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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1010 WRIT PETITION NO.10048 OF 2022

MISS. SANIKA NANDLAL SHINDE
VERSUS
THE UNION OF INDIA, THROUGH THE SECRETARY AND
OTHERS

Mr Mukul S. Kulkarni, Advocate for petitioner;
Mr A. T. Jadhavar, Standing Counsel for respondent Nos.1 and 2
Mr P. K. Lakhotiya, A.G.P. for respondent No.3

AND
WRIT PETITION NO.9724 OF 2022

ASHWANI MOHANAN ACHARI, THROUGH HER FATHER
MOHANAN PAPPU ACHARI
VERSUS
THE UNION OF INDIA, THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

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Mr Mukul S. Kulkarni, Advocate h/f Mr Vinod P. Patil, Advocate
for petitioner;
Mr A. T. Jadhavar a/w Mr D. B. Gaikwad, Standing Counsel for
respondent No.1
Mr P. K. Lakhotiya, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 12th October, 2022

PER COURT:

WRIT PETITION NO.10048/2022

1. The petitioner has put forth prayer clauses (A), (B), (C),
(D), (E) and (F), which read as under :-

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“A. The Hon’ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, direction or order in the nature of writ and thereby quash and set aside the result sheet printed by the Petitioner from the website of the Respondent No.2 on 17.09.2022 at 11.43 AM [Annexure K] being contrary to the result of the Petitioner declared on 07.09.2022 [Annexure I] and may further declare that the Petitioner has secured 665 marks in NEET 2022 examination and further that the All India Rank of the Petitioner is 1992 and her OBC Ranking is 68 and issue appropriate orders for the said purpose;

B. The Hon’ble High Court may be pleased to issue a writ, direction or order in the nature of writ and thereby direct the Respondent Nos.1 to 3 to permit the Petitioner to participate in the admission process for medical courses for the academic year 2022 – 2023 on the basis of her mark sheet printed on 07.09.2022 having scored 665 marks and All India Rank of 1992 and her OBC Ranking is 68 and further to grant her admission as per merit on the basis of the said score and issue appropriate orders for the said purpose;

C. The Hon’ble High Court may be pleased to issue a writ, order or direction in the nature of Writ and thereby direct a detailed fact finding inquiry through a Special Investigation Team in respect of change in marks and rankings of the Petitioner and also in respect of overall conduct of the entire admission process and issue appropriate orders for the said purpose;

D. Pending hearing and final disposal of the present Writ Petition, the Hon’ble High Court may be pleased to direct the Respondent No. 2 to produce the Original and also the Carbon copy of the OMR Sheet of the Petitioner on the basis of which the result/s of the Petitioner were declared and issue appropriate orders for the said purpose;

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E. Pending hearing and final disposal of the present Writ Petition, the Hon'ble High Court may be pleased to direct the Respondent Nos.1 to 3 to permit the Petitioner to participate in the admission process for medical courses for the year 2022-2023 on the basis of her mark sheet printed on 07.09.2022 having scored 665 marks and All India Rank of 1992 and her OBC Ranking is 68 and further to grant her admission as per merit on the basis of the said score and issue appropriate orders for the said purpose;

F. Pending hearing and final disposal of the present Writ Petition, the Hon'ble High Court may be pleased to direct a detailed fact finding inquiry through a Special Investigation Team in respect of change in marks and rankings of the Petitioner and also in respect of overall conduct of the entire admission process and issue appropriate orders for the said purchase;”

2. Considering the controversy involved, we had directed the Standing Counsel appearing for the Union of India on 30/09/2022, to place before us the original, as well as the carbon copy of the OMR Sheet, question paper as well as the official results/marks memo.

3. Today, when the matter was called out after lunch recess, the learned Advocate for the Union of India places before us an affidavit-in-reply dated 09/10/2022, filed by Shri Binod Kumar Sahu, Director, National Testing Agency. It has been specifically

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set out in the said reply that, the petitioner can compare page 218 of the petition paper book, which is the answer sheet of the petitioner, forwarded to her as a part of the process, after completion of the examination and the declaration of the results. So also, the original answer sheet as well as the office copy, which is a carbon copy, is placed before the Court.

4. We granted a long pass over to the petitioner to have a look at her answer sheet, the carbon copy and page 218 of the petition paper book. On perusal of the same, the petitioner, who is present in the Court, instructs the learned Advocate to state that Section 1, which is the left side part adjacent to the perforation of the answer sheet, is identical, meaning thereby, the original left portion, the left carbon sheet, as well as the left side portion of page 218, are matching. The only grievance is, that the Invigilator, whose sign appears on the original sheet and also on the carbon sheet, though identical, he has signed on the carbon sheet and has put the time, on a different side. Nevertheless, we do not find that this turns upon the theory of fabrication.

5. Insofar as the actual answer sheet, meaning thereby, the right side portion adjacent to the perforation, which is known as

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Section 2, matches with the Section 2 of the carbon copy, as well as page 218 of the petition paper book. We ourselves have painstakingly gone through each circle, which is colour marked with a black ball point pen and we find that, as the questions and the responses carry specific numbers, all the answers on the original, tally with the carbon office copy, as well as page 218 of the petition paper book, which was delivered to the petitioner. The petitioner herself has verified the answers and states that, all these three are matching and there is no change in the answers. The thumb impression of the petitioner is also admitted.

6. The grievance that the petitioner has raised is, as regards the first result sheet. She noticed online on 07/09/2022 (at page 219 of the petition paper book), which is the date of declaration of the results, to be different from the second printout taken by her on 17/09/2022, which is at page 226 of the petition paper book. We find a discrepancy between the two prints-out. There is a serious discrepancy with regard to the QR Code that appears on the authenticated results printout, which is admitted by respondent No.2. The title appearing on the results sheet, which is called as the 'Score Card', is also slightly different. As such, there appears to be a slight difference between the authenticated printout of the

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Score Card and the printout of the Score Card purportedly taken by the petitioner on 07/09/2022. Surprisingly, the time at which the print out has been taken, does not appear in the sheet produced by the petitioner as being the first printout obtained by her, which is at page 219 of the petition paper book.

