

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10581/2019 and CM APPLs. 34221-34222/2022**

Date of Decision: 07.03.2023

IN THE MATTER OF:

PARAJ BAIGSEN
S/O YUSUF BEGG
R/O FLAT #7, 10/A ASWINI NAGAR
REGENT PARK P.O.
KOLKATA – 700040 PETITIONER

Through: Mr. Jaspal Singh and Ms. Namrah
Nasir, Advocates.

versus

UNIVERSITY GRANTS COMMISSION
THROUGH ITS SECRETARY
BAHADUR SHAH ZAFAR MARG
ITO METRO GATE NO.3
NEW DELHI – 110002 RESPONDENT NO.1

UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
WEST BLOCK
RAMA KRISHNA PURAM
NEW DELHI – 110066 RESPONDENT NO.2

NATIONAL TESTING AGENCY
THROUGH ITS CHAIRPERSON
C-20 1A/8, SECTOR – 62
I.I.T.K. OUTREACH CENTRE
NOIDA
UTTAR PRADESH –201309

NEW DELHI – 110066

..... RESPONDENT NO.3

Through: Mr. Apoorv Kurup, Ms. Nidhi Mittal and Ms. Swati Bhardwaj, Advocates for R-1.

Mr. Akshay Amritanshu and Mr. Ashutosh Jain, Mr. Samyak Jain and Mr. Divyansh Singh, Advocates for R-2.

Mr. Manisha Singh and Mr. Vishal Ashwani, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in this petition under Article 226 of the Constitution of India seeks for issuance of a writ for quashing the final answer key prepared and released by the respondents for the University Grants Commission-National Eligibility Test, 2018 (hereinafter referred to as UGC-NET-2018) and declare a fresh modified answer key with corrected answers.

2. The facts of the case are that on 01.09.2018, the process for online applications for UGC-NET-2018 had commenced. The said test is conducted to determine eligibility for college and university-level lectureship and for the award of Junior Research Fellowship (JRF) for Indian nationals. The examination in question was conducted on 21.12.2018. The petitioner also appeared for the same. On 29.12.2018, the petitioner accessed the tentative answer key of Sociology (Paper-005) and after scrutinizing the tentative answer key, he found that there were some discrepancies with respect to three questions. The petitioner, thereafter, on 31.12.2018, raised his

objections after paying the requisite fees. On 05.01.2019, the result of the examination in question was declared and the petitioner was awarded 66% and hence, failed to obtain the cut-off percentage which was 66.67%. The petitioner, thereafter, submitted various representations to the respondents to correct the answer key and to finalise the revised mark sheet. Since no action was taken by the respondent-National Testing Agency (NTA), therefore, the petitioner has approached this court.

3. The learned counsel appearing on behalf of the petitioner submits that he raised objections with respect to three questions. The objection with respect to one question was accepted, however, no correction was made with respect to the other two questions. While pointing out the disputed question Nos.18 and 41, he states that, in view of the material available on record, the finalised answer key by experts is palpably wrong. For the sake of clarity, question Nos. 18 and 41 are reproduced as under:

“18. Question ID 91394326624:- Among the following, there are two statements which can't be true together, but can be false together.

Select the code that represents them:

Statements:

- (a) All bats are mammals.*
- (b) Some bats are mammals.*
- (c) Some bats are not mammals.*
- (d) No bats are mammals.*

Option 1:- 913943104505 (a) and (b)

Option 2:- 913943104508 (b) and (c)

Option 3:- 913943104506 (a) and (c)

Option 4:- 91394314507 (a) and (c)

41. Question ID 91394326647:- Which among the following envisaged a common educational structure like 10+2+3 as a common core in the curriculum programme?

Option 1:- 913943104591 National Policy on Edu. (NPE), 1986

Option 2:-913943104589 Kothari Commission

Option 3:- 913943104590 Sinha Committee

Option 4:- 91394310592All India Council of Technical Education”

4. The petitioner states that the correct answer to question No.18 should be option No.3, whereas, the respondents have treated option No.2 to be the correct answer. Similarly, he states that with respect to question No.41, the correct answer should be option No.2, whereas, the respondents have accepted option No.1 to be the correct answer.

5. Learned counsel for the petitioner has taken this court through various materials on which he has placed reliance. According to him, even the Kothari Commission Report itself suggests that the option No.2 is the correct answer and, therefore, there was no reason for the examining agency to have opted for any other option. He has also referred to various literature and documents which, according to him do not require any adjudication as the same are official documents. He has also referred to the notification dated 27.03.1976 of West Bengal Council of Higher Secondary Education Regulations to supplement his case. Learned counsel for the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Kanpur University & Ors. vs. Samir Gupta & Ors.*¹, *Manish Ujwal and Ors. vs. Maharishi Dayanand Saraswati University and Ors.*² and *Rishal & Ors. vs. Rajasthan Public Service Commission & Ors.*³

6. The counter-affidavit filed by the respondent-NTA controverts the submissions made by the learned counsel appearing on behalf of the petitioner. According to the counter-affidavit filed by respondent-NTA, it is

