

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1791 of 2016**

Shrishti Jaiswal D/o Shri Suresh Jaiswal, aged about 21 years, R/o Ramnagar, Tehsil & District Surajpur, CG

----**Petitioner**

Versus

1. The State of Chhattisgarh, acting through Joint Secretary, Medical Education Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, CG.
2. Controller, Chhattisgarh Professional Examination Board, Raipur, CG
3. Director, Medical Education, Old Nurses Hostel, Raipur, CG

---- **Respondents**

For Petitioner:	Shri Devesh Kela, Advocate
For Respondents No. 1 & 3:	Shri Adhiraj Surana, PL
For Respondent No.2:	Dr. Sourabh Pandey, Advocate

AND**WPC No. 1763 of 2016**

1. Vivek Kumar S/o Chiman Lal Dewangan, aged about 22 years, R/o Kankalipara, Simga, District Baloda Bazar, Chhattisgarh.

----**Petitioner**

Versus

1. The State of Chhattisgarh through Secretary, Medical Education Mantralaya, Mahanadi Bhavan, Naya Raipur, CG.
2. Controller, Chhattisgarh VYAPAM Raipur, CG

---- **Respondents**

For Petitioner:	Smt. Renu Kochar, Advocate
For Respondent No. 1:	Shri Adhiraj Surana, PL
For Respondent No.2:	Dr. Sourabh Pandey, Advocate

DB: **Hon'ble Shri Justice Pritinker Diwaker &**
 Hon'ble Shri Justice C.B. Bajpai

Order reserved on 21.9.2016

Order passed on 28.9.2016

CAV Order

Per P. Diwaker, J

28/09/2016

With the consent of the parties, the matter is heard finally.

2. The point involved in the aforesaid two writ petitions being quite similar, they are being disposed of by this common order:

3. Both the petitioners appeared in Chhattisgarh Pre Medical Test, 2016 (for short "CGPMT") as the candidates belonging to Other Backward Category (for short "OBC"). The entrance examination consisting of two papers was conducted on 15.6.2016. The first paper was in respect of Physics and Chemistry whereas the second one was Botany and Zoology.

4. Petitioner Shrishti Jaiswal was allotted Roll Number (13010033) whereas petitioner Vivek Kumar was allotted the Roll Number (16090171). Model answer was published on 16.6.2016 in the official website of VYAPAM. However, as there was some typographical error in the model answers published on 16.6.2016,

revised model answers were published on 17.6.2016 vide Annexure P-8 in WPC 1791/2016. While publishing the model answers, it was informed to the candidates that they were at liberty to file their objections to the model answers published by the VYAPAM along with valid proof in support thereof, latest by 21.6.2016. According to the petitioners, they raised objections in relation to various model answers published by the VYAPAM. Petitioner Shrishti Jaiswal submitted her objection in relation to 8 questions of paper-II (Botany & Zoology) i.e. question Nos. 3, 37, 49, 50, 63, 67, 85 and 89 whereas petitioner Vivek Kumar submitted his objection in relation to 16 questions (03 from paper-I (Physics & Chemistry) and 13 from paper-II (Botany and Zoology) i.e. question Nos. 13, 20 & 86 from paper-I whereas question Nos. 2, 5, 18, 19, 27, 31, 32, 40, 56, 74, 91, 94, 100 from paper-II. Apart from the petitioners herein, other candidates also submitted their objections in relation to various questions and after constituting a committee of 3 experts from each subject and ultimately final answers were published on 23.6.2016 by the VYAPAM vide Annexure P-10 to WPC No. 1791/2016. While publishing final answers, the VYAPAM decided to delete 11 questions from paper-I (Physics and Chemistry) and one question from paper-II (Botany and Zoology) and it was decided to allot **scaled** marks against the deleted questions applying the formula given in the examination instructions vide Annexure R-2/2 to the return filed in WPC No. 1791/2016. Thereafter, on 24.6.2016 the

result of the said entrance examination was declared.

5. Petitioner Shrishti Jaiswal scored total 98.516 marks and her overall rank is 744, category rank is 241, female rank is 436 and female category rank is 113 whereas petitioner Vivek Kumar scored 99.965 marks and his overall rank is 669 and category rank is 213. Thus both the petitioners have been held eligible for MBBS/BDS/Veterinary/Physiotherapy course. However, since both of them did not get the counseling letter from the State Government, the present petitions have been filed by them.

6. Grievance of the petitioner in WPC 1791/2016 is that her objection in relation to question Nos. 3, 37, 49, 50, 63, 67, 85 and 89 have not been considered properly and the model answers published by the VYAPAM are not as per the text books prescribed by the NCERT whereas grievance of the petitioner in WPC No. 1763/2016 is that question Nos. 27, 40, 74, 100 in paper-II and question No. 13 of paper-I have not been properly considered and the model answers are not correct. Further, without making any proper pleading in the rejoinder, the additional ground has been raised by the petitioner in WPC No. 1763/2016 that in respect of question Nos. 16, 17, 18, 32, 33, 48 and 76 of paper-II, the model answers are not correct. In relation to question No. 17 it has been pleaded that it was out of syllabus as the answer to said question is not given in text books prescribed by NCERT, Yugbodh and ICSE.

