

**Writ Petition No.8810/2015 (PIL), Writ Petition  
No.9892/2015, Writ Petition No.10859/2015, Writ  
Petition No.10860/2015 (PIL), Writ Petition  
No.11320/2015 (PIL), W.P.No.14143/2015**

**26.08.2015**

Shri A.M.Trivedi, Senior Advocate with Shri Ashish Trivedi, Advocate for the petitioner in W.P.No.8810/2015 (PIL).

Shri Aditya Sanghi, Advocate for the petitioner in W.P.No.9892/2015.

Shri P. Vishwanath Shetty, Senior Advocate with Shri Amalpushp Shrotri and Shri Ajay V. Gupta, Advocates for the respondent No.31-APDMC.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri P.K.Kaurav, Advocate for the AFRC.

Shri Sanjay Kumar Verma, Advocate appears as *amicus curiae* in W.P. No.10859/2015.

Heard counsel for the parties.

These matters were listed on 09.07.2015 when prayer for interim relief asked by the petitioners was considered. By a speaking order, the Court moulded the interim relief by issuing directions to the respondents (APDMC and AFRC), in particular, to ensure that the OMR sheets are contemporaneously scanned and the soft copy thereof preserved by the Secretary, Home (Police) or Medical Education Department, Government of Madhya Pradesh. The written examination was scheduled to be held on 12.07.2015, however, according to the respondent No.31 due to unavoidable circumstances the examination could

not be held on the scheduled date. Instead, the respondent No.31 moved application before this Court to permit them to conduct the examination online on such terms and conditions as the Court may direct.

2. That application was initially considered on 28.07.2015 and once again a speaking order passed by this Court, the respondent No.31 was allowed to explore the possibility of conducting the entrance examination online, but on complying with the technical and logistical issues delineated in the said order. The respondent No.31, thereafter, reverted back with the names of the Agencies who were willing to undertake the work of online examination and comply with the measures delineated by this Court in the order dated 28.07.2015. However, the Agencies identified by the respondent No.31 had made counter proposals which were duly considered by the Court; and finally on 10.08.2015, it was noted that atleast two Agencies amongst the five Agencies identified by respondent No.31 can be considered for assigning the task of Common Entrance Test to be conducted online. The Court further directed the respondent No.31 to ascertain whether the officials of the said Agency are willing to file undertaking in this Court to ensure complete compliance of the technical and logistical parameters specified in the order

dated 28.07.2015. The respondent No.31 continued with the exercise of finalizing the Agency, but, at the same time, approached the Supreme Court to question the orders passed by this Court on 09.07.2015, 28.07.2015, 03.08.2015, 10.08.2015 and 12.08.2015 by way of SLP (Civil) Nos.23565 to 23569 of 2015. That SLP was however disposed of on 20.08.2015. The order passed by the Supreme Court reads thus:-

“O R D E R

Taken on Board.

Precisely, the petitioner is aggrieved by the following direction in the impugned order(s):

“The said respondent may take instructions from the concerned Agency, which will be appointed for conducting online examination as to whether the Secretary and the Managing Director of that Company is willing to submit affidavit of undertaking before this Court about full compliance of the technical and logistical matters mentioned in our previous order without any exception, if the Court so directs.”

In our opinion, if for any reason an outside agency is not in a position to give such an undertaking as wished by the High Court, the petitioner can certainly bring those facts to the notice of the High Court and if such a request is made by the petitioner to modify that portion of the order, the High Court would look into the grievance that is made out by the petitioner and pass appropriate orders thereon.

With these observations, the Special Leave Petitions are disposed of.”

3. Besides the aforesaid Special Leave Petition, the Transfer Petition (Criminal) No.327 of 2015 pending before the Supreme Court, which has been filed by the writ petitioner in the leading writ petition, was also mentioned before the Supreme Court on 24.08.2015, for seeking clarification with reference to the issue noted in our order dated 21.08.2015. The order passed by the Supreme Court reads thus:-

“O R D E R

It is brought to our notice by Shri P. Vishwanatha Shetty, learned senior counsel that because of the pendency of some matters before this Court, the High Court is not proceeding with the Writ Petition (Crl.) No.8810 of 2015, pending before it.

2 If that is so, we now request the High Court to proceed and decide the Writ Petition (Crl.) No.8810 of 2015. Needless to say that the Division Bench of the High Court would consider the request for interim relief(s) also. List the petitions along with the connected matters on 4th September, 2015.”

4. In the backdrop of the abovesaid order of the Supreme Court dated 24.08.2015, the counsel appearing for the parties have filed joint statement/memo before this Court duly signed by Advocate for the petitioner and the respondent No.31 as well as petitioner in W.P. No.8810/2015 (PIL); and which statement has been orally supported by the counsel appearing for the petitioners in companion writ petitions as well as by the counsel

appearing for the respondents in the concerned writ petitions including Shri Ajay V. Gupta, Advocate who had invited our attention to the fact noted in order dated 21.08.2015. It is stated that the Court may now consider the question regarding grant of interim relief on its own merits and including the request of the respondent No.31 to dispense with or modify some of the parameters mentioned in order dated 28.07.2015 and including to provide for further measures as may be necessary to instill confidence about the conduct of free and fair entrance examination by APDMC.

**5.** Accordingly, we have considered the submissions made by the counsel appearing for the respective parties, in particular, regarding the necessity to reconsider the parameters specified in clauses B(1), B(7), B(9) and C(1) (iv) as noted in the order dated 28.07.2015.

**6.** As regards Clause B(1), the Agency now finalized by the respondent No.31 (whose name has been disclosed to the Court, but is kept confidential), to conduct the examination has expressed its reservation on the ground that the process of taking fingerprints at the time of enrollment/submission of form may not be possible as that process has already been completed long back. The counsel for APDMC has also expressed difficulty in repeating the

same process at this belated stage, as it would only further delay the holding of examination - which process must be completed before the end of September, 2015. **The APDMC through counsel has, however, assured the Court that in future the requirement spelt out in clause B(1) of obtaining fingerprints at the time of enrollment/submission of form will be followed. At the same time, APDMC has assured the Court that the verification of the fingerprints (biometric) and photos would be done at the time of entry in the Examination Centres by the concerned examinee and also thereafter during counseling and at the time of admission.**

7. This assurance given on behalf of APDMC, in our opinion, for the time being, in respect of the ensuing examination (2015), may have to be accepted. Even the counsel appearing for the petitioners have no serious objection to modify this parameter indicated in our order dated 28.07.2015. Accordingly, the said condition (B(1)) stands modified to the above extent and the assurance given by APDMC to observe the same for future examinations; and also the limited assurance with regard to present examination of strict verification of identity of the examinee at the entry point of the Examination Centre and thereafter till the stage of admission and to comply with other

conditions, is accepted.

**8.** That takes us to the request for dispensing Clause No.B(7) and C(1)(iv) which in one sense are linked and dependent on each other. With reference to the said conditions, the counter proposal given by APDMC is that instead of uploading the data to monitoring server on real time basis, the Agency is willing to record every click of candidate and capture it on local server. Even if the candidate has not attempted any answer, the idling status will be captured every two minutes. This information/data can be used for audit trial. In response to this counter proposal of the respondent No.31, counsel for the petitioners submitted that two minutes time gap is too much and there is likelihood of misuse of the said time space in a given situation. That time space must be reduced to not more than 30 seconds.

**9.** To assuage this apprehension, however, it was eventually agreed by the respondent No.31 that further precautionary measures can be taken by the APDMC as also by the Agency conducting online examination in the following terms, which would be in addition to the parameters already delineated in the order dated 28.07.2015 – except to the extent modified in terms of this order [clauses B(1), B(7), B(9) and C(1)(iv) respectively]. The

said additional parameters are as follows:-

**Before declaring results, the Monitoring Agency (AFRC) and the independent Supervising Authority (official of NIC) must reassure that:**

- (i) Every candidate has attempted the examination from the recognized Examination Centre and has used only one Computer (MAC address and also same IP address) throughout the examination time.**
- (ii) The Software must provide for auto generated real time alert/report to the Monitoring Agency (AFRC) and independent Supervising Authority (official of NIC), if second entry (attempt to modify, alter, change the answer already marked), to enable them to verify on the basis of CCTV footage whether the second action has been done by the same candidate.**

**Alternatively, once question is attempted by the candidate, he should not be able to revert back to the previous question for making any changes.**

- (iii) Similarly, real time auto generated alert/report must be generated by the Software marked to the Monitoring Agency (AFRC) and the independent Supervising Authority (official of NIC), if the**

**original entry/marking is changed, modified or altered from the different MAC address computer with same or different IP.**

- (iv) The Monitoring Agency and the independent Supervising Authority must verify the authenticity and genuineness of every discrepancy noticed from the auto generated alert/report, before declaring the results of the concerned candidate.**
- (v) In case of malfunctioning of computer of any candidate, at the given Examination Centre, it can be changed in the same Examination Centre during the Examination time, only after written prior permission of the Authority at the Examination Centre allowing him to operate second (another) computer, for the reasons to be recorded contemporaneously therefor.**
- (vi) Results of candidates with any of the abovesaid discrepancy should be withheld till the verification process is complete. The verification to be completed not later than one week.**
- (vii) After examination time is complete, the Software must be able to undertake auto-analysis of matching of the data of both the servers. If any**

discrepancy is found in the statistics of any particular roll number, then the result of such candidate should be withheld.

- (viii) Examinee computer, local exam server and central server times should be synced through a mechanism.
- (ix) When examinee is giving the exam the complete back-end activities and all the ports of the system should be disabled. The keyboard should be disabled while the examinee giving the exam.
- (x) All other programs except the Online exam clients should be deactivated by controlling the inputs of the examinees. Only Mouse should be enabled.

10. The APDMC has no objection whatsoever in complying with these additional parameters. The counsel for the APDMC has also, on instructions, stated before us that the Agency to be appointed by respondent No.31 for conducting the online examination has also agreed and committed to comply with all the technical and logistical requirements including the additional requirements specified today.

11. The counsel appearing for the petitioners on instructions submits that if these additional measures are

observed during the conduct of online examination, most of the issues that have been raised by the petitioners in the petitions or otherwise would be redressed.

12. As a result, the conditions specified in clause B(1), B(7), B(9) and C(1)(iv) of the order dated 28.07.2015 are modified to the extent mentioned hitherto on acceptance of the assurance given by APDMC to fulfill all other conditions including the additional conditions.

**13.** As regards Clause No.B(9) specified in the order dated 28.07.2015, it was brought to our notice even during the previous hearing that the Agency may not be able to provide for Examination Centres having ISO 27001 certification at such short notice. **Instead, the Agency as well as APDMC would ensure that the Examination Centres will be AICTE or NAAC accredited Colleges only.** If that condition is fulfilled and the other conditions specified in order dated 28.07.2015 including the additional parameters, now specified, the condition in clause No.B(9) can be modified accordingly.

14. The other relaxation requested by APDMC is to dispense with the requirement of filing affidavit of undertaking of the Managing Director of the Agency to be engaged by the respondent No.31 for conducting the online examination. Considering the assurance given by APDMC

through counsel across the Bar which we have already placed on record and accepted, it may not be necessary to insist for the affidavit of the third party who may be unwilling to give such affidavit. The measures now proposed being comprehensive and would address all the apprehensions; and that the APDMC has given undertaking to fulfill all the conditions in its letter and spirit; coupled with the fact that AFRC being the Monitoring Agency has also undertaken through Counsel that it shall ensure that APDMC fulfills all the conditions mentioned in order dated 28.07.2015 including the modified conditions and the additional parameters specified above and if any discrepancy is noticed, would be immediately brought to the notice of the Court for seeking further direction, as may be required, the requirement of undertaking of Agency is hereby dispensed with.

**15. In addition to the oral assurance given on behalf of respondent No.31-APDMC, we direct the Secretary and President of APDMC to file affidavit of undertaking to comply with all the parameters specified in order dated 28.07.2015 and as modified in terms of this order. That affidavit be filed by Friday (28.08.2015).**

**16.** We once again make it clear that the respondent No.31 has volunteered to comply with this arrangement to ensure

free and fair conduct of entrance examination so as to instill public confidence in the dispensation and larger public interest, but without prejudice to the rights and contentions available to respondent No.31 including to resist this petition on all aspects and in particular on the issue of maintainability thereof.

**17.** We appreciate the effort put in by APDMC to ensure that a proper mechanism is put in place for conducting the entrance examination which will not only be free and fair but transparent and also observe complete confidentiality. Providing for this arrangement, is, obviously, no reflection on the respondent No.31 in any manner. As aforesaid, respondent No.31 has agreed for this arrangement in larger public interest.

**18.** We may place on record statement made by the counsel for respondent No.31 that jammers will be arranged at the Examination Centres during the examination period to ensure that no unfair practice is resorted to by any examinee. We also place on record the statement made by the counsel for the respondent No.31 that ordinarily the ratio of Invigilators and candidates maintained at the Examination Centre is 1:20, to ensure free and fair examination.

**19.** It is made clear that this modification and clarification

is only in respect of examination conducted by respondent No.31 under monitoring of AFRC, because of paucity of time and to be concluded before end of September, 2015.

**20. As indicated in our order dated 28.07.2015, we direct APDMC to immediately interact with NIC for nomination of Database Administrator not below the rank of Scientist “C” for overall supervision of the technical operations and other matters referred to in the said order. If no response is received from NIC, that position be brought to the notice of the Court immediately for passing appropriate orders in that behalf or for replacement of independent person/agency to oversee the technical operations during the relevant period whilst the examination (DMAT – 2015) is conducted.**

**21. The papers handed over by the counsel for respondent No.31 concerning the profiles of Agencies and other material be kept in sealed cover, in the custody of the Principal Registrar (Judicial).**

**22. List these matters on 3<sup>rd</sup> September, 2015 under caption “Direction” to consider the affidavit of undertaking. Writ Petition No.14143/2015, however, be listed tomorrow (27.8.2015) before this Bench.**

**(A. M. Khanwilkar)**  
**Chief Justice**

**(K.K.Trivedi)**  
**Judge**