

(221) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1327 of 2015 (O&M)
Date of decision: 21.9.2015

Reetika and Ors.

.... Appellants

Versus

State of Punjab and Others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present : Mr. Gurminder Singh, Senior Advocate with
Mr. IPS Kohli, Advocate for the appellants.

Mr. PPS Thethi, Addl. A.G, Punjab for the State.

Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate for respondents
No.2 & 3 – Baba Farid University of Health Sciences,
Faridkot.

None for respondents No.4 to 20.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate for respondent No.21
Anahita Chahal.

Mr. Rajiv Atma Ram, Senior Advocate with Mr. Ranjit
Singh Kalro, Advocate for respondent No.51 mentioned
in the amended memo of parties in the Civil Writ
petition.

Mr. Mukand Gupta, Advocate for respondents No.26, 35,
37, 39, 42, 48, 53, 54 and 55 mentioned in the
amended memo of parties in the Civil Writ Petition.

S.S. Saron, J.

This order shall dispose of LPA No.1327 of 2015 filed by
Reetika and others as also LPA No.1323 of 2015 filed by Harsimran
Kalsi and others against the common order dated 1.9.2015 passed
by the learned Single Judge in CWP No.11475 of 2015.

The appellants in the respective Letter Patents Appeals appeared for the Pre-Medical Entrance Test ('PMET' – for short) for seeking admission to the MBBS, BDS, Ayurvedic and Homeopathy etc. courses conducted by the Baba Farid University of Health Sciences, Faridkot ('University' – for short) for the Session 2015-16. The competitive examination provided by the PMET was in the shape of 200 objective type questions with multiple choice answers to be solved in 180 minutes. The PMET was conducted by the University on 17.5.2015 at Lovely Professional University, Jalandhar. According to the appellants, the said test contained glaring and patent mistakes in the question paper and several questions had no correct options in the multiple answers that were given. Some questions were repeated and many questions had more than one correct option. Besides, some questions did not make any sense as the numerical values given in the question papers were not possible. Discerning and bright students wasted a lot of time in deciphering the wrong questions and answers and that too within a less than a minute to solve the questions. The examinees were put to mental torture and harassment which affected their performance and genuine students were deprived of their admissions to the MBBS etc. courses.

Thirty-two candidates filed CWP No.11475 of 2015 and nine candidates filed CWP No.12409 of 2015; besides, Yuvraj Arora filed CWP No.13427 of 2015, which have been dismissed by the learned Singh Judge by impugned order dated 1.9.2015. Against the said decision, fourteen out of thirty-two of the petitioners in CWP No.11475 of 2015 have filed LPA No.1327 of 2015, besides, four out of nine of the petitioners in CWP No.13427 of 2015 have

filed LPA No.1323 of 2015 and none has filed an appeal in CWP No.12409 of 2015.

The Punjab Government on 30.3.2015 issued notification for admission to the MBBS/BDS etc. courses in Medical and Dental Institutes in the State of Punjab for the Session 2015-16. The University was authorized to conduct the PMET and it issued the prospectus inviting on-line applications from candidates seeking admission to the medical courses. A calendar of the scheduled to be conducted was also notified. The mode of test it was indicated shall be of an objective type with multiple choice questions requiring the candidates to answer on the OMR response sheet. A sealed question booklet with answer-sheets was provided. The test/question booklet was to comprise of 200 questions serially numbered from 1 to 200. Each question was followed by four responses marked (A), (B), (C) and (D). Out of these, one was to be the correct or the most appropriate response. There was to be no negative marking for the wrong answer. However, for security reasons, the fifth oval i.e. (E) had been provided and all the un-attempted questions were to be darkened with the fifth oval and if all ovals were left blank then the questions were to carry one negative mark. There was a provision provided for rechecking the OMR response sheet if demanded by the candidate/guardian of the candidate. Application in this regard was required to be submitted on plain paper to the University within seven days of the declaration of result. A rechecking fee of Rs.5000/- was to be paid. The University issued admits cards to 15,517 candidates through its website. The examination was to be conducted at the Lovely Professional University, Jalandhar on 17.5.2015. The PMET test

was conducted at the said venue on the date fixed i.e. 17.5.2015 and out of 15,517 candidates 15,152 candidates appeared, the result of which was declared on 18.5.2015. There were 7043 candidates who were successful.

The petitioners before the learned Single Judge dissatisfied with the manner in which the PMET was conducted by the University for the Session 2015-16 raised grievances that they faced lot of difficulties and were inconvenienced in approaching the venue because of traffic jam and the test which was to start 11.00 a.m. got delayed by 45 minutes. They were also dissatisfied with the seating arrangements inasmuch as there was no sufficient gap between students who were made to sit on a long table and desk with a four students in a row. The primary grievance with which the present appeal relates to is regarding the question paper and the options given in the answers key which according to the appellants were mostly incorrect, contained errors, besides, the questions were repeated and some questions had more than one right option and there were printing errors etc. Before the learned Single Judge, a prayer was made for a re-test, supply of the question paper and a direction to upload the answer key and OMR sheet on the website of the University.

