

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

WRIT PETITION NO. 6740 OF 2019

Ankita Abhang Indrale through
mother Indrale Manorama Abhang
and another .. Petitioners

Versus

The Union of India and others .. Respondents

Shri A. S. Golegaonkar, Advocate for Petitioners.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 to 4.

**WITH
WRIT PETITION NO. 6789 OF 2019**

Isha Suresh Kadam through her
father Suresh Gopalrao Kadam
and others .. Petitioners

Versus

The Union of India and others .. Respondents

Shri A. S. Golegaonkar, Advocate for Petitioners.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 to 4.

**WITH
WRIT PETITION NO. 6798 OF 2019**

Gaura Gajanan Shinkar .. Petitioner

Versus

The Union of India and another .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.

**WITH
WRIT PETITION NO. 6986 OF 2019**

Shubham Subhash Pawar through
father Subhash Dalsingh .. Petitioner

Versus

The Union of India and another .. Respondents

Shri P. S. Pawar, Advocate for the Petitioner.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.

**WITH
WRIT PETITION NO. 7221 OF 2019**

Rishika Vilas Dharmadhikari .. Petitioner

Versus

The Union of India and others .. Respondents

Shri Santosh S. Jadhavar, Advocate h/f Shri Nandkumar Y.
Kingaonkar, Advocate for the Petitioner.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

CLOSED FOR ORDERS ON : 16.08.2019

ORDER PRONOUNCED ON: 11.10.2019

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioners challenge clause No. 6 of NEET – 2019 brochure and also seeking declaration that answers given by them to the questions as contended by them in the petitions are correct. The petitioners also assail Clauses 1(c), 2(c) & (d) and

4(i) and (ii) of Chapter 7 of Information Bulletin for NEET-UG-2019 as violative of principles of natural justice.

2. Mr. Golegaonkar, the learned advocate for petitioners led the arguments. Mr. Salunke, Mr. Jadhavar holding for Mr. Kingaonkar and Mr. Pawar, the learned counsel for respective petitioners adopted arguments of Mr. Golegaonkar and made further submissions.

3. The contention of petitioners is that, answers to the various questions that the petitioners had attempted and as have been detailed in the memo of writ petitions are correct and the answers in the answer key are erroneous. They should be given the marks for the same. The learned counsel to buttress their submissions place reliance on the text book. They also rely on opinion of experts, who have also confirmed that answers as given by petitioners are correct and the answers in the answer key are wrong. The learned counsel submit that, Clause No. 6 of the NEET-UG-2019 brochure restricting the jurisdiction to Delhi in case of disputes pertaining to the conduct of examination is illegal. The jurisdiction cannot be restricted to one Court. According to learned counsel, the Clauses 1(c), 2(c) & (d) and 4(i) and (ii) of Chapter 7 of Information Bulletin for NEET-UG-2019 are violative of principles of natural justice. On one hand the National Testing Agency (NTA) is giving opportunity to make representation and challenge the answer key, but in Clause 2-B no individual candidate is to be informed about acceptance and non-acceptance of his challenge. By this procedure the doubt is

created. The said procedure is not fair. No verification through the experts by NTA has been done and there are no revised marks given, nor the answer key is revised. The Clauses 1(c), 2(c) & (d) and 4(i) and (ii) of Chapter 7 of Information Bulletin for NEET-UG-2019 give unlimited powers in the matter of rechecking/re-evaluation of answer sheet, that adversely affects the result and rank in the end marking.

4. Mr. Deshpande, the learned Assistant Solicitor General for respondents submits that, the answer keys of all the questions of NEET-UG-2019 examination conducted on 05.05.2019 were verified by the subject experts between 22nd and 26th May, 2019. The same were uploaded on official website. The candidates were informed through a public notice dated 29.05.2019 issued on the said examination portal, to challenge answer given in the key answer of any question within the said period.

5. The learned A. S. G. further submits that, 40510 challenges were received from the candidates. The challenges included the challenge of questions and answers raised by the petitioners also. The said challenges were placed before the Committee of respective subject experts, who are professors from IITs/reputed universities for verification. The subject experts went through the challenge/objection including that of the petitioners and considered each and every aspect of the challenge from 29.05.2019 to 03.06.2019 and submitted the report. The report of the subject experts on the answer key was placed before the result committee of NTA comprising of representatives of

Ministry of Health and Family Welfare, Director General of Health Services, Medical Council of India, etc. in its meeting held on 03.06.2019 and thereafter answer key were treated as final and results were declared on 05.06.2019. The respondents have placed on record the evaluation of the answers by the experts to the questions and answers attended by the petitioners. The learned A. S. G. further submits that, in academic matters, this Court would not exercise its power of judicial review. The learned A. S. G. relies on the judgment of the Apex Court in a case of **Ran Vijay Singh and others Vs. State of U. P. and Others** reported in ***(2018) 2 SCC 357***.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. Clause 6 of the NEET-UG-2019 brochure mandates that all the disputes pertaining to conduct of examination and allotment of seats shall fall within jurisdiction of Delhi only. The said clause cannot restrict the jurisdiction of this Court under Article 226 of the Constitution of India. The jurisdiction of this Court under Article 226 of the Constitution of India is sacrosanct. It is an extraordinary jurisdiction. Said jurisdiction cannot be limited by the guidelines/brochure.

8. The Constitution of India is Suprema Lex. The jurisdiction under Article 226 of the Constitution of India can not be circumvented and circumscribed by clause in brochure.

