

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4498 OF 2018

Harshita Mishra

.. Petitioner

Versus

The Government of India & Ors.

.. Respondents

Mr.S.S.Thombre, Advocate for the petitioner.

Mr.D.G.Nagode, Advocate for respondent No.1.

Mr.S.V.Advant, Advocate for No.3.

**CORAM : PRASANNA B.VARALE &
S.M.GAVHANE, JJ.**

DATED : 11.07.2018

P.C. :-

1. Heard Mr. Thombre, learned Counsel for the petitioner. Considering the issue involved and the prayers made in the petition, the petition is taken up for hearing and final disposal with the consent of the parties.

2. The petitioner is a student prosecuting her education and after completing her Graduation in Pharmacy stream, namely, B. Pharmacy, the petitioner appeared for the examination known as "Graduate Pharmacy Aptitude

Test" (for short "GPAT"). It is submitted that such examination is a national level entrance exam conducted by All India Council for Technical Education (for short "AICTE") every year under the directions of the Ministry of Human Resources Development, Government of India. It is then submitted that the test, namely, GPAT facilitates the institution to select suitable Pharmacy graduates for admission to the Master's program i.e. M.Pharm. It is not in dispute that admission process is channelized through on-line process. The petitioner submitted her application form and her score card is placed on record at Exh."C". Now the grievance of the petitioner is that the petitioner while replying the questions, submitted her answers and particularly the petitioner replied to two answers by exercising her options. The grievance of the petitioner is that even though the option exercised by her as reflected in the answer-sheet and her answer, was based on the study material i.e. a reference book which was recognized by the AICTE, her options were not treated as correct answers to the questions. The

petitioner raised grievance by way of on-line application or representation. Such exercise is undertaken by the petitioner twice and the communication was received by the petitioner through AICTE informing the petitioner that the GPAT Expert Committee had undertaken the exercise of considering grievance of the petitioner twice and on careful consideration, the AICTE arrived at a conclusion that the request of the petitioner cannot be entertained. Mr.Thombre, learned Counsel vehemently submitted that the petitioner submitted her claim along with extract of the reference book. It was the submission of Mr. Thombre, learned Counsel that the petitioner ought to have been given opportunity to satisfy the Expert Committee. Such opportunity is not granted, as such, the petitioner prayed for appointing the Expert Committee. Thus, these are the submissions of learned Counsel Mr. Thombre, appearing for the petitioner.

3. Mr. Advant, learned Counsel submitted before us the written instructions in the form of para-wise

comments received by him. The written instructions are taken on record and marked "X" for identification.

4. At the outset, before we consider merits of the petition, we have no hesitation to state that this Court is not an expert in the field of academics and more particularly the issues before us is of testing correctness of answers, which are in the field of Pharmacy stream. Thus, the issue will have to be considered with the opinion of those who are experts in the field. On the backdrop of the submissions of learned Counsel appearing for the petitioner, it would be useful to refer to certain documents placed on record. The grievance of the petitioner is about two questions and the reference is made in the representation or application submitted to AICTE. These are Question ID - 621 and Question ID - 628. The questions, options, AICTE's answer and the answer of the petitioner-candidate are stated as follows :-

[Question ID = 628] What is the effective ratio of methyl propyl paraben for anti-microbial activity?

1. 1:1 [Option ID = 2508]
2. 5:1 [Option ID = 2509]
3. 2:5:1 [Option ID = 2510]
4. 10:1 [Option ID = 2511]

AICTE's Answer : 10 i.e. option 4 [Option ID = 2511]

Petitioner's Answer : 5:1 option 2 [Option ID = 2509]

[Question ID = 621] Vials and bottles are regularly not subjected to following test :-

1. Sterility test [Option ID = 2480]
2. Clarity test [Option ID = 2481]
3. Leaker (chamber) test [Option ID = 2482]
4. Pyrogen test [Option ID = 2483]

AICTE's Answer : Leaker (chamber) test, i.e. option 3 [Option ID = 2482]

Petitioner's Answer : Pyrogen test i.e. option 4 [Option ID = 2483]

5. Though it is submitted by learned Counsel for the petitioner that opportunity of personal audience ought to have been granted to the petitioner before the Expert Committee, in the representation submitted by the petitioner herself, there is no such prayer. The representation of the petitioner states that her reply and option exercised by her was correct reply in view of reference book and as such she was entitled to receive allocated marks for such questions. It was her ultimate request in the representation of allocating her 4 + 1 i.e. 5 marks. There are two representations. First representation is of 31.03.2018. Second representation is

of 10.04.2018. The second representation is just reiteration of the first representation. It was submission of the petitioner that there were four choices to question IDs 621 and 628. The petitioner exercised option No.2 for the question ID = 628 and petitioner opted for option No.4 to question ID = 621. The answers to these questions as per AICTE are option No.4 to question ID = 628 and option No.3 to question ID = 621.

