

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.04.2015

+ **W.P.(C) 4326/2014**

ABHISHEK KUMAR PANDEY

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Alok K. Joseph.

For the Respondents : Ms Saroj Bidawat for UOI.

AND

W.P.(C) 5667/2014

SANJAY KUMAR BHARTI & ANR

..... Petitioners

versus

UNIVERSITY GRANTS COMMISSION & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Gulshan Sharma and Mr Sanjay Kumar.

For the Respondents : Mr Arjun Harkauli and Mr Satyawan Sherawat.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner in W.P.(C) 4326/2014-Abhishek Kumar Pandey (hereafter 'Abhishek ') has filed the present petition, *inter alia*, praying that his result for the NET examination in the subject of Law (Code: 58) held in

June, 2012, be set aside. Abhishek further prays that he be declared having cleared the said examination in the subject of law.

2. The petitioners in W.P.(C) 5667/2014 have filed the present petition, *inter alia*, praying that directions be issued to University Grants Commission (hereinafter 'UGC') to issue a NET Certificate to the petitioners. However, the learned counsel for the petitioners at the outset stated that the petitioner no.2 was not pursuing the relief and the petition may be considered only in respect of the petitioner no.1-Sanjay Kumar Bharti (hereafter 'Sanjay'). Abhishek and Sanjay are hereafter collectively referred to as the 'petitioners'.

3. The petitioners sat for the NET Examination conducted by UGC in June, 2012. Abhishek required 40% marks in each of the first two papers i.e. paper I and paper II, 50% marks in paper III and an aggregate of 65% marks in all papers to qualify the NET Examination; Sanjay – being a candidate from SC category – required of 35% marks in each of the first two papers i.e. paper I and paper II, 40% marks in paper III and an aggregate of 55% marks in all papers to qualify the NET Examination. The petitioners scored the minimum marks in each paper but their aggregate marks fell marginally short of the qualifying criteria; Abhishek scored an aggregate of 64.57% marks and Sanjay scored an aggregate of 54.86% marks.

4. Whilst Abhishek is aggrieved by answer keys in respect of question nos. 10 and 11 of Law paper II, Sanjay is aggrieved by answer key in respect of question no. 11 of Law paper II and question nos. 47 and 48 of

Law Paper III. The said questions are quoted below:-

“10. Match List-I (Jurist) with List-II (Assumption) and select the correct answer using the codes given below the lists:

List - I

- I. Aquinars
- II. Pound
- III. Kelsen
- IV. Savigny

List - II

- (a) Jural postulates
- (b) Spirit of people
- (c) Ground norm
- (d) Reason and will in law

Codes:

- | | I | II | II | IV |
|-----|-----|-----|-----|-----|
| (A) | (b) | (d) | (c) | (a) |
| (B) | (d) | (b) | (c) | (a) |
| (C) | (b) | (d) | (a) | (c) |
| (D) | (d) | (b) | (a) | (c) |

11. Match List-I with List-II and select the correct answer using the codes given below the lists

List - I

- I. Law in a changing society
- II. Human Law and Human Justice
- III. The morality of law
- IV. Ancient law

List - II

- (a) Fuller
- (b) Friedmann
- (c) Stone
- (d) Main

Codes:

- | | I | II | II | IV |
|-----|-----|-----|-----|-----|
| (A) | (a) | (c) | (b) | (d) |
| (B) | (c) | (a) | (b) | (d) |
| (C) | (b) | (a) | (d) | (c) |
| (D) | (a) | (b) | (d) | (c) |

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47. Under Section 6 of the Hindu Minority and Guardianship Act, 1956 the natural guardian of a minor child is

- (A) Mother

- (B) Father
- (C) Both Mother and Father
- (D) Either Mother or Father

48. A Muslim wife can relinquish her Mahr

- (A) When she is minor
- (B) When she has attained the age of puberty
- (C) When she is not less than 18 years of age
- (D) When she is not less than 21 years of age"