The learned Single Judge in terms of his impugned order formulated three questions that required consideration namely:-

1. Whether the PMET-2015, held on 17.05.2015, is liable to be cancelled and re-conducted on the basis of mere allegations leveled by the petitioners of mismanagement, favouritism, impersonation and cheating?

2. Whether the petitioners were entitled to carry their question booklet (s) with them after the examination was over and Clause 7 (11) of the prospectus is liable to be struck down being arbitrary and unreasonable and the University is obliged to upload the answer keys and OMR sheets of the candidates on its website?

3. Whether the expert report tendered by the petitioners about the disputed questions should be accepted as against the expert report of the University or the matter should be referred to a third agency for another expert opinion at this stage?

The first two questions that were formulated for adjudication do not survive any more. The learned Single Judge in respect of the first question held that the PMET 2015 held on 17.5.2015 was not liable to be cancelled or re-conducted. As regards the second question it was held that the petitioners (appellants) were entitled to carry the question booklets with them after the examination was over.

Sh. Gurminder Singh, learned Senior Advocate for the appellants has submitted that he does not assail the findings of the learned Single Judge as regards the cancellation and re-conducting of the examinations on the allegations of mismanagement, favouritism, impersonation and cheating.

Sh. Anupam Gupta, learned Senior Advocate appearing for the University has submitted that the University has not and would not for the present assail the finding of the learned Single

Judge on the second question as formulated regarding the entitlement of the candidates to carry their question booklet (s) with them after the examination was over.

It is primarily the third question which is in issue in the present appeal as to whether the expert report tendered by the petitioners (now appellants) about the disputed questions should be accepted as against the expert report of the University or the matter should be referred to a third agency for an expert opinion at this stage.

Sh.Gurminder Singh, learned Senior Advocate appearing with Sh.IPS Kohli, Advocate for the appellants has strenuously contended that the matter is liable to be referred to a third independent committee for re-evaluation and that this Court may constitute an independent committee of experts to evaluate the answer sheets at this stage and the appellants would be bound by the evaluation of the key answers that are given to the question papers. The learned Senior Counsel for the appellants has laid considerable emphasis on the contentions that the key answers that have been given by the University are mostly incorrect and the results that have been drawn on the basis of the same has seriously prejudiced the case of the appellants as there is difference of one mark or may be even less than one mark between the candidates who have got their seats in the MBBS course and the appellants who have not got them. It is submitted that the if the key answers are wrong and the reassessment is doubtful in cases of multiple choice questions given in the answers key then remedial measures are liable to be taken. In support of his contentions, learned Senior Counsel cites Kanpur University v. Sameer Gupta, (1983) 4 SCC

309, Abhijit Sen v. State of UP, (1984) 2 SCC 319, Convenor MBBS/BDS Selection Board v. Chandan Mishra, 1995 Supp. (3) SCC 77, Guru Nanak Dev University v. Saumil Garg (2005) 13 SCC 749, Rajesh Kumar v. State of Bihar (2013) 4 SCC 690, Amalendu Santra v. University of Calcutta, AIR 1986 Calcutta 153 (DB), Madhu Mohan v. State of Kerala 2000 (3) SCT 819 (DB) (Kerala), Rajan Yadav v. Himachal Pradesh University, 2000 (3) SimLC 27 (DB) (HP) and DPS Chawla v. Union of India, 2012 (1) SLR 377 (DB) (Delhi). On the strength of the same it is contended that though normally the key answers given by the paper setter are presumed to be correct, however, the correctness should be ascertained from the standard prescribed textbooks and not merely on the basis of inferences. It is submitted that in order to have an effective answers to the various questions which have been demonstrated to be wrong would require that an independent committee of experts or an expert should re-evaluate and give the answers so that there is fairness in the process of examinations.

In response Sh. Anupam Gupta, learned Senior Advocate appearing with Sh. Gautam Pathania, Advocate for the University has seriously and strenuously opposed the contentions of the learned counsel for the appellants. It is submitted that the entire exercise for almost a period of three months was conducted and the learned Single has gone into details of each and every issue raised and found no ground to interfere, besides, the University itself has given due consideration and taken remedial measures wherever it was required. It is submitted that in most of the answers which the appellants' state are wrong have been correctly answered by them and they have been given marks for the right

answers. It is submitted that the admissions of as many as 548 students have been finalized by deposit of their admission fees on 9.9.2015 and another 155 students deposited the fees on 10.9.2015 in two banks i.e. the Oriental Banks of Commerce and the HDFC Bank. The entire process is now sought to be disrupted by a handful of appellants and they have obtained stay orders by misrepresentation on 10.9.2015. The allocations of seats for the various colleges were done on 8.9.2015 after advertisement in this regard had been published in the newspapers on 3.9.2015. The result of the allocations of seats was also notified on the website of the University on 8.9.2015. The classes for the Session 2015-16 have also commenced on 16.9.2015. He has also given the break-up of the last rank of the candidates for allotted seats in the medical/dental colleges in the State as follows:-

“Medical Colleges

Course	College	Quota	Last Rank
MBBS	Govt College	Govt.	239
MBBS	Private College	Govt.	414
MBBS	Private College	Management	561

Dental Colleges

Course	College	Quota	Last Rank
BDS	Govt.	Govt.	650
BDS	Private	Govt.	2306
BDS	Private	Management	3148

Sh. D.S. Patwalia, learned Senior Advocate with Sh.

