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W.P(MD)No.23779

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23779 of 2022

Mr.P.Balamurugan,
S/o.Ponnusamy,
Door No.15B, 14th street,
Rahmath Nagar,
Tirunelveli – 327 011.

...Petitioner

Vs

- 1.The Secretary,
Ministry of Health and Family Welfare,
Room No.156A, "A" wing,
Nirman Bhawan,
New Delhi – 110011.
- 2.Medical Counseling Committee (MCC),
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi – 110011.
3. The Executive Director,
National Board of Examinations in Medical Sciences,
Medical Enclave,
Ansari Nagar Ring Road,
New Delhi – 110029.
- 4.National Medical Commission,
Pocket – 14, Sector – 8,
Dwaraka Phase-1,
New Delhi – 110077.
- 5.The Senior Director,
National Testing Agency,
First Floor, NSIC-MDBP Building,
Okhla Industrial Estate,
New Delhi-110 020.

..Respondents



W.P(MD)No.23779

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein to provide marks to the petitioner's son for correct answers opted by him and revise the rank of the petitioner's son namely B.Raakesh and reserve a UG seat in a Government Medical College at Tirunelveli for the present Academic Year 2022-2023 within a time stipulated by this Hon'ble Court by considering the representation, dated 22.09.2022.

For Petitioner	:Mr.R.J.Karthick
For R1 to R3 & R5	:Mr.P.Karthick
	Standing Counsel
For R4	: Ms.Subbaranjani Anandh

ORDER

The petitioner has filed this writ petition on behalf of his son B.Raakesh, who is aged about 17 years seeking direction, directing the respondents herein to provide marks to the petitioner's son for correct answers opted by him and revise the rank of the petitioner's son and reserve a UG seat in a Government Medical College at Tirunelveli for the present Academic Year 2022-2023 within a time stipulated by this Court by considering the representation, dated 22.09.2022.

2. The petitioner's son appeared for National Eligibility Entrance Test (NEET-UG 2022) held on 17.07.2022. His application number is 220410011780 and his Test Booklet Code is Q5. After the completion of NEET exam, provisional answer key was published by the fifth respondent/National



W.P(MD)No.23779

Testing Agency (herein after referred to as NTA). The said key answer was challenged by him as per Public Notice, dated 25.08.2022 issued by the fifth respondent that candidates will be given an opportunity to make an online challenge against the provisional Answer key by paying a non-refundable processing fee of Rs.200/- per answer. He claimed marks for the right answers and after paying the requisite fee as his son felt that the answer key provided for the questions were incorrect. While challenging the answer key, the petitioner's son gave a detailed illustration and explanation along with supporting documents as to how the answer key provided by the respondent is incorrect. The result of NEET UG 2022 was published by the fifth respondent National Testing Agency on 07.09.2022 and to his shock and surprise without any modification, the provisional answer key was declared as final. The petitioner's request as well as the claim was not considered and result was published. Hence, he made a detailed representation, dated 22.09.2022 to the fifth respondent, who is the competent authority and the same was received by him on 26.09.2022 and the petitioner he has not received any reply from the fifth respondent. The Government of Tamil Nadu has announced the counseling date that on 17.07.2022.

3. The petitioner further submits that his son scored 469 marks as per the result published by the National Testing Agency. As per the valuation procedure, four marks are to be awarded for every correct answer and one mark is to be deducted for every incorrect answer. The petitioner's son has lost



33 marks due to non consideration of relevant factors by the NTA, even though the challenge to the answer key was substantiated with basic norms of Science and rationalised illustrations as per National Council of Education Research and Training (NCERT) books. Hence, the petitioner challenged questions 92, 110, 129, 159, 160, 166 and 197 (Test Booklet Code is Q5). The reasoning given by the petitioner for challenging the answer keys are hereunder:

“1. Question No.92, as per National Testing Agency answer key, the option was 5 but there was no option 5 in the test booklet. When option 5 is not even available on the test booklet, how come the candidate be expected to answer?

2. Question No.110, it is not clearly mentioned whether it is aerobic or anaerobic respiration. The framing of question is an error as per NCERT Class 11, Biology page no. 229 and 235.

3. Question No.129, all the statements, a,b,c,d and e are correct in reference to NCERT Class 11, Biology Page No.90.

4. Question No.159, the statement I is incorrectly framed. It should be “Fatty Acides and glycerols cannot be absorbed into the blood directly”.

