

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8674 OF 2016

Dr. Ashish Mishra, Age: 29 years, presently]
residing at 1406, 14th Floor, Saikrupa CHS]
Ltd., Gundavali, Nagardas Road, Andheri(E),.]
Mumbai- 400069.] ... Petitioners

Versus

1. State of Maharashtra, Through its]
Department of Medical Education &]
Research, Mantralaya, Mumbai-400001.]
2. Directorate of Medical Education and]
Research, Government Dental College &]
Hospital Building, St. George's Hospital]
Compound, Near V.T., Mumbai - 400001.]
3. State CET Cell, Through the Commissioner]
305, Government Polytechnic Building,]
49, Kherwadi, Ali Yawar Jung Marg,]
Mumbai - 400 051] ... Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2010 OF 2016

Madhur G Maheshwari, age 27 years, Indian]
Inhabitant of Mumbai, presently residing at]
30/4, Sai Deep Building, J.B. Nagar,]
Andheri (East), Mumbai - 400 059.] ... Petitioner

Versus

Directorate of Medical Education & Research]
Government Dental College and Hospital]
Building, St. George's Hospital Compound,]
P. D'Mello Road, Mumbai 400 001.] ... Respondent

Mr. V.M. Thorat with Ms. Pooja Thopratt for the Petitioner in WP No.8674 of 2016.

Mr. M.M. Vashi, senior counsel with Ms. Aparna Deokar I/b M/s. M.P. Vashi Associates for the Petitioner in WP (L) No.2010 of 2016.

Ms. Sushma Bhende, AGP, for the Respondents in both petitions.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR JOSHI, JJ.**

FRIDAY, 29TH JULY, 2016

JUDGMENT : [Per S.C.Dharmadhikari, J.]

1 We had, on 29th July, 2016, pronounced an order
dismissing both the petitions.

2 Here are our reasons for the above conclusion.

3 For proper appreciation of the rival contentions,. It
would be appropriate if we reproduce the prayers in the two Writ
Petitions. Writ Petition No.8674 of 2016 seeks the following two
reliefs :

“(a) call for the relevant records and proceedings from the office of respondent authorities and after going into legality of the same, hold and declare that question numbers 13, 14, 44 and 60 of answer key of Section-A and question numbers 109, 120, 129, 131 and 142 of answer key of Section-B (MEDICINE) and question numbers 105, 122, 134 and 148 of answer key of Section-B (SURGERY) and question number 105 of answer key of Section-B (PEDIATRICS) is incorrect and correct the same as described in Exhibit-G.

(b) direct the Respondent authorities to constitute a fresh expert committee to look into the queries raised at Exhibit-G with a further direction that on obtaining opinion by such committee re-assess the answer key of Section-A and Section-B (MEDICINE), Section-B (SURGERY) and Section-B (PEDIATRICS)”

4 The other writ petition being Writ Petition (L) No. 2010 of 2016 prays for the following reliefs :

“(a) That a writ certiorari or any other writ, order or direction be issued calling for the records and files of the case and after going into the legality and validity of the decision taken by the respondent

contained in a notification dated 15th July, 2015 (Exhibit C), quash and set aside the same to the extent it declared question Nos.28, 49, 60 and 93 of Section A of the question paper in the said course i.e. MH-SSET-2016 as non evaluative.

(b) That a writ of mandamus or any other writ order or direction be issued ordering and directing the respondent not to give admissions in the said course as per the merits list published, which is at Exhibit B and prepare a fresh merit list by treating the four questions Nos.28, 49, 60 and 93 of Section A of the question paper of MH-SSET-2016 in the said course as evaluative.

(c) That the decision taken by the respondent treating the four questions Nos.28, 29, 60 and 93 of Section A of the question paper in the said course as non-evaluative, vide a notification dated 15th July, 2016 (Exhibit C), be stayed.”

