

Freya Kothari vs Union Of India & Ors on 22 September, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 13668/2022, CM APPL. 41662/2022 & CM APPL.
41663/2022

FREYA KOTHARI

Through:

Ms. Bina Madhavan & Ms.
Mehra, Advs. ...

versus

UNION OF INDIA & ORS. ...

Through:

Mr. Aakanksha Kaul, Sr
Counsel, Ms. Poonam, G
Mr. Manek Singh, Mr. A
& Ms. Divita Dutta, Ad
Mr. T. Singhdev, Mr. A
Chakravarty, Ms. Raman
Ms. Michelle B. Das &
Gulati, Advs. for R5
Mr. Sanjay Khanna, SC
Ms. Pragya Bhushan, Mr
Singh & Mr. Tarandeep
for NTA

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 22.09.2022

1. The petitioner has filed the present writ petition impugning the final answer key dated 08.09.2022 issued by the respondent - National Testing Agency (NTA) for National Eligibility-cum-Entrance Test (Undergraduate) [NEET (UG)] - 2022, Examination conducted on 17.07.2022.

2. It is contended by the petitioners that the final answer key in respect of question Nos. 63, 127, 133 and 164 is incorrect and the answers given by petitioner are the correct answers. It is, therefore, contended that evaluation done by the respondent is flawed and needs to be re-evaluated to give the marks for these questions, the answers of which are rightly given by the petitioner.

3. The petitioner achieved 10497 general category rank in the merit list and 25628 in NEET All India rank and claims that if the marks are correctly awarded as per the correct answers she would achieve a much higher rank.

4. It is submitted that the answers given by the petitioner were based on the approved syllabus from the NCERT Book which was also pointed out by the petitioner to the respondent by way of a challenge under Rule 14.2.2 submitted after the declaration of provisional answer keys on 31.08.2022.

5. Learned counsel for the petitioner states that petitioner on 01.09.2022 specifically gave a representation, however, when the final result was declared on 07.09.2022, it was found that no revision to the answers keys was carried out by the respondent - NTA which has adversely prejudiced the petitioner and if she is awarded the marks in respect of those questions, which according to her, are the correct and most appropriate answers but were evaluated otherwise, she would possibly achieve much higher rank.

6. It is stated that the petitioner had scored 590 marks out of 700 marks and if the marks are correctly awarded, as claimed, she would score 610 marks because 4 marks which are given for every correct answer would be added and 1 mark which is wrongly deducted for each of these four answers considering them to be wrong would also be added back.

7. The admitted facts relevant for deciding the present case are that the National Eligibility cum Entrance Test for 1872343 candidates was held by NTA on 17.07.2022. The provisional answer key for the test was declared on 31.08.2022. The petitioner, on 01.09.2022 in terms of the procedure prescribed under Rule 14.2.2 challenged the provisional answer keys in respect of question Nos. 63, 127, 133 and 164. The final result of the examination was declared by the respondent on 07.09.2022 and the final answer key was also made available to all the candidates which did not accept the objections raised by the petitioner and maintained the answers as provided in the provisional answer keys.

8. The scope of judicial review in such cases where the challenge is made to the evaluation of the test papers on the ground that the answer keys as erroneous is well-settled.

9. In *Kanpur University v. Samir Gupta*: (1983) 4 SCC 309, the Hon'ble Supreme Court in relation to the challenge by the students to the answer key held as under:

"15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."

(Emphasis supplied)

10. Similar views have been expressed by the Hon'ble Division Bench of this Court in *Salil Maheshwari v. The High Court of Delhi*: 2014 (145) DRJ 225 and *Sumit Kumar v. High Court*: (2016) SCC OnLine Del 2818. It has been held that unless it is found that there can be no possibility of doubt that the answer given is incorrect, the Court would refrain from interfering with the examination.

11. In *Sumit Kumar v. High Court* (supra), the Hon'ble Division Bench of this Court observed as under:

"11. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is "demonstrably wrong" in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. Albeit, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression "demonstrably wrong" and the clapham omnibus standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the Court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt."