5. Question No.160, in the statement I, the preposition is wrongly framed as “into” instead of “from”.

6. Question No.166, as per NCERT Class 12, Biology Page No.47, it is stated that meiosis occurs 'periodically' in spermatogenesis. But in statement 'C' it is given as 'continuously' instead of 'periodically'. Since all the options are incorrect, bonus marks must be awarded to this question.

7. Question No.197, the statement 'e' states “Some patients develop allergic reactions to the foreign insulin” which is true as per the study “Resistance and allergy to recombinant human insulin” - DOI : 10.1016/s0091-6749(05)80122-8.”



W.P(MD)No.23779

4. The petitioner's son is an aspiring candidate, who has strenuously prepared for this NEET UG-2022 examination and also holds a strong academic record. Hence, the petitioner forwarded an e-mail and representation dated 22.09.2022 to consider his claim pertaining to the incorrect answers, but till now the fifth respondent has not given any reply. Hence, the petitioner has filed the present writ petition for the above stated relief.

5. The learned counsel for the fifth respondent has filed the counter affidavit, wherein, the Director at National Testing Agency has sworn the affidavit. He would submit that the present writ petition is entirely misconceived as no fundamental or legal rights of the petitioner has been violated by NTA and the same deserves to be dismissed at the outset. The petitioner has been awarded with marks as per the examination/marking scheme adopted by the NTA for the National Eligibility Entrance Test (NEET) UG 2022 and there is no anomaly has happened as alleged by the petitioner.

6. It is a settled law that it is for the experts/academic bodies and not for the Courts to go into the correctness of the answers contained in the answer key; when there are conflicting views, then the Court ought to bow down to the option of the experts; Courts ought not to take on the role of experts in academic matter and it must exercise great restraint and should be reluctant to entertain a plea challenging the correctness of the key answers.



7. He would further submit that the National Testing Agency (NTA) has been established by the Ministry of Human Resource Development (MHRD), which is now known as the Ministry of Education, Government of India (GOI), as an independent, autonomous and self-sustained premier testing organization under Society Registration Act, 1860 for conducting efficient, transparent and international standards tests in order to assess the competency of candidates for admissions to premier Higher Education Institutions.

8. As per Section 14 of the National Medical Commission Act, 2019, the National Eligibility-cum-Entrance Test (NEET (UG)] has to be conducted as a common and uniform examination for admission to undergraduate medical education in all medical institutions. Similarly, as per Section 14 of the National Commission for Indian System of Medicine Act, 2020, there shall be a uniform NEET (UG) for admission to undergraduate courses in each of the disciplines I.e., BAMS, BUMS, and BSMS courses of the Indian System of Medicine in all Medical Institutions governed under this Act. NEET (UG) shall also be applicable to admission of BHMS course under National Commission for Homeopathy.

9. National Testing Agency conducted the National Eligibility-cum-Entrance Test (UG) for 1872343 candidates at 3570 different Centres located in



497 Cities throughout the country including 14 Cities outside India on 17 July 2022 (Sunday) from 02:00 P.M., to 05:20 P.M.(IST).

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10. To make the examination system transparent, NTA has evolved the scheme of displaying the Question Paper and Recorded Responses for the examinees for verification. Further, an opportunity is provided to the candidates to challenge, if any, the answer keys to the Questions.

11. As per the scheme for the NEET (UG) 2022, the subject experts appointed by NTA have duly considered the objections/challenges to the answer keys issued for the said exam including those preferred by the petitioner in the present writ petition. The final answer keys for the said examinations have been prepared after duly examining the challenges and that the petitioner has no vested right to review/challenge the decision of the subject experts of the NTA. In this regard, clauses 14.2 of the Information Bulletin issued for NEET (UG) 2022 may be noted, which reads as follows:-

"14.2 Display of Answer Key for the challenge

14.2.1 The NTA will display the Provisional Answer Key of the questions, giving an opportunity to the candidates to challenge, in case of any doubt in the answer key published on the website <https://neet.nta.nic.in/>. For the exact date of display of the Answer Key, candidates may regularly check updates on the NTA website after the examination.



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14.2.2 Candidates will be given an opportunity to make an online challenge against the provisional Answer Key by paying a non-refundable processing fee of Rs.200/- per answer challenged, within a specified period as indicated in the Public Notice.

14.2.3. Challenges made by the candidates will be verified by the NTA with the help of a panel of subject experts. If found correct, the answer key will be revised accordingly. based on the revised Final Answer Kay, the result will be prepared and declared.