Sehaj Bir Singh, Advocate appearing for respondent No.21 –

Anahita Chahal submits that she was provisionally admitted in the All India Quota under the graduate/dental seats on 2.9.2015, as per Annexure A3 attached with CM No.29120 of 2015. The said respondent No.21, it is submitted, was given admission on 8.9.2015 and thereafter, her counseling was done on the same date. She deposited her fees on 10.9.2015. She has surrendered her seat in the All India Quota to avail the PMET 2015 seat. She has also started attending her classes on 16.9.2015. The learned Senior Counsel has fully supported the contentions raised by Sh. Anupam Gupta, learned Senior Advocate appearing for the University. He has submitted that the learned Single Judge has delved into all the issues and has passed a reasoned order after due consideration and deliberations which does not warrant any interference.

Sh. Rajiv Atma Ram, learned Senior Advocate with Sh. Ranjit Singh Kalro, Advocate submits that large numbers of seats were to be filled in pursuance to the PMET 2015 in the Medical, Dental, Ayurvedic and Homopaethic Colleges in the State of Punjab. The admissions process has been completed. He has submitted that the order passed by the learned Single Judge is just and fair and the appellants are only browbeating the issue and are holding several students to ransom by stalling the admission process midway specially when the Supreme Court has fixed 30.9.2015 as the deadline for completing the admissions. It is submitted that the deadline for completing the admissions is to be adhered to in accordance with the time schedule fixed by the Supreme Court in Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433 which has unequivocally requested the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule

of merit. The same it is submitted has been reiterated in Royal Medical Trust (Regd.) v. Union of India, JT 2015 (8) SC 10. The date 30th September of each year is the date prescribed for finishing the admission process which is not to be altered. It is further submitted with reference to the documents placed on record that several students/candidates had surrendered their All India quota seats so as to take admissions under the PMET-2015. A pointed reference has been made to the case of Anahita Chahal (respondent No.21) in this regard.

Sh. Gurminder Singh, Senior Advocate for the appellants, further submits that though 30th September of each year is the date fixed for concluding the admissions, however, the Supreme Court itself in Asha v. Pt. B.D. Sharma University of Health Sciences and Others, (2012) 7 SCC 389 has held that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students.

We have heard learned counsel for the parties during the entire process of the day and with their assistance gone through the records of the case.

An objection that has been strenuously raised by Sh. Rajiv Atma Ram, learned Senior Advocate is with regard to the maintainability of the LPA inasmuch as all the persons who were impleaded as respondents No.6 to 44 in the writ petition before the learned Single Judge have not been made parties to the present appeal. It is submitted that the affected candidates, therefore, not being parties to the appeal warrants the dismissal of the appeal for non-joinder of necessary parties as they were parties in the writ

petition before the learned Single Judge. An objection in this regard was raised by him on the date he put in appearance i.e. 17.9.2015.

Sh. Gurminder Singh, learned Senior Advocate for the appellants accepts that the said mistakes have been committed and he has filed CM No.2962 of 2015 in terms of Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure ('CPC' - for short) for impleading respondents No.22 to 61 and has also filed an amended memo of parties. Besides, he has filed CM No.2961 LPA of 2015 under Order 5 Rule 20 read with Section 151 CPC to serve the newly added respondents No.22 to 61 through their counsel representing them in the writ petition and in the alternative by way of publication.

However, it would not now be necessary to carry out this exercise for the reasons stated hereinafter.

The basic issues that have been raised by the learned Senior Counsel for the appellants is that he seeks to demonstrate that the answers key to the questions are either incorrect or have multiple answers or would be otherwise impossible to answer. It would, however, not be out of place to mention that that learned Single Judge has conducted an extensive exercise in respect of all the questions that were raised and has consequently found that there is not such an issue which would require further consideration. Some of the questions that have been demonstrated by the learned Senior Counsel for the appellants are that in question No.14 the question is; "A basic communication system consists of (A) Transmitter (B) Information Source (C) User of Information (D) Channel and (E) Receiver". Four key answers are given and the answer given by the University in its key is (C) i.e. in

the order 'BDACE'. However, according to the various textbooks which have been shown by the learned Senior Counsel for the appellants (C) is incorrect and that answer (B) which gives the combination of 'BADEC' is correct. This according to the appellants is the correct answers according to the NCERT textbook as also according to Halliday/Resnick/Walker's Fundamentals of Physics and New Millennium Physics by S. Dinesh and Co. and also other textbooks.

The other question which he has demonstrated is the question No.27 which is to the effect; "Which of the following pairs of physical quantity does not have the dimensional formula?" The options given are; (a) work and talk (b) angular momentum and plank's constant (c) tension and surface tension and (d) impulse and linear momentum. The answer given by the University is option '(b)'. However, according to the appellants the correct answer should be '(c)' according to the NCERT textbook and other textbooks.

