



2024: DHC: 3865



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

+ W.P.(C) 5633/2024

DR SRI KIRUBA NANDINI M Petitioner
Through: Mr. Vishal Gera and Mr.
Abhiraj Verma, Advs

versus

NATIONAL BOARD OF EXAMINATION & ANR.

..... Respondents

Through: Mr. Kirtiman Singh, Mr. Waize
Ali Noor, Mr. Varun Rajawat, Mr. Kartik
Baijal, Ms. Shreya V. Mehra, Ms. Vidhi
Jain, Mr. Aryan Agrawal and Mr. Varun P.
Singh, Advs. for NBEMS

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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10.05.2024

Issue in controversy

1. The court is required to examine, in the present case, whether the National Board of Examination in Medical Sciences (NBEMS) was justified in cancelling the candidature of the petitioner for her DNB¹ program *vide* letter dated 12/15 March 2024, on the ground that the petitioner remained absent from DNB training, without prior approval of the NBEMS, for 297 days.

Applicable Leave Rules



2. The applicable Leave Rules for DNB trainees, as framed by the NBEMS, read thus:

“1. DNB/FNB Trainees are entitled to avail leave during the course of DNB/FNB training as per the Leave Rules prescribed by NBE.

2. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duty off/ Gazetted holidays as per hospital/institute calendar/policy. This leave shall be processed at the institutional level.

3. Any kind of study leave is not permissible to DNB/FNB Trainees.

4. Under normal circumstances leave of one year should not be carried forward to the next year. However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE.

5. Unauthorized absence from DNB/FNB training for more than 7 days *may* lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted.

6. Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB /FNB training. The training institute has to forward such requests to NBE along with the leave records of the candidate since his/her joining and supporting documents (if any) through the Head of the Institute with their recommendation/comments. NBE shall consider such requests on merit provided the seat is not carried over and compromise with training of existing trainees in the Department.

7. Any extension of DNB/FNB training beyond the scheduled completion date of training is permissible only under extraordinary circumstances with prior approval of NBE. Such extension is neither automatic nor shall be granted as a matter of routine.

8. DNB/FNB trainees are required to complete their training by a prescribed cutoff date (as per information bulletin of Exit exam) for being eligible to DNB/FNB Exit examination.

¹ Diplomate of National Board



9. The eligibility for DNB/FNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin.’

Facts

3. The petitioner completed her MBBS from Annapoorana Medical College and Hospital in 2018. Thereafter she appeared in the NEET for undertaking the DNB course. In the results announced in 2020, she scored 16445th rank. On the basis thereof, she was admitted to the DNB post-MBBS in Obstetrics and Gynaecology by the Respondent 1 – National Board of Examinations (NBE) *vide* registration letter dated 14 August 2020. She was to undergo training in the Apollo Hospital, Chennai.

4. In the third year of her training, the petitioner was diagnosed, in September 2022, as suffering from Acute Myeloid Leukemia M-2 Type (hereinafter “AML”). She had, therefore, to be subjected to intensive treatment which was commenced on 27 September 2022. Chemotherapeutic treatment of the petitioner started on 30 September 2022. It is averred, in the writ petition, that owing to the Covid-19 pandemic which was also prevalent at the time, her condition worsened. She had also to be placed on ventilator support. It was only on 15 November 2022 she was discharged from the hospital after having undergone 50 days continuous treatment.

5. On 10 January 2023, Dr. T. Raja, Director of the Medical Oncology in the Apollo Hospital, Chennai issued a certificate advising



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medical leave for the petitioner from 28 September 2022 till the time of completion of her treatment, further certifying that she was neither mentally or physically in a condition to complete the course. It was also stated in the certificate that one of the proposed plans of treatment was allogenic stem cell transplant which required 4-6 months, including treatment and recovery.

6. On 18 January 2023, the petitioner was again admitted to the Apollo Hospital where on 24 January 2023, she underwent allogenic stem cell transplant. She was discharged from the hospital on 14 February 2023 with advice for regular follow-up and restrictions on her physical activity given the treatment that had been undertaken on her body.