7. During the course of argument, counsel for the petitioner in WPC 1791/2016 confined his stand in relation to question Nos. 3, 63, 67, 85 and 89 only whereas counsel appearing for the petitioner in WPC 1763/2016 has questioned the correctness of model answers in relation to all the questions pleaded in her writ petition and the rejoinder as well. They submit that the model answers published by the VYAPAM do not tally with the answers given in the text books in particular the books published by NCERT. Her further argument is that while publishing model answers, the VYAPAM has consulted other text books of higher standard which have never been taught to the school students and therefore the model answers in relation to disputed questions are not acceptable and the VYAPAM is under obligation to award marks to the petitioner in relation to those questions. It is submitted that had correct evaluation been done and correct model answers been prepared by the VYAPAM, the petitioners would certainly have been called for counseling as after adding extra marks they would have been within the zone of consideration for counseling.

8. Though in both the writ petitions the petitioners have not made any specific pleading as to how the model answers in relation to disputed questions published by the VYAPAM are incorrect or the question is out of syllabus, their challenge to the same is as under:

WPC No. 1791/2016;

Q.No. of Paper-II, SET (A)	Correct answer according to petitioner	Correct answer according to VYAPAM
3	(D)	(B)
63	(A)	(D)
67	(C)	(B)
85	(A)	(B)
89	(C)	(A)

9. Giving reference to certain NCERT book counsel for the petitioner in WPC No. 1791/2016 submits that as the said book is a most reliable one, the answer given therein has to be accepted and not the other answer including the model answers prepared on the basis of books which are not recommended or taught to the students, can be correct.

10. Likewise in **WPC No. 1763/2016** the petitioner challenges the correctness of the answers to some of the questions in the following manner:

Q.No. Of Paper-II SET (C)	Correct answer according to petitioner	Correct answer according to VYAPAM
16	(A)	(B)
17	Out of course	Within course
18	(C)	(D)
27	(C)	(A)
32	(B)	(C)
33	(C)	(A)
40	(D)	(B)
48	(A)	(D)
74	(A)	(B)

76	(C)	(A)
100	(A)	(B)

Q.No. Of Paper-I SET (C)	Correct answer according to petitioner	Correct answer according to VYAPAM
13	(A)	(B)

11. Replying to the arguments of the counsel for the petitioners in both the writ petitions, it is submitted by the counsel for the VYAPAM as under:

- (i) that the petitions are liable to be dismissed on the basic principle of lack of pleading because nowhere in the present petitions it has been pleaded by the petitioners as to what was the question which was asked in the examination, what is the model answer and what is the correct answer which has been given by them for the reason that in the cases where validity of question paper is challenged, elaborate pleading is required to be made including that on what basis the model answer given by the VYAPAM is wrong and the answer given by the petitioners is right;
- (ii) that the VYAPAM has no personal grudge against any of the candidates;
- (iii) that after publishing the model answers in a very fair manner the VYAPAM invited objections from the candidates and all the objections have been duly considered by a committee of three experts in each subject and only thereafter the final answers were published and based thereon, the answer sheets were checked

and result has been declared;

(iv) that to justify their answers to some of the questions the petitioners are relying on a particular text book whereas the experts of the concerned subject have taken support of number of authoritative text books including ones published by the NCERT while drawing conclusion in respect of correctness of the answers;

(v) that VYAPAM has never recommended any particular book for preparation of the CGPMT;

(vi) that to prepare for medical entrance test candidates take coaching in various States and read various text books including that of NCERT but the VYAPAM is not bound to refer to a particular book while arriving at the correctness of the answers.

(vii) that the correct answers to the questions asked in the said medical entrance test are determined on the basis of universally accepted science text books keeping in mind the syllabus prescribed by VYAPAM.

12. In the return filed by the VYAPAM, final answers published by it have been stated to be fully justified and there is no ambiguity in the same. Return further states that each objection raised by the petitioners has been duly considered by the VYAPAM and each of the final answers has been arrived at only after the opinion of three senior experts in each subject. It is submitted by the counsel for the VYAPAM that it is not pleaded in the writ petitions as to how the answer to a particular question pointed out by the petitioners is incorrect and merely saying

something as incorrect by giving reference to a particular unsubstantiated pleading would not serve the purpose.

