

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF DECEMBER 2013/29TH AGRAHAYANA, 1935

WP(C).No. 22798 of 2013 (Y)

PETITIONER(S):

**DR.SIMI P WALTEN,
W/O.DR.SIBI M.S., POOKKATHU HOUSE, PERUNGOTTUKARA,
THRISSUR, PIN-680565.**

BY ADV. SRI.C UNNIKRISHNAN

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, DEPARTMENT OF HIGHER EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE COMMISSIONER
THE OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATION
GOVERNMENT OF KERALA, SANTHINAGAR, THIRUVANANTHAPURAM.**
- 3. THE CENTRAL COUNSEL FOR INDIAN MEDICINE
REPRESENTED BY ITS SECRETARY
JAWAHAR LAL NEHRU BHARTIYA CHIKITSA AVAM HOMOEOPATHY
ANUSANDHAN BHAVAN, 61-65, INSTITUTIONAL AREA,
JANAKPURI, NEW DELHI-110058.**
- 4. UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF AYUSH
MINISTRY OF HEALTH AND FAMILY WELFARE, AYUSH BHAVAN
B BLOCK, GPO COMPLEX, INA, NEW DELHI-110 023.**

*** ADDL.R5 IMPEADED**

**5. THE DIRECTOR, DIRECTORATE OF AYURVEDA MEDICAL EDUCATION
AROGYA BHAVAN, M.G.ROAD, THIRUVANANTHAPURAM -695001.**

**ADDL. R5 IS IMPEADED AS PER ORDER DATED 28.10.2013 IN IA 14257/2013.
IN WPC.**

**R1,2 & 5 BY GOVERNMENT PLEADER SRI.ROSHAN ALEXANDER
R3 & 4 BY SRI.PPARAMESWARAN NAIR, ASG OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2013
THE COURT ON 20-12-2013 DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE AY PAPER I QUESTION PAPER.

EXHIBIT P2 : TRUE COPY OF THE ANSWER KEY TO AY PAPER I QUESTION PAPER.

EXHIBIT P3 : TRUE COPY OF THE AY PAPER II QUESTION PAPER

EXHIBIT P4 : TRUE COPY OF THE ANSWER KEY TO AY PAPER II QUESTION PAPER.

**EXHIBIT P5 : TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN
DESHABHIMANI DAILY.**

**EXHIBIT P6 : TRUE COPY OF THE REPRESENTATION DT.31-8-13 SUBMITTED BY THE
PETITIONER BEFORE R2.**

**EXHIBIT P7 : TRUE COPY OF THE RELEVANT PAGES OF RANK LIST FOR PG
(AYURVEDA) ENTRANCE EXAMINATION FOR THE YEAR 2012.**

**EXHIBIT P8: A TRUE COPY OF THE RANKED LIST DATED 25/9/2013 PUBLISHED BY
THE 2ND RESPONDENT.**

**EXHIBIT P9: TRUE COPY OF THE NOTIFICATION NO.2095/MDA/2013/TA4/CEE DATED
26/10/13 ISSUED BY THE COMMISSIONER OF ENTRANCE EXAMINATIONS**

**EXHIBIT P10: TRUE COPY OF THE PAGE NO.149 OF THE TEXT BOOK OF FORENSIC
MEDICINE AND TOXICOLOGY BY DR.K.S.NARAYAN REDDY**

**EXHIBIT P11: TRUE COPY OF THE PAGE 34 OF SYLLABUS OF MBBS AT THE AIIMS
DELHI**

**EXHIBIT P12: TRUE COPY OF THE RTI APPLICATION DATED 4/10/13 AND ITS REPLY
DATED 30/10/13**

**EXHIBIT P13: TRUE COPY OF THE NEWS PUBLISHED BY TIMES OF INDIA ON 26/6/13
IN THE WEB.**

RESPONDENT(S)' EXHIBITS & ANNEXURES

**EXHIBIT R2(A): TRUE COPY OF THE ARTICLE WRITTEN BY SRI.RAJEEVA
L.KARANDIKAR PUBLISHED IN CURRENT SCIENCE VOLUME 99, NO.8
DATED 25/10/2010**