7. On 23 May 2023, Dr. Raja issued a Fitness Certificate to the petitioner in which it was certified that the petitioner was on intensive anti-cancer treatment since 27 September 2022 and that she had, for that purpose, also undergone allogenic stem cell transplant on 24 January 2023. It was certified that she was fit to rejoin work on 10 July 2023.

8. On 21 July 2023, the petitioner rejoined duties at the Apollo Hospital.

9. On 22 September 2022, the petitioner submitted her DNB thesis which was accepted by the NBEMS.



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10. On 3 October 2023, the Apollo Hospital wrote to the NBEMS, informing the NBEMS that the petitioner had been diagnosed with AML on 27 September 2022, for which she had been on continuous treatment; that she had undergone bone marrow transplant on 24 January 2023 and that she had taken 296 days of leave from 27 September 2022 to 20 July 2023. In the circumstances, it was also stated that the petitioner was extending her course from 19 August 2023, and that the course would be completed on 10 June 2024. The Apollo Hospital, therefore, requested the NBEMS to take a call on the petitioner's request for extension of her DNB training.

11. On 30 January 2024, the petitioner submitted a leave application for the period she had remained on leave.

12. On 11 February 2024, the petitioner apprised the NBEMS of her health condition and requested that she be permitted to extend her DNB training programme from 18 August 2023 to 10 June 2024.

13. On 22 February 2024, the NBEMS addressed the following communication to the Apollo Hospital with a copy marked to the petitioner:

"DO NOT REPLY <reg@natboard.edu.in> Thu, Feb 22,2024 at 10:40 AM

To: Umaselvi G <umaselvLg@apollohospitals.com>, MS MH Chennai <ms@apollohospitals.com>, medicaleducation <medicaleducation_cni@apollohospitals.com>
Cc: kn95 <kiruba.nandini95@gmail.com>

Respected Sir/Madam,

We are writing to express our serious concerns regarding the leave



of Dr. Sri Kiruba Nandini M from DNB POST MBBS training without prior approval from the National Board of Examinations in Medical Examinations (NBEMS).

As you are aware, the training of NBEMS trainees is governed by specific leave rules that require explicit prior approval from the NBEMS before availing any leave over and above the 30 days of leave per year. It has come to our attention that Dr. Sri Kiruba Nandini M proceeded on leave from 27.09.2022 to 20.07.2023 without seeking the necessary approval from the NBEMS through the training institution. This action is a clear violation of the established rules and regulations governing the training program.

Further, you have allowed the trainee to avail the said leave without informing to and/or approval of NBEMS. This leave of the trainee not only raises questions about his/her commitment to the training program but also puts your compliance with the established protocols into question. Please be apprised that the NBEMS places great importance on adherence to the prescribed guidelines, and any deviation from these rules is taken very seriously.

You are hereby cautioned to adhere strictly to the NBEMS leave rules while allowing the trainees to avail leave during the NBEMS training programme. We expect the hospital to exercise due diligence in ensuring that no candidate proceeds on leave beyond permissible leave without obtaining prior approval from the NBEMS in the future.

Hence, you are required to clarify why you have not apprised NBEMS about the leave earlier. Leave approved shall be subject to submission of the above mentioned clarification.

You are requested to provide clarification within 3 days”

14. The Apollo Hospital responded to the show cause notice dated 22 February 2024 on the same day, stating that, while it had informed the NBEMS of the critical state of health in which the petitioner had been, as a result of which she was in no position to submit any leave application or medical certificate, the hospital was waiting for the petitioner to recover before submitting the requisite documents. Apologies were also submitted for the delay that may have been



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occasioned on this account.

