. Had it been only a case of non-supply of documents, this Court after setting aside the impugned order, could have relegated the parties to the stage of show cause notice with a direction to the respondent to pass a fresh order after furnishing relied-upon and other relevant documents to the petitioner.

41. However, in the present case this Court has clearly found that the findings of Examination Ethics Committee based on no evidence are perverse, which by itself is a ground warranting interference with the impugned order.

42. In the result, the present petition is allowed and the impugned order dated 29.10.2024 cancelling the candidature of the petitioner for NBEMS Diploma Final Examination June 2024 and her further debarment from appearing in any NBEMS Examination for two years, is quashed and set aside with further direction to the respondent to declare the result of petitioner for the NBEMS Diploma Examination June 2024 Programme, both for theory as well as practical, within two weeks from today.

43. The petition along with other pending applications, if any, is disposed of in the above terms.

VIKAS MAHAJAN, J

JULY 07, 2025/dss