5. The answers as provided in the answer key in respect of the aforementioned questions are as under:

"Paper: Paper II
Subject: (58) Law

QNO	KEY
10	A
11	B

Paper: Paper III
Option:
Subject: (58) Law

QNO	KEY
47	B
48	C

6. According to Abhishek, none of the options (answers) to question nos. 10 and 11 of Law paper II were correct and the said questions ought to have been excluded from the evaluation. According to Sanjay, the answer keys in respect of question nos. 47 and 48 of Law paper III were palpably erroneous. He states that the natural guardian of a minor would be both the mother and father and, therefore, the answer key which indicates answer (B), i.e. the father of a minor to be the natural guardian, is erroneous. Similarly, he contends that a Muslim wife can relinquish her Mahr when

she attains the age of puberty. However, the answer key indicates the correct answer to be (C) - when she is not less than 18 years of age.

7. The learned counsel for the respondents submits that it would not be appropriate for the Court to sit as an appellate body as to the correctness of the answer keys as that is an area which is left exclusively for the experts. The learned counsel has also referred to the judgment of the Kerala High Court rendered on 07.10.2014 in W.P.(C) No.24443/2012 captioned as **Saji Mathew v. Union of India & Ors.** He points out that the question paper considered by the Kerala High Court in that case is the same in respect of which the petitioners have a grievance, that is, Law Paper II and Law paper III. In the said case, the Court dismissed the petition and had held that the “*court cannot interfere with the valuation process that had been adopted by respondent-UGC*”.

8. The learned counsel for the petitioners contend that as the answer keys were, *ex facie*, erroneous, interference by the court is necessary. They relied on the decision of a Co-ordinate Bench of this court in **Rahul Shrivastava & Anr. v. University Grants Commission: W.P.(C) No.3182/2013 decided on 23.10.2013** in support of their contention.

9. I have heard the learned counsel for the parties.

10. There is no dispute that as per the policy of UGC, if the grievance of the petitioners with regard to the answer keys was found to be justified, the petitioners would be entitled to have their answer sheets re-evaluated on the basis of the correct answers but the results of other candidates would not be disturbed.

11. UGC issued a notification dated 21.10.2013, providing an opportunity to the candidates, who had a grievance with regard to the answer keys, to send a request to re-examine the answer keys along with supports from standard texts/literature. The relevant extract from the said notification is under:-

“It is evident that the UGC takes all precautionary measures in the interest of candidates before declaration of result as stated above to ensure that candidates may not suffer due to incorrect answer keys. However, in case any students still have some grievance(s) regarding answer-keys of UGC-NET June, 2012 and December, 2012, it has been decided by the UGC to further re-examine such cases in the interest of student. In case, any answer key(s) pointed out by the candidate(s) is/are found to be incorrect, the UGC will process the result in the light of changed key(s) and qualify the additional candidates for JRF and/or eligibility for lectureship without changing the result of previously qualified candidates. Since UGC will have to bear a heavy expenditure for TA/DA/Honorarium and stay arrangement for the Subject Experts for re-examination of the answer keys, a processing fee of Rs.5,000/- (Rupees Five thousand only) per candidate is being charged for this purpose.

In view of above, all those candidates having such grievances who appeared in UGC-NET Examinations held in June, 2012 and December, 2012 (including those who have already represented) may send written requests to the Head, UGC NET Bureau, South Campus University of Delhi, Benito Juarez Marg, New Delhi-110021 in this regard supporting their stand with proof from standard books/literature along with a Demand Draft of Rs.5,000/- in favour of Secretary, UGC within one month from the date of issue of this notification.”

12. Since, according to the petitioners, the answer keys to the questions as indicated above were erroneous, the petitioners made representations to the UGC.

13. As per the procedure adopted by UGC, the same were referred to an Expert Committee who submitted its report indicating that no change was required in the answer keys with respect to the aforementioned questions. UGC accepted the report and rejected the representations made by the petitioners.