5. It is, therefore, apparent that the petitioners in both petitions are seeking directly opposite reliefs.

6 The brief background in which the two petitions were filed are summarized hereinbelow:

7 Writ Petition No. 8674 of 2016 is filed on 25th July, 2016 by a petitioner who passed his MBBS examination along with one year compulsory internship in the year 2010. He was thereafter admitted in the post graduate degree course in the discipline (MD Medicine) at B.J. Medical College, Pune. He passed this examination in the year 2014. He now claims to be eligible to pursue what is popularly known as a higher or super-speciality course. He states that some of the students placed like him have passed similar examinations and are eligible to pursue super-speciality course studies. These super-speciality courses are available in surgical as well as non-surgical branch. Such of the student who has completed the post graduate medical course from surgical branch is eligible to pursue the super-speciality course in surgical branch and it is styled as M.Ch. Super-speciality course. Likewise, a student who has completed the post graduate medical course from non-surgical branch is eligible to pursue super-speciality course study and known as D.M. Super-speciality course.

8 The petitioner at page 6 of the petition highlights the

qualities of the super-speciality course and the examination conducted for entry therein. He submits that these courses can be pursued by meritorious students only. There is no reservation as far as these courses and studies are concerned. They are also free of any other reservations by the State Government. The State of Maharashtra is one of the few States which offers admissions to super-speciality courses and any student residing in any part of India after passing the post graduate degree course examination is eligible for admission to such super-speciality course in the State of Maharashtra. There was a common entrance for super-speciality course (for short referred to as “MH-SSET-2016”) for seats which are less than 100. There are approximately 1400 applicants from all over the country and who appeared for such examination.

9 The information brochure at Annexure-B is relied upon to urge that this contains the rules. The rules provide for a common paper, namely, section-A having 100 multiple choice questions. There are 100 marks assigned. This is a common paper based on the syllabus of undergraduate MBBS course for both types of applicants (surgical or non-surgical). The petitioner

states that section-B comprises of eight different papers and the applicant has to appear for one of those eight papers depending upon the post graduate discipline. This section-B comprises of 50 multiple choice questions and assigned 50 marks. Here, the respective disciplines, namely, surgical and non surgical are followed and the paper in section-B has to be answered accordingly. The petitioner having completed his studies at the post graduate level states that this MH-SSET-2016 was held on 20th June, 2016 and provisional answer key was provided to all the students on 23rd June, 2016. Annexure-C to the petition is a copy of the provisional answer key of common section-A and Annexure-B is a copy of the provisional answer key of section-B for the discipline of medicine, general surgery and paediatrics.

10 This petitioner heavily relies upon the objections and stated to be received by the authorities from some 1181 students. These objections pertain to the question and key answers for section-A as well as different question papers of section-B. The petitioner states that the respondent-authorities took a note of the aforesaid objections by their Notification dated 15th July, 2016, and marked four questions of section-A as non-evaluative

and made correction in the key answer of section-A and various question papers of section-B. Thereby, these authorities accepted that there was genuine mistake in framing certain questions and an erroneous answer key was provided. Annexure-E is a copy of the Notification dated 15th July, 2016.

11 The petitioner states that he made a detailed representation on 18th July, 2016, pointing out how approximately fourteen questions have still remained to be corrected. The petitioner in paragraph 8 of the petition submits that he and other candidates, whose names are appearing at Annexure-A to this petition, are concerned only with common section-A and the question papers of general medicine, general surgery and paediatrics of section-B. At Annexure-G is a detailed explanation with regard to the questions and it is claimed that now the Directorate of Medical Education & Research has published a further Notification dated 22nd July, 2016, Annexure-H to the paper-book by which it has decided to go ahead and complete the process. Thus, the counselling / interview of the eligible candidates would be held bringing the whole process to an end.

12 The petitioner submits that as per the final merit list dated 15th July, 2016, 838 students appeared for DM and 625 appeared for Mch under MH-SSET 2016 conducted by respondent authorities. The competitive nature of such exams are well known due to sparse seats (less than 100) in super-speciality courses in Maharashtra. The question and answers across Section A (Common) and Section B (Medicine), Section B (Surgery) and Section B (Paediatrics) were sent to DMER between 20th June, 2016 to 26th June, 2016 via online mode by the petitioner and other candidates. It is submitted that the respondent authorities have acknowledged that it had received 1181 objections related to questions and key options across all specialities / subjects. The queries sent by the petitioner and other such students in each context were supported by valid references from standard textbooks however, they have remained largely unresolved as per the Notification MH-SSET-2016 final result / merit list dated 15th July, 2016. The petitioner states that the respondent authorities were approached following the declaration of final Merit list by the petitioner and other aspiring students via emails over objectionable questions and

