



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 15279/2022**

Date of Decision: **27.07.2023**

IN THE MATTER OF:

MOHAMED ANWAR
S/O MOHAMED HANEF
MOH. KATRA BAKHTAWAR SING
DISTRICT – AMROH, UTTAR PRADESH - 244221

.... PETITIONER

Through: Mr.Abhik Chimni, Mr.Mukul Kulhari
and Mr.Saharsh Saxena, Advocates.

Versus

NATIONAL TESTING AGENCY
BLOCK C-20, 1A/8, SECTOR 62,
IITK OUTREACH CENTRE,
GAUTAM BUDDH NAGAR,
NOIDA-201309, UTTAR PRADESH (INDIA).

.... RESPONDENT NO.1

UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG,
NEW DELHI- 110002.

.... RESPONDENT NO.2

Through: Ms.Seema Dolo, Advocate for R-1.
Mr.Apoorv Kurup, Ms.Kirti
Dhadeech and Mr.Shivansh Dwivedi,
Advocates for R-2.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, *vide* the instant writ petition has prayed for the directions against the respondents to grant additional two marks to the

petitioner for attempting Question ID No.1955 of UGC-NET Examination (December 2020-June 2021 Merged Cycle) or to direct the respondents to issue a revised result of the petitioner including the additional two marks towards Question ID No.1955.

2. Learned counsel appearing on behalf of the petitioner states that the petitioner applied for UGC-NET Examination in December 2020- June 2021 cycle and choose NET subject as Urdu. According to learned counsel for the petitioner, the Question ID No.1955 of UGC-NET Examination of Urdu subject was ambiguous, in as much as, it contained two correct answers.

3. In addition, learned counsel appearing on behalf of the petitioner further submits that not only two answers which were found to be correct by the respondents themselves, another answer i.e. option no.3 is also correct on the basis of the material produced by him.

4. Learned counsel appearing on behalf of the petitioner also submits that if Clause 4.5 (vi) of the Information Bulletin published by the respondents is perused, the same would indicate that the candidates are entitled for marks against the ambiguous question. He, therefore, states that undisputedly there are two answers which were found to be correct by respondent no.1-National Testing Agency (NTA) itself which inevitably leads to the conclusion that the question itself is ambiguous, and therefore, the petitioner should have been awarded marks for Question ID No.1955.

5. According to learned counsel for the petitioner, in provisional answer key, respondent no.1-NTA has published option no.1 to be the correct answer and at the later stage, in final answer key, respondent no.1- NTA has finalized option no.2 to be the correct answer, however, again respondent no.1-NTA switched over to option no.1 to be the correct answer. Moreover,

later on, respondent no.1-NTA approved both option nos.1 and 2 to be the correct answers. This position is not disputed by learned counsel appearing on behalf of the respondents.

6. Learned counsel appearing on behalf of the petitioner, therefore, states that there was sufficient reason for the petitioner not to raise any objection with respect to the provisional answer key or the final answer key. According to him, the petitioner realized about the ambiguity of the answer pertaining to Question ID No. 1955, when this court has disposed of W.P.(C) No.7756/2022 in terms of order dated 22.07.2022.

7. He, therefore, submits that notwithstanding the fact that the petitioner did not raise the objection and if the case of the petitioner falls within Clause 4.5, the petitioner is entitled for the relief of granting marks against Question ID No.1955.

8. Learned counsel appearing on behalf of the petitioner places reliance on the decision of this court in the case of ***Salil Maheshwari vs. The High Court of Delhi and Anr.***¹, decision of the Hon'ble High Court of Calcutta in the case of ***Dr. (Mrs.) Sakti Rupa Chakraborty vs. University of Calcutta and Ors.***² and the decision of the Division Bench of this court in the case of ***Anjali Goswami and Ors. vs. Registrar General, Delhi High Court***³.

9. Learned counsel appearing on behalf of respondent no.1-NTA raises a strong objection with respect to maintainability of the instant writ petition. Learned counsel for respondent no.1-NTA submits that the petitioner did not raise any objection when the provisional answer key was published.

¹ 2014 SCC OnLine Del 4563

² 1992 SCC OnLine Cal 131

³ 2019 SCC OnLine Del 6829

10. According to the learned counsel appearing on behalf of respondent no.1-NTA, the candidates were made aware in advance that prior to declaration of result, respondent no.1-NTA would publish provisional answer key and the candidates will be given an opportunity to raise challenge against the provisional answer key. The challenge to the provisional answer key was invited by respondent no.1- NTA through its website between 21.01.2022 to 24.01.2022 before 9:00 PM. The requisite processing fee was to be deposited by 24.01.2022 upto 11:50 PM. While taking this court through public notice dated 21.01.2022 placed on record as *Annexure-R1/1*, learned counsel states that the petitioner has not submitted any objection with respect to Question ID No. 1955 within the time prescribed.

11. According to her, admittedly, the petitioner has attempted option no.3. She, therefore, states that if in a provisional answer key, option no.1 was stated to be the correct answer then, the petitioner should have raised the objection immediately, once the provisional answer key was published.

12. She further states that in any case, if in a final answer key, option no.2 was finalised to be the correct answer, in that case also, the petitioner could have submitted his objection.

13. She, therefore, states that once no challenge was made between 21.01.2022 to 24.01.2022; at a later stage, no such objection is permissible. Learned counsel while placing reliance on a decision of the Division Bench of this court in the case of *Salil Maheshwari (supra)* submits that the Division Bench in paragraph no.7 of the said decision has unequivocally held that the candidate who did not raise any objection within the time permissible, cannot be allowed to raise any objection at a later stage. She, therefore, prays for dismissal of the instant writ petition.

14. According to the learned counsel for respondent no.1-NTA, even on merits also once an opinion has been formed by the experts, the court under Article 226 of the Constitution of India cannot substitute the same.

15. In rejoinder submissions, learned counsel appearing on behalf of the petitioner submits that after the final answer key was published in the month of February, 2022, he immediately raised the objection. He also submits that there is no bar or restriction to challenge the final answer key, notwithstanding the fact that the original time for raising an objection with respect to provisional answer key was over.

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

17. Before proceeding to deal with the case, it would be appropriate to reproduce Question No. 1955 and the available options. The same reads as under:-

'Q. There are two categories in chronologically order: .

(A) Mir Taqi Mir, Zauq, Meeraji

(B) Ghalib, Mir Oard, Noam Meem Rashid

(C) Khan Arzoo, Mir Taqi Mir, Mir Oard

(D) Meeraji, Noon Meem rashid, Qayyum Nazar

Please Identify the Correct Categories:

(1) C and D

(2) A and C

(3) A and D

(4) B and C

Options:-

1. Option ID :- 7817

2. Option ID:- 7818

3. Option ID :- 7819

4. Option ID:- 7820'

18. If Clause 4.5 of the Information Bulletin is perused, the same would indicate that if a question is found to be incorrect/ambiguous during the key

challenge, only those candidates who have attempted the question and chosen one of the correct answers would be given priority.

19. For the sake of clarity, Clause 4.5 of the Information Bulletin regarding Marking Scheme is reproduced as under:-

“4.5 Marking Scheme

- i) Each question carries 02 (two) marks.*
- ii) For each correct response, candidate will get 02 (two) marks.*
- iii) There is no negative marking for incorrect response.*
- iv) No marks will be given for questions un-answered/un-attempted/attempted/attempted for Review.*
- v) To answer a question, the candidate needs to choose one option as correct option.*
- vi) If a question is found to be incorrect/ambiguous during the Key Challenge, only those candidates who have attempted the question and chosen one of the correct answers would be given the credit. Only for dropped question(s), if any, marks will be given to all the candidates.*
- vii) In case a Question is dropped due to some technical error, full marks shall be given to the candidates who have attempted it.”*

20. In the instant case, the petitioner has admittedly attempted option no.3 as answer to Question ID No. 1955. In the provisional answer key issued by respondent no.1- NTA, option no.1 was initially published to be the correct answer. Respondent no.1-NTA in their final answer key chose to finalize option no.2 to be the correct answer. At a later stage, on account of certain ambiguity, the respondent no.1-NTA has decided to treat option nos.1 and 2 both as being the correct answers.

21. Respondent no.1-NTA has, therefore, awarded marks to all those candidates who have attempted either option no.1 or option no.2 to Question ID No.1955.

22. If Clause 4.5(vi) of the Information Bulletin is carefully perused, the same would indicate that those candidates, who have not attempted the ambiguous answers and have not chosen one of the correct answers, are not entitled for any marking.