The other question demonstrated by learned Senior Counsel for the appellants is question 4 which is to the effect; "An astronomical refractive telescope has an objective focal length of 20m and eye piece of focal length 2 cm." The options are (a) the length of the telescope is 20.02 (b) the magnification is 1000 (c) the image formed is inverted and (d) an objective of larger aperture will increase the brightness and reduce the chromatic aberration of the image. The correct answer given by the University is option (c), however, according to the appellants, the correct answer should be (a), (b) and (c) together according to the textbooks. Sh. Anupam Gupta, learned Senior Counsel for the University has, however,

submitted that the entire exercise has been carried out and wherever rectification was necessary has been done and necessary advantage given to the candidates. In regard to this particular question, he has submitted that (c) is the correct answer which has been deliberated upon. A reference has been made to the observations of the learned Single Judge where it is mentioned that during the course of hearing, counsel for the University fairly admitted that questions No.19 and 26 were repeated and had been recommended to be deleted/cancelled and question No.47 had already been cancelled by the University because of printing error.

Learned Senior Counsel appearing for the appellants emphasizes on the press note (Annexure A-2 with the appeal) issued by the Punjab School Education Board, which informs the Heads of government/non-government/affiliated schools, students and their parents that curriculum syllabus prepared by the NCERT for Science group, physics, chemistry, biology and maths for the academic year 2011-12 has been made applicable by the Punjab School Education Board. Earlier the textbooks related with these subjects were recommended by the said Board published by the private publishers. Now, textbooks for Science group from the academic year 2014-15 till 11th class and from the academic year 2015-16 for the 12th class shall be published by the Punjab School Education Board after adopting the same from NCERT. Therefore, on the strength of the same, it is submitted that the NCERT curriculum which is prescribed for the students provide the correct answer which were liable to be adopted by the University.

The process of evaluation of answers to technical questions is indeed not the domain of this Court in the exercise of

its supervisory writ jurisdiction. Besides, it cannot be said with respect to the answers that are provided to the questions that have been set in the PMET 2015 are indeed the correct and the only answers as are given in the NCERT. These are set by the examiners by providing the necessary key answers. Therefore, it is the examiner's key which is to be considered correct or at least appropriate as against the questions, which have been set unless these are shown to be glaringly improbable or not possible. Sh. Anupam Gupta, learned Senior Counsel for the University has informed that the question papers and answers key were set from the outside the University from an independent source which is not in any manner connected or associated with the University. The answers that have been given are correct and in any case are possible or appropriate. These do not warrant any interference by this Court especially when these are to be seen from the point of view of the examiner and it has been uniformly applied in respect of all the students and candidates who appeared for the PMET 2015. Sh. Rajiv Atma Ram, learned Senior Counsel for some of the candidates who have appeared has referred to the interim order dated 19.6.2015 which was passed by the learned Single Judge during the course of the hearing. The said order is to the following effect:-

"On the last date of hearing, learned counsel for the University made a statement that one of the petitioners may peruse the question paper in the Court.

By way of CM No.7531-CWP-2015, the petitioners have filed an affidavit of Divesh Sharma

(petitioner no.2 herein) wherein name (sic. names) of petitioners no.2, 3, 7 and 13 have been mentioned for the purpose of perusal of all the 4 sets of the question paper. However, during the course of hearing, it was agreed between the parties that only 2 petitioners may be allowed to see the question paper.

Accordingly, petitioner nos.2 and 7 were given their question papers in the Court. Both of them spent more than an hour in studying the question paper in order to highlight the discrepancies. Both the petitioner nos.2 and 7 have given to the Court 2 pages on which discrepancies have been highlighted in pencil. These two pages are made part of the record. The Court also asked petitioners no.7 to come on the Dias to explain the discrepancy. At the same time, one of the experts in Physics, namely, Professor Harjit Singh was also called. The other three experts, who had verified the answer key, namely, Mr. Navdeep Shekhar (Botany), Mr. Raman Mahajan (Chemistry) and Ms. Kamaljeet Kaur (Geology) (sic. Zoology) are present in the Court.

Learned counsel for the University has also handed over the proceedings of the meeting of the subject experts held on 18.06.2015 regarding explanation of objections raised in CWP Nos.11475 and 12409 of 2015. These documents are taken on

record in continuation of Annexure R-27 and copies thereof are also handed over to both the counsel for the petitioner(s) in both the cases.

Counsel for the University has also handed over answer key in regard to all the four sets of questions booklet i.e. A, B, C and D and the copies thereof have been given to the counsel for the petitioner(s).

The Court time is over as it is already 4.50 p.m., therefore, keeping in view the urgency in the matter, the case is adjourned to 22.06.2015. It would be pertinent to mention here that on 10.06.2015, this case was listed before this Court by the senior most Judge during vacations, on the ground that this Court had dealt with this petition on the first date of hearing while sitting in the roster dealing with education matters and is holding the Bench during vacations. Since the hearing of this case is not concluded and I am not sitting in vacations roster from 22.06.2015 to 26.06.2015, therefore, both the aforesaid cases i.e. CWP Nos.11475 and 12409 of 2015 are hereby released for listing on the adjourned date.”

A perusal of the above order shows that two of the petitioners had perused of all the four sets of the question papers i.e. the question papers of Physics, Chemistry, Botany and Zoology. During the course of hearing, it was agreed between the parties that only two petitioners be allowed to see the question papers.