¹ (1983) 4 SCC 309

² (2005) 13 SCC 744

³ (2018) 8 SCC 81

stated that the subject experts appointed by respondent-NTA examined the objections/challenges to the provisional answer keys. The counter-affidavit further shows that the objections raised by the petitioner were also considered and no substance was found with respect to the two questions objected to by the petitioner. While referring to clause 12.3 of the Information Bulletin of the UGC-NET-2018 examination, it is stated that there is no provision for re-checking/re-evaluation of the result of the UGC-NET-2018 examination. It is also stated that the examination in question was conducted from 18.12.2018 to 22.12.2018, in two shifts per day across 235 cities in the country in 85 subjects. After the examination was over, the provisional answer key of all subjects of the UGC-NET, 2018 was first verified by the subject experts and, thereafter, the same was uploaded on the website on 29.12.2018 *vide* public notice dated 29.12.2018. The candidates were allowed to challenge the provisional answer key through the link made available on the website. The objections received from the petitioner were placed before the subject experts. The subject experts upon examining the objections have refuted the claim of the petitioner with respect to the suggested answers. On the basis of the exercise conducted by the experts, the final answer key dated 05.01.2019 was prepared and the result of the exam was declared on 05.01.2019 itself. It is also submitted that the disputed question No.18 herein was the subject matter of challenge before this court in W.P. (C) 2548/2019 in the matter of *Abhay Dwivedi & Ors. V. University Grants Commission & Ors.* and W.P.(C) 3446/2019 in the matter of *Vijay Kumar & Ors. v. The Secretary National Testing Agency (NTA) & Ors.* and this court in terms of the orders dated 29.07.2019 and 11.07.2019 respectively, dismissed both the writ petitions holding therein that there was

‘nothing to indicate that there was any glaring defect or demonstrably wrong answer in the answer key put forth by the NTA.’ The respondent-NTA in their counter-affidavit have also placed reliance on various decisions of the Hon'ble Supreme Court in the cases of ***Maharashtra State Board Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kurmar Sheth***⁴, ***CBSE v. Aditya Bandopadhyay***⁵, ***U.P.P.S.C through its Chairman and Anr. vs. Rahul Singh and Anr.***⁶, ***Ranvijay Singh and Ors. vs State of Pradesh and Ors.***⁷ and ***H.P. Public Service Commission vs Mukesh Thakur***⁸ and a decision of this court in the case of ***Atul Kumar Verma vs UOI and Ors.***⁹

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. As far as the legal position with respect to answer keys and their validity is concerned, the same has been dealt with by the Hon'ble Supreme Court in the case of ***Kanpur University & Ors. (supra)***. In paragraph Nos.15 and 16, the Hon'ble Supreme Court has clearly held that the answer key should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It has also been held that it must be clearly demonstrated to be wrong, that is to say, the error must be such, that no reasonable body of men well-versed in the particular subject would regard it as correct. The said proposition of law has been followed by the Hon'ble Supreme Court in various subsequent decisions including in the case of

⁴ AIR 1984 SC 1543

⁵ 2011 (8) SCC 497

⁶ 2018 SCCOnLine SC 609

⁷ 2018 (2) SCC 257

⁸ (2010) 6 SCC 759

⁹ 221 (2015) Delhi Law Times 669



Manish Ujwal and Ors. (supra) which has been relied upon by the learned counsel appearing on behalf of the petitioner.

9. If the enunciation of law as has been propounded by the Hon'ble Supreme Court is considered and applied in the instant case, it would be seen that what the petitioner is arguing for is to opt for a different answer on the basis of certain material, which according to him, is undisputed. It is to be seen that the material with respect to the concerned subject is to be first examined by the subject experts. In the instant case, there is no allegation with respect to any *mala fide* or otherwise on the part of the respondents. The fact remains that all those students who appeared in the examination have been treated similarly. The objections raised by the petitioner were considered and out of three objections, one objection was accepted by the subject experts. After consideration of the objections made by the petitioner, if the subject experts have formed any opinion then there is no reason to take a different view. The court would not substitute its own opinion over the opinion of the experts in the field.

10. This court in the case of ***Ashish Singh and Ors. V. Union of India and Ors.***¹⁰ has held that once the procedure has been followed by the concerned examination agency and the objections are considered and finalised by the experts, the court normally should not interfere into the answer keys. Paragraph Nos.17 to 19 of the decision in the case of ***Ashish Singh and Ors.(supra)*** are reproduced as under:

“17. Having considered the procedure, which has been followed by the respondent No.3-NTA and after perusal of the answers which have been finalized by the experts, this court is not inclined to accept the prayer of the petitioners of either to call

¹⁰ 2023/DHC/00078

for a second expert opinion or to further send the questions before a 'Expert Committee'.

18. It is to be seen that there are no allegations of mala fide or bias against any of the experts or against the examining body. The procedure as detailed above does not, by any judicial standard, seem unreasonable. In fact, this court is of the opinion, that procedure is just, fair and reasonable. There were lakhs of students who appeared in the said examination. The fact remains that all the students were treated similarly. Merely for the reason that some text, as has been produced by the petitioners, indicating answers to be different from what were there in the answer key, the entire examination process cannot be overturned.

19. Under the aforesaid circumstances, this court is not inclined to interfere in the instant petition. Accordingly, the same is dismissed along with the pending application."

11. Having considered the submissions made by the learned counsel appearing on behalf of the parties and in view of the discussion, as above, this court does not find any reason to interfere with the answer key finalised by the respondents. The impugned answers are not palpably and demonstrably erroneous. The objections to the key answers were examined by the experts and, thereafter, the required corrective measures were taken.

12. Accordingly, the petition stands dismissed along with pending applications.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 07, 2023/Priya