**Reportable**

**IN THE SUPREME COURT OF INDIA**
**CIVIL ORIGINAL JURISDICTION**

**Writ Petition (C) No. 208 of 2022**

**Shikhar & Anr.** **… Petitioners**

**Versus**

**National Board of Examination & Ors.** **… Respondents**

**J U D G M E N T**

**Dr Dhananjaya Y Chandrachud, J**

**1.** The petition under Article 32 of the Constitution has been instituted by doctors who are aspirants of NEET- PG 2022. They have challenged the deadline set for the completion of internship for appearing for NEET-PG 2022. The facts which give rise to the present petition are set out below.

**2.** On 15 January 2022, the first respondent released the NEET-PG 2022-23 Information Bulletin[1] providing the examination schedule and eligibility criteria. Clause 4.4 of the Information Bulletin stipulates amongst the eligibility criteria that the internship



1 "**Information Bulletin**"

completion certificate has to be submitted at the time of counselling / admission to the allotted medical college and that the internship should have been completed by 31 May 2022.

**3.** On 8 February 2022, this Court, while considering a petition[2] under Article 32 of the Constitution, permitted the petitioners, who were seeking a postponement of the internship deadline, to submit a representation before the Union Ministry of Health and Family Welfare. This Court observed:

> "The issue which has been raised by the petitioners requires a determination of facts bearing on the position in different parts of the country. Prescribing a cutoff date pertains to the policy domain. The ends of justice would be met by permitting the petitioners to submit a representation to the Union Ministry of Health and Family Welfare setting out the nature of the hardship which has been faced by the petitioners and similarly placed candidates. The representation shall be considered expeditiously, within a period of one week of the date of its submission, by the competent authority. Since the Court is leaving it open to the petitioners to move the MoHFW with a representation, no opinion has been expressed by this Court on the merits of the grievance at the present stage."

**4.** After considering the representations which were received, the National Board of Examination issued a notice on 16 February 2022 extending the cut-off date for completion of internship to 31 July 2022 to fulfill the eligibility criteria for the NEET-PG examination. The petitioners are aggrieved by the revised cut-off date and have invoked the jurisdiction of this Court under Article 32 of the Constitution.

**5.** The grievance of the petitioners is that the extension of the cut-off from 31 May to 31 July 2022 would still leave out students from certain States who are unable to complete their internships by the cut-off date. It has been submitted that on 3 May 2021, the Union Government in the Ministry of Health and Family Welfare had authorized the States/UTs to deploy medical interns in Covid management duties.

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2 Shivam Satyarthee v Union of India, Writ Petition (C) No 68 of 2022

Besides this, it was envisaged that the services of final year MBBS students may be utilized for providing services such as tele-consultation and monitoring of mild Covid cases.

**6.** Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the petitioners, submitted that in certain States, the internships of medical students commenced later as a result of the deployment of final year medical students on Covid duties. For instance, it has been stated that in Kerala, the internships commenced in August 2021, in Bihar in October 2021, in Jharkhand in August 2021, in Uttar Pradesh in September 2021 and in Jammu and Kashmir in November 2021. The submission is that the commencement of the internships was delayed in these States due to the Covid situation and as a consequence, these students would not be able to fulfill the cut-off date of 31 July 2022. Hence, it has been urged that the cut-off date should be extended further to accommodate these students for the NEET-PG 2022. In the alternative, it has been urged that the period spent on Covid duties should be allowed to be counted towards the internship requirements.

**7.** Having due regard to the above submission, this Court had on 30 March 2022 requested the Solicitor General to assist the Court after seeking the views of the Ministry of Health and Family Welfare. Ms Aishwarya Bhati, Additional Solicitor General has in the course of her submissions placed before the Court the practical difficulties in acceding to the request of the petitioners and the cascading effect if the submission of the petitioners is accepted. The Additional Solicitor General stated that the examinations are now scheduled to be held on 21 May 2022; counselling will be expected to commence in the third or fourth week of July 2022; and, under the time schedule which is proposed, classes are likely to commence on 1 August 2022. Hence,

it has been submitted that any extension of the internship completion deadline would result in the disruption of the entire schedule. Moreover, it has been submitted that if the time schedule which is now prescribed is adhered to, the next examination is likely to be held in January 2023.