14. In view of the aforesaid policy, the only question to be considered is whether the grievance of the petitioners that the answer keys to the question nos. 10 and 11 of Law paper II and question nos. 47 and 48 of Law paper III, held in June, 2012 were erroneous, is sustainable. And, whether any interference is warranted by this court under Article 226 of the Constitution of India.

15. Insofar as question no. 10 of Law paper II and question no. 47 of Law paper III is concerned, Mr. Harkauli, the learned counsel for UGC, has argued that there is no substance in the contention that the view of the experts on the answer keys is erroneous. Insofar as question no. 11 of Law paper II and question no. 48 of Law paper III is concerned, the petitioners have referred to various texts and the same does, *prima facie*, indicate that the answers to those questions are erroneous. Mr. Harkauli, has also fairly argued on the basis that the view of the expert committee in respect of those questions is erroneous and focused his arguments on the reasonableness of the decision making process; he contended that there is no flaw in the

decision making process. UGC had referred the matter to the expert committee and thereby done what was required to be done. As the representation made by the petitioner was examined by experts and rejected, the decision of UGC is not amenable to judicial review.

16. In *Saji Mathew (supra)*, the Kerala High Court had considered the question nos. 11 and 48, which are the questions in respect of which the petitioners claim that the answer keys are erroneous, and concluded that the answers provided by the petitioner in that case - which is the same as urged by the petitioners in this case - were plausible.

17. In *Rahul Shrivastava (supra)*, a co-ordinate bench of this court had examined the answer keys to several questions from Paper II of the NET examination held in December 2012 and found that the answer key to several answers were, plainly, erroneous and, accordingly, had directed that the results of the petitioners therein be re-computed.

18. Concededly, unless the court finds the decision of UGC palpably erroneous, no interference with the decision of UGC would be warranted. I am inclined to accept the view that in cases, where two views were plausible, the powers of the court under Article 226 of the Constitution of India would not be exercised to embark upon an enquiry as to which of two possible views should govern the evaluation of the answer sheets. This is also the principle followed by the Kerala High Court in *Saji Mathew (supra)*. The Supreme Court in *Kanpur University, through Vice-Chancellor and Ors. vs. Samir Gupta and Ors.* (1983) 4 SCC 309 had also 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.”

19. Indisputably, if there are two plausible views this Court would not sit as an Appellate Court to examine which of the two views should be accepted. However, it would be important to consider whether the concerned authority had taken an informed decision.

20. UGC has devised an elaborate procedure to mitigate the possibility of a wrong answer key. The suggested answer key is placed in public domain and objections are invited. The same are considered by a panel of experts and, thereafter, a final answer key is published. In addition, UGC also entertained representations from candidates and had the same re-examined by experts. Clearly, there is no flaw in the procedure devised by UGC to mitigate the possibility of a candidate suffering due to a wrong

answer key. In this case also, a reference had been made to an Expert Committee and its opinion on the answer keys was sought by UGC. However, in most of the cases, the Expert Committee did not substantiate the answers with sufficient material. It is trite law that even an expert would have to substantiate its view by cogent reasons and material. In the present case, the Expert Committee's answer to the representations are very brief and in some of the cases cryptic. Insofar as the answer to question no. 10 of Law paper II is concerned, the Expert Committee has commented as under:-

"The answer key provided by UGC (i.e. A) to this question is correct. The assertion is wrong in view of fact that Savigny (Jurist) has actually expounded the jural postulates while Roscoe Pound (Jurist) elaborated the same for social approval while emphasizing on social engineering. Savigny had expounded his work in *Das Rheet des Bestizes* in 1803 to which Rascoe Pound elaborated in 1943."

21. The above, plainly, indicates that the experts had examined the representation with regard to Question No. 10 and had provided the reasons for rejecting the same. In respect of question no. 47 of Law paper III, the Expert Committee had noted that *"According to Sec. 6 of Hindu Minority and Guardianship Act, 1956, the answer key provided by UGC is correct."* In my view, this also clearly addressed the representation with respect to the answer key to question no. 47 of paper III.

22. 22. In respect of answer to question no. 11 of Law paper II, the petitioners have referred to texts authored by the named jurists. It is apparent that a substantial challenge to the correctness of the answer key in

respect to question no. 11 had been laid by the petitioners. In Saji Mathew (supra), the court had also observed that “5. *The petitioner would rely on Exts.P16 to P18 to substantiate his contentions with regard to question No.11, Ext.P19 in respect of question No.14 and Ext.P20 in respect of question No.48, to show that the answers given by the UGC in their final answer key are demonstrably wrong. No doubt, the material relied upon by the petitioner would certainly indicate that based on certain authoritative texts on the subject, the answer suggested by the petitioner to the questions aforementioned is also a plausible one*”. The court further observed that “*The petitioner, who relies on authoritative texts and legal pronouncements on the subject, is no doubt justified in holding a view that the answers that are supported by such authoritative text books and judicial pronouncements have to be taken into consideration while valuing his answer papers.*”

23. Undisputedly, “Law in a changing society” is authored by W. Friedmann; “Human Law and Human Justice” is authored by Julius Stone; “The morality of law” is authored by Lon L. Fuller; and “Ancient Law” is authored by Sir Henry Maine. Thus, any student viewing question no.11 would obviously match the name of the book with the name of the author. One is hard pressed to imagine any other answer to question no.11. However, the Expert Committee rejected the representation as under:-

"The answer key provided by UGC (i.e. B) to this question is correct. The question was framed on the original assertive theory propounded by jurists and not on the title names of the books of the authors."

24. Plainly, the above does not give any clue as to which “original assertive theory”, according to the Expert Committee, was associated with the named jurists. The Expert Committee neither indicated the original assertive theories nor indicated as to how those were connected with the particular jurists. Thus, in my view, the comment does not provide sufficient reasons to the petitioners as to why their representation was rejected. Although UGC had referred the representation made by the petitioner to the Expert Committee, it was, nonetheless, incumbent upon UGC to satisfy itself as to the comments received from the Expert Committee. However, it does not appear that UGC satisfied itself as to the manner in which the representations were considered by the Experts, but had simply accepted their unreasoned view. The learned counsel for the UGC has also fairly conceded that although the process adopted by UGC was correct, but apparently the experts had made a mistake. Thus, obviously, UGC does not have any material to support the answer provided in the answer key. This aspect was not considered by the Kerala High Court in *Saji Mathew (supra)*.

25. In respect of question no. 48 of Law paper III, the decisions of various Courts and texts referred to clearly indicate that Sanjay’s challenge to the answer key in respect of question no. 48 was significant and the same ought to have been considered by the Expert Committee. However, the Expert Committee had disposed of the representation by simply stating that “*As per Muslim Law, the answer key provided by UGC is correct.*”

26. Several High Courts in our country have accepted the view that a Muslim wife can relinquish her Mahr when she attains the age of puberty.

(See: Ahamadalli Mahamad Hanif Makandar v. Rabiya: (1978) 80 Bom LR 238). It appears that the representation in respect of question no. 48 was completely over looked as there is no reason indicated as to why the material placed along with representation was rejected.

27. There is yet another aspect that is required to be considered. Clearly, even if it is assumed that there are two possible correct answers, UGC would have to consider whether a student who opts for one ought to be penalized for the same. Unless there is good reason to prefer one answer over the other, it would, *prima facie*, be unfair to penalize those students who had opted for another answer, which may also be termed as correct. The object of a test paper is to evaluate the knowledge of a candidate. In the circumstances, where a question has two correct answers, this object would not be served by penalizing the students who had opted for an answer other than as indicated in the answer key. This aspect needs to be considered by the UGC.

28. In the circumstances, I consider it appropriate to remand the matter to the UGC with a direction to reconsider the representation of the petitioners and dispose of the same after obtaining the view of an expert, if considered necessary. UGC may also consider excluding question nos. 11 and 48 for the purposes of evaluating the petitioners. It is clarified that the results of other candidates would not be disturbed.

VIBHU BAKHRU, J

APRIL 29, 2015
RK/MK