

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

% Judgment reserved on : 15.07.2013
Judgment pronounced on : 19.07.2013

+ W.P.(C) 4147/2012

ARCHIT KRISHNA Petitioner
Through: Mr.R.K. Handoo and Mr.Yoginder
Handoo, Mr. Manish Shukla and
Mr. Yogesh Sharma, Advs.

Versus

NATIONAL LAW UNIVERSITY & ANR. Respondents

Through: Mr.Anand Varma, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The petitioner before this Court appeared in Common Law Admission Test (CLAT), 2012 conducted by the respondents for the purpose of admission to various national law schools / universities. The said test is conducted by one or the other national law college/university, on a rotational basis. In the application form, the candidates were required to give preference for the universities/colleges participating in the said test. The petitioner was required to choose all the 14 colleges/ universities granting admission on the basis of the aforesaid test, in the

order of their preference. The first four colleges/ universities indicated by the petitioner, in the order of preference, were NLSIU-Bangalore, NALSAR-Hyderabad, NLIU-Bhopal and WBNUJS-Kolkata. The petitioner obtained 141 marks in the said test and considering his position in the merit list, he could get admission in WBNUJS-Kolkata, which was the fourth preference exercised by him. The grievance of the petitioner is that the answers notified by the respondents in respect of as many as four questions was incorrect, as a result of which he was given 141 marks though he should have been given 145 marks. According to him, had he been given 145 marks, to which he was lawfully entitled, he would have got admission in NLSIU-Bangalore, which was his first choice out of 14 schools/ universities participating in the test. According to him, even 142 marks to him would have ensured his admission to NALSAR-Hyderabad, which was his second choice in the order of preference. The petitioner is accordingly seeking the following reliefs:

- a. issue appropriate writ of mandamus or any other appropriate writ, direction or order, directing the respondents to transfer petitioner's admission to NLSIU, Bangalore or NALSAR-Hyderabad, on the basis of merit cum preference, after correcting the wrong answers and setting right the anomalies in the question paper and/or;

- b. to direct the respondents to award 4 additional marks to the petitioner;
 - c. to direct the respondents to submit before this Hon'ble Court the OMR answer sheet of the petitioner.
- 2. The respondent has contested the petition and taken a preliminary objection that the issue involved in this writ petition stands covered by a decision of this Court dated 31.7.2012 in W.P(C) No.3732/2012, where this Court rejected the challenge to the aforesaid examination, which included challenge to the answers notified by the respondent in respect of certain questions, including Question No. 56 and 197 which are subject matter of this writ petition. On merits, the respondent has maintained that the answers notified in the answer-key are correct answers.
- 3. The challenge in present writ petition is confined to Question Nos. 56, 75, 193 and 197. As far as challenge to the answer to Question No.56 is concerned, a perusal of the order dated 31.7.2012 passed by this Court in W.P(C) No.3732/2012 would show that the challenge was expressly rejected by this Court in the said decision. However, no view was expressed by this Court with respect to answer to questions no.75, 193 and 197. Therefore, I propose to examine whether the answers contained in the answer-key to question nos.75, 193 and 197 can be said to be so

patently and unquestionably incorrect as to warrant interference by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution. The aforesaid questions read as under:

4. **Question no.197 :**

The Right to Equality is guaranteed by

- (A)Article 14 to 18
- (B)Article 14
- (C)Article 14 and 15
- (D)Article 14, 15 and 16.

As per answer-key, the correct answer is (D), whereas according to the petitioner, the correct answer is (A). In our Constitution, Articles 14 to 18 find mention in Part-III under the Heading ‘Right to Equality’. However, a perusal of Article 17 and 18 would show that neither of these Articles really deals with the ‘Right to Equality’, Article 17 provides for abolition of untouchability whereas Article 18 provides for abolition of titles. Therefore, though Articles 17 and 18 are also clubbed with Article 14 to 16 under the heading ‘Right to Equality’, the said right is actually not guaranteed by either of these Articles. Hence, I find no merit in the contention that answer (A) is correct answer.

5. **Question no.75:**

Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) completed how many years of operation in 2011?

(A)3 years

(B)4 years

(C)5 years

(D)6 years.