Two of the petitioners were given the question papers in Court and both of them spent a hour in studying the question papers in order to highlight the discrepancies. The discrepancies were highlighted with pencils and these pages were taken on record. At the same time, one the experts in Physics was called, besides, three experts in Botany, Chemistry and Zoology were also present. Learned Senior Counsel for the University also handed over the proceedings of the meetings of the subject experts held on 18.6.2015 regarding explanations of objections raised in the writ petition. Besides, Senior Counsel for the University also handed over the answers key in regard to all sets of question booklets i.e. 'A', 'B', 'C' and 'D' and copies of the same were given to the counsel for the petitioners. Thereafter, on 7.7.2015 the following interim order was passed in the writ petition:-

“During the course of hearing, Learned Sr. counsel has produced the report of their own experts in regard to the questions about which the opinion had been expressed by the University in their meeting held on 2.07.2015.

Counsel for the University has prayed for an adjournment to study and respond to the report of the experts of the petitioner.

At this stage, counsel for the respondent has submitted that the report produced by the petitioner is of the teachers who are running their own coaching colleges.

Be that as it may, the case is adjourned to 13.07.2015 for further hearing.”

In terms of the above order, the learned counsel for the petitioners before the learned Single Judge produced a report of their own experts in regard to the questions about which the opinion had been expressed by the University in the meeting held on 2.7.2015.

These meetings and reports have been considered and dealt with by the learned Single Judge as also the credibility of the experts. Learned Senior Counsel for the appellants, however, submits that all the experts that were mentioned in the order dated 19.6.2015 have in fact some association with the University. He has made a particular mention that in the bio data that as given by all the said experts they have mentioned that many a times they had performed duties of key advisor of various competitive examination of Baba Farid University of Health Sciences, Faridkot. It is submitted that Dr.Navdeep Shekhar, Professor in Botany, Government Brijendra College, Faridkot has in his professional experience mentioned that many a times he performs duties of key advisor of various competitive examination of the University. Similarly, Kamaljeet Kaur, Associate Professor, Zoology, Government Brijendra College, Faridkot has mentioned that she has performed duties of key advisor of various competitive examinations of the University. Similar is the position with regard to Harjit Singh, Asst. Professor, Physics, Govt. Brijendra College, Faridkot and Dr. Mrs. Raman Mahajan, Asst. Professor, Chemistry, Govt. Brijendra College, Faridkot. Therefore, according to learned Senior Counsel, these Professors being associated with the University would tow the University line.

This, however, would not be the correct position. As has already been noticed that Sh. Anupam Gupta, learned Senior Counsel for the University has stated that the question papers and the answers key had been outsourced to an agency outside the University and the said Professors had only endorsed the answer keys that have been given. In view of their standing, it is quite unlikely that they would favour the University merely because many a times they had performed duties of key advisers of various competitive examinations of the University. They have carried out other functions as well which is mentioned in their educational qualifications, work/teaching experience and professional experience. There can be no element of bias against the candidates of in favour of the University in their evaluating the answers key to the questions that were set for the PMET 2015. In fact the appellants-candidates, according to Sh. Rajiv Atma Ram, learned Senior Counsel appearing for the some of the candidates, had brought their own experts, who were basically teachers in coaching centres, for the purpose of evaluating the answers key to the questions and they gave their own answers key to suit their convenience so that their coaching work is not undermined because of the wrong answers key given by them. A reference has been made to the case of Shiv Charan Gupta who filed CWP No.13498 of 2015 which was dismissed by a Division Bench of this Court on 9.7.2015 with the following order:-

“The petitioner, who is a Teacher and merely providing coaching to the students/candidates without charging any amount, has no locus-standi to challenge the

result of the examination as he is not one of the applicant/candidate in the examination.

Thus, we are not inclined to entertain this petition.

Dismissed.”

It is submitted that such methods were adopted to scuttle the PMET test through the process of the Court and teachers of coaching centres who impart training to students for being successful in the PMET 2015 also had jumped in the fray to at least prolong, if not nullify the admission process.

Be that as it may, the teachers/experts who appeared before the learned Single Judge had conducted the evaluation of the question papers and the answers sheets cannot per se be said to be in any manner favouring the University or having bias against the students who were the petitioners before the learned Single Judge on the premise that they would favour the University. The experts before the learned Single Judge were Professors in their respective fields working at Govt. Brijendra College, Faridkot. It is not shown that the said experts who evaluated the question papers and answers key before the learned Single Judge had any interest in the subject matter or cause. To disqualify a person from performing the duties of an expert on the ground of interest in the subject matter, the test of real likelihood of bias in favour of one or the other is to be considered. One would be required to enquire as to whether there is some real danger of bias favouring one or the other person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case the Court is required to consider whether a fair minded and a person

well informed in his field has considered all the facts would yet give a possibility of favouring one or being biased towards the other. The test of real likelihood of bias over the test of reasonable suspicion has been preferred. The contention of the learned Senior Counsel for the appellants of the experts favouring the University is based only on reasonable suspicion and not on any actual or real likelihood of bias. The test of reasonable suspicion being clearly inapplicable is to be disfavoured and there being no likelihood of bias on the part of the College Professors, the contention of the learned Senior Counsel for the appellants that the Professors having earlier associated with the University would favour it, is clearly misplaced.