6. The petitioner emphasized that her replies are based on reference books, namely, "Pharmaceutical Dosage Forms and Drug Delivery" by Ram I. Mahato, Ajit S. Narang and "The Theory and Practice of Industrial Pharmacy" by Lieberman and Lachman. Now perusal of the representation of the petitioner to AICTE shows that the petitioner was insisting that the questions put by AICTE itself was incomplete question. The petitioner was of the opinion that as regards Question ID = 628, there is no fixed or universal ratio and this opinion of the petitioner was based on some reference book. Now, insofar as question

ID=621 is concerned, the petitioner offers her explanation stating that said leaker test is performed to detect any leakage in the containers like bottles, ampoules etc. i.e. finished products. Then she also offered some explanation based on one reference book. At the cost of repetition, we again state that as this Court is not expert in academics nor in the stream of pharmacy, we will have to fall back on the expert opinion. In the present matter, the AICTE referred the representations of the petitioner to the Expert Committee. The Expert Committee undertook an exercise of assessing the representation of the petitioner not once but twice. The AICTE referred the recommended book for the syllabus by the AICTE and there is also extract in the written communication to Question ID = 621 and Question ID = 628. It will be useful to refer to the written submission which reads thus :-

“Before finally publishing the Results, AICTE had given an opportunity to all the candidates to raise their grievances/queries on the question and answers options of GPAT 2019 Examination through Online Objection Tracker

during 25th Jan, 2018 to 27th Jan, 2018. All the queries/objections raised by the candidates (including the query raised by this candidate) was referred to the Expert Committee after going through all the queries have finalised the Answers and based on that the Result was declared on 15th Feb, 2018."

7. Now this submission clearly shows that the AICTE granted opportunity to the candidates to raise their query about the questions for the period from 25.01.2018 to 27.01.2018, meaning thereby AICTE granted an opportunity to all those candidates to raise their queries about the questions and answer options within stipulated period of 25.01.2018 to 27.01.2018. Learned Counsel Mr. Thombre though orally submitted that the petitioner submitted her query within the period of 25.01.2018 to 27.01.2018, we could not find any such representation placed on record. Mr.Thombre's submission is based only on the communication of AICTE which says that the questions raised by the petitioner were replied by the AICTE through E-mail dated 06.02.2018. Be that as it may. Now, further AICTE's written instructions reads

thus :-

"Answer Options for Question Numbers 621 and 628 given by AICTE Expert Committee are CORRECT (Standard Reference Book "Theory and Practice of Industrial Pharmacy by Leon Lachman 3rd Edition" page numbers (467 & 673) attached as Annexure – I)

Regarding Question No.621, as per the Answer Option No.3 selected by AICTE Experts, Vials & bottles are regularly not subjected to following tests Ans : Leaker (Chamber) test, which is the correct answer given by the expert which can be seen on page No.673"

8. Then insofar as Question No.628 is concerned, it is stated that regarding Question No.628, which states : What is the effective ratio of Methyl Paraben and Propyl Paraben for antimicrobial activity. Answer Option is 10:1 i.e. 4th Option. This is from Standard Reference Book : Theory and Practice of Industrial Pharmacy by Leon Lachman. A copy of the material is also placed along with the submission. The heading of the subject is Quality Control and there are two parts (i) Leaker Test and (ii) Clarity Test. It will not be out of place to refer other material which reads thus :-

"A reported study has shown that detection of leakers is more effective when the ampuls are immersed in a bath of dye during the autoclaying cycle. This has added advantage of accomplishing both leaker detection and sterilization in one operation. Capillaries of about 15 microns in diameter or smaller may or may not be detected by those test methods.

Vials and bottles are not subject to such a leaker test because the rubber closure is not rigid, however, bottles are often sealed while a vacuum is being pulled so that the bottle remains evacuated during its shelf-life."

9. Then the written submission states that the query raised by the petitioner including the supporting material provided by the candidate was referred to the Expert Committee and the Expert Committee has gone through all the supporting material provided by the candidate along with other candidates before finalizing answers and result was declared on 15.02.2018. The petitioner-candidate was also informed about the decision of the Expert Committee on her objection/query before announcing the Result of GPAT 2018. Further the AICTE states that the submission of the petitioner that there was deduction of five marks for the options she exercised

and as per her statement these options were correct answers. The AICTE submits that while assessing the answer-sheet, only one mark is deducted from these two wrong answers and not five marks as alleged by the petitioner.

10. Learned Counsel Mr.Thombre further made an attempt to submit before us that the petitioner exercised her option which was closer to the correct answer, as such, the petitioner ought to have been granted five marks. We are unable to accept the submission for two reasons. Firstly, it is the contention of the petitioner herself that the question itself was wrongly framed. Secondly, even though the option exercised by the petitioner may be closer to the correct answer, the correct answer itself was one of the options and the petitioner was not prevented from exercising that option, which was the correct answer. It is also brought to our notice that the petitioner is granted one mark. Considering these facts, we are unable to persuade

ourselves to accept the submission of learned Counsel Mr. Thombre. As stated above, it is the petitioner's own contention that the question was wrongly framed. Now, this conclusion is drawn by the petitioner on her own understanding and in view of certain reference book.

11. Considering all the above referred facts, we are of the opinion that the petition is thoroughly merit-less and deserves to be dismissed.

12. The writ petition is dismissed.

[S.M.GAVHANE, J.]

[PRASANNA B.VARALE, J.]