

Neutral Citation Number is 2023:DHC:1923-DB
IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 16.03.2023
+ **LPA 56/2020 & CM APPL. 3615/2020**
NATIONAL TESTING AGENCY Appellant

versus

SANJEEV KUMAR & ANR Respondents

Advocates who appeared in this case:

For the Appellant : Ms. Seema Dolo, Adv.

For the Respondents : Mr. Apoorv Kurup & Ms. Nidhi Mittal, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The appellant National Testing Agency (hereafter 'NTA') has filed the present intra-court appeal impugning the judgment dated 09.12.2019 (hereafter '**the impugned order**') passed by the learned Single Judge in Writ Petition (C) No. 8664/2019 (impugned order).

2. The UGC – NET Junior Examination was conducted by the appellant between 20th and 26th June 2019, and the scheduled date of the examination was fixed on 26.06.2019. The provisional answer key was put up on the website on 29.06.2019, and objections were invited from the candidates. A public notice in that regard was also published.

3. On 03.07.2019, the respondent raised objections with

regard to the answers to question Nos. 19 and 80. All objections, including the objections raised by the respondent, were considered by the experts. The appellant accepted the objection raised by the respondent in respect to the answer to question No. 19 but declined the same with regard to question No. 80. This led the respondent to file the writ petition in this court, being W.P. (C) No. 8664 of 2019 seeking the following reliefs:

"(a) declare all the options of question no. 80 in the examination UGC-NET, 2019 as wrong and direct Respondent no. 2 to setting aside the alleged correct answer key with ID No. 646350107270, by cancelling the question and awarding equal number to all the examinees accordingly;
(b) direct Respondent no. 2 to consider the objections dated 03.07.2019 lodged by the Petitioner and redraw the result accordingly."

4. Question No. 80 and the options available by way of answer are stated as under:

Q.80. Who among the following analysed the naturalisation of connotative myths?

1. Michel Foucault
2. Roman Ingarden
3. J. Hillis Miller
4. Ronald Barthes "

5. According to NTA option No. 4 is the correct answer. The respondent had objected to the same, contending that the correct answer is not "Ronald Barthes" but "Roland Barthes". It was contended that there was a spelling error in the first name of Mr Roland Barthes, and therefore option No.4 could not be considered as the correct option.

6. The learned Single Judge accepted that the answer to question No. 80 is not correct and there was a possibility of causing confusion in the minds of the examinees. It accordingly directed the appellant to remove question No. 80 from the

consideration and allocate the requisite two marks to the respondent with consequential reliefs.

7. Ms Dolo, learned counsel appearing for NTA contended there was a minor spelling mistake in the first name of the “Roland Barthes, a well known critic, which was not material. Further, she submitted that the respondent, in any case, had selected option No.3, “J Hillis Miller” as the correct answer. Thus, it is apparent that the respondent was not mislead on account of the first name of Roland Barthes being misspelt. In terms of instructions given, the examinee was to select the apposite answer, and in the present case, the closest answer to the question asked was option No. 4 and not option No. 3. She submits that the objections raised by the respondents were considered by the experts and it was decided that the critic involved is known by his surname “Barthes” and not by his first name. She earnestly contended that even if there was an error in the first name of Mr. Barthes, the same would not have made any difference because the critic was known by his surname.

8. In the given facts, the only question to be addressed is whether the decision of NTA to reject the respondent’s objection to the answer to question 80 of UGC-NET Junior Examination, warranted any interference by this court.

9. Before proceedings further to address the said question, it would be apposite to refer to authorities regarding the scope of judicial review in such cases.

Scope of Judicial Review

10. In *Kanpur University v. Samir Gupta: (1983) 4 SCC 309*, the Supreme Court affirmed the decision of the Allahabad High

Court, whereby relying on the views of experts, the court had found merit in the complaints of the students of Kanpur University in respect to the answer key. In that case, the Supreme Court held as under:

“15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. 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. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key

answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”

11. In ***Sumit Kumar v. High Court of Delhi : 2016 SCC OnLine Del 2818***, a Coordinate Bench of this Court had referred to the earlier decisions as well as the decision of the Supreme Court in ***Kanpur University v. Samir Gupta*** (*supra*) and observed as under:

“11. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is “demonstrably wrong” in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. Albeit, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression “demonstrably wrong” and the clapham omnibus standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt.”

12. In a later decision in ***Kishore Kumar v. High Court of Delhi: W.P.(C) 9425 of 2018, decided on 29.10.2018***, a Coordinate Bench of this Court had further narrowed down the scope of judicial review. Merely because some answers or questions are found to be inapt, the same would not warrant judicial intervention. Unless *ex-facie* arbitrariness is established, the court would not interfere with the decision of the examination body. The relevant observations made by the court are set out below:

“26. As far as the attack to the answer keys on the merits goes, possibly, the court may on a close analysis conclude that on one or two questions, the answer keys were inapt.

However, this has to be weighed in with the fact that the court exercises judicial review jurisdiction. Absent demonstrably facial arbitrariness, its approach should be circumspect and deferential (to the examining body).....”

