

# National Board Of Examination vs Association Of Md Physicians on 6 August, 2021

**Author: Jyoti Singh**

**Bench: Chief Justice, Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 225/2021

NATIONAL BOARD OF EXAMINATION

..... Appellan

Through: Mr. Maninder Singh, Senior

Advocate with Mr. Kirtiman Singh, Ms. Akanks

Sisodia, Mr. Waize Ali Noor, Mr. Taha Yasin

Ms. Ruchira Gupta, Advocates

versus

ASSOCIATION OF MD PHYSICIANS

..... Respond

Through: Mr. Adit S. Pujari & Ms. Kajal D

Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 06.08.2021 Proceedings have been conducted through video conferencing.  
C.M.No.24696-24697/2021 (exemptions) Allowed, subject to all just exceptions.

The applications are disposed of.

LPA 225/2021 & C.M.No.24695/2021(stay) Issue notice.

Mr. Adit S. Pujari, learned counsel accepts notice on behalf of Respondent and seeks time to file reply.

Time as prayed for is granted.

Let reply be filed before the next date of hearing. Present appeal has been filed against the impugned order dated 05.07.2021, whereby the Appellant has been directed to treat the disputed questions, as set out in paragraph 4 of the said order, as deleted from the FMGE (December, 2020) and to award one extra mark to the candidates who were assessed as having answered these questions incorrectly.

Learned Senior Counsel for the Appellant contends that the said direction is against the law settled by the Hon'ble Supreme Court that the writ Court should not re-appreciate the correctness of the question papers as this is the domain of the experts in the field. Reliance is place on the judgements of the Hon'ble Supreme Court in Uttar Pradesh Public Service Commission vs. Rahul Singh and Another (2018) 7 SCC 254 and Central Board of Secondary Education and Another vs. T. K.

Rangarajan and Others, (2019) 12 SCC 674. In Uttar Pradesh Service Commission (supra), the Hon'ble Supreme Court held that the Courts cannot take on the role of experts in academic matters and unless the candidate demonstrates that the key answers are patently wrong on the face of it, Courts cannot enter into academic field, weigh the pros and cons of the arguments of both sides and then come to the conclusion as to which answer is better or correct. In Ran Vijay Singh vs. State of U.P. (2018) 2 SCC 357, the Hon'ble Supreme Court held that Courts dealing with academic matters should presume the correctness of the key answers and in the event of a doubt the benefit must go to the examining authority rather than the candidate.

Learned Senior Counsel also points out that the correctness of the multiple choice questions was verified by the subject matter experts from the field of Community Medicine at different stages. He also submits that between 07.12.2020 to 12.12.2020, NBE conducted the post-exam review of all questions speciality-wise involving 20 different subject matter experts and no question was found to be incorrect. The answer keys were reconfirmed by the experts. On 18.12.2020, results of FMGE Screening Test were announced but no complaint or representation was received before declaration of the result. Post the declaration of the result, NBE received representations alleging that one question relating to Sample Registration System was technically incorrect. Although the question was found to be technically correct in the post-exam review, however, NBE constituted a Committee in January 2021 of 5 subject matter experts. The Committee vide its report dated 15.01.2021 concluded that the question was correct and valid.

Having heard the learned Senior Counsel for the Appellant and the learned counsel for the Respondent and looking into the judgements relied upon by the Appellant and the other relevant facts brought to the notice of this Court, we are of the view that the Appellant has made out a prima facie case for grant of interim relief. Balance of convenience is also in favour of the Appellant and irreparable loss shall be caused to the Appellant if the impugned judgement is not stayed during the pendency of the present Appeal.

Accordingly, by way of an interim relief, we hereby stay the operation, implementation and execution of the impugned judgement and order dated 05.07.2021 passed in W.P.(C) 918/2021 (Annexure A-1 to the memo of the Appeal) till the next date of hearing.

List on 17.09.2021.

CHIEF JUSTICE JYOTI SINGH, J AUGUST 06, 2021/ns