15. The petitioner also submitted the following response to the communication dated 22 February 2024, on 24 February 2024:

“Respected Sir,

In response to the query T202402112821 submitted on 11.02.2024, I received a mail received from NBE regarding the clarification of leave. I was diagnosed with acute myeloid leukaemia on 27.09.2022. It was out of the blue and unexpected. Due to the side-effects of chemotherapy, I went into septic shock and was on ventilator for several days. Even my survival was a big question. Owing to the complexity of my situation, I was not in the physical state to apply for leave. My sincere apologies for not notifying you regarding the leave earlier. I assure you this will not happen in the future and I strictly adhere to NBE guidelines. My institution has mailed you regarding my leave. I humbly request you to accept my leave under extraordinary circumstances and extend my course from 17.08.2023 to 10.06.2024.

I am attaching the mail sent by the head of the Institute to the NBE.”

16. The NBEMS responded on 5 March 2024 stating that the petitioner’s request was under consideration and that she would be informed of its outcome in due course.

17. It was thereafter that the impugned communication dated 12/15 March 2024 came issued by the NBEMS and received by the Apollo Hospital on 21 March 2024, informing the hospital that the petitioner’s DNB candidature had been cancelled. The said order merits reproduction *in extenso* thus:

“Ref. No: NBEMS/T&M/C&R/Post MBBS/20661371101

Dated: 12/15-03-2024

Dr. SRI KIRUBA NANDINI M,



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12/31 C THAVAN STREET
IDAPPADI SALEM
TAMIL NADU 637101

Sub: Cancellation of Candidature from DNB Post MBBS course in the specialty of Obstetrics and Gynaecology of January 2020 admission session- reg.

Dear Dr. SRI KIRUBANANDINI M,

As you know that you were allotted DNB Post MBBS seat at Apollo Hospital, 21, Greams lane, Off Greams Rd, Thousand Lights, Chennai, Tamil Nadu~600006 in the speciality of Obstetrics and Gynaecology.

2. Your training institute vide its communication dated 03.10.2023 informed your re-joining on 21-07-2023 after availing medical leave from 27.9.2022 to 20.7.2023 i.e. 297 days.

3. Neither you nor your training institute informed NBEMS regarding your absence from training from 27.9.2022 to 20.07.2023 even before informing, the same at the time of your re-joining DNB training i.e. on 03.10.2023.

4. Your kind attention is invited to the NBEMS leave norms read with FAQs which are published on NBEMS website vide notice dated 20.03.2018 which explicitly mentioned that:

a. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duly off! Gazetted holidays as per hospital/ institute calendar / policy

b. Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB /FNB training. The training institute has to forward such requests to NBE along with the leave records of the candidate since his/her joining and supporting documents (if any) through the Head of the Institute with their recommendation/comments.

c. Under normal circumstances leave of one year will not be carried forward to the next year However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE. NBE shall consider such requests on merit, provided the seat is not carried over and compromise with training of existing trainees in the Department If the extension of leave more than a year will



lead to cancelation of candidature.

d. DNB/FNB trainees are required to complete their training, including the extension of training (wherever applicable), by the prescribed cut-off date, for being eligible to DNB/FNB Exit examination. The eligibility for DNB/FNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin.

5. It is apparent from perusal of the above facts that despite being fully aware and conscious of the NBEMS leave rules, you have availed 297 days of leave till 20.07.2023 without approval from NBEMS.

6. A show cause notice was issued to you and your institute on 22.02.2024 to seek clarification as to why your registration for the course should not be cancelled. In response to the same, your institute has apologized and ensure timely submission of leave request to NBEMS, however, you have not submitted any clarification.

7. You would appreciate that leave during the Postgraduate Medical training results in gaps in the clinical knowledge and skills. The consistency in the training is essential for building a comprehensive understanding of patient care. It is further submitted that the interruptions in the training to the extent as in your case impedes the progress as per the requirement of prescribed curriculum and adversely affect the essential learning components of the training programme.

In view of the above, I am directed to inform that your registration with NBEMS to pursue the DNB course in the specialty Obstetrics & Gynaecology has been cancelled on account of the prolonged discontinuation of the training programme overlooking the prescribed guidelines and rules thereby leading to a fractured training.

The matter has been closed and no further communication shall be entertained. This issues with the approval of Competent Authority.