13. In respect of WPC 1763/2016 it is submitted by the counsel for the VYAPAM that initially the petitioner had confined his submission only in respect of five questions and without amending the writ petition, validity of further seven questions has been doubted in the rejoinder which is not permissible in law. According to the VYAPAM the petitioner should have first amended the writ petition by making specific pleading and then the question of validity of additional questions could have been raised and not by way of rejoinder.

14. It is submitted on behalf of the VYAPAM that pursuant to the request made on previous date of hearing, it has made available the following experts of the subject:

Independent Experts

1. Dr. B.G. Sharma - M.Sc, M.Phil, Ph.D – Physics (Assistant Professor)
2. Dr. D.K. Shrivastava - M.Sc. Ph.D – Botany (Assistant Professor)
3. Dr. R.K. Agarwal - M.Sc Ph.D – Zoology (Retd. Principal)

Experts of VYAPAM

1. Dr. N.B. Singh, M.Sc. Phd.- Botany (Assistant Professor)
2. Dr. Vimal Kumar Kanungo – M.Sc. Ph.D – Botany(Assistant Professor)
3. Dr. Rama Shankar Singh - M.Sc. Ph.D – Physics (Professor)
4. Dr. Anil Shrivastava – M.Sc. Ph.D - Zoology (Professor)

15. Heard counsel for the parties and perused the documents

on record.

16. Though in the absence of proper pleading in the writ petitions, we could have dismissed the same in the threshold but considering the fact that the matter pertains to students who have challenged the action of the VYAPAM, we wish to decide the same on merit.

17. Foremost requirement of the petitioners in the present case is to establish whether the final answers published by the VYAPAM are incorrect. Though validity of various questions has been assailed by the petitioners and in relation to most of the questions they rely on the text books published by NCERT but if the return of the VYAPAM is seen, it is apparent that before finalizing the answers the committee of experts was appointed and after considering each and every objection raised by the petitioners as well as other candidates, final answers have been prepared.

18. During the course of argument, each and every question raised by the petitioners in their writ petitions has been discussed threadbare by the parties, and the experts present in the Court have shown number of text material in support of the answers arrived at finally. Limited contention of the petitioners is that if they have given answer to a particular question according to NCERT text book, they should be accepted and not the final answers prepared by the VYAPAM on the basis of some other text

material.

19. The aforesaid contention of the petitioners is noted and rejected. If the VYAPAM has prepared final answers after consulting the experts of concerned subject and the petitioners have utterly failed to demonstrate as to how a particular answer is wrong and how a particular question is out of syllabus, we are afraid that the petitioners are not entitled for any relief. Dealing with an identical question the Apex Court in the matter of **Kanpur University through Vice Chancellor and others v. Samir Gupta and others** reported in **(1983) 4 SCC 309** has held as under:

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

From the aforesaid judicial pronouncement of the Apex Court, three propositions of law emerge on the permissible extent of judicial review of a final answer key published by the VYAPAM.

First, the answer key must be presumed to be correct and must be followed, even in the face of a mere doubt, *second*, only if an answer is demonstrably wrong, in the opinion of a reasonable body of persons well-versed in the subject, it may be subject to judicial review, and *third*, if the answer is incorrect beyond doubt, then a candidate cannot be penalised for answers at variance with the key.

20. The aforesaid legal position has been reiterated by Delhi High Court in the case of Salil Maheshwari v. High Court of Delhi in WPC 4976/2014.

21. Though an allegation has been made by the petitioners about the correctness of the answer key finally published by the VYAPAM, they have failed to prove as to on what basis they are holding a particular answer as incorrect or a question to be out of course. VYAPAM which conducted the medical entrance examination has never prescribed a particular book for preparation purposes and it has simply provided the syllabus, and therefore if the petitioners have read some book containing an incorrect answer to the question, VYAPAM is not bound to accept the same. Documents on record show that the final answer key has been prepared after due consultation of a committee of experts in each subject. That apart, the experts - individual and that of the VYAPAM, present in the Court remain firm-footed regarding the answer key published by VYAPAM to be correct. Merely saying that an answer is incorrect is not enough and it is

the duty of the petitioners to substantiate and prove by a universally acknowledged text material as to how and on what basis it is incorrect. Likewise, question No. 17 also remains unsubstantiated as to how it is beyond syllabus.

22. Competitive exam in whichever field it is, demands deeper and smarter study in the subject with the support of as many universally acknowledged books meeting out the syllabus, as possible that too with a good sense of imagination. The principal object of conducting such countrywide and statewide examinations is to have the best possible brains in the institutions of higher repute and unless one dives deeper in the subject, probably the correct conclusion would be out of reach and just superficial roving would not get the desired result.

23. In the conclusion, as the petitioners have not been able to substantiate their stand as to how an answer challenged by them is incorrect or how a particular question is not within the syllabus, they cannot get the relief prayed for by them in their writ petitions. Thus the aforesaid two petitions being without any substance are liable to be dismissed and they are dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(CB Bajpai)
Judge