

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2324 of 2016**

M Prajwal Reddy S/o M Sreenivasa Reddy, aged 18 years,
R/o Qr No. 1A, Street No. 03, Sector-10 Bhilainagar, District
Durg, CG

-----Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Higher Education Department, Mahanadi Bhavan, Mantralaya, New Raipur, CG.
2. CG VYAPAM BOARD, Shailendra Nagar, Raipur, constituted by Chhattisgarh Government vide notification dated F-1/51/2004/42 Raipur dated 30.7.2005 is empowered to conduct examinations for professional courses viz. Engineering, Medical, Polytechnic & Ayurveda courses

----- Respondents

For Petitioner:	Shri N.A.S. Reddy & Shri Utsav Maheshwari, Advocates
For Respondent No. 1 :	Shri Adhiraj Surana, Dy. GA
For Respondent No.2:	Dr. Sourabh Pandey, Advocate

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

Order on Board by Hon. P. Diwaker, J

28/09/2016

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

2. The petitioner herein appeared in Chhattisgarh Pre Medical

Test, 2016 (for short “CGPMT”) as the candidate belonging to Unreserved Category (for short “UR”). 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.

3. Petitioner was allotted Roll Number (16010243). 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-4. 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 petitioner, he raised objections in relation to various model answers published by the VYAPAM. He submitted his objection in relation to 6 questions of paper-I {Physics (question Nos. 1, 11, 20, 32, 46 and 48)}; 3 questions of paper-I {Chemistry (question Nos. 70, 89 & 92)}; 8 questions of paper-II {Botany (question Nos. 3, 9, 27, 30, 42, 44, 49 & 50)} and 6 questions of paper-II {Zoology (question Nos. 64, 67, 79, 85, 88 & 89)}. Apart from the petitioner 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-6. 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. Thereafter, on 24.6.2016 the result of the said entrance examination was declared.

4. Petitioner scored total 98.248 marks and his overall rank is 765. Thus he has been held eligible for Veterinary/Physiotherapy course only. However, since he has not been declared eligible for MBBS/BDS course and did not get the counseling letter from the State Government, the present petition has been filed by him.

5. Though in the writ petition the petitioner has assailed the validity of as many as 23 questions but after seeing the reply during the course of argument, he has confined his argument only to six questions i.e. (question Nos. 3, 7 & 37 of Paper-II – Set-A - Botany and question Nos. 67, 85 & 89 of Paper-II – Set-A – Zoology). According to the petitioner, the model answers to all the six questions are not correct and only the answers given by him are correct. Further grievance of the petitioner is 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 and the Trueman's Elementary Biology. His further stand 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 petitioner would certainly have been called for counseling as after adding extra marks he would have been within the zone of consideration for counseling.

6. According to the petitioner, in relation to six disputed questions, the model answers published by VYAPAM are incorrect whereas the answers given by him, described as under, are the correct ones:

Q.Nos. Of Paper-II, SET (A)	Correct answers according to petitioner	Correct answer according to VYAPAM
3	<i>D</i>	<i>B</i>
7	<i>A</i>	<i>C</i>
37	<i>D</i>	<i>A</i>
67	<i>C</i>	<i>B</i>
85	<i>A</i>	<i>B</i>
89	<i>C</i>	<i>A</i>

6. Giving reference to certain NCERT and Trueman's books counsel for the petitioner submits that as the said books are the most reliable ones, 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. Though the petitioner has not specifically challenged the scaling formula applied by the VYAPAM as provided in Annexure R-2/2 i.e. Examination

Instruction No. 10 at Page 25 and 26 to the return but during argument an attempt has been made by him to say that the said scaling formula adopted by VYAPAM is at the disadvantageous position for him. It is argued that as many as 12 questions have been invalidated out of which, the petitioner has given correct answers to five questions and thus loss of five marks has been caused to him at the cost of scaling formula applied by the VYAPAM.