**8.** Responding to the alternative submission of Mr Gopal Sankarnarayanan that the period which has been spent on Covid duties should be treated towards the internship requirements, the Additional Solicitor General submitted that Covid duties do not cover all specialties and, hence, the acceptance of this request would result in tinkering with the educational curriculum.

**9.** While we understand that the present cut-off date for the completion of the internship would put certain students at a disadvantage, we are conscious that it is the domain of the executive and regulatory authorities to formulate appropriate eligibility standards for admission. In **Indian Institute of Technology Kharagpur & Ors.** v. **Soutrik Sarangi**[3], a three-judge Bench of this Court held that courts should be circumspect in exercising their powers of judicial review in matters concerning academic policies, including admission criteria. In that case, this Court refused to interfere with the eligibility criteria for appearing in JEE (Advanced) 2021 which prevented a candidate who had secured a seat in one of the IITs from competing in a subsequent examination. This Court relied on **All India Council for Technical Education** v. **Surinder Kumar Dhawan**[4], where it was observed that judicial interference motivated by concerns of mitigating the hardship faced by students may result in unintended consequences adversely affecting the education system. This Court held thus:

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3 2021 SCC OnLine SC 826
4 (2009) 11 SCC 726

> "19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. **This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect.** Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university[5]. It was held by this court in All India Council for Technical Education v. Surinder Kumar Dhawan[6]
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> > "16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. **If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education**."
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> 20. Given this general reluctance of courts to substitute the views of academic and expert bodies, the approach of the High Court in proceeding straightaway to characterize the rationale given by the IIT in fashioning the Criteria No. 5 cannot be supported."
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> (emphasis supplied)

**10.** In **Rachna** v. **Union of India & Ors.**[5] a petition under Article 32 of the Constitution was instituted before this Court with a prayer to grant one additional attempt to clear the Civil Services (Preliminary) Examination 2020 to petitioners who were otherwise not eligible to participate in subsequent examinations due to their exhausting available attempts or because of crossing the age bar. The petitioners pleaded that on account of the unprecedented Covid-19 pandemic, they had faced difficulties in preparing for the examination. The petitioners also argued that the government had previously granted such a relaxation in 2015. This Court dismissed the petition and held that policy decisions are taken by the executive considering the

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5 (2021) 5 SCC 638

prevailing circumstances. The Court further observed that the petitioners cannot invoke the writ jurisdiction of the Court to direct the government to come out with a specific policy granting relaxation to certain candidates as a matter of right. The following observations of this Court are relevant:

> "45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right."

**11.** In the previous proceedings when this Court passed an order dated 8 February 2022, the Court was conscious of the fact that any extension of cut-off dates pertains to the policy domain. The decision was hence left to the expert agencies of the Union of India. However, having regard to the hardship which was faced by the petitioners and similarly placed persons, we left it open to them to submit a representation to the Union Government. Responding to the request, an extension of the cut-off date has been granted from 31 May 2022 to 31 July 2022.

**12.** Whenever a cut-off is extended, some students are likely to fall on the other side of the dividing line. In **State of Bihar** v. **Ramjee Prasad**[6], the State had prescribed that applicants applying for the post of Assistant Professors must have three years of experience. In the preceding year, the cut-off date for the receipt of applications was set

6 (1990) 3 SCC 368

in June, however, in the year in question, the date was fixed in January making certain candidates ineligible owing to their failure to meet the three-year requirement. This Court held that the cut-off date cannot be held to be arbitrary unless it is shown that it is unreasonable, capricious or whimsical even if no reasons are forthcoming as to the choice of date. This Court observed thus:

> "8. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as January 31, 1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.** It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. **Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational.** We are, therefore, of the opinion that the High Court was clearly in error in striking down the government's action of fixing the last date for receipt of applications as January 31, 1988 as arbitrary."
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> (emphasis supplied)

