

\$~94

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 23.09.2016

+ **W.P.(C) 7750/2016**

SAGAR SANJEEV DUA

..... Petitioner

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION AND ORS**

..... Respondents

Advocates who appeared in the case:

For the Petitioner :

Father of the petitioner in person.

For the Respondent:

Mr Amit Bansal, Ms Manisha Singh,
Ms Seema Dolo and Ms Surbhi Mehta,
Advocates for CBSE.

Ms Anita Sahani, Advocate for
R-2/GGSIP University.

Mr Mohinder J.S. Rupal, Advocate for Delhi
University.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

W.P.(C) 7750/2016 & CM No.31997/2016(interim relief)

1. The petitioner has filed the present petition seeking to challenge the answers of respondent No.1 to question Nos.73,103,124,135,158 of National Eligibility cum Entrance Test (NEET) – 2016 and for appointment of an independent expert or panel of experts to examine the contentions of the petitioner and to evaluate whether the answers

given by the petitioner to the questions set by the respondent No.1 were correct or the view of the respondent No.1 is correct.

2. Extensive submissions were made on the correctness of the answers given by the petitioners by referring to research material placed on record. Reliance was placed on several articles covering the various questions as well as the textbook of NCERT.

3. Learned counsel for the respondents has contended that the question paper has been set by experts who have also given their answers. It is contended that as per chapter VII clause 4 of the Information Bulletin of NEET-2016, there is no provision for reassessment/re-evaluation of answer-sheets.

4. It is, however, contended that once the answer key is made public, objections are invited from students. The objections once received are placed before the experts, who after examining the various answers give their view. It is contended that several objections were received by the respondents including objections raised by the petitioner. The experts, after examining the objections, accepted some of the objections and made necessary rectifications in the answer key. With regard to the questions in respect of which the petitioner has raised his challenge, it is contended that the experts reiterated their view and did not accept any of the challenges raised not only by the petitioner, but also by the several other students.

5. It is further contended that the setting of question paper and the

answer key is a job entrusted to experts and this Court in exercise of power under Article 226 of the Constitution should not normally interfere with such a view taken by the experts. Reliance is placed on the decision of the Supreme Court titled **Himachal Pradesh Public Service Commission versus Mukesh Thakur And Another**, (2010) 6 SCC 759, to contend that it is not permissible for the Court to take up the task of examiner/Selection Board upon itself and to examine the discrepancies and inconsistencies in the question paper and the evaluation thereof.

6. Reliance is also placed on the decision of a Coordinate Bench of this Court dated 13.07.2015 in WP(C) 5719/2015 titled **Atul Kumar Verma versus Union of India & Another**, to contend that there can be no judicial review of the answer key, which the question setter/s with or without consultation with other subject experts has prepared and who, upon objection being raised thereto, has reiterated the answer key, with or without assistance of other experts and which answer key has been uniformly applied to all candidates taking the examination.

7. The petitioner had made an endeavour by referring to several materials on record to show that the answer, more particularly, to question No.73 is patently incorrect. Other material was also referred to contend that the answers, as per the answer key to the other questions in respect of which the petitioner had raised objections were also not correct.

8. I am unable to accept the course of action suggested by the petitioner. Even if this Court were to *prima facie* agree with the contention of the petitioner that the answers, as marked by the petitioner, are correct and the answer key of the respondent is incorrect, in my view, this Court would not be competent to carry out such an exercise, more so, in view of the fact that the questions are from technical subjects. The question paper is from Physics, Chemistry and Biology. For a Court to assess and examine even, *prima facie*, whether the answers are correct or incorrect, would be beyond the competence of a Court, which may not be an expert in the said subjects.

9. The Supreme Court in *Himachal Pradesh Public Service Commission* (*supra*) has held as under:-

“14. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:-

(i) As to whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions papers and evaluation thereof?

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had

secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court?

(iii) Whether in absence of any statutory provision for revaluation, the court could direct for revaluation?

16. It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities.

20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.

24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmar Sheth, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The

Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

"14.It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act..."

16.The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act."

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation."