Yours sincerely

Sd/-

Rashmi Munjal

Assistant Director

Department of Training and Monitoring



Copy to:

THE HEAD OF THE INSTITUTION
APOLLO HOSPITAL, 21, GREAMS LANE,
OFF GREAMS RD, THOUSAND LIGHTS,
CHENNAI., TAMIL NADU-600006

Sir/Madam,

The institute is hereby cautioned to follow the NBEMS leave rules in letter & spirit and refrain from allowing a trainee to avail leave from training beyond the scope of NBEMS leave norms and without approval of NBEMS.

Sd/-
Rrashmi Munjal
Assistant Director
Department of Training and Monitoring”

18. Representations were thereafter addressed by the petitioner to the NBEMS. As they did not elicit any favourable response, the petitioner has approached this Court by means of the present writ petition, seeking an appropriate writ, order or direction, setting aside the letter dated 12/15 March 2024 whereby her DNB candidature was cancelled.

19. Counter affidavit has been filed by the NBEMS. I have also heard Mr. Vishal Gera, learned counsel for the petitioner, and Mr. Kirtiman Singh, learned Standing Counsel for NBEMS at considerable length.

Submissions of the NBEMS

20. Mr. Kirtiman Singh submits that, even if the petitioner was indisposed for the period during which she did not attend training, she



ought to have at least submitted a leave application in advance so that her request for leave to be considered by the NBEMS. He submits that prior approval of NBEMS is necessary before a candidate proceeds on leave.

21. It was only on 3 October 2023 that the Apollo Hospital, Chennai wrote to the NBEMS, informing the NBEMS of the petitioner's prior period of absence. The NBEMS, thereupon, wrote to the Apollo Hospital requiring it to submit its request, qua the petitioner's period of leave, through the NBEMS web portal.

22. This was not done.

23. It was only six months after the petitioner had rejoined duty in Apollo Hospital that she addressed an application to the NBEMS, seeking regularisation of the period of her absence from duty of 297 days from 27 September 2022 to 20 July 2023 by *ex post facto* sanction of leave for the said purpose.

24. Thereafter, on 5 March 2024, the NBEMS wrote to the petitioner stating that her application dated 11 February 2024, for grant of leave to cover the period of her absence from 27 September 2022 to 20 July 2023 was under consideration and that she would be intimated of its outcome by the NBEMS in due course.

25. The outcome of the consideration was, apparently, the following impugned order, which came to be passed by the NBEMS



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on 12/15 March 2024, cancelling the DNB candidature of the petitioner:

“Ref. No: NBEMS/T&M/C&R/Post MBBS/20661371101

Dated: 12/15-03-2024

Dr. SRI KIRUBA NANDINI M,
12/31 C THAVAN STREET
IDAPPADI SALEM
TAMIL NADU 637101

Sub: Cancellation of Candidature from DNB Post MBBS course in the specialty of Obstetrics and Gynaecology of January 2020 admission session- reg.

Dear Dr. SRI KIRUBANANDINI M,

As you know that you were allotted DNB Post MBBS seat at Apollo Hospital, 21, Greams lane, Off Greams Rd, Thousand Lights, Chennai, Tamil Nadu~600006 in the speciality of Obstetrics and Gynaecology.

2. Your training institute vide its communication dated 03.10.2023 informed your re-joining on 21-07-2023 after availing medical leave from 27.9.2022 to 20.7.2023 i.e. 297 days.

3. Neither you nor your training institute informed NBEMS regarding your absence from training from 27.9.2022 to 20.07.2023 even before informing, the same at the time of your re-joining DNB training i.e. on 03.10.2023.