12. The Hon'ble Division Bench of this Court, in a later decision in Kishore Kumar vs. High Court of Delhi: W.P. (C) 9425 of 2018, decided on 29.10.2018, narrowed down the scope of judicial review and held that merely because some answers or questions are found to be inapt, the same would not call judicial intervention unless the same are found to be ex-facie arbitrary. It was held as under:

"26. As far as the attack to the answer keys on the merits goes, possibly, the court may on a close analysis conclude that on one or two questions, the answer keys were inapt. However, this has to be weighed in with the fact that the court exercises judicial review jurisdiction. Absent demonstrably facial arbitrariness, its approach should be circumspect and deferential (to the examining body)....."

13. In the present case, the petitioner has disputed the answers given in the answer key stating as under:

Question Question Answer as per Answer as per No. Answer Key Petitioner (based on NCERT book) 63 Given below are two statements: Option (3) Option (1) @ Pg. Statement I: Both statement I Statement I is 211 The boiling points of the following and statement II incorrect but hydrides of group 16 elements increases are incorrect Statement II is correct in the order - @Pg. 51 @Pg. 236 $H_2O < H_2S < H_2Se < H_2Te$ (Chemistry Book Statement II: published by the The boiling points of these hydrides Respondent NCERT increase with increase in molar mass. for Class XII (Part-I), Chapter P-Block Elements at Page No. In the light of the above statements, 187) @Pg. 263 choose the most appropriate answer from the options given below: Reason - with the increasing molecular (1) Statement I is incorrect but mass, vanderwall forces increase and Statement II is correct hence the boiling point (2) Both Statement I and Statement increases II are correct (3) Both Statement I and Statement II are incorrect (4) Statement I is correct but Statement II is incorrect.

Question Question Answer as per Answer as per No. Answer Key Petitioner (based on NCERT book) 127 Read the following statements about Option (3) Option (1) the vascular bundles:

@ Pg. (a) In roots, xylem and phloem in a (b), (c), (d) and (a), (c), (d) and (e) 221 vascular bundle are arranged in an (e) Only Only @ Pg. 237 alternate manner along the different radii. @Pg. 51

(b) Conjoint closed vascular bundles do not possess cambium (Biology Book for

(c) In open vascular bundles, Class XI, Chapter cambium is present in between xylem Anatomy of Flowering

(d) The vascular bundles of published in January, dicotyledonous stem possess endarch 2019) @Pg. 295 protoxylem

(e) In monocotyledonous root, Reason - Statement usually there are more than six xylem (a) is correct and the bundles present same is mentioned in NCERT book, Choose the correct answer from the therefore, option options given below :- without statement (a) (1) (a), (c), (d) and (e) Only cannot be a correct answer.

(2) (a), (b) and (d) Only (3) (b), (c), (d) and (e) Only Option (3) (as per NTA) cannot be (4) (a), (b), (c) and (d) Only correct because Statement (a) is not even mentioned therein Question Question Answer as per Answer as per No. Answer Key Petitioner (based on NCERT book) 133 What is the net gain of ATP when Option (4) Two Option (1) Eight each molecule of glucose is converted @Pg. 51 @Pg. 238 @ Pg. to two molecules of pyruvic acid?

(1) Eight

(2) Four

(3) Six

(4) Two

Question
No.

Question

Answer as
Answer Key

164

Given below are two statements:

Option (4)

@Pg.
225

Statement I:

The release of sperms into the seminiferous tubules is called spermiogenesis.

Statement II:

Spermiogenesis is the process of formation of sperms from spermatogonia.

Statement I is correct

Statement II is incorrect @Pg

51

choose the most appropriate answer from the options given below:

- (1) Statement I is incorrect but Statement II is correct
- (2) Both Statement I and Statement II are correct
- (3) Both Statement I and Statement II are incorrect
- (4) Statement I is correct but Statement II is incorrect

14. It is stated that the answers given by the petitioner are supported by NCERT textbook. In relation to question No. 127, the correct answer, according to the petitioner, was option No. 1 which says statements given in

(a), (c), (d) and (e) only, to be a correct answer whereas the correct answer, as per the answer given by NTA was Option No. (3) which says the statements given in (b), (c), (d) and (e) only, to be correct answer. Therefore, as far as statements given in (c), (d) and (e) are concerned, the same are correct

according to both petitioner and respondent, being common in both the answers i.e. one preferred by petitioner and the one as per the answer key. The dispute, therefore, arises in relation to the statements given in (a) and (b), which read as under :-

"(a) In roots, xylem and phloem in vascular bundle are arranged in an alternate manner along the different radii."