10. The Supreme Court, in the said judgment, has categorically held that a Court cannot take up itself the task of statutory authorities. It is not permissible for the Court to take upon itself the task of examiner and to examine the discrepancies and inconsistencies in the question paper and evaluation thereof. The Supreme Court has categorically laid down that it is not permissible for the High Court to examine the question papers and answer-sheets itself. Furthermore, the Supreme Court has noticed that in the absence of any provision under the statute or statutory rules/regulations permitting re-evaluation, the Court should not generally direct re-evaluation.

11. In the instant case, the Information Bulletin for NEET-2016 specifically stipulates that there is no provision for rejecting/re-evaluation answer-sheets.

12. Furthermore, a Coordinate Bench of this Court in Atul Kumar Verma (*supra*) has held as under:-

“15. When I apply the aforesaid principles to a plea, seeking judicial review of the answer key which the question setter / s with or without consultation with other subject experts has prepared and who, upon objection being raised thereto has reiterated the answer key with or without the assistance of other experts, and which answer key has been uniformly applied to all the candidates taking the examination, in my view the answer is unequivocal that no judicial review lies.

16. Judicial review, as aforesaid is of the decision making process and not of a decision which the authority / body has been entrusted in the scheme of things to take.

If that be the case, how, without there being any averments impugning the process by which answer key has been processed, can the Court be said to be empowered to review the answer key or for that matter the question paper. It is settled position in law that merely because the decision / action, of which judicial review is sought, being wrong in the opinion of the Court or of several others, is no ground for entertaining judicial review-thereof unless any illegality or unreasonableness in arriving of the decision or taking of action is shown. The parameters of illegality and unreasonableness also are, as laid down in Tata Cellular supra. Applied to questions in an examination and answer key thereto, they would be say, where the preparation of question paper and the answer key is by person not an expert in the subject or in violation of any rule prescribed therefor or if inspite of merit being found in objection preferred thereto no correction thereof is carried out inspite of procedure prescribed therefor or if there is any bias or other uncalled for motivation in preparation thereof. This list is certainly not meant to be exhaustive but is certainly meant to be illustrative.

17. Unless the Courts, though accustomed to resolve / adjudicate on disputes, curb their temptation to interfere with the question paper and answer key inspite of counter view, of other subject experts, being brought before them and there being thus a dispute as to which view is correct, the Universities and the examining bodies on whom the said function has been entrusted, would loose their sheen and the respect in which they are held. I would go to the extent of saying that if the Courts, which cannot possibly be experts in all subjects, on the basis of opinions to the contrary obtained from other 'independent' subject experts, were to start setting aside the questions and answer keys bona fide prepared by the subject expert and who bona fide continues to believe in correctness thereof, we may reach a day where no self

respecting expert would agree to partake in the exercise of setting the question papers and answer key (and which mostly is honorary or for nominal remuneration) for the fear of his / her opinion, bonafide held being pitted against that of other in Court and his name and honour being sullied in the process. We, in my opinion, ought not to allow our Universities and examining bodies being so reduced to a 'medium' as the Supreme Court observed in Tata Cellular instead of Centres of learning and expertise. If they have ceased to be so, the jurisdiction under Article 226 ought to be exercised to set right their functioning rather than the Court taking over the mantle of correcting the question paper set and answer key thereto framed by them.”

13. The Coordinate Bench has taken a view that there can be no judicial review of the answer key which the question setter has prepared and who, upon objection being raised, has reiterated the answer key. In the instant case also, the experts, who had set the question paper, have reiterated the answer key and the objections raised by various candidates have been dealt with. The answer key has been uniformly applied to all candidates who have taken the examination.

14. The question paper and the answer key are prepared by independent subject experts. The Court, in exercise of powers under Article 226 of the Constitution, cannot take over the task of correcting the answer set in the answer key framed thereto by an independent subject expert. Nothing has been pointed out for me to take a view different from the view taken by the Coordinate Bench in **Atul Kumar**

Verma (*supra*).

15. In view of the above, I am not inclined to exercise powers under Article 226 of the Constitution and to examine the questions and the answer key set by the respondents and even to return a *prima facie* finding that the contention of the petitioner the answers given by the petitioner are correct or the answers given by the respondents are incorrect.

16. In view of the above, the writ petition is dismissed. No orders as to costs.

SANJEEV SACHDEVA

SEPTEMBER 23, 2016/ 'sn'