answers across Section-A (Common) and Section-B (Medicine), Section-B (Surgery) and Section-B (Paediatrics). A requisition (comprising more than 40 pages including queries and detailed references) seeking earliest resolution and urgent necessary feedback pertaining to the queries over objectionable questions and answers from Section-A (Common) and Section-B (Medicine) was also submitted in-person by the petitioner to respondent authorities on 18th July, 2017. The petitioner submits that the query in each context were again supported by valid detailed references from standard textbooks but remains unresolved over course of last one week without any communication from DMER till date.

13 The petitioner submits that the petitioner is seeking urgent resolution to the above unattended grievances concerning queries over objectionable questions and answers across Section-A (Common) and Section-B (Medicine). Section-B (Surgery) and Section-B (Paediatrics). The petitioner submits that the result of approximately 1400 aspiring students is at stake and due to the incorrect answer key non-meritorious students will be given admission to super-speciality courses. The petitioner further

submits that it is evident from the final merit list published by respondent authorities dated 15th July, 2016, that even single mark can bring about drastic shuffle in state ranking of aspiring students. The cited fourteen valid objectionable questions across various sections after necessary rectification which is being sought from the DMER can have huge impact on rankings of many aspiring students and their career. The petitioner submits that there should not be scope for any discrepancy or error arising in the final revised key of MH-SSET 2016. The petitioner further submits that the objectionable questions from Section-A (Common) and Section-B (Medicine), Section-B (Surgery) and Section-B (Paediatrics) in particular have objections pertaining to the following issues :

- More one than one correct answer in majority questions.
- Faulty framework of questions and sometime lacking specifically and having genuine spelling errors.
- Faulty framework of options and sometime having genuine spelling errors.
- Declaring evaluative (valid) questions as non-evaluative (incorrect/invalid) and vice-versa without any uniform

criteria particularly in case of spelling mistake. It is to emphasize that every spelling error appeared in question or options has distorted the entire word in the context.

- Some answers are not as per the National guidelines endorsed by MOHFW, India; World Health Organisation and standard textbooks by reputed authors and publication.
- Question based on facts which are expressed as controversial in standard textbooks.

14 The petitioner in Writ Petition (Lodg) No. 2010 of 2016 submits that on declaration of the result, it was found that the petitioner has secured 112 marks out of 150 marks and is having a rank at 74 in merit list. The said merit list is defective for the reasons set out in the petition. Annexure-B to the paper-book is a copy of the merit list.

15 The petitioner further submits that the petitioner was surprised to read a Notification dated 15th July, 2016, issued by the respondent, whereunder the respondent has decided that four questions, being question No.28, 49, 60 and 93 in section-A of the said examination paper and two questions, being question

No.105 and 124 from Section B are non-evaluative. Annexure-C to the paper-book is a copy of the said Notification.

16 The petitioner further submits that he is not concerned and, therefore, is not challenging the decision taken by the respondent pertaining to question No.105 and 124 of Section-B of the question paper of the said examination. However, the petitioner challenges the decision taken by the respondent pertaining to four questions of Section-A of the examination paper of the said examination. Hence, the petitioner has filed the writ petition.

17 There are two affidavit-in-replies filed in the first and second matter.

18 In Writ Petition No. 8674 of 2016, the Director of Medical Education and Research, Government of Maharashtra has filed his affidavit and it is stated that the questions for super-speciality entrance examination are prepared by the paper setter who is an expert and senior teacher in Government Medical College and the said questions are further moderated by another

expert and senior teacher in the said college. Since medical science is changing everyday due to on-going research in the field of medicine, it is difficult to maintain a question bank. However, there are necessary guidelines and instructions issued by the competent authority to the paper setter / moderator for framing multiple choice questions (MCQ for short) and care is taken to check that no questions out of prescribed syllabus and the questions are put by using the recent textbooks of the respective subjects are used.