4. Your kind attention is invited to the NBEMS leave norms read with FAQs which are published on NBEMS website vide notice dated 20.03.2018 which explicitly mentioned that:

a. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duly off! Gazetted holidays as per hospital/ institute calendar / policy

b. Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB /FNB training. The training institute has to forward such requests to NBE along with the leave records of the candidate since his/her joining and supporting documents (if any) through the Head of the Institute with their recommendation/comments.



c. Under normal circumstances leave of one year will not be carried forward to the next year. However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE. NBE shall consider such requests on merit, provided the seat is not carried over and compromise with training of existing trainees in the Department. If the extension of leave more than a year will lead to cancellation of candidature.

d. DNB/FNB trainees are required to complete their training, including the extension of training (wherever applicable), by the prescribed cut-off date, for being eligible to DNB/FNB Exit examination. The eligibility for DNB/FNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin.

5. It is apparent from perusal of the above facts that despite being fully aware and conscious of the NBEMS leave rules, you have availed 297 days of leave till 20.07.2023 without approval from NBEMS.

6. A show cause notice was issued to you and your institute on 22.02.2024 to seek clarification as to why your registration for the course should not be cancelled. In response to the same, your institute has apologized and ensured timely submission of leave request to NBEMS, however, you have not submitted any clarification.

7. You would appreciate that leave during the Postgraduate Medical training results in gaps in the clinical knowledge and skills. The consistency in the training is essential for building a comprehensive understanding of patient care. It is further submitted that the interruptions in the training to the extent as in your case impedes the progress as per the requirement of prescribed curriculum and adversely affect the essential learning components of the training programme.

In view of the above, I am directed to inform that your registration with NBEMS to pursue the DNB course in the specialty Obstetrics & Gynaecology has been cancelled on account of the prolonged discontinuation of the training programme overlooking the prescribed guidelines and rules thereby leading to a fractured training.

The matter has been closed and no further communication shall be



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Yours sincerely

Sd/-

Rashmi Munjal
Assistant Director

Department of Training and Monitoring

Copy to:

THE HEAD OF THE INSTITUTION
APOLLO HOSPITAL, 21, GREAMS LANE,
OFF GREAMS RD, THOUSAND LIGHTS,
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Sir/Madam,

The institute is hereby cautioned to follow the NBEMS leave rules in letter & spirit and refrain from allowing a trainee to avail leave from training beyond the scope of NBEMS leave norms and without approval of NBEMS.

Sd/-

Rashmi Munjal
Assistant Director

Department of Training and Monitoring

26. Mr Kirtiman Singh would submit that, in these circumstances, no infirmity can be found in the decision of the NBEMS to cancel the petitioner's candidature.

Analysis

27. It is clear from a perusal of the above sequence of events that the petitioner was indeed in a critical state of health for the entire period during which she remained absent from training.

28. The fact that, owing to the situation in which the petitioner was



placed, she was in no position to submit any leave application or forward any medical document either to the Hospital or to the NBEMS is vouchsafed even in the communication dated 22 February 2024 from the Apollo Hospital to the NBEMS. This Court cannot be blind to the fact that the petitioner was suffering from AML, which is cancer of the bone marrow, from where all the cells of the blood originate, and one of the most critical illnesses known. It was the petitioner's good fortune that she came out of the illness, after an extended period of chemotherapy.

29. The NBEMS does not dispute the bonafides of the petitioner's contention that she was actually in a state of critical illness during the period which she was undergoing treatment. Even otherwise, the claim is supported by medical documents of eminent oncologists from the Apollo Hospital, Chennai, and the court cannot disbelieve what they have said.

30. Mr. Kirtiman Singh submits that it was only on 3 October 2023 that, for the first time, the Apollo Hospital informed the NBEMS of the petitioner's absence from DNB training from 27 September 2022 to 20 July 2023.

31. That said, however, Rule 5 of the Leave Rules envisages the availment of leave, other than the eligible leave of seven days per year, resulting in the candidate having to seek extension of DNB/FNB training. Cancellation of the training is not envisaged, in the Leave Rules, as an inevitable sequitur of a candidate remaining absent from



training, irrespective of the length of such absence. If one were to cohesively to interpret Rules 4 to 6 of the Leave Rules, as reproduced in para 2 *supra*, they do not stipulate that absence from training without prior approval of the NBEMS or without taking leave prior thereto, irrespective of the duration thereof, can *ipso facto* result in cancellation of the candidate's DNB candidature.