9. If two or more Courts have concurrent jurisdiction by virtue of Section 28 of the Contract Act, the jurisdiction can be restricted to one Court. The said Section would apply to ordinary Tribunals exercising jurisdiction provided by the statute. Section 28 would not extend to the constitutional remedy. Even statute can not abrogate the jurisdiction of this Court under Article 226 of the Constitution of India, much less an agreement by the parties or the guidelines declared in the brochure.

10. This Court in its exercise of powers of judicial review would be circumspect in interfering and deciding the correctness of the answer keys. The court would be reluctant to substitute its own views in academic matters and more particularly in preference to those formulated by professional men possessing rich experience and knowledge.

11. The opportunity is given to challenge the answer keys as submitted by the learned A. S. G. and 40510 objections to the answer keys were received. Each and every objection was threadbare dealt by the Committee of experts and final answer key was uploaded. Some challenges were accepted. The challenges raised by the petitioners were not accepted. The NTA expert's opinion is placed on record substantiating reasons for the answer keys and the answers as suggested by the petitioners to be not correct. We have gone through the said report. They have dealt with the questions in issue and have supported their answers with reasons. The Apex Court in a case of **Kanpur University Vs. Samir Gupta** reported in ***(1983) 4 SCC 309***

observed that, “the answer key 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 rationalization. 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.”

12. The burden of proof is on the candidate and the said burden is enormous and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would be circumspect in entertaining a plea challenging the correctness of answer key.

13. The Apex Court in a case of **U. P. S. C. and others Vs. Rahul Singh and others** reported in ***(2018) 7 SCC 254*** has observed that, unless the candidate demonstrates that the key answers are patently wrong on the face of it, the Courts cannot enter into academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answers is better or more correct.

14. In the present cases, answer key was published. Upon publication of answer key, objections were received. The committee of experts was constituted. The objections were considered threadbare and thereafter final answer key was published. In the present matters, the respondents have placed on record the correct answers with reasoning of experts of N.T.A. The petitioners are also relying upon the expert's opinion of the

persons whom they have consulted and according to them are experts. In such a scenario, naturally when the body of experts of NTA have considered the objections and demonstrated that the answers as suggested by petitioners are wrong, it will not be open for this Court to venture as to who is correct. This Court does not possess expertise and knowledge in those fields, nor the Court would be competent to substitute its views in place of the expert's.

15. In the light of the above, it would not be possible for this Court to hold without any inferential process or reasoning the answers in the answer key to be incorrect.

16. In two of the petitions, the petitioners have challenged the following clauses :

Chapter 7 : Post Examination Activities and Declaration of Result

1. Display of OMR sheets and responses on website

- a)
- b)
- c) Representations made by the candidates against the OMR grading will be verified by the NTA from the actual record and the same will be updated in the datea, if challenges are found correct.
However, no intimation in this regard will be sent to individual candidate.

All candidates are advised to remain in touch with the website www.ntaneet.nic.in for viewing and dowlading image of OMR/answer sheet and

responses captured by the machines.

2. Display of Answer Key for challenges

- a)
- b)
- c) Challenges made by the candidates will be verified by the NTA with the help of its subject experts. If found correct, the answer key will be revised accordingly. Based on the revised Answer Key, result will be prepared and declared.
- d) No individual candidate will be informed about the acceptance/non-acceptance of his/her challenge.
- e)

3. Declaration of Result

- a)
- b)
- c)

4. Re-checking/re-evaluation of answer sheets

- . The machine – gradable Answer Sheets are evaluated with extreme care and are repeatedly scrutinized.
- . There is no provision for re-checking/re-evaluation of the answer sheets. This is because of the following reasons.
 - i) The candidates are given an opportunity to make the representation on the OMR gradation of their OMR sheets and also given an opportunity to challenge the answer key

in case of any doubt.

ii) The OMRs are machine gradable which are being evaluated through specific software impartial to all.

. No correspondence in this regard will be entertained.

17. The guidelines/rules in the brochure are issued by academicians. In the case of **Maharashtra State Board of Secondary and Higher Secondary Education V. Paritosh Bhupeshkumar Sheth** reported in ***(1984) 4 SCC 27***, the Apex Court held that,

“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 drawbacks 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. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation - making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the

Constitution. None of these vitiating factors are shown to exist in the present case.....”

18. No person can have a right of revaluation or to suggest that, he is to be heard at the time of deciding or finalizing the answer key, if the rules do not provide. In a case of **Ran Vijay Singh and others Vs. State of U. P. and Others** (supra) the Apex Court has observed as under :

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is

committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible.

19. The regulation provide an opportunity to the students to challenge the answer key. The challenge is considered by the body of experts and thereafter the answer key is finalized. When the final answer key is published the candidate gets to know as to whether his objection has been sustained or negated. We do not find that the brochure condition in Chapter 7 suffers from any violation of principles of natural justice or the same are *ultra vires*. The magnitude of the answer sheets is very large. The results have to be declared timely. It cannot be prolonged and it is not expected that each and every candidate would be communicated personally about the result of his objection. The candidate gets the knowledge about his objection when the final answer key is published. This Court cannot discard opinion of experts in academic matters.

20. The stand of the respondents is also supported by experts' opinion. When there are conflicting views, the Court must bow down to the opinion of experts. Judges are not experts in those fields and as such restraint is required to be exercised. In case of doubt, the benefit goes in favour of the examination body and not

in favour of the students as observed by the Apex Court in a case of **Manish Ujwal Vs. Maharshi Dayanand Saraswati University** reported in ***(2005) 13 SCC 744***.

21. In the light of the above, no relief can be granted to the petitioners. The writ petitions as such are dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19