19 Even with regard to the recent examination, out of 150 marks, 100 marks were from MBBS level syllabus (Section A) and 50 marks were from respective broad speciality syllabus, i.e. M.S. / M.D. (Section B). After setting out the multiple choice question paper, the candidate is expected to choose only one correct option as a single best response though other options may appear to be plausible. But, in order to maintain transparency, objections on questions are invited from the candidates appearing at this examination. After the examination is conducted, but before the results are declared, to maintain confidentiality of questions, to avoid leakage, pre-examination validation of

questions is avoided. None of the questions in the present examination were out of syllabus. It is stated that in view of the directions of the Hon'ble Supreme Court dated 18th January, 2016, in the case of *Ashish Ranjan & Ors. vs. Union of India and Ors.* regarding time schedule for completion of admission process for super-speciality medical courses, it is mandatory for all competent authorities to complete the admission process within the time prescribed. In the present case, on 15th July, 2016, result of the entrance examination was declared and on 25th July, 2016, a revised notice was published for filling preference form and documents verification. If any relief is granted at this stage, that will disturb the whole process and even the merit list declared on 15th July, 2016.

20 It is in these circumstances that it is prayed that no interference is called for in this Court's writ jurisdiction and the writ petition be dismissed.

21 In the other petition also, the said Director has filed an affidavit but in paragraphs 3 and 4 of this affidavit, this is what he stated :

“3. I say that with reference to four questions from Section-A of MH-SSET-2016 examination which is subject matter of the present Writ Petition, the Competent Authority i.e. Respondent herein received total 51 representations i.e.

for Question No.28	-	6 representations
for Question No.49	-	4 representations
for Question No.60	-	10 representations
and for Question No.93	-	31 representations.

By the said representations, the candidates claimed that there were errors in the said questions.

4. I say that after receipt of the said representations, the Competent Authority appointed subject experts for verifying correctness of the questions and the respective objections. The subject experts opined that there were errors in framing the abovesaid four questions and objections received by 51 candidates were correct. Relying on the opinion given by the subject experts, the Competent Authority declared the abovesaid four questions as non-evaluative/invalid and decided to allot one mark each to all the candidates appeared for MH-SSET-2016 examination for those non-evaluative four MCQs. I say that for the abovesaid four questions all the candidates appeared for MH-SSET-2016 examination

including the petitioner were benefitted by additional four marks.”

22 On the above material, we have heard the divergent submissions of the learned counsel appearing for the parties.

23 In Writ Petition No. 8674 of 2016, Mr. V.M. Thorat learned advocate appearing on behalf of the petitioner and the supporting parties would contend that the averments in the writ petition, which have not been specifically dealt with, would demonstrate as to how the petitioners have substantiated throughout with supporting materials that more than four questions were non evaluative. Meaning thereby, they are completely contrary to the principles of posing a multiple choice question. If it is conceded that one answer out of the choice is correct and some may appear to be correct, then, it is mandatory that there is no scope for possibilities or probabilities. More than one or two or three could be the correct answers is hardly then a multiple choice. This sort of an examination makes a mockery of this pattern. When nearly 60% to 70% are unhappy and make a representation based on which a decision is taken, it is declared

four questions are non-evaluative, then, the authorities ought to have seriously considered the grievance of the students. All throughout in his submissions, the common theme is that this is a do or die situation for the candidates like the petitioner. These are highly demanding studies and examination courses. That is why they are styled as super-speciality courses. The stakes are very high. It is in these circumstances that Mr. Thorat would submit that more than one correct answer in majority questions, from the framework of the questions and options, declaring evaluative (valid) questions as non-evaluative and vice versa without any uniform criteria would justify this Court's interference in writ jurisdiction. Mr. Thorat would submit that holding such an examination (CET) is no licence to ask any and every question and out of the prescribed syllabus. Similarly, one cannot brush aside or ignore the prescribed text books and views of the experts in the field with regard to the answers. Mr. Thorat would read out passages from the text book (Harrison Text Book of Medicine) while inviting our attention to one of the questions pertaining to response to iron therapy. He would read extracts from the prescribed text books of surgery, hematology, medicine in order to buttress his submission that men and even experts

learn by mistakes. Therefore, in the past several questions were declared as non-evaluative. He would rely upon the CET of 2015 and particularly of post graduate studies. Mr. Thorat, therefore, submits that in the interest of students aspiring to go higher, this Court should follow the same path as was followed in the case of *Jimmy Abraham Thomas vs. State of Maharashtra*, reported in (2002) 3 BCR 219.

24 Mr. M.M. Vashi, learned senior counsel appearing on behalf of the petitioner in Writ Petition (L) No.2010 of 2016 in controverting these submissions would submit that if Mr. Thorat's arguments are accepted, then, on every occasion going by the sheer number of students raising objections, the examination as a whole would have to be scrapped. A re-examination would then must necessarily be ordered. Such a course cannot be permitted and at the instance of students and parents. None have a fundamental or a legal right as far as higher studies and that too in professional courses. Post graduate and super-speciality studies are not primary education and, therefore, there is no fundamental right guaranteed by the Constitution as far as these studies are concerned. In

professional courses, there are certain standards set and those standards apply to all. Given the competition, fewer seats and more number of students appearing, it is imperative that a Common Entrance Test is held and a Centralized Admission Process is initiated. In that students have to appear and answer questions with regard to which they have only to tick mark the true or false or correct and incorrect answers. Once examinations are the only way out to judge and decide the merit, then, after participating therein and to the fullest extent, it is not permissible to then challenge it. If such challenges are entertained at the instance of students who have voluntarily participated, then, the process can never end. There would be multiple challenges and at all stages. In such circumstances, he would submit and as pointed out in the Memo of the Writ Petition that there was no warrant in going on accepting the objections. They ought not to have been accepted with regard to any question. He submits that once the examination is taken, results are declared, mark list is issued, the respondents cannot claim that the key answer was wrong or take a decision as to whether the question is evaluative or non evaluative. Relying upon Grounds D, E and F, Mr. Vashi would submit that this Court

should proceed to allow the writ petition argued by him and quash and set aside the Notification dated 15th July, 2016, and the four questions Nos.28, 49, 60 and 93 of section A of the question paper of MH-SSET-2016 be declared as evaluative.

25 In support of his submissions, Mr. Vashi relies upon the judgment of the Hon'ble Supreme Court in the case of *Kanpur University Through Vice Chancellor & Ors. vs. Samir Gupta & Ors.* AIR (1983) 4 SCC 309 and *Nirav Deepak Jobanutra vs. State of Maharashtra & anr.* (2002) 4 Mah. LJ 125.

26 For properly appreciating the rival contentions, one must make a reference to some basic principles that emerge from the decision in the case of *Kanpur University* (supra). In the case of Kanpur University, the Hon'ble Supreme Court was dealing with an issue arising out of admissions to medical colleges in the State of UP. The seven medical colleges in the State of UP to which admission was granted on the basis of the result of a combined pre-medical test, resulted in the Kanpur University being entrusted with the task of holding that test. About twenty thousand applications were received every year for admission to

total number of 779 seats in the seven medical colleges out of which fifty per cent are reserved and the remaining fifty per cent are open. The four subjects which are Science subjects as mentioned in paragraph 2 were the prescribed ones for the test. One paper is set for each subject and the pattern of examination was multiple choice objective type test. After referring to the peculiarities of this test and the concept of a key answer, the Supreme Court referred to the three questions, one each in the paper of Chemistry, Zoology and Botany with regard to which the controversy arose at the relevant time. The Court found out that there were correct answers / key answers. However, the students argued that they tick marked the answer as it reads in Hindi and not as it reads in English. Then, what was brought to the notice of the Hon'ble Supreme Court was whether there was any difference in the answer on account of the language. Having cleared that ground, the Court held in paragraphs 15, 16 and 18 as under :

“15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One

way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. *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 U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.*

... ..

18. *If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problems are bound to arise*

in the compilation of such text-book for, various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of 'Multiple Choice Objective type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answers. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it."

27 These paragraphs were highlighted by Mr. Vashi to submit that the parameters are laid down clearly. We have also to answer one test according to Mr. Vashi if we are to entertain the petitions. The test is the above principles.