32. Rule 5 in fact states that unauthorised absence from DNB/FNB training for more than seven days *may* lead to cancellation of registration and discontinuation of DNB/FNB training, without permitting rejoining. The use of the word “may” by itself indicates that there is an element of discretion in the entire exercise and that, while deciding whether to cancel the DNB candidature of a candidate, the NBEMS is required to keep all relevant factors in mind. It is obvious that the use of the word is deliberate, as, in the perception of the framers of the Leave Rules, every case of unauthorized absence would not justify cancellation of the candidate's DNB candidature. In interpreting and implementing the Rule, therefore, the NBEMS is required to be alive to the discretionary element inherent in Rule 6, and to judiciously exercise the said discretion. Any mechanical decision to terminate the DNB candidature of the candidate would *ipso facto* be illegal, as it would not indicate judicious exercise of the discretion vested in the NBEMS by Rule 6.

33. Among the factors that must of necessity weigh with the NBEMS, in exercise of discretion under Rule 6 must, needless to say, be the culpability of the candidate concerned. There has, therefore,



necessarily to be drawn a distinction between a case in which the absence of the candidate is negligent or unjustified, from a case in which the absence is bonafide and owing to unavoidable circumstances beyond the control of the candidate.

34. In taking a decision in that regard, the NBEMS has to keep in mind the overall public interest involved in ensuring that a candidate such as the petitioner, who is sincere and who has, despite having come through a period of intense physical and mental trauma, rejoined her DNB training with the hope and aspiration of completing it, is granted an opportunity to do so. Eviscerating, *ab initio*, the entire DNB program that the petitioner has undergone, merely because she did not seek leave in advance before commencing her chemotherapeutic treatment, would not only altogether destroy her morale; it would also do complete disservice to the cause of justice.

35. *Justice*, not law, is, at the end of the day what we have given to ourselves in our constitutional scheme. Our preambular goal is justice, not law. Law is merely a vehicle to attain justice. Law which, if administered, would result in injustice, is not worth administering.

36. The Leave Rules do not envisage unauthorized absence from training, *irrespective of the length of such absence*, as necessarily resulting in cancellation of the candidate's DNB candidature. By use of the word "may" in Rule 5, the NBEMS has been conferred the discretion to take a decision on whether to cancel the candidate's candidature, or not, in the face of her, or his, unauthorized absence



from duty. That discretion has necessarily to be exercised in such a manner as would subserve the cause of justice. In the considered opinion of this Court, in the facts of the present case, any decision to cancel the petitioner's DNB candidature would clearly result in injustice to the petitioner. In the facts of the present case, such exercise of discretion cannot, therefore, be regarded as judicious.

37. What is envisaged as a necessary consequence of taking of leave by the DNB candidate is extension of the DNB training, *vide* Rule 6, subject to approval by the NBEMS. The two factors which the NBEMS is required to bear in mind while dealing with any such request are whether the seat is carried over, or whether grant of extension to the candidate would compromise the training of existing trainees. Mr Singh does not seek to contend – and, indeed, the counter-affidavit does not seek to aver, either – that either of these exigencies apply, so as to justify rejection of the petitioner's request to extend her training period.

38. There is yet another aspect of the matter, apart from merits. The petitioner was never visited with any show cause notice proposing cancellation of her DNB candidature. The communication dated 22 February 2024 is not a show cause notice at all. It does not call upon anyone to show cause against anything. It merely cautions strict adherence with the NBEMS leave rules and seeks a clarification as to why the NBEMS was not informed earlier about the leave that had been undertaken by the petitioner. To reiterate, therefore, it was not a show cause notice, in any sense of the word.



39. Nonetheless, the petitioner responded to the said communication on 24 February 2024. Significantly, *after the said communication was sent, on 5 March 2024, the NBEMS wrote to the petitioner, stating that her representation for grant of leave for the period from 27 September 2022 to 20 July 2023 was under consideration and that she would be informed of its outcome.* Thereafter, without any prelude and preface, and without granting any opportunity to the petitioner, the impugned order came to be passed, cancelling the petitioner's DNB candidature.