14.2.4 No individual candidate will be informed about the acceptance/non-acceptance of his/her challenge.

14.2.5 The key finalized after the challenges will be treated as final”.

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

There is no provision for re-checking/re-evaluation of the answer sheets.

The candidates are given an opportunity to make the representation on the OMR graduation of their OMR sheets are also given an opportunity to challenge the answer key in case of any doubt.

No correspondence in this regard will be entertained.”

According to them, as per 14.2.5 the key finalized after the challenges will be treated as final.

14.4 Re-checking/re-evaluation of answer sheets,

There is no provision for re-checking/re-evaluation of the answer sheets. The candidates are given an opportunity to make the

representation on the OMR graduation of their OMR sheets are also



given an opportunity to challenge the answer key in case of any doubt. No correspondence in this regard will be entertained."

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12. In support of his contention, the learned counsel for the respondents submitted the judgment of the Hon'ble Supreme Court of India in ***Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupesh Kurmarsheth*** reported in ***AIR 1984 SC 1543*** and in ***H.P.Public Service Commission vs. Mukesh Thakur & another (AIR 2010 SC 2620)***. In the above said judgment, the Hon'ble Apex Court held that in the absence of a provision for re-evaluation, a direction to this effect cannot be issued by the Court.

13. Under the scheme evolved by NTA, on display of the answer Key and OMR Sheet, an opportunity to the candidates to Challenge the Answer Keys to the Questions (if any) is provided for. The Challenges/objections received are then again placed before the respective subject experts. The objections so received are considered and examined exhaustively by the subject experts of NTA. If the subjects experts on examining the objections finds merit in it, then on the advice of the subject experts NTA modifies its answer key accordingly and gives appropriate benefit to the candidates. However, if the subject experts are of the view that the answer contained in the answer key is a correct answer, no modification in the answer key is carried out.



14. The final answer keys are decided by the Experts, after the Challenges received from the candidates are settled by the respective Subject Experts. The result is declared on the basis of the final/revised answer key recommended by the respective Subject Experts only. Thus, the NTA relies on the decision of the Subject Expert(s), based on which the final result is declared.

15. According to them, NTA displayed the provisional Answer Keys, OMR Answer Sheets and Recorded Responses to the Candidates during the period 31.08.2022 to 02.09.2022. Public Notice to the same effect were issued for information of the Candidates on the Portal (neet.nta.nic.in). As per the record of fifth respondent, the petitioner attempted 166 questions out of 200 questions and out of attempted 166 questions 127 question were correct and 39 question were incorrect and accordingly, the petitioner obtained 459 marks $(127 \times 4) - (39 \times 1)$. The petitioner being aggrieved by the marks obtained by him, as he presumed that his son should have got 469 marks filed objection to 10 questions viz., Q No.92, 110, 129, 159, 160, 166 and 197 of A5 questions of the answer key during the window period of filing challenges to the provisional answer keys issued by NTA for the said examination of series 'Q5' booklet. All the objections including the one preferred by the petitioner were placed before the subject experts. The subject experts after examination of the objections filed by the petitioner did not find merit so far question nos. 110,129, 159, 160, 166 and 197 and question No.92 was 'Drop' question for



W.P(MD)No.23779

which he was given 1 mark in accordance with policy.

WEB COPY

16. As per the clause 14.4 of the Information Bulletin, there is no scope of any further re-evaluation after the subject experts have duly examined the challenges and finalized the answer key. The petitioner's son obtained AIR ranking 109553 and OBC-NCL Rank 49224.

17. The respondents referred various judgments of the Hon'ble Supreme Court of India in ***H.P.Public Service Commission vs. Mukesh Thakur (2010) 6 SCC 759***, wherein it was inter-alia, held 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. 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 Respondent/candidate alone. Hence, the Hon'ble Supreme Court in the said matter had set aside the directions of the High Court directing re-evaluation of the answer sheet by another examiner.

18. This Court in the matter of ***Atul Kumar Verma vs UOI & Others 221 (2015) Delhi Law Times 669***, while dealing with the issue of challenging the answer key on the basis of evaluation published by coaching centres and subject experts other than the CBSE experts, has held that 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 lose their sheen and the respect in which they are held.

19. The Court further held that once the examining bodies have followed the procedure of inviting objections to the answer key and if satisfied therewith, corrected the answer key and thereafter declared the result, then there can be no scope for judicial review of the said answer key unless allegations of bias, malafide, non-consideration of relevant factors etc., are made out for invoking the power under the Judicial review.