28 While we do not disagree with Mr. Vashi and hold that

these are the settled tests, still, what we find is that Mr. Vashi also is espousing the cause of a student. Going by Mr. Vashi's argument, this student also has taken the examination. He has also attained marks. He has also a convenient version to project and place forward. The cause that Mr. Vashi espouses is to be found from paragraphs 6 and 7 of the petition. The petitioner is not challenging the decision taken by the respondent pertaining to Question Nos.105 and 124 of section B, but restricting his challenge to the four questions of section A. This is thus an interested version. If the student has no right after participating in the whole process to question and challenge it, then, this fundamental objection of Mr. Vashi and going to the root of the cause would equally apply to this petition. He is trying to cut into the chances of other students and by knocking them out in a legal battle. We do not countenance such state of affairs for students, at best, can outsmart the other in open competition by their performance in the examinations. They can score for themselves by excelling in studies and thereafter consistent with the mandate of Article 51-A of the Constitution of India [clause (j)]. By this excellence in all spheres of individual and collective activity they have to take the nation to higher levels of endeavour

and achievement. This is not the purpose of filing the petitions of the present nature. It is unfortunate that two set of students challenge some decision taken in case of their similarly placed brothers and sisters and appearing at the same examination because some objections have been raised by them. The academic body has taken a decision to declare four questions as non evaluative does not mean that a convenient version of this petitioner as projected by Mr. Vashi should be automatically accepted. He selects the section and questions for challenge as that suits his purpose. He is benefitted by some questions being declared as non-evaluative. Yet, he argues contrary to his pleading that the respondents should not declare any question as non-evaluative. This is destructive of the whole purpose of a common process and the redressal mechanism to rectify the mistakes therein. Having espoused the grievance of this petitioner and placed forward in this manner, we have no hesitation in concluding that even going by the Supreme Court judgment, we should not entertain his challenge.

29 Mr. Vashi's reliance on the Division Bench judgment in *Nirav Deepak Jobanputra* (supra) is misplaced. The CET was

held therein also and the argument was that the students who had filed the petitions projected an error. The error which was pointed out, according to the Division Bench, cannot be ruled out. However, the Division Bench found no substance in the contentions that the whole process was faulty. The argument was disclosure of question papers to the petitioner in a competitive examination is not permissible for the confidentiality and secrecy of a competitive examination will vanish. That argument was rejected and the reliance placed on *Jimmy Abraham* (supra) was found to be apposite. Therefore, the decision not to disclose the question paper to the petitioners was upheld. We think this decision, though in the context of different facts, reiterates the principle of confidentiality and secrecy.

30 Equally, we do not find the reliance placed by Mr. Thorat on the judgment in *Jimmy Abraham Thomas's* case to be well placed. In *Jimmy Abraham Thomas* (supra), the facts in the lead petition were noted. Those were indeed gross in that when the students saw the mark-list, they found that in the paper of Biology answered by them, they had received far lesser marks than their expectation. Subsequently, the results of the HSC

examination were declared by the Examination Board and it is the case of the petitioners that they obtained excellent marks in Biology. That is how they got in touch with each other and realised that all of them had answered the question reflected in Version 33 for Biology and all of them had received much lesser marks as compared to what they received in the HSC examination. After indicating the position of these petitioners as far as the marks obtained in HSC examination in the same subject, the Division Bench noted that the suspicion of these students that there was some error in the Biology paper in the common entrance test is well merited. The petitioner's enquiry revealed that hardly any candidate from version 33 figured in the first 100 top rankers. A comparison with the students who wrote answer book of Versions 11, 22 and 44 was made and the foundation for the petitioner's allegations were that the entire examination results would be vitiated if it is found that there is an error in the assessment of Biology section of this Version Set 33. The petitioners submitted that the exam being highly competitive every mark obtained counts and is relevant and there would be a large number of students for every mark difference. The rival contentions were heard and after the State

accepted in the affidavit that there were as many as thirteen mistakes in the correction of Version 33 of the Biology paper, it prepared a revised merit list. Therefore, the Court in the peculiar facts and circumstances and finding that a huge number of students are affected, granted the reliefs. The State was directed to publish and implement the revised merit list and grant admission to the students strictly in accordance therewith. The large number of students and the concern expressed by them and their parents were, therefore, redressed in the peculiar backdrop. We cannot read paragraph 116 of this judgment in isolation and out of context as desired by Mr. Thorat. We do not think that the facts and circumstances in the present case are on par with those noted in *Jimmy Abraham*. Hence we conclude that this decision is distinguishable on facts.