As per answer-key, the correct answer is (D) whereas according to the petitioner, the correct answer is (C). Admittedly, Mahatma Gandhi National Rural Employment Guarantee Act came to be passed by Parliament on 25.8.2005, it received assent of the President on 05.09.2005 and was notified on 02.02.2006. Section 1(3) of the aforesaid Act reads as under:

“(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States or for different areas in a State and any reference in. any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such State or, as the case may be, in such area:
Provided that this Act shall be applicable to the whole of the territory to which it extends within a period of

five years from the date of enactment of this Act.”

It would thus be seen that the aforesaid Act did not come into force immediately on its being passed by Parliament. It came into force only on 02.02.2006 when it was notified in Gazette of India. An Act of Parliament cannot be said to have become operational before it is notified, when the Act itself provides that it will come into force only on the appointed date. The years of operation, therefore, will commence only from the appointed date and not from the date the Act was passed by Parliament. Since the Act came into force/operation only on 02.02.2006, it has completed 5, not 6 years of operation in the year 2011. Therefore, the answer to this question, as contained in the answer key, is neither a correct nor one of the possible correct answers. The answer to this question being mathematical in the sense that to arrive at a correct answer one has only to see how many years, from the date of coming into force of the Act, had passed up to 2011, there can be no two possible answers to this question. I, therefore, hold that the answer to this question, notified by the respondent was an incorrect answer.

6. “Question No. 193

X went to Y’s house and forgot his bag which contained 1 kg

sweets. Y's children consumed the sweets. Decide the liability of Y.

- (A) Y is bound to pay the price of sweets to X
- (B) Y is not bound to pay anything
- (C) Y is bound to pay half the price of sweets.
- (D) Y would not have to pay anything because X loves Y's children."

According to the petitioner, the correct answer to the aforesaid question is 'A', whereas according to the respondents, the correct answer is 'B'. In support of their contention that 'A' is the correct answer to the above-referred question, the petitioners rely upon Section 70 of Indian Contract Act, 1872 and illustration (a) to the aforesaid Section which reads as under:

"70. Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them."

As rightly pointed out in the counter-affidavit, there are three

conditions for invoking Section 70 of Indian Contract Act. Firstly, the goods are to be delivered or something has to be done for another person lawfully. Secondly, the thing done or the goods delivered must be done or delivered must be done without intention to do so gratuitously and thirdly, the person to whom goods are delivered enjoys the benefit thereof. The aforesaid Section will apply only if all the three conditions mentioned above are established in a given case. If any of these conditions is lacking, there would be no scope for applicability of the said section. There was nothing unlawful in 'X' forgetting his bag, containing sweets in the house of 'Y'. Therefore, the first condition for applicability of Section 70 of Contract Act was fulfilled in this case. It is obvious from a perusal of the question that the sweets were not meant for 'Y' or his children and was not a gift for them. Obviously, 'X' was acting non-gratuitously when he forgot his bag in the house of 'Y'. Therefore, the second condition also stands fulfilled. But, since the sweets were consumed by the children of 'Y' and not by 'Y' himself, the third condition that the person to whom the goods are delivered should enjoy benefit thereof, is not fulfilled in this case, when no negligence, etc. is attributed to 'Y'. In any case, the answer 'B' to the aforesaid question, in

my view, cannot be said to be apparently incorrect so as to warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution. In my view, considering the information available in the question, it can hardly be disputed that answer 'B' is the correct answer or at least the most appropriate answer in respect of the above-referred question.

7. The learned counsel for the respondent contended that another writ petition being *W.P.(C) No. 3732 of 2012: Shivani Gupta vs. National Law University, Jodhpur and Anr.*, challenging the answers to notify by the respondent to some of the questions asked in this very examination, having been dismissed, another writ petition, challenging answers to certain questions in the very same examination, should not be entertained. A perusal of the decision of this Court in the above-referred case would show that during the hearing of the aforesaid case, the respondent submitted that after examination was conducted, the assertions made in the different representations were examined by three experts appointed by the Convener, which found the question paper and the key absolutely in order and the said Committee had recorded reasons for the conclusions arrived at by them. In this regard, they also placed

reliance on the decision of Supreme Court in **Sanchit Bansal vs. Joint Admission Board** (2012) 1 SCC 157. There is no material before this Court to show that the writ petitions examined by the aforesaid Committee included the representation in respect of questions No. 75 and 193. If that was the position, the reasons recorded by the Expert Committee for the conclusions arrived at by them in respect of the aforesaid questions should have been placed before the Court. Therefore, the Court does not know whether the answers in respect of questions No. 75 and 193 were re-examined by the Expert Committee and if so, what were the reasons for which the Committee came to the conclusion that the answers contained in the answer key were correct. I also find that this Court actually examined correctness or otherwise of the answer in respect of question No. 56 and concluded that the answer contained in the answer key was, in fact, the correct answer. As regards the decision in **Sanchit Bansal** (*supra*), I find no such proposition of law in the aforesaid decision which would prevent this Court from interfering even where it finds that the answer contained in the answer key in respect of a particular question cannot even be said to be one of the possible correct/appropriate answers, not to speak of the most appropriate answer.