7. Counsel for the petitioner submits that very scaling formula is bad because 12 questions have been invalidated and once the petitioner has answered five questions correctly out of the 12 questions, he should have been given marks against those questions. It is submitted that there may be a situation that some of the candidates may have answered all the 12 questions correctly but yet they have been deprived of getting any mark and the candidates who have answered only 1-2 questions correctly are getting advantage of application of scaling formula as provided by the VYAPAM.

8. Replying to the arguments of the counsel for the petitioner, it is submitted by the counsel for the VYAPAM as under:

- (i) that the VYAPAM has no personal grudge against any of the candidates;
- (ii) 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;

(iii) that to justify his answers to some of the questions the petitioner is 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 and Trueman while drawing conclusion in respect of correctness of the answers;

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

(v) 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.

(vi) 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.

9. 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 petitioner 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.

10. 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. N.K. Singh - M.Sc, M.Phil, Ph.D – Botany (Assistant Professor, Government Science college, Sargaon, District Mungeli)
1. Dr. D.K. Shrivastava - M.Sc. Ph.D – Botany (Assistant Professor, Govt. PG College, Bilaspur)
2. Dr. R.K. Agarwal - M.Sc Ph.D – Zoology (Retd. Principal, Govt. College, Khertha)
3. Smt. Rashmi Sao - M.Sc Ph.D – Zoology (Professor, ERR PG Science College, Bilaspur.

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. K.K. Harish – M.Sc. Ph.D - Zoology Professor, Girls College, Raipur

11. Heard counsel for the parties and perused the documents on record.

12. Foremost requirement of the petitioner 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 petitioner and in relation to most of the questions he relies on the text books published by NCERT and Trueman 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 petitioner as well as other candidates, final answers have been prepared.

13. During the course of argument, each and every question raised by the petitioner in his writ petition 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 petitioner is that if he has given answer to a particular question according to NCERT and Trueman's text book, they should be accepted and not the final answers prepared by the VYAPAM on the basis of some other text material which is of higher collegiate standard.

14. The aforesaid contention of the petitioner is noted and rejected. If the VYAPAM has prepared final answers after consulting the experts of concerned subject and the petitioner has utterly failed to demonstrate as to how a particular answer is wrong, we are afraid that the petitioner is 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.

15. 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.

16. Though an allegation has been made by the petitioner about the correctness of the answer key finally published by the

VYAPAM, he has failed to prove as to on what basis he is holding a particular answer as incorrect. 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 petitioner has 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 petitioner to substantiate and prove by a universally acknowledged text material as to how and on what basis it is incorrect.

17. 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.

18. In the conclusion, as the petitioner has not been able to

substantiate his stand as to how an answer challenged by him is incorrect, he cannot get the relief prayed for by him in his writ petition.

19. So far as scaling formula is concerned, no specific ground has been raised by the petitioner except making the submission that such formula is dis-advantageous to him because as many as five questions correctly answered by him have been invalidated and therefore he is entitled for five marks. This contention of the petitioner cannot be accepted on this ground. Scaling formula was made known to the candidates by way of Examination Instruction that too much before the examination in question. We find sufficient force in the argument advanced on behalf of VYAPAM that this formula is applied uniformly in case of invalidation of questions. If certain question is invalidated, candidate cannot be awarded marks against the same even if he has answered it correctly. Once a decision is taken to delete a particular question, there is no occasion for the candidates to claim marks against the same even if he has answered it correctly. Moreover, it is not a case of the petitioner that some candidate has derived any benefit out of the said formula and the petitioner has been put at the disadvantageous position. Mere say of the petitioner that he should be given certain marks on the basis of correctly answering the invalidated questions is nothing but a ridiculous expectation. Even if scaling formula is applied paper wise and not subject wise, total marks of the petitioner in any

case would be less than 100 i.e. 50% and that way also the petitioner will not qualify for MBBS or BDS course.

19. Thus the petition being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(CB Bajpai)
Judge