**ANNEXURE R2(A): A TRUE COPY OF THE NOTIFICATION NO.2095/MDA/2013/TA4/CEE
DATED 25/9/2013**

**ANNEXURE R2(B): A TRUE COPY OF THE EXPERT COMMITTEE REPORT FOR
QUESTION COMPLAINTS.**

/ TRUE COPY /

P.S TO JUDGE

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 22798 of 2013

Dated this the 20th day of December, 2013

JUDGMENT

Admission to the 'Post Graduate Ayurveda Vachaspathi M.D. Course - 2013', based on the Common Entrance Examination conducted by the second respondent is the subject matter of challenge in this writ petition. the petitioner has sought for the following reliefs:

"i. Declare that all the questions in Exts.P1 & P3 question papers which are having indicative choice as correct answer badly affected the transparency of the test itself and therefore the test is liable to be cancelled and a fresh test is required and to issue a writ of Mandamus or any other writ, order or direction commanding the 2nd respondent to cancel the entrance examination held on 25.8.2013 and to conduct reexamination of the entrance examination for M.D.Ayurveda 2013 in a fair and transparent manner.

ii. Alternatively issue a writ of Certiorari or any other writ, order or direction quashing all the questions in Exhibit P1 and P3 questionnaires with a right answer option of A & B or AB & C as an option among the four option and issue a writ of Mandamus or any other writ, order or direction commanding the 2nd respondent to prepare a

ranked list after evaluating the answers of balance questions in the Exhibits P1 and P3 questionnaires.”

2. The case of the petitioner as evident from the pleadings and proceedings is that, the question paper set for the Entrance Examination with multiple choice answers, was rather indicative of the answers, in so far as nearly 1/3rd of the total number of questions had more than one answer and the candidates were granted options A & B or AB & C and so on; suggesting/indicating that an answer with an option having more answers together was the correct answer. According to the petitioner, this exercise was to extend undue advantage to some candidates and since the questions were indicative of the answers by virtue of the modality, the examination was not fair or transparent and hence it was sought to be cancelled and to conduct re-examination, by submitting Ext. P6 representation. Since the same did not yield any positive result, the petitioner has approached this Court with the prayers as mentioned above.

3. A statement dated 9.10.2013 has been filed from the part of the second respondent; paragraphs 2 to 4 of which read as follows:

“2. In this connection, I may submit that the Answer Keys of the Entrance Examination for Admission to P.G.Ayurveda (MD Ayurveda) Courses 2013 held on 25.8.2013 were published in the website www.cee-kerala.org on 27.8.2013. Through

this Notification, it was notified that complaints in this connection, if any, may be forwarded to the Office of the Commissioner for Entrance Examinations, before 5.00 pm on 31.8.2013, with necessary supporting records. A few complaints regarding the questions and keys have been received and the same have been examined by Expert Committee constituted for the purpose. There were 70 (seventy) questions/answer keys placed before the Expert Committee in Paper I and 57 numbers were in Paper II.

3. Based on the recommendations of the Expert Committee, in paper I, Question Numbers 2, 18, 20, 58, 66, 75, 80, 93, 98, 116 and 130 were deleted and key of Question No.43 changed as B, Question No.49 changed as A, Question No.71 changed as B, Question No.99 changed as C, Question No.100 changed as A, Question No.111 changed as A, Question No.121 changed as B, Question No.124 changed as C, Question No.145 changed as D and Question No.146 changed as A and Question No.149 changed as D. Also in Paper II, Question Numbers 3, 8, 13, 17, 38, 123, 139, 145, 147 and 150 were deleted and key of Question No.12 changed as C, Question No.66 changed as D, Question No.101 changed as A, Question No.111 changed as A, Question No.112 changed as B, Question No.113 changed as C, Question No.126 changed as C and Question No.149 changed as D.

4. There are 150 questions in Paper I and 150 questions in Paper II. While preparing the rank list,

eleven questions in Paper I and ten questions in Paper II have been deleted, since there were more than one correct choices or errors in these questions/choices. These questions have not been included for valuation and no marks have been awarded for these deleted questions to any candidate. The marks obtained for the remaining 139 questions in Paper I have been multiplied by $(150/139)$ and the marks obtained for the remaining 140 questions in Paper II have been multiplied by $(150/140)$ to get the actual marks (corrected to four decimals). This formula is applied to award proportionate marks based on the score of the candidates in the questions considered for valuation (excluding deleted questions) to compensate the loss of marks for the deleted questions."