13. The law in relation to the scope of judicial review of decisions relating to challenges to answer key is reasonably well-settled. Unless it is found that there can be no vestige of doubt that the answer key is incorrect, the court would refrain from interfering with the decision of the examination authority.

14. It is also well-settled that merely because the court is of *prima facie* view that the answer to the question is incorrect, the same would not necessarily warrant any interference in the examination process. A fair degree of play in the joints is provided to the examining body in deciding the answer which, according to them, is the correct answer.

15. Unless the court finds that the decision of the examining body is capricious, arbitrary, or actuated by malice, it would not be apposite for the court to exercise judicial review. The decision of the examining body cannot be a subject matter of judicial review on merits unless the same is palpably erroneous or is alleged to be actuated by malice or is capricious and arbitrary.

16. A fair procedure has been adopted by the appellant in the present case by inviting objections to the answer keys and having the same examined by experts. Such exercise having been carried out, the decision of experts does not warrant a judicial review on merits.

17. A Division Bench of Kerala High Court in the case of ***H. Nowfal and Ors. v. Kerala Public Service Commission and Anr.***: 2014 SCC OnLine Ker 12162 held that in cases where such procedure is adopted, the scope of judicial review would be

further restricted to cases where the action of the expert body, if afflicted with palpable error or where it is found that the experts have not acted in a *bona fide* manner. It was held as under:

“11. What is a feature in the present case, which appears to us to distinguish it from the cases which are decided, is the procedure which is already put in place by the Public Service Commission. The judgments of the Supreme Court relied on by the learned counsel for the petitioner were rendered in a situation where the university and in one case the employer, conducted the examinations. There were complaints against the same which reached the courts. The courts took the views of the experts. It is relying on the decision of the experts, which were found convincing to the courts, that the courts granted relief. On the other hand, in these cases, as we have already noticed, the procedure evolved by the Commission pursuant to the direction of this court was to publish provisional key, invite objections, get them scrutinised with the help of experts and act on the decision of the experts. Therefore this is precisely what the courts have done in the decisions which were relied on by the learned counsel for the petitioners. What the petitioners would seek is a review of even the decision of experts to whom the matter is referred by the Commission under a procedure which is evolved. That, we think, may involve the court, which exercises judicial review, to sit in judgment over the experts and, more importantly, attract criticism that it is doing a review as an appellate court will do. At this juncture, it is very apposite to note that the petitioners do not have any case that the persons to whom the matter was referred by the Commission, seeking their opinion as experts, are not experts or they were in any manner actuated by malice. This means that the Commission took care by first publishing the provisional key, inviting objections, getting the objections scrutinised by the body of experts who must be treated as having acted bonafide. Further the result of that exercise, if it is sought to be subjected to further scrutiny, for the purpose of the exercise of judicial review, we would think that it may invite the criticism that the said exercise would be an appellate power exercised in disguise as judicial review. It is true that the Tribunal took the view that the Commission already having followed a procedure which is fair and which involved the scrutiny of the objections by the Commission with reference to experts, the matter did not require interference. The Court or Tribunal doing judicial review should not reduce the exercise of judicial review power to that of appellate review and enter findings on facts for which it may not possess the expertise. If a view from among two views of the matter is taken then if it defers to one of the views this court does not shun its jurisdiction. On the other hand it would be a restrained exercise of its discretion which

would still be in exercise of its jurisdiction keeping it within the four walls of its jurisdiction.”

18. There is also merit in Ms Dolo’s contention that the candidates were required to select the most apposite answer from the set of four options. Question No. 80 was very specific and required the examinee to name the person who analysed the naturalisation of connotative myths. NTA has admitted that there was a minor spelling error, and instead of ‘Roland Barthes’, the answer sheet reflected ‘Ronald Barthes’. However, given that the candidates were to select the closest option, the minor spelling error in the first name of the well known critic, would make no difference. This error is not of nature that justifies any judicial intervention.

19. It is also significant to note that the examinations were conducted to determine the eligibility for lecturership in order to ensure a minimum standard for entrance into the teaching profession. There is merit in the contention that such examinees could not be heard to state that they got confused because of a minor spelling error as mentioned above.

20. It cannot be argued that the respondent got confused to the extent that he selected ‘J. Hillis Miller’ (option 3) instead of ‘Ronald Barthes’ only because ‘Roland’ was misspelt as ‘Ronald’. We are unable to concur with the view of the learned Single Judge that that the minor spelling mistake had any propensity of causing confusion in the minds of examinees. The the learned Single Judge fell in error in interfering with the decision of NTA and allowing the writ petition.

21. The decision of NTA to reject the respondent’s objection, even though there was a minor spelling mistake in the correct

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amenable to judicial review.

22. In view of the above, present Appeal is allowed and the impugned judgment dated 09.12.2019, passed by the learned Single Judge in Writ Petition (C) No. 8664/2019 is set aside.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

MARCH 16, 2023

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