**13.** Recently in **Hirandra Kumar** v. **High Court of Judicature at Allahabad & Anr.**[7], a two-judge Bench of this Court, of which one of us (DY Chandrachud, J) was a part held that the cut-off date or an age limit does not become arbitrary and violative of Article 14 of the Constitution merely because certain candidates fall on the wrong side

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7 (2020) 17 SCC 401

of it. A cut-off date or an age bar would always exclude some candidates. This Court emphasised that the determination of the cut-off date is within the sphere of the executive and the court cannot assume that function. This Court observed:

> "21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age-limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age-limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.
> 27….the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not takeover the function for itself. Plainly, it is for the rule-making authority to discharge that function while making the Rules."

**14.** In the present case, cogent reasons have been provided as to why the deadline for completing the internship cannot be extended. An extension of the cut-off any further would result in the disruption of the educational schedule, as indicated to the Court by the Additional Solicitor General. Moreover, students who have qualified in terms of the cut-off of 31 July 2022 will be prejudiced by the inevitable postponement of the schedule. Hence, it would not be appropriate for this Court to issue any such direction. The alternative prayer for the inclusion of the period of Covid duties in the internship requirements would also involve this Court in micro-managing the curriculum for the completion of medical courses. This is a function which, in our view, should not be assumed by the Court. Hence, though hardship has been caused to those students whose internship commenced much later, it would not be possible, at this stage, to disturb the schedule as it would affect the other students who fulfill the cut-off date of 31

July 2022.

**15.** The petitioners have sought to rely on an order of this Court in **Poulami Mondal & Ors.** v. **All India Institute of Medical Sciences & Ors.**[8] where the Institute of National Importance Combined Admission Test (INI CET) for admission to the Post Graduate courses for the July 2021 session was directed to be postponed by this Court. The consideration that weighed with this Court, *inter alia*, was that owing to the lockdown in several states, it would have been virtually impossible for candidates to reach the examination centres. Further, it was observed that many of the doctors who would be appearing for the examination were exposed to Covid-19 and would have to quarantine and isolate themselves. There was also an apprehension that conducting the examination at that time could lead to the spread of the virus. The relevant observations are reproduced below:

> "The attention of the court has also been drawn to news reports of extensions of lock down, in many States. It is reported that in Odisha lock down has been extended till 16th June, 2021. In Maharashtra and Andhra Pradesh and also in Kolkata, the lock down has been extended till 15th June, 2021. It would be extremely difficult, if not virtually impossible for many candidates for the INI CET to reach their examination centres from their places of duty. Many of the doctors are exposed to and are running the risk of contracting Covid 19 and they may have to isolate and/or quarantine themselves. Even otherwise holding the INICET on 16th June, 2021 will result in spread of the virus and increase in Covid19 cases.
> Having regard to the circumstances, pleaded, fixing of the INI CET on 16.06.2021 is arbitrary and discriminatory, more so since other important examinations including Joint Entrance Examinations, Board Examinations etc. have been postponed.
> The impugned notice is, therefore, set aside. The INI CET is directed to be postponed by at least a month from 16th June, 2021."

The factual matrix that led to the postponement of INI CET was completely different from the present circumstances. Crucially, the case dealt with conducting of an examination during a pandemic where strict lockdowns were in place. It did not relate to

8 Writ Petition (s) (Civil) No(s). 623 of 2021

fixing of a cut-off date, which is bound to exclude some aspirants and include others. The law is clear that such exclusion will always be incidental to fixing of any cut-off date and cannot be termed arbitrary.

**16.** Thus, on a considered view of the matter, it would not be appropriate to entertain the petition under Article 32 of the Constitution. The petition is accordingly dismissed.

**17.** Pending application, if any, stands disposed of.

**…….....J.**
**[Dr Dhananjaya Y Chandrachud]**

**…….....J.**
**[Surya Kant]**

**…….....J.**
**[Bela M. Trivedi]**

**New Delhi;**
**April 05, 2022**