4. While so, W.P.(C).Nos. 25074, 25185 and 25481 of 2013 came to be filed before this Court challenging the course and proceedings pursued by the second respondent. It was pointed out that, the Rank List prepared, based on the 'answer keys' supplied earlier was subsequently altered, conceding that some of the answers as given in the 'key' were not correct and that some modification was necessary with reference to the defective questions as well. But the subsequent modified Rank List was also defective for many a reason, as the answers given as per the 'revised answer key' were also not correct in respect of some questions. In the said circumstance, this

Court called for a report from the Director of Ayurveda Medical Education, directing to furnish the correct particulars in a sealed cover; pursuant to which a detailed report was filed by the Director.

5. After going through the report, this Court observed as per interim order dated 21.10.2013 that, there was considerable force in the contentions raised from the part of the petitioners with regard to the incorrect questions and actual answers and it may be necessary to recast the lists based on the actual facts and figures. Some additional questions involved in W.P.(C). No. 25185/2013 were also sought to be dealt with by the Director, as pointed out by the learned Government Pleader, and accordingly, another interim order was passed on 23.10.2013 in the aforesaid three cases. The Director was required to furnish the particulars of the questions to be deleted and the correct answer key, to the second respondent herein (who was the first respondent therein), simultaneously directing the Commissioner of Entrance Examination to recast the 'Rank List' as well as the 'Category List', based on the correct data to be furnished by the Director and to effect allotment by the Director, based on the revised list to be prepared as aforesaid.

6. On the basis of the above direction, a revised Rank List was published on 26.10.2013 and taking note of the factual position, the above three writ petitions were disposed of as per common judgment

dated 28.10.2013, with liberty to the concerned respondents to finalize the proceedings and to give admission to the students concerned, to the particular course, based on the revised Rank List prepared by the Commissioner of Entrance Examination. It was also made clear that, it will not be a bar to consider the case of the petitioner herein to be dealt with separately.

7. After filing a statement as mentioned hereinbefore, the second respondent has filed a counter affidavit dated 16.11.2013 as well. Paragraphs 5 to 8 are relevant which are extracted below:

"5. At the outset itself it is submitted with great respect that the term used by the petitioner in the writ petition, 'indicative answer' is itself a misnomer and used only to mislead this Hon'ble Court. There is nothing called an indicative choice. If the petitioner used the term for having an option answer which contained more than two options or a combination of some of the options as one among the option answers, that cannot be said to be an indicative choice. At the outset itself, it is worthwhile to demonstrate before this Hon'ble Court that in Entrance Examinations, the idea of incorporating a choice having more than one answers of a combination of options is a modern scientific technique for preventing gate crashing. The term 'Gate Crashing' as it signifies is a process by which the examiner resist the attempt of a candidate to seek for an answer in a specific pattern which

concentrates only on guess work and nothing else. By virtue of gate crashing, a candidate, who is attending an entrance examination only on the basis of guess work will be put in a fix, where he was constrained to answer a question without any doubt. Presence of a choice with multiple answers is not by itself a demerit. In fact all the modern system of entrance examination follows the same pattern wherein, one of the options or choice would be a combination of two or more answers. That is why, clause 10 of the prospectus says that "the candidates will have to choose the 'most appropriate' response". This usage is pertinent since it does not say that the candidate have to choose the 'correct answer'. Therefore, if for practical reasons one has to resort to a multiple choice test that can be evaluated via computer, then a better alternative is to have questions that have one or more correct answers and then to postulate that to get a credit a candidate must select all correct answers and not select any incorrect answer. For the purpose of reference a true copy of the article written by Sri.Rajeeva L.Karandikar published in Current Science Volume 99, No.8, dated 25.10.2010 is produced herewith and marked as **Exhibit R2(a)**.

6. It is submitted that, therefore the contention that the idea of having combination of two or three options as one of the option answer is with the deliberate intention to help some of the candidates is not correct and hence liable to be rejected. According to the notification published by