31 As a result of the above discussion, we do not find that the petitioners in both petitions deserve any relief.

32 The tests which have to be applied are already summarized in the case of Kanpur University & Ors (supra) and in the case of *Abhijit Sen & Ors. vs. State of UP & Ors.* reported in

AIR 1984 SC 1402. In the case of *Vivek Jain vs. The Professional Examination Board, Madhya Pradesh, Bhopal & Ors.* reported in *AIR 1994 MP 164*, the Madhya Pradesh High Court applied these tests and after setting out the purpose of an objective type test, it concluded in that case that the petitioners are entitled to partial relief. In the paper of General English of Pre-Medicine test in the respective four questions, the petitioners were given proportionate marks in relation to marks secured by them in that paper. They were given further one mark for the questions, if negative marking was done and deduction was made. The relief ultimately granted in paragraph 31 was based on this conclusion. For that conclusion to be reached, the Division Bench found that it is not possible to agree with the respondents at least insofar as the above partial relief is concerned. The test in the situation before the Madhya Pradesh High Court evolved was where a question admits of two or more equally correct answers inclusive of any key answer out of the four possible alternative answers, then, such a question if not already cancelled by the Examination Board, should be cancelled by the Court and relief should be given to the students on that basis. It is this course which has been followed in the instant case. We do not see why we should

interfere with that decision and which is impugned before us by Mr. Vashi. The case is not, therefore, of the nature found by the Madhya Pradesh High Court.

33 In the case of Ms. *Uma Patnaik & ors. vs. Convenor, MBBS / BDS Selection Board*, reported in *AIR 1994 Orissa 117*, the Orissa High Court in paragraphs 5 and 6 held as under :

"5. That is not the end of the matter. We find that in respect of about 20 questions there are mistakes in the questions. Those have been attributed by the opposite parties to be the printer's devil or unintended mistakes. It is their case that any student acquainted with elementaries of Physics, Chemistry, Botany and Zoology could not have been confused by the mistakes. That does not dilute the irresponsibility of the examining body. Carelessness is writ large. If in 150 questions, there are nearly 20 mistakes, it is bound to affect the mind of any candidate. He may be required to think whether his knowledge in the subject is inadequate, or that there is a mistake in the question. It is not for the candidate to ponder over the correctness of the question and find out whether there is any printing inaccuracy. It was the duty of the examining body to be more careful to see that there is no mistake. This has also equally affected the candidates. Therefore, while expressing our displeasure over the carelessness of the examining body, we do not accept the prayer of the petitioners to nullify the results.

6. In respect of large number of questions, the petitioners have asserted that the key answers given are not correct. Volumes of materials have been placed for our consideration. Though the petitioners are correct that there is a divergence of opinion, as regards correctness of the key answers, we do not

think it necessary to refer to all of them because even the experts on whose opinions the petitioners have relied have accepted that when the key answers indicated are correct, but the answers suggested by mistake are nearly correct. In such a case, the key answer adopted by the examining body has to be accepted. Where, however, alternative answers are correct and merely because examining body has adopted one of them to be correct answer cannot deprive a candidate who has answered alternative correct answer, cannot be denied a mark (sic). In respect of question No. 44, we feel that the key answer indicated is not the only correct answer. The said question reads as follows :

“44. Solubility of I_2 in water is increased by :

- (a) adding KI*
- (b) boiling the solution*
- (c) adding an acid*
- (d) cooling the solution*