20. The Hon'ble Supreme Court in **Ranvijay Singh v. State of U.P (A.I.R.2018 SC 52)** summarized the law on the subject and held that, "*the Court should not at all re-evaluate or scrutinize the answer key. It has no expertise and academic matters are best left to academicians. Court should presume the correctness of the Answer Key and proceed on that assumption. In the event of doubt, the benefit of doubt should go to the examination authority, rather than the candidate.*"

21. The learned counsel appearing for the respondents would submit that based on the above submissions and judgments referred, the petitioner's case is not acceptable.



W.P(MD)No.23779

22. Heard the learned counsel appearing for the petitioner and the learned Government Pleaders appearing for the respondents and perused the entire materials available on record.

23. It is seen from the petitioner's prayer that his son has answered the questions on the options given, according to him, it was correct answer. But the authorities, namely, NTA has stated that the challenges made by the candidates will be verified by the NTA with the help of a panel of subject experts. If found correct, the answer key will be revised accordingly. Based on the revised Final Answer Key, the result will be prepared and declared. The key finalised after the challenges will be treated as final as per the Bulletin. It is made clear that the petitioner cannot seek for re-checking/re-evaluation of answer sheets and also it has been clearly stated that the expert opinion is the final and there cannot be any further re-evaluation or re-checking.

24. Bulletin 14.4 shows that 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: The OMRs are machine gradable and are being evaluated through specific software impartial to all.



W.P(MD)No.23779

25. 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. No correspondence in this regard will be entertained.

26. As per Bulletin 14.2 Display of Answer Key for the challenge is as follows:

14.2.1.The NTA will display the Provisional Answer Key of the questions, giving an opportunity to the candidates to challenge, in case of any doubt in the answer key published on the website <https://neet.nta.nic.in/>. For the exact date of display of the Answer Key, candidates may regularly check updates on the NTA website after the examination.

14.2.2 shows that Candidates will be given an opportunity to make an online challenge against the provisional Answer Key by paying a non-refundable processing fee of Rs.200/- per answer challenged, within a specified period as indicated in the Public Notice.

14.2.3-Challenges made by the candidates will be verified by the NTA with the help of a panel of subject experts. If found correct, the answer key will be revised accordingly. Based on the revised Final Answer Key, the result will be prepared and declared.

14.2.4.No individual candidate will be informed about the acceptance/non-acceptance of his/her challenge.



14.2.5 of the bulletin states that the key finalised by the expert will be treated as a finalised key answer.

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27. As per the respondent Bulletin, NTA submits that the said expert opinion, who has finalised the key answer, after the challenge, will be treated as final answer and there can be no rechecking or re-evaluating the same by any person.

28. The Hon'ble Supreme Court in the matter of ***U.P.P.S.C., through its Chairman and another vs. Rahul Singh and another (2018) 7 SCC 254*** have made the following observation:-

"...14. In the present case, we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the Court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts."

33. In ***Ran Vijay Singh & Ors. v. State of Uttar Pradesh and ors. (2018) 2 SCC 357***, held that

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 be 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 as 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.

The apex Court further held that the Court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics.

29. In ***Vikesh Kumar Gupta and Ors.vs. The State of Rajasthan and Ors. (07.12.2020-SC): MANU/SC/0923/2020*** has also held the same footing. The Court cannot interfere with the expert opinion in academic matters. In any event, assessment of the questions by the Courts itself to arrive at correct answers is not permissible....”



W.P(MD)No.23779

30. The Hon'ble Division Bench of Madras High Court in the matter of

B.Florance Mary and another vs. The Chairman, TRB in W.A.Nos.1097

and 1099 of 2014 has held that

"....6. It is a settled law that while exercising the discretionary and extraordinary power under Article 226 of the Constitution of India, this Court cannot act like an expert body, by replacing the assessment made by experts."

31. In above, the catena of judgments shows that the Court cannot act as an expert and the Court should not overstep their jurisdiction to upset the opinion of the experts. Accordingly, this Court finds that the challenges made by the petitioner was verified by the NTA with the help of a panel of subject experts and came to the conclusion that the answer given by the experts are correct and the request of the petitioner cannot be considered.

32. Considering the above, the expert opinion by NTA cannot be revisited by this Court and as per the Bulletin issued, their decision is final and Courts cannot interfere with the marks awarded to the petitioner. Hence, this Court is not inclined to interfere with the said decision. Accordingly, this writ petition is dismissed. No costs.

Index : Yes/No
Internet:Yes/No
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25.11.2022



W.P(MD)No.23779

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W.P(MD)No.23779

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W.P(MD)No.23779 of 2022

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