40. Cancellation of the DNB candidature of a candidate is an extremely serious matter. It is one of those instances in which the principle laid down by the Supreme Court in *Swadeshi Cotton Mills v. U.O.I.*² regarding strict compliance with the principle *audi alteram partem* would apply with all force. No such decision can be taken without issuing the concerned candidate a show cause notice, which must not only require the candidate to show cause *against* cancellation of her or his candidature, but must also set out the reasons in that regard, and without, thereafter, granting the concerned candidate an opportunity of personal hearing before taking a decision.

41. For failure to follow these procedures, too, the impugned decision cannot, in my opinion, sustain in law.

42. The petitioner is, of rights, therefore, entitled to have the

² (1981) 1 SCC 664



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impugned decision cancelling her DNB candidature, quashed and set aside resulting in her NBEMS candidature being restored.

43. Mr. Gera, learned Counsel for the petitioner, also prayed that the petitioner may be permitted to appear in the final theory examinations of the NBEMS, which are scheduled to commence on 15 May 2024. It is true that the last date for submitting applications for the examinations has passed, and that the applications are normally to be submitted online with a generation of the admit card also online. Nonetheless, in the present case, this petition was filed before the last date had reached, and, owing to no fault of the petitioner, has come up today.

44. In the peculiar facts of this case, it would be a travesty of justice in my opinion, and would also compound the agony that the petitioner has already suffered over years, if the petitioner is not permitted to appear in the examination to be held on 15 May 2024. I have no doubt that the NBEMS would take pro-active steps in order to ensure that the petitioner is issued an admit card so that she can appear in the examinations to be held on that day.

45. One of the issues that has arisen regarding this prayer of the petitioner was whether she has undergone the requisite period of training in order for her to be permitted to appear in the examination. Mr. Gera has handed over, across the bar, the information bulletin of the DNB final examination to be held in May 2024 which states that the cut-off date for completion of DNB training for eligibility to



appear in the DNB final theory examination to be conducted in May 2024 is 31 December 2024. In other words, the candidate is required to undergo three years of training by 30 December 2024 in order to be eligible to appear in the DNB final examination in May 2024. Mr. Gera submits – and, on facts, the submission appears to be right – that the petitioner would have completed three years of her training much before December 2024.

46. For the present, I treat the submission as correct, subject to verification by the NBEMS. The petitioner would, therefore, subject to that limited caveat, be permitted to appear in the DNB examination to be held in May 2024.

47. Mr. Kirtiman Singh had also prayed that if this Court is setting aside the impugned order, the respondent should be permitted to take appropriate steps in accordance with law against the petitioner, if so advised.

48. Ordinarily, the court would have acquiesced to such a request. However, the facts of this case do not persuade me to do so. The petitioner has suffered from a debilitating physical disease, for a complete year. The *bonafides* of her claim in the regard are not in dispute. The only real mistake, if any that can be said to have been committed, is that the petitioner did not apply for leave during that period, as was required by rules. It was a physical impossibility for the petitioner to have done so.



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49. She did inform the NBEMS of her situation soon after she rejoined the duty. She has herself agreed to undergo the extended period of training and has not sought any concession in that regard.

50. In these circumstances, subjecting the petitioner to any further inquisitorial process would be not just harsh but insensitive.

51. Accordingly, the impugned order dated 12/15 March 2024 is quashed and set aside. The DNB candidature of the petitioner is restored.

52. The petitioner would also be permitted to undergo her DNB theory examinations to be held on 15 May 2024.

53. The writ petition stands allowed accordingly, with no orders as to costs.

54. Let a copy of this order be e-mailed to learned Counsel for the parties simultaneously with its uploading.

C. HARI SHANKAR, J.

MAY 10, 2024

dsn

Click here to check corrigendum, if any