"(b) Conjoint closed vascular bundles do not possess cambium"

15. It is submitted that the NCERT textbook in the chapter 'Vascular Tissue System' (Page 90) also mentions an identical narration as statement given in (a) which reads as under:

"When xylem and phloem within a vascular bundle are arranged in an alternate manner along the different radii, the arrangement is called radial such as in roots."

16. The statements given in (a) & (b) are in relation to vascular bundles falling in the Chapter 'Anatomy of Flowering Plants'. The chapter in relation cambium being possessed in vascular bundles is detailed in the same NCERT book.

17. Similarly, in relation to question Nos. 63, 133 and 164, the learned counsel, by showing the chapters and extract from NCERT had tried to reason that the answer given by the petitioner is the more appropriate answer.

18. Learned counsel for the petitioner states that the above referred text from the NCERT book clearly shows that the answer in the final answer key is incorrect. Learned counsel relies upon the Information Bulletin issued for NEET (UG), 2022 which specifically mentions that for NEET (UG), 2022, the National Medical Commission of India (NMC) also recommends the syllabus prepared by NCERT.

19. Learned counsel for the petitioner relies upon the judgment passed by the Hon'ble Division Bench of this Court in Sumit Kumar v. High Court (supra) and the judgment passed by the Hon'ble Apex Court in the case of Rajesh Kumar & Ors. vs. State of Bihar & Ors.: (2013) 4 SCC 690, to contend that if the answer sheets are evaluated on the basis on erroneous answer key, the benefit has to be given to the candidate.

20. Learned counsel for the respondent contends that the objections given by the petitioner, as also various other objections received after issuance of provisional answer keys, were duly considered by the experts in the field and final answer key was thereafter taken out.

21. He submits that the wisdom of the experts in the field cannot be challenged in the manner as sought to be done in the present writ petition.

22. It is submitted that the questions, even though are multiple choice objective-type, still required application of mind and their answers cannot be in a straitjacket formula as is sought to be done by

the petitioner.

23. He submits that the reference to the NCERT textbook is a matter of interpretation and it is to be left to the wisdom of the experts, as to which answer they feel is the most apposite for the questions asked.

24. Once the objections raised by the petitioner were duly considered by the sufficiently qualified experts in the field and there is no allegation of any malice or lack of bona fide, this Court should not interfere in the examination process.

25. He further submits that seeking a reappraisal of the decision of the experts on merits is not permissible in terms of law laid down by the Hon'ble Apex Court as well as this Hon'ble Court.

26. Learned counsel for the respondent further relies upon the judgment passed by Coordinate Benches of this Hon'ble Court in the case of Mahesh Kumar v. Staff Selection Commission & Anr.: Special Leave to Appeal (C) No. 1951/2021, Purbasha Das & Ors. v. National Testing Agency & Ors.:

W.P. (C) 6801/2019 decided on 09.07.2019 and National Board of Examination vs. Association of MD Physicians: LPA 225/2021 decided on 05.08.2022.

CONCLUSION

27. The petitioner, in the present case, has challenged and is doubting the decision of the experts in the field of medical science who are responsible for setting up the question papers and deciding the appropriate answers for such questions.

28. It is a matter of fact that various objections raised are duly considered by these experts and final answers are published and there is no material before this Court to doubt the decision taken by such experts.

29. Moreover, this Court is not an expert in the field of medical science to sit over the decision taken by the experts and substitute it with its own wisdom.

30. As noted above, the scope of judicial review in such cases is limited.

31. It can be seen that the questions asked from the candidates are tricky and their answers cannot be argued to be in a straitjacket formula, as sought to be done by the petitioner.