It may also be noticed that the answers or formation of answers key to the questions set in the PMET 2015 is best left to the wisdom of the resource persons and subject experts and the Courts would not impose themselves as specialists of subject experts in matters like the present. The limited indulgence that the Court has is to direct the examining body to take cognizance of the objections received from the aggrieved candidates and decide such objections. This exercise has already been undertaken in extenso before the learned Single Judge.

A Division Bench of this Court in Khatri Saurabh Satyapal v. Haryana Public Service Commission and another, 2009 (2) SCT 362 in which one of us (S.S. Saron, J.) was a member, considered the case of some unsuccessful candidates who challenged the preliminary examination on the ground that some questions were out of syllabus and answers in some questions were wrongly given in the question papers. Reliance was placed on the

judgment of the Supreme Court in N. Lokanadham v. Chairman, Telecom Commission, (2008) 5 SCC 155 wherein it was held that assuming that there was some ambiguity in the prescribed syllabus, it would have been for an expert body to clear the same and in the event it is found that any question that has been out of syllabus only those who could not answer the same might have been entitled to any relief. No relief in a case of this nature it was held could have been granted on assumptions. Therefore, the Courts indeed have limited jurisdiction in these matters and it is for the experts to clear the ambiguity and that no relief can be granted on assumptions. Sh. Anupam Gupta, learned Senior Counsel appearing for the University has taken pain in demonstrating with reference to the chart to show the answers given by the candidates to the questions that were set. He has demonstrated the following chart:

Q. No. (Set 'A')	No. of petitioners who have answered correctly as per University Answer- Key (out of 41 petitioners)	No. of top- ranking candidates who have answered correctly (out of 41 toppers)	No. of top- ranking candidates who have answered correctly (out of 100 toppers)	No. of top- ranking candidates who have answered correctly (out of 200 toppers)
4	6	8	23	48
6	4	1	2	3
8	18	15	34	76
9	22	34	76	159
10	26	39	86	167
11	13	10	28	48
12	8	3	7	29
14	3	2	5	8
15	9	22	50	92
16	13	7	17	38

17	13	7	19	34
22	1	1	2	4
27	8	1	2	7
28	9	23	53	104
29	18	22	55	91
32	12	9	22	47
33	0	4	7	13
34	14	13	33	67
35	8	10	21	37
36	8	5	9	26
38	7	0	0	6
40	8	0	6	12
42	4	2	9	16
45	13	14	31	68
47	12	19	45	79
50	26	14	34	76
53	9	14	35	70
57	36	40	97	196
61	34	39	95	186
71	16	16	47	95
84	24	36	78	148
91	22	36	91	174
130	7	1	2	6
136	17	25	59	117
164	11	12	34	66
169	28	21	49	103
177	32	40	94	187

180	14	33	86	164
186	3	15	24	46
189	22	34	83	167

The above tabulation shows that there has been a somewhat equal scoring of marks by the candidates who appeared in the PMET 2015 test and it cannot be said that the examination that has been conducted has resulted in prejudice to any particular appellant.

Another aspect which has been referred to by learned Senior Counsel for the University is with respect to the appellants. It is submitted that highest in ranks amongst the appellants in the present LPA No.1327 of 2015 on the basis of revised results is as follows:-

		BFUHS Result on 18.05.2015		Revised Result as per order of Pb. & Hry High Court on 02.09.2015	
Name	Appellant No.	PMET Marks	Ranking	PMET Marks	Ranking
Trishika Verma	6	536	754	548	750
Apoorva Sharma	14	520	1133	532	1118
Ks. Vikramaditya Rai	11	492	1885	508	1751
Ankush Aggarwal	7	492	1985	504	1938
Adeshpal Singh	13	489	2014	498	2100
Oshin Madan	10	484	2171	496	2127
Harshaman Kaur	8	479	2410	495	2236
Danish Bhalla	3	476	2509	488	2457
Gaurja Juneja	12	456	3242	468	3194
Divesh Sharma	2	452	3334	464	3273

Reetika	1	440	3912	448	3984
Niharika Jaggi	9	432	4197	440	4285
Hargun Kaur	4	432	4232	440	4315
Shairmohinder Puri	5	424	4594	436	4504

In the connected LPA No.1323 of 2015, the position in respect of the appellants as per result declared on 18.05.2015 is as follows:-

Name	Appellant No.	PMET Marks	Ranking
Nimish Garg	4	516	1243
Abhinav Malhotra	2	500	533
Harsimran Kalsi	1	492	1931
Pritish Gautam	3	480	2370

