

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 2039 of 2020**

Jitesh Kumar Das S/o Shri Jhasaketan Das Aged About 24 Years R/o 4/66, Janki Kutir, Anant Vihar Colony, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Commissioner, Directorate Of Higher Education, Indrawati Bhawan, Atal Nagar, District Raipur, Chhattisgarh.
2. Chhattisgarh Professional Examination Board (CGVYAPAM) Through Its Advisor, Vyapam Bhawan, North Block, Sector-19, Atal Nagar, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Siddharth Rathod, Advocate
For State	:	Mr. Mateen Siddiqui, Deputy A.G.
For Respondent No.2	:	Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/09/2020**

1. The grievance of the petitioner in the present writ petition is the non-consideration of the objections that he has raised on the model answers published by the Respondent No. 2, so far as the Chhattisgarh State Eligibility Test (SET) 2019 is concerned.
2. The contention of the counsel for the petitioner is that the petitioner being eligible for participating in the State Eligibility Test conducted for the year 2019, the petitioner appeared for the examination and attempted both General Paper I and Paper II. The exams were held on 08.09.2019 and the model answers of the said examination was published on 25.11.2019. Immediately, thereafter the petitioner submitted his objection before the

Respondent No. 2 in-respect-of one questions in Paper I and two questions in Paper II. It is the contention of the counsel for the petitioner that the answers that the petitioner has attempted is based upon the text which is usually taught in the colleges and the petitioner is confident that the answers to be correct. It was for this reason that the petitioner had submitted his objection with supporting documents to show that the answers attempted by him are correct and the answers published in the model answers were incorrect.

3. Dr. Saurabh Pande, Advocate appearing for the Respondent No. 2 on the other hand, opposing the petition submitted that the objection on publication of the model answer, the objection so filed by the petitioner have been duly considered by the committee consisting of experts in the field. The experts having scrutinized each of the objections did not find any merits in the answers in the objection so filed by the petitioner and thereby the final result were published in the month of June, 2020. According to the counsel for the respondent no. 2, the petitioner did not raise any objection then, and now, the writ petition after more-than 2 months of the passing of the result has been filed the writ petition therefore should not be entertained at this juncture. It was also the contention of the counsel for the respondent no. 2 that the respondents had also called for the objections after publication of the model answers and the objections were placed before the Committee of Experts in the field and the Committee having thoroughly scrutinized the objections, there is hardly any scope of interference left for this Court under Article 226 of the Constitution

of India. The counsel for the respondents relied upon the judgment of the Supreme Court in the case of ***Uttar Pradesh Public Service Commission and Anr. Vs Rahul Singh and Another (2018) Vol. 7 SCC 254*** and thus prayed for the rejection of the said writ petition.

4. Having heard the contentions put-forth on either side, the undisputed facts of the case is that the petitioner appeared for the State Eligibility Test 2019 held on 08.09.2019, the model answers were published on 25.11.2019. The petitioner thereafter immediately submitted the objection in-respect of six of the questions in the two papers. As per the counsel for the respondent no. 2, the objections of the candidates after the publication of the model answers were duly scrutinized by the expert in the field and then they did not find any merits in the objections so filed by the petitioner. It would be relevant at this juncture to refer to the principles of law laid-down by the Supreme Court in the case of ***Rahul Singh (supra)*** wherein in paragraph 9 to 12, the Hon'ble Supreme Court held as under:

“9. In Kanpur University v. Samir Gupta², this Court was dealing with a case relating to the Combined Pre-Medical Test. Admittedly, the examination setter himself had provided the key answers and there were no committees to moderate or verify the correctness of the key answers provided by the examiner. This Court upheld the view of the Allahabad High Court that the students had proved that three of the key answers were wrong. The following observations of the Court are pertinent:

“16. ... 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.”

² (1983) 4 SCC 309

The Court gave further directions but we are concerned mainly with one that the State Government should devise a system for moderating the key answers furnished by the paper setters.

10. In *Ran Vijay Singh v. State of U.P.*³, this Court after referring to a catena of judicial pronouncements summarised the legal position in the following terms: (SCC pp. 368-69, para 30)

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. 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;

30.2. 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;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate- it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

11. We may also refer to the following observations in paras 31 and 32 which show why the constitutional courts must exercise restraint in such matters: (*Ran Vijay Singh case*³, SCC p. 369)

“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. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes

³ (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297

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prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination- whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

12. The law is well settled that the onus is on the candidates to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The constitutional courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case², the Court recommended a system of:

(1) moderation;

(2) avoiding ambiguity in the questions;

(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions."

5. A similar view has already been taken by the Supreme Court in the case of Richal and Ors. vs. Rajasthan Public Service Commission & ors. (2018) Vol. 8 SCC 81, wherein the Hon'ble Supreme Court dealing with a similar issue has in paragraph 19 held as under:

"19. The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key

² Kanpur University v. Samir Gupta, (1983) 4 SCC 309

answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case, we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up in this Court by filing these appeals.”

6. From what has been laid down by the Supreme Court in the aforesaid two judgments it clearly stands settled that in exercise of all the powers of the judicial review, the High Court cannot re-evaluate or scrutiny the answers attempted by the candidates as it is a matter of expertise and the matter relating to the academics should be left to be considered by the experts in academics and in the process the opinion of the experts have to be presumed to be correct. However, at the same time, the candidate who has submitted his objections based upon certain materials that he is relying upon, it is expected that the Committee of Experts on scrutiny of the same, duly appreciates the objections and the supported documents and then reach to a conclusion as to whether the objection has any force and also as regards, whether the answers attempted by the candidates or the answers depicted in the model answer is a better answer?
7. Apart from that, the candidate should also have the benefit of knowing as to why the objections so raised by the candidates is not sustainable and the answers depicted in the model answer is found to be more accurate with which the students also would be benefited in the future course. This aspect has to be to the extent of intimating the petitioner as to how his objections were dealt with, if at all, if it has been.

8. Under the circumstances, in the present writ petition this Court is of the opinion that as of now, the writ petition stands disposed off directing the Respondent no. 2 to intimate the petitioner as to why his objections were not sustainable or whether the text that he has relied upon was authentic or not and as to how the model answers published are more accurate answers.
9. Let the Respondent No. 2 intimate the petitioner in-respect-of the discussion of the Expert Committee only so far as the objections raised by the petitioner in-respect-of Question No. 21 of General Paper-I of Set-A and Question No. 67 and 87 in Paper-II of Set-A (Commerce) is concerned. Let this exercise be completed within a period of four weeks from the date of receipt of copy of this Order. That in the event if there is any change of opinion by the committee and the marks of the petitioner would get improved, revised result shall be published by the Respondents with consequence to follow on the same.
10. With the aforesaid direction, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved