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

% *Date of Judgment :24.07.2017*

+ W.P.(C) 5439/2017 & C.M .Nos.22896/2017 & 24792/2017  
MISS. URVASHI KHANNA

..... Petitioner

Through Mr. R. Venkatramani, Sr. Adv. Mr.  
M.R. Shamshad, Mr. Aditya  
Samaddar and Mr. Yashraj Bundela,  
Adv.

versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF  
HEALTH AND FAMILY WELFARE & ORS

..... Respondents

Through Mr. Amit Bansal and Ms. Seema  
Dolo, Adv. for CBSE.

+ W.P.(C) 6074/2017  
AMRIT ADARSH

..... Petitioner

Through Ms. Babita Panigrahy, Adv.

versus

THE CHAIRMAN, CENTRAL BOARD OF SECONDARY  
EDUCATION & ANR

..... Respondents

Through Mr. Amit Bansal and Ms. Seema  
Dolo, Adv. for CBSE.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

1 Both these petitions raise common questions and shall be decided by a common order.

2 In W.P. (C) No.5439/2017, the petitioner was aggrieved by the fact that four of her questions were not marked correctly. This has been noted in the order dated 03.07.2017. The grievance of the petitioner is qua questions

No. 58, 68, 105 & 140. On that date, the submission of the respondent had been recorded which was to the effect that challenge qua questions No. 105 & 140 had been accepted. The petitioner had been awarded four marks each for each of the two questions i.e. 8 marks in total. Additional submission was that qua other questions i.e. questions No. 58 & 68, the objections of the petitioner had not been accepted. The submission of the respondent was that the expert body had examined these objections. The same answers had been reiterated. The respondent had been directed to produce the reasons for rejecting the objections of the petitioner qua questions No. 58 & 68. The same have been produced. The sealed cover has been de-sealed and the reasoning given by the expert body has been noted.

3 In W.P. (C) No.6074/2017, the petitioner was aggrieved by the answers of her two questions; they were questions No. 51 & 56. On 19.07.2017, the submission of the respondent that a revised answer key had been prepared but the answers to the aforementioned questions i.e. answers to questions No. 51 & 56 still remained the same and this had been noted. The respondent had been directed to obtain positive instructions. The reasoning for arriving at the answers to questions No. 51 & 56 have also been produced in a sealed cover and the same has been de-sealed and scrutinized by this Court.

4 At the very outset, this Court will answer the first argument raised by the learned counsel for the petitioner in W.P. (C) No.5439/2017. In this context, learned counsel for the petitioner on the last date (17.07.2017) had relied upon the judgment of the Apex Court in (2005) 13 SCC 749 Guru Nanak Dev University Vs. Saumil Garg & Another to substantiate his

proposition that where the question is vague and incapable of being answered, the appropriate course is to give marks only to those students who have attempted the said question and not to others; the respondent could not have across the board given marks to other persons if they had not attempted the question and in such an eventuality, the rank of the petitioner would be effected.

5 Counter affidavit has been filed by the respondent. Although the respondent has not specifically answered the aforementioned question yet on oral instructions learned counsel for the respondent submits that he has positive instructions to state that these four marks for each question were awarded only to those students who had attempted the questions and not across the board. The ratio of the judgment of Guru Nanak Dev University (supra) has been fully complied.

6 Noting this stand of the respondent, learned senior counsel for the petitioner does not press this submission.

7 Relevant would it be to point out that questions No. 58 & 68 are the subject matter of dispute in W.P. (C) No.5439/2017.

8 In W.P. (C) No.6074/2017 it is questions No. 51 & 56 which are in dispute.

9 Question No. 68 in W.P. (C) No.5439/2017 and question No. 51 in W.P. (C) No.6074 /2017 are the same; they have been given a different serial number. The reasoning given in reiterating the answers to questions No. 51 & 68 (both are the same questions) are contained in the chart submitted by the respondent which has been scrutinized. This appears at F-9. The

reasoning given by the experts who have reiterated the answer to this question has been noted. It is in two paragraphs. This reasoning has been given by two experts and has been endorsed by the Authority of respondent No. 2. The details of this reasoning and the names of the experts are not being disclosed at the specific request made by the respondent who submits that the names of these experts are to be kept as a closely guarded secret as if their names are open to the public, they may create a difficult situation in future and there could be endless allegations/counter allegations against the said persons which would rob the respondent of their right to keep this information in their own domain.

10 This Court has also scrutinized the reasoning given by the said experts to question No. 58 (W.P. (C) No.5439/2017) and question No. 56 in W.P. (C) No.6074 /2017. These answers had been examined by the experts and this appears at F-8 & F-12 respectively. For the reasons as countenanced by the respondent, the names of these experts have not been disclosed.

11 Learned counsel for the petitioner, at this stage, submits that if this scrutiny is being carried out by the Court and the Court not being an expert body and the said scrutiny chart also not being made available to the petitioner, there would be no effective argument which could really be advanced by the petitioner and this whole exercise of filing this writ petition would be a futile exercise.

12 This Court is not in agreement with this submission of the learned senior counsel for the petitioner.

13 The respondents have been fair; out of four questions which have been objected to by the petitioner (W.P. (C) No.5439/2017), the respondent on the first date itself had stated that challenges to two questions had been accepted (questions No. 105 & 140). Qua the other questions, the challenge had not been accepted (questions No. 58 & 68). The same was the position in W.P. (C) No.6074 /2017. The challenge to two questions No.51 & 56 had not been accepted. As already noted supra, question No. 68 in W.P. (C) No.5439/2017 and question No. 51 in W.P. (C) No.6074 /2017 are the same questions. The challenge in fact thus remains qua three questions.