The revised result as per orders of this Court passed by the learned Single Judge on 02.09.2015 has not been given as regards appellants of LPA No.1323 of 2015. It is, however, submitted that some of the appellants who are higher in merit than the candidates who are last as per tabulation given above, subject to reservations, may even get their admissions. Therefore, the contentions as raised on their behalf according to learned Senior Counsel appearing for the respondents is only with a view to further delay the matter and the University in fact is bound by the strict schedule by the Supreme Court in Priya Gupta’s case (supra). In the said case indeed a time schedule has been provided for the finalization of admissions to Medical/Dental Colleges. It has inter alia been laid down that the last date upto which students can be admitted

against vacancies arising due to any reason is 30th September. This schedule it has been held has the force of law and binding on all concerned. Besides, it was observed that it is difficult to comprehend that any authority can have the discretion to alter the said schedule to suit a given situation. The High Courts have been requested, as already noticed above, to strictly adhere to the schedule. This has been reiterated in *Royal Medical Trust (Regd.) v. Union of India and others (supra)* wherein it has been held that the directions in *Priya Gupta's case (supra)* must now be understood in the light of such statutory empowerment and it was declared that it is open to the Central Government, in terms of the note, to extend or modify the time limits in the Schedule to the Regulations. However, the deadline namely 30th September for making admission to the first MBBS course as laid down in Medical Council of India v. Madhu Singh, (2002) 7 SCC 258 and Mridul Dhar v. Union of India & Ors., JT 2005 (1) SC 340 must always be observed. The said date though has been somewhat toned down in *Asha v. Pt. B.D. Sharma University of Health Sciences (supra)*, wherein it has been provided that where there is no fault attributable to a candidate who is denied admission for arbitrary reasons, in such a case, that time schedule need not be strictly followed. The appellant therein was not at fault and she pursued her rights and remedies as expeditiously as possible and it was held that the cut off could not be used as a technical instrument and tool to deny admissions to meritorious students. The appellant therein was a candidate placed higher in the merit list and it was not disputed that candidates lower in merit to her had already given admission in the MBBS course. It was in the said circumstance that

the appellant therein was granted admission. The same is not the case in respect of any of the appellants herein that any candidate lower than them has been admitted.

In respect of the plea of the learned Senior Counsel for the appellants for reevaluation of the answer sheets, it will be appropriate to notice the case of Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupeshkumar Sheth and Others, (1984) 4 SCC 27 wherein the issue of re-evaluation of answer sheets came up for consideration before the Supreme Court. It was held that permitting re-evaluation would lead to uncertainty regarding result of competitive examination for indefinite period of time and that such course shall be against public interest. The following observations in the said judgment are apposite:-

“28. As pointed out by a Constitution Bench of this Court in FatehchandHimmatlal v. State of Maharashtra (1977) 2 SCC 670 “the test of reasonableness is not applied in vacuum but in the context of life’s realities”. If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Education Boards alone but would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court judgment is that every candidate who has appeared for any such

examination and who is dissatisfied with his results would, as an inherent part of his right to "fair play" be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system

and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

Therefore, further evaluation of the answer sheets is not necessary. The case of Kanpur University v. Sameer Gupta (supra) referred to by the learned Senior Counsel for the appellants related to a case where the paper setter committed an error while indicating the correct answers to a question set by him. It was considered whether the students who answer the question correctly be failed for the reason that though their answer is correct it does not accord with the answer supplied by the paper setter to the University as correct answer. It was a case for admission to Medical Colleges on the basis of the result of the Combined Pre-Medical Test conducted by the Kanpur University which had conducted a multiple choice of objective test. The difficulty had arisen because key answers disclosed by the paper-setters turned out to be wrong. The candidates had approached the Allahabad High Court and had contended that the answers ticked by them were correct and the key answers were wrong. There was controversy in regard to three questions, one each in the papers of Chemistry, Zoology and Botany. The question paper had been set

in Hindi and English languages. It was pointed out that the questions set in Hindi translated from the questions set in English. Similar problem arose in other two questions as well because of its framing in Hindi and English languages, which is not the case in the present appeal. As already noted the experts have evaluated the answers key to the questions and have resultantly found them to be correct.

In *Guru Nanak Dev University v. Saumil Garg (supra)* a challenge was laid to the second PMET test conducted by the said University in which correctness of the answer key to 21 questions was disputed. A Division Bench of this Court scrapped the result after referring to the questions and answers of the experts. The University was directed to re-evaluate the answers sheet. The paper setters were also adversely commented upon. The Supreme Court, in appeal in the said case upheld the directions issued by this Court for fixing responsibility on the paper setters and those who had been vested in the responsibility to finalize the answers key as also the consequential steps. However, it was held that in case of doubt, the benefit in regard to answers provided in the answers key would go in favour of the examining body. In *Abhijit Singh v. State of UP (supra)*, the appeals were filed by four failed students, two of the appeals were not pressed and these were dismissed. Two of the appellants namely Kumari Shivani Aggarwal and Kumari Sunita Khare had challenged the University decision of refusing them admission in any of the seven Medical Colleges. It was contended that key answer supplied by the paper setter to question No.31 in Zoology paper was wrong and incorrect and the answer given by the both the appellants was correct according to recognized