32. It is significant to note that in relation to question Nos. 63, 133 and 164, it is mentioned that the candidate has to choose the most appropriate answer. Meaning thereby, that one or two answers can look correct but the candidate has to choose the answer which experts feel to be the most appropriate one. This itself leads to a situation where the correctness of the answer becomes a matter of debate and does not fall in the category of cases where it leaves no room for doubt that the answer given by the student is the correct answer. It was held by the Hon'ble Apex Court in Kanpur

University v. Samir Gupta (supra) that the Court has to assume the answer given in the key to be correct unless it is proved to be wrong and it should not be held to be wrong by inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong. In so far as question No. 127 is concerned, the candidate has been asked to choose the correct answer from the options given as noted above. From the point of view of a person not an expert in medical field, both statement (a) and statement (b) may seem to be correct statements. However, this Court is not sitting in appeal over the views taken by experts who have set the question paper and have decided on the correct answer. This Court, being not an expert in the field, cannot supplant its opinion being not in a position to interpret the medical literature and would be over-stepping its jurisdiction by holding the view given by the experts to be an incorrect view. The answers given in the key cannot be patently called to be wrong on the face of it. The moment, the Court has to conduct the exercise wherein the arguments have to be heard on whether answer key is correct or incorrect, and has to consider the arguments advanced by both the parties to reach a conclusion that itself would mean that answer selected by experts is not demonstrably wrong and would amount to interference which has been frowned upon by the Courts in such cases.

33. It is obvious from the perusal of the extract of the NCERT textbook relied upon by the petitioner that the answers are debatable and therefore, it is beyond the scope of judicial review.

34. As held by the Hon'ble Division Bench of this Court in the case of Kishore Kumar vs. High Court of Delhi (supra), the interference, in such cases, is restricted only in cases where arbitrariness is ex-facie demonstrable.

35. The Hon'ble Division Bench of this Court in a recent judgment dated 05.08.2022 in the case of National Board of Examination vs. Association of MD Physicians: LPA 225/2021, in similar circumstances where the alleged incorrect questions were challenged in relation to the screening test, conducted in exercise of power under Section 33 of Indian Medical Council Act, held as under:

"17. The foregoing cases cement the finding that Judges are not and cannot be experts in all fields, and the opinion of experts cannot be supplanted by a Court overstepping its jurisdiction. It needs to be demonstrated by a candidate that the key answers are patently wrong on the face of it, and if there is any exercise conducted by the Court wherein the pros and cons of the arguments given by both sides need to be taken into consideration, that will inevitably amount to unwarranted interference on the part of the Court. When there are conflicting views, it is incumbent upon the Court to bow down to the opinion of the experts which, in this case, was the Expert Committee constituted by the NBE.

18. The submissions made by the learned Senior Counsel hold weight inasmuch as the Court cannot step into the shoes of the examiner and render an opinion contrary to that of the Expert Committee. If the error in the question is manifest and palpable, and does not require any elaborate argument, then the Writ court may choose to intervene. However, where the errors do not show their heads without a detailed and elaborate probe into the opinions of experts, the Court must stay its hands. It would

not be prudent for a Court to conduct itself like an expert in a subject alien to it when an entire body of experts has arrived at a contradictory stand. It is also not for the Courts to interfere in such matters, except in absolutely rare and exceptional cases, especially in view of the fact that the instant examination pertains to the practice of medicine - a field that requires the exercise of utmost care and caution."

36. This Court does not find that the answers provided in the answer key for the question Nos. 63, 127, 133 and 164 are such demonstrably wrong and incorrect to fall within the parameters set by the Hon'ble Apex Court warranting judicial interference.

37. The law as settled by the Hon'ble Apex Court as well as this Hon'ble Court does not permit this Court to doubt the wisdom of the experts. This Court does not feel the issues raised to be within the scope of judicial review.

38. In view of the above, this Court finds no merit in the writ petition. The same, along with all the pending applications, is hereby dismissed.

AMIT MAHAJAN, J SEPTEMBER 22, 2022 KDK / SS