According to the examining body, with reference to the opinion of certain Professors, answer (a) is the correct answer. It is stated that by adding KI the solubility of I_2 in water is increased. Reference has been made to Modern Chemistry by Nanda, Das and Sharma at page 92. The petitioners have asserted that answer (b) is also correct answer. The Professors have opined that if iodine is boiled in water it may be vaporised, since it is a partially volatile substance. The possibility of I_2 vaporising away by boiling is not relevant. The question is about increase in solubility. Significantly the Professors, whose opinions have been relied upon by the examining body, have not stated anything about this aspect. During course of hearing the Convenor who was present and was instructing the learned counsel for the State, accepted that (b) is also correct, but stated that (a) is more correct, without indicating the basis for such statement. Therefore, in our considered opinion answer (b) cannot be said to be wrong, and both answers (a) and (b) are correct. In view of our above conclusion, both answers are correct and not

answer (b) is nearly correct. Every candidate who has indicated (b) to be the correct answer deserves one mark. Those of the petitioners who have secured 121 marks or more and have indicated answer (b) against question No.44 to be the correct answer, shall be awarded one mark and their position shall be reconsidered by the opposite parties. If any of them has been awarded one mark in respect of question No.44, obviously there is no question of addition of any mark. If after receiving one mark any of the petitioners become eligible, he is entitled to be admitted to the course. Let the exercise be done within three weeks from today. We make it clear that while considering the eligibility, the procedure indicated at Clause 9.3 of the prospectus has to be adopted. If on the basis of the mark awarded in respect of question No.44, the position of the candidate concerned, is superior to that of a candidate already admitted, then only he / she shall be considered for admission.”

34 Thus, the Court concluded that in a multiple choice objective test, the key answer should be correct or most appropriately correct answer and the rest should be either wholly incorrect or incorrect though appear to be correct. That is the distinctive feature between multiple choice objective test and the traditional system of examination. In the multiple choice objective test, it is imperative that the answers to the questions as indicated must not carry two correct answers. That would be unfair to the candidate. On this basis and following the tests laid down in *Kanpur University* (supra), the Court granted the relief.

However, the Orissa High Court speaking through His Lordship Arijit Pasayat (as His Lordship then was) made some pertinent observations. The exercise which is now sought by Mr. Thorat is on the footing that the petitioners in the writ petition in which he is appearing are right in their submission that there are other questions which could also be deemed as vitiated if one applies the above test. Mr. Thorat's argument that a candidate securing 121 marks may be deprived of a seat because the lowest mark of selected candidate is 122. The Division Bench held that a post mortem does not bring back the life of a person. Post verification of correctness of questions/answers after examination is over cannot take away the effect of non application of mind before the questions were set. However, if this affects each candidate then the petitioners submissions cannot be accepted particularly that the examination is vitiated on account of the mistakes committed by the examining body. It is, therefore, not for the candidate to ponder over the correctness of the question and find out whether there is any printing inaccuracy. The examining body should be careful and though the Court expressed its displeasure, it did not undertake the exercise desired by the students before it. It eventually granted the reliefs as are to be found in paragraphs 6

and 7 of the judgment.

35 Therefore, it is not that the Court must every time undertake the exercise desired by the students for every process has to achieve finality and must reach it accordingly. If the pleadings are inadequate and there are no proper materials, then, the Court should not only on the one-sided version of the students probe the matter in details. If the academic body has taken a decision bearing in mind the larger interest of the society and the students, then, that decision should be upheld unless it is found to be vitiated by arbitrariness or lack of *bona fides*. We do not find any such position emerging from the record of these cases.

36 That is why we have dismissed the petitions.

37 In the view that we have taken, it is not necessary to consider the reliance placed by Ms. Bhende on an order passed on 29th February, 2016, in Writ Petition No. 2546 of 2016 by a Division Bench of this Court to which one of us (S.C. Dharmadhikari, J.) was a party.

38 For the same reasons and in the light of the view taken above, we need not consider Mr. Vashi's wider submission that students or their parents have no fundamental or legal right to question the process merely because in their opinion a particular key answer was so erroneous as would make a mockery of the academic standards. We express no opinion on these contentions in the present case.

39 Both the petitions are, accordingly, dismissed.

DR.SHALINI PHANSALKAR-JOSHI, J. S.C. DHARMADHIKARI, J.