8. In **Kanpur University, through Vice-Chancellor and Ors. vs. Samir Gupta and Ors.** (1983)4 SCC 309, while considering challenge to correctness of key answers, the Apex Court, *inter alia*, held as under:-

“16. 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.....

17.....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.”

In the aforesaid case, Supreme Court confirmed the direction given by the High Court for re-assessment to certain questions on the ground that the answers provided in the answer key were wrong.

Manish Ujwal and Ors. vs. Maharishi Dayanand Saraswati University and Ors. (2005) 13 SCC 744, some of the candidates, who appeared in the entrance test, disputed correctness of the answers to certain question in Physics, Chemistry and Biology. The High Court sought expert opinion from Jodhpur University and Udaipur University

with respect to answers to the aforesaid questions. The unanimous opinion of the experts in respect of six questions was that the answers, notified by the University to those questions were erroneous. However, despite that no relief to the petitioners was granted by the High Court. Setting aside the decision of High Court, the Apex Court took the view that the student community could not be made to suffer on account of errors committed by the University. In this regard, the Court observed that first and paramount reason being the welfare of the students, wrong key answer can result in the merit being made a casualty.

In **D.P.S. Chawla v. Union of India & Ors.** 184(2011) DLT 96, a Division Bench of this Court found that the answer, contained in the answer key in respect of one question, was wrong. The Court, accordingly, enhanced the marks secured by the petitioner in the first paper from 49% to 50%, thereby declaring him successful in the examination and eligible for promotion.

In **Gunjan Sinha Jain vs. Registrar General, High Court Of Delhi,** W.P.(C) No. 449/2012 and connected matters, decided on 09.04.2012, a Division Bench of this Court found certain answers contained in the answer key in respect of Delhi Judicial Service Examination to be incorrect and accordingly substituted those incorrect answers by what the Court felt were

correct answers.

9. It would this be seen that the petitioner is entitled to mark only in respect of the answer given by him to question No. 75 in case 'C' was the answer given by him to the said question. If any negative mark has been given to the petitioner on account of the answer given by him to the aforesaid question, the said negative mark also needs to be excluded from consideration, while computing the revised marks to the petitioner.

10. The next question, which arises for this consideration, is as to what relief, in the facts and circumstances of the case, can be given to the petitioner at this stage. The petitioner was granted admission in WBNUJS-Kolkata in the Academic Session 2012-2013. He has already completed one year of study and in case he has passed the first year paper, he would now be studying in second year of the course. The case of the petitioner is that had he been given 142 marks, he would have got admission in NALSAR-Hyderabad, which was the second option, exercised by him. Though the petitioner has sought transfer to NLSIU-Bangalore or NALSAR-Hyderabad, in my view, it would not be appropriate to direct transfer of the petitioner from WBNUJS-Kolkata to NALSAR-Hyderabad at this stage. There are specified number of seats

in NALSAR-Hyderabad and all those seats stand already filled. There is no material on record to show that there is any vacancy in the second year of the batch which was admitted in NALSAR-Hyderabad, in the year 2012. The transfer of the petitioner from WBNUJS-Kolkata to NALSAR-Hyderabad would, therefore, result not only in NALSAR-Hyderabad being made to admit beyond its sanctioned strength, one seat in WBNUJS-Kolkata would also fall vacant and go waste in the process. Neither WBNUJS-Kolkata nor NALSAR-Hyderabad is a party to this petition. This is yet another reason why the relief sought to by the petitioner cannot be granted to him.

11. In these circumstances, the writ petition is disposed of with a direction to the respondents to declare the revised results of the petitioner within four weeks, treating option 'C' as the correct answer of Question No. 75.

The writ petition stands disposed of accordingly. There shall be no order as to costs.

V.K.JAIN, J

JULY 19, 2013
rd/BG