14 The answer keys have been revised and uploaded. These answer keys have reiterated the answers which had been prepared in the earlier answer key. This was on the report of two experts in the subject; details of which find mentioned supra (F-8, F-9 & F-12). The reasoning arrived at by the experts has also been scrutinized by this Court. Documents had been produced in a sealed cover; after scrutiny, they have been returned back.

15 This Court reiterates that this Court is not the expert body dealing with the said answers to the said questions and neither the counsel for the petitioner or for the respondents is an expert.

16 In this context, the observations of the Apex Court in (1994) 6 SCC 651 Tata Cellular Vs. Union of India dealing with the judicial review qua decisions made bonafide and the concerns of Bench were reiterated in W.P. (C) No.5719/2015 Atul Kumar Verma Vs. Union of India & Anr are relevant. Although Tata Cellular (supra) had been delivered in the context of judicial review in tender matters yet the principles hold good for all matters of judicial review of decisions which have been arrived at bonafide. It is not

the case of the petitioner even in these cases that there are malafide attributed to the respondents. Some of these principles laid down in Tata Cellular are relevant and are reiterated herein as under:-

*“Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself;”*

17 Applying the aforesaid principle to the facts of the instant case, this Court is of the view that when the answer key has again been revised by a body of experts who had taken this task upon themselves and admittedly this answer key having been applied uniformly to all such students, no judicial review would lie.

18 The observations of the Coordinate Bench of this Court in a similar context in Atul Kumar Verma are extracted herein as under:-

*“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, bona fide 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.*

*18. Notice may be taken of H.P. Public Service Commission Vs. Mukesh Thakur (2010) 6 SCC 759. The petitioners therein had sought re-evaluation of the paper of Civil Law in the examination held for selection for the post of Civil Judges. The High Court directed the answer sheet of the petitioner to be sent to another examiner for re-evaluation and as per the re-valued marks held the petitioner eligible for appointment and disposed of the writ petition directing the petitioner to be appointed. The Supreme Court, while setting aside the said judgment, held, (a) that it was not permissible for the High Court to examine the question paper and the answer sheet itself particularly when the examining body has assessed the inter se merit of the candidates; (b) if there was a discrepancy in framing the question or evaluation of the answer, it was for all the candidates appearing in the examination and not for the petitioner alone; (c) 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, such a course could not have been adopted by the High*

*Court; (d) that the course adopted by the High Court was not permissible.*

*19. A Division Bench of this Court also recently in Salil Maheshwari Vs. The High Court of Delhi MANU/DE/2085/2014 held that, (i) a candidate in an examination who has not availed of the opportunity given for objecting to the answer key is estopped from raising a challenge at a belated stage; (ii) that the Supreme Court in Kanpur University has held that the answer key must 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; and if the traditional parameters of judicial review – illegality, irregularity, non-consideration of material facts or consideration of extraneous considerations or lack of bona fides in decision making process as contrasted with the decision itself, are satisfied can the decision be corrected in judicial review; (iii) in matters of judicial review which involve examination of academic content and award of marks, a circumspect approach, leaving evaluation of merits to the expertise of academics has to be effected; (iv) and, else judicial review is permitted only when decision is so manifestly and patently erroneous that no reasonable person could have taken it.*

*20. Mention at this stage may be made of In Re: v. Askew [1768] 4 2168, where Lord Mansfield considered the question whether*

*mandamus should be granted against the College of Physicians and held “it is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physician: and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious or biased; much less, warped by resentment, or personal dislike”.*

*21. In my view, it is the aforesaid principle which alone applies to the scope of judicial review of answer key.*

*22. That brings me to the judgments relied upon by the senior counsel for the petitioner. The ratio of Kanpur University has already been culled out by the Division Bench in Salil Maheshwari supra. Moreover Kanpur University and Guru Nanak Dev University pertain to an era where no opportunity was given for objecting to the answer key, though the answer key was published along with the result of the examination and where after the result was challenged. Since then, most examining bodies themselves or under directions of the Courts have devised a procedure of inviting objections to the answer key and considering the said objections and if satisfied therewith, correcting the answer key and thereafter declaring the result. After the said procedure has been followed, in my view there is no scope for judicial review of the answer key unless allegations of bias, mala fide, non-consideration of relevant factors etc. which are traditionally the*

*grounds for invoking the power of judicial review are made out. The Courts have directed the examining bodies which did not have the procedure of inviting objections to the answer key to follow the said procedure which the Courts felt was necessary to have a fair result of the examination and to eliminate the possibility of mistakes in the answer key. Once such a procedure has been followed, there can be no possible further challenges except on the traditional parameters of judicial review. If such challenges were to be allowed, the same would lead to disgruntled students filing one petition after other with opinions of the subject experts and which can vary and which will ultimately lead to delays in admissions and in commencement of academic session and all of which will be contrary to public interest and cannot be permitted and if permitted would amount to a cure worse than the disease of a possibility of error remaining in the answer key inspite of the procedure of inviting objections and considering the same being followed.*

*23. No case for judicial review within the traditional parameters thereof has been made out.”*

19 In this background, this Court is of the view that petitions are without any merit. Dismissed.

**INDERMEET KAUR, J**

**JULY 24, 2017**

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