the Commissioner for Entrance Examinations dated 27.8.2013 in consonance with the dictum of the Apex Court in 1983(4) SCC 309, any candidate who was having any complaints about the questions and answers should make that complaint within 31.8.2013 which was the limit. The complaint ought to have been made by any candidate should contain the reasons for the complaint. Exhibit P6 representation dated 13.8.2013 is the only complaint forwarded by the petitioner to the second respondent. According to Exhibit P6, 100 out of 300 questions in the examination was having an option either A and B or A, B and C as an option among the four options. It is also alleged that "there are strong reasons to believe based on a common human logic that it was a deliberated and premeditate thing to lead some specific candidates to the answer. Therefore, petitioner requested to cancel the examination and conduct a re-examination or to cancel the questions which are having an option answer having a combination of more than two answers. It is pertinent to point out that the petitioner has not revealed either in the representation or before this Hon'ble Court the material upon which she is relying on to prove that there is malafide use of power so as to sabotage the admission process. It is also not the case of the petitioner by demonstrating the questions or answers which she alleges to be indicative or incorrect. As held by the Hon'ble Supreme Court in 1983(4)SCC 309, "The key answer should be assumed to be

correct unless it is proved to be wrong. It should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong that is, it must be such as no reasonable body of men well versed in the particular subject would regard as correct”.

7. Non-demonstration of any illegality that has been committed by the examiner on the petitioner itself cuts the rule of petitioner's case. It is relevant to point out that using an option which is having a combination of options as the answer is not a wrong practice much less an illegality. Petitioner has not a case that the second respondent or any authorities of the Government has leaked the question papers to some favouritism to a section of the candidates. Petitioner simply alleges that since some of the questions carry optional answers, which is a combination of two or other options the answers are indicative and are liable to be cancelled. Such a contention is preposterous and liable to be rejected.

8. Preparing options and answers and setting question papers is an arena of the examiner. Unless and until a candidate demonstrably proves before the Hon'ble Courts that either the answers are wrong or the question itself is wrong or the question has no correct answer the Hon'ble Supreme Court has consistently held that the examiner need not be doubted.”

The petitioner has filed a reply affidavit producing some additional documents as Exts. P9 to P13. Ext.P9 is the revised Rank

List published on 26.10.2013 as mentioned hereinbefore.

8. The learned counsel for the petitioner submits that the grievance of the petitioner as to the indicative nature of the answers to be opted still remains in tact and this has extended undue advantage to some candidates in respect of questions which were having no definite answer, but multiple answers.

9. The learned Government Pleader appearing for the respondents submits that, there is absolutely no merit or bonafides in the contentions raised by the petitioner. Reference is made to Clause '10' of the Prospectus issued by the respondents, as approved by the Government, which clearly stipulates that the candidates has to choose the 'most appropriate' response. The necessity to have such a modality, especially for higher studies as involved herein, is sought to be asserted in the counter affidavit, also with reference to the opinion of experts in this regard. It is further stated that, the petitioner did not point out any incorrect option while submitting Ext.P6, but for the ground of human logic. The grievance of the petitioner as contended in Ext.P6 representation is in the following terms:

"....There are strong reasons to believe based on common human logic that it was a deliberate and premeditated thing to lead some specific candidates to the answer and thereby to create undue advantage to some candidates. The matter has also

come in visual as well as print media and it was clearly alleged that the examination question was leaked for the undue favour of some candidates. I request you to take a serious note of the same and to take necessary steps to cancel the examination and to conduct a re examination or to cancel the questions that followed this particular modality of choice since it has affected the transparency of the examination and has put the efforts of genuine candidates like me in vain.”

10. After hearing both the sides, this Court finds that no specific case has been pointed out by the petitioner with regard to the incorrect option, if any, and the fact that some of the questions were having more than one answer stands conceded from the part of the respondents, as intentional, to test the knowledge level of the candidates concerned. The fact that Clause '10' of the Prospectus required the candidates to choose the 'most appropriate response' is not under dispute and the said Clause is not subject to challenge in this writ petition. So long as the said Clause stands, it was for the participants including the petitioner to have chosen the most appropriate answer and if the petitioner could not identify the same, giving the most appropriate option, nobody else can be blamed in this regard. So also, the petitioner has not established the prejudice if any, as highlighted by the Apex Court as per the decision reported in **Kanpur University, Through Vice Chancellor & Others v. Samir**

Gupta & Others (1983) 4 SCC 309 (Paragraph 16).

11. Even otherwise, if the questions were indicative of the answers, it is a fact which was applicable to everybody and the petitioner was also a beneficiary who could have easily identified the answer because of the indicative/suggestive elements. This Court finds that the petitioner has not established any tenable reason to call for interference.

The writ petition is devoid of any merit and none of the grounds raised in support of the same could be held as tenable. Interference is declined and the writ petition is dismissed accordingly.

**P.R. RAMACHANDRA MENON,
JUDGE.**

kp/-