textbooks. There was a typing mistake of the word 'adsorbed' which was wrongly typed as 'absorbed'. The key answer supplied by the paper setter was alternative No.2 while both the appellants had ticked alternative No.4 as the correct answer. Both the said claimed that each one answer is correct answer having relied upon the passage appearing of the textbook produced therein. In the view of the Supreme Court, a careful reading of the passage that had been submitted, the key answer supplied by the paper setter as well as the answers given by the two appellants was regarded as wrong. In the view of the Supreme Court, alternative Nos. 2 and 3 would be the correct answer. After evaluation of the two questions that were raised and answers given the appeal of Kumari Sunita Khare was allowed and a direction was given to admit her to MBBS course. The other three appeals were dismissed. In *Convenor MBBS/BDS Selection Board v. Chandan Mishra (supra)* the expert committee constituted by the High Court with consent of the parties found as many as eight key answers to be wrong. The High Court accordingly directed re-evaluation. The Selection Board, however, concealed the fact that the admissions had already been made on the basis of the lists that had been declared defective by the High Court. In such circumstances, it was held that the admissions were illegal and liberty was granted to make admissions on the basis of re-evaluation as had been directed by the High Court. In *Rajesh Kumar v. State of Bihar (supra)* the Supreme Court directed that in case of erroneous evaluation using wrong answer key when examinees had succeeded were not at fault and proper relief/direction is to direct re-evaluation. In the said case, the model answer key which was used for evaluating the answer sheets

was itself defective; the result prepared on the basis of the same could not be in any way different. In the said case, therefore the answer key itself was defective.

In the present case it is appropriate to notice that the learned Single Judge has dealt with and considered each of the questions that were raised on behalf of the petitioners before him and some of which have been reiterated by the appellants herein and wherever there is a doubt, remedial steps it was noticed had been taken. Besides, as has been noticed the PMET text books did not enjoin that the correct answer is to be considered as right but it is the examiner's key which is to be considered correct or at least appropriate against the questions that have been set unless these are shown to be glaringly improbable or not possible. In the circumstances, the learned Single Judge has gone into the entire gamut of controversy in this case and there is no infirmity in the same.

Consequently, there is no merit in the appeal and the same is accordingly dismissed. The interim directions issued by this Court vide order dated 10.9.2015 stand vacated. The admission process shall be undertaken by the respondents No.2 and 3 – Baba Farid University of Health Sciences, Faridkot and completed before 30.9.2015 in accordance with the time schedule fixed by the Hon'ble Supreme Court. There shall be no order as to costs.

(S.S. Saron)
Judge

21.9.2015
amit

(Amol Rattan Singh)
Judge

Contd...

AMOL RATTAN SINGH, J.

We had dismissed this petition by a short order, holding therein that there is no infirmity in the order of the learned Single Judge. We had also stated that we would give detailed reasons by way of separate order.

I have gone through the judgment of my learned Brother and I fully agree with it. However, I would like to add a note to the same. The issue, essentially, is as to whether the answer key to the questions that were put to the candidates of the examination in question, was wholly correct or not. As per the appellants, there is a discrepancy in the answers to forty questions in various subjects. According to the four experts whom the learned Single Judge had associated during the course of proceedings, there were only four answers in the key, which were not correct.

Learned Senior Counsel for the appellants submitted that as per the experts who had given their report on behalf of the appellants, there were actually forty wrong answers in the key given, as already noticed. The said experts are those who are stated to be running coaching centres etc. and, therefore, the possibility of them having some interest/motive cannot be ruled out, as per the respondents. Yet, in view of the large disparity of allegedly wrong answers, in the answer key, as opined to by the two sets of subject experts, given a larger time frame, I may have been inclined to refer the matter to experts not in any way associated to the University; because, as pointed out on behalf of the appellants, the experts associated before the learned Single

Judge, were in some way or the other, associated with the examination system of the respondent-University. Thus, even though, as pointed out by my learned Brother, there would be no reason simply on that count, to disagree with their opinion, yet only in order to have a wholly independent opinion from experts not in any manner associated with the respondent-University, I may have liked to refer the matter to an independent body of experts, to obtain their opinion. Thereafter, if that opinion was in consonance with that of the experts associated by the petitioners before the learned Single Judge, I would have liked to go into the questions individually, on the basis of texts produced by both sides and any other research material which could have been gone into at that point.

However, since the dead line of 30.09.2015 is only 8 days away, with only five working days in between, there is no method for this Court to determine on its own, without another opinion, as to whether the experts associated before the learned Single Judge, by either side, are correct or not. Therefore, even the judgment cited in Asha's case (supra) would not come to the rescue of the appellants, as the ratio of that judgment also, is to the effect that if the Court is certain that there is some definite 'discrepancy' in the examination process, admissions can be deferred to a date beyond 30.09.2015. No such definite material is before us at this stage to enable us to order that admissions be deferred beyond the said date. Secondly, if we were to find some such material by obtaining another opinion, it would eventually mean we would have to issue notice to 7000 plus

candidates in the fray for admission, which obviously would take the admission process to at least a few months beyond 30.09.2015.

Hence, keeping in view the above and the fact that the learned Single Judge has gone into the issue in extenso, as already held by my brother, that possible recourse is also not being resorted to, even while giving reasoning for resorting to the opinion of a third body of experts.

Hence, agreeing with my brother, both the appeals are hereby dismissed.

21.9.2015
A.Kaundal

(Amol Rattan Singh)
Judge

Note: Whether to be referred to the Reporter: Yes/No