7. The Hon'ble Supreme Court dealt with a similar issue in Writ Petition (Civil) No.1286/2021, filed by Prabhnoor Singh and others Vs National Testing Agency and others, which was decided by an order dated 10/01/2022. After considering the controversy, the Hon'ble Supreme Court concluded in paragraph Nos.7 to 11, as under :-

“7. On 15 October 2021, in terms of the above guidelines, all the candidates were informed of the display of their OMR answer sheets and their recorded responses together with the provisional answer key. On 13 October 2021, the first respondent forwarded a sealed hard disk of the OMR answer key, recorded responses along with provisional answer key to the National Informatics Centre (NIC) for uploading on the website of the first respondent. The website of the first respondent is hosted by NIC. Accordingly, the OMR answer key, recorded responses and provisional answer key were uploaded by NIC on the official website of the first respondent at 11.44 am on 15 October 2021. Besides this, NIC forwarded the images of the OMR sheets to the email IDs of candidates including the petitioners.

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8. Hence, it has been stated that there is only one original OMR answer sheet per candidate on the record of the first respondent and there is no tampering in the scanned images which were displayed on the website from 15 to 17 October 2021. Moreover, it has also been stated that there was no difference in the scanned images which were once again displayed on the website of the first respondent between 9 and 14 November 2021. No two test booklets and OMR sheets bear the same number. The OMR answer sheets of the petitioners are stated to have their original writing along with relevant details including signatures in two places as well as signatures of the Invigilators.

9. Five of the six petitioners along with their parents verified the original OMR sheets in the office of the first respondent on 8 November 2021. The respondents have submitted that the copy of the OMR sheet alleged to have been provided by the first respondent, which has been appended at Annexure P-4 to the petition, and the screen shot are fabricated.

10. For the present purpose, it is not necessary to enquire into the submissions of the first respondent that the OMR sheet annexed by the petitioners is fabricated by the petitioners. It is not in dispute that the original OMR sheets of five of the six petitioners have been duly verified. They bear the signatures of the candidates. In this view of the matter and having due regard to the contents of the counter affidavit, it cannot prima facie be suggested that there was any act of tampering or manipulation in the back office of the National Testing Agency. The examination has been attempted by as many as 15.44 lakhs candidates, out of whom six have come to this Court. Of them, inspection of the original was permitted to be taken by all of them and the originals were inspected by five of the candidates on 8 November to 2021.

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11. In the above view of the matter, we decline to entertain the Petition under Article 32 of the Constitution. The Petition shall accordingly stand dismissed.”

8. In the case before us, the petitioner, who is present in the Court, has honestly stated that the original answer sheet, the office copy and the one which was supplied to her at page 218 of the petition paper book, are the same and she admits the answers that she has set out in the answer sheet. The authenticated Score Card squarely matches with the answers, which are admitted by the petitioner. As such, in these circumstances, this petition cannot be entertained and the same is dismissed.

9. Insofar as the grievance of the petitioner, as to how did she get a printout of an incorrect Score Card on 07/09/2022, which has a different QR Code as compared to the authenticated answer sheet, we leave it open to the petitioner, to lodge a specific detailed complaint to respondent No.2 / National Testing Agency. Respondent No.2, would then refer the matter to the Cyber Crime Cell for investigation, since the said Cell has the technology and the expertise to identify, as to whether there was any foul played by hacking the website of respondent No.2, for creating fictitious results of candidates, knowing the date of the pronouncement of

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the results on 07/09/2022. In the event, the said Cell identifies the perpetrators of such offences, it would be at liberty to lodge a specific First Information Report, by following the procedure laid down in law, in order to ensure that the persons guilty of such conduct, are punished.

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10. Insofar this writ petition is concerned, the original answer sheet, as well as the office copy (carbon copy) is shown to the petitioner. On comparing the entire original and office copy of the answer sheet, there is no discrepancy at all insofar as the use of the black ball point pen and the entry of the mother's name, father's name, signature of the candidate with her name and the time and the signature of the Invigilator with time. Section 1 and Section 2 on the original, as well as on the office copy, are matching. The petitioner admits that, both are matching and they reflect the exact answers that the petitioner had offered. However, the copy of the answer sheet that the petitioner received purportedly through respondent No.5 / National Testing Agency, does not match with the original and office copy of the OMR sheet, is her contention.

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11. In view of the above and in the light of the view taken by the Hon'ble Supreme Court, this petition also stands dismissed, with liberty to the petitioner, to lodge a specific complaint with respondent No.5 (respondent No.2 / the National Testing Agency in Writ Petition No.10048/2022). As like, the directions set out here above, respondent No.5 would also deal with such a complaint, similarly.

12. Before we part with these matters, we need to respond to the serious grievance voiced by the petitioners that, after the answer sheet is complete and the exams are over, the original copy, as well as the office copy go back to respondent / National Testing Agency. The petitioners do not have any such copy as a proof of the answers that have been offered. It is, therefore, suggested that one such carbon copy, called as the 'Students Copy' be generated, so as to be handed over to the examinee students. We would call upon respondent /National Testing Agency, to consider the said suggestion in an attempt to maintain transparency and if it appeals to the said organization, they would be at liberty to introduce such a 'Students Copy'.

(11)

13. The originals as well as the copy of the answer sheets of both the petitioners are returned to the learned Advocate representing respondent / National Testing Agency, in the Court.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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