23. The petitioner has admittedly marked option no.3 to be the correct answer. Since the petitioner neither has opted option no.1 nor option no.2, therefore, no benefit can be given to the petitioner on account of any ambiguity with respect to option nos.1 and 2.

24. So far as the grievance raised by the petitioner with respect to the correct option of Question ID No.1955 to be option no.3 is concerned, admittedly objections were invited between 21.01.2022 to 24.01.2022. The petitioner did not raise any objection within the time prescribed therein. In the provisional answer key, option no.1 was indicated to be the correct answer. Since the petitioner had opted option no.3, the petitioner then at the relevant point of time should have raised the objection with respect to option no.1.

25. The Division Bench of this court in the case of **Salil Maheshwari** (*supra*) in paragraph 7 has categorically held as under:-

7. This Court is of the opinion that the petitioner cannot be heard to challenge the answer key to a particular question, after having discovered that he was awarded no marks for his response, it being at variance with the answer key. Here, the last date for communicating objections was 23.6.2014, and the respondent released its response to the objections on 2.7.2014. The results were only published on 8.7.2014. It appears that the petitioner did not think it necessary to object to this question before the deadline for objections, but only sought to object after the results were published on 8.7.2014 by way of this petition filed on 1.8.2014. This Court finds that the petitioner was therefore estopped from raising a challenge at this belated stage, since a challenge cannot be advanced against a selection process only after the candidate has discovered his or her unsuccessful performance in

*the process. See **Dhananjay Malik v. State of Uttaranchal** (2008) 4 SCC 171 and **Madan Lal v. State of J&K** (1995) 3 SCC 486. Consequently, no findings will be recorded in regard to this question.*

26. It is thus seen that since the petitioner did not raise any objection within the time prescribed for the aforesaid purpose, the petitioner cannot be heard to say that option no.3 was the correct answer and the options which were finalized, are incorrect.

27. Any interference into the aforesaid aspects will have the effect of disturbing the decision taken by the experts. The writ courts under Article 226 of the Constitution of India are normally not expected to interfere in the modal answer key.

28. The Hon'ble Supreme Court in the matter of **U.P. Public Service Commission vs. Rahul Singh & Anr.**⁴ has held that when it came to conflicting views with regard to the answer key in an exam, then the courts must rely on the opinion of the experts and cannot take on the role of experts in academic matters.

29. This court in the case of **Ashish Singh and Ors. V. Union of India and Ors.**⁵ 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 for a second expert opinion or to further send the questions before a ‘Expert Committee’.

⁴ (2018) 7 SCC 254

⁵ 2023/DHC/00078

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."*

30. With respect to objection to the answer key, this court in the matter of ***Atul Kumar Verma vs. Union of India & Anr.***⁶ in paragraph no. 22 held as under :-

"22. The Courts have directed the examining bodies which did not have the procedure of inviting objections to the answer key to follow the said procedure which the Courts felt was necessary to have a fair result of the examination and to eliminate the possibility of mistakes in the answer key. Once such a procedure has been followed, there can be no possible further challenges except on the traditional parameters of judicial review. If such challenges were to be allowed, the same would lead to disgruntled students filing one petition after other with opinions of the subject experts and which can vary and which will ultimately lead to delays in admissions and in commencement of academic session and all of which will be contrary to public interest and cannot be permitted and if permitted would amount to a cure worse than the disease of a possibility of error remaining in the answer key inspite of the procedure of inviting objections and considering the same being followed.

23. No case for judicial review within the traditional parameters thereof has been made out."

31. A similar view has been taken by this Court in the case of ***Urvashi Khanna v. Union of India through Secretary, Ministry of Health and***

⁶ 2023:DHC:000778

Family Welfare & Ors. and Amrit Adarsh v. The Chairman, Central Board of Secondary Education & Anr.⁷

32. It is thus seen that a fair procedure has been adopted by respondent no.1-NTA in the present case by inviting objections to the answer keys, having the same examined by experts and publishing the final result. Such exercise having been carried out, the decision of the experts does not warrant a judicial review on merits.

33. It is for this reason, this court is not inclined to interfere in the instant writ petition and the same is, therefore, dismissed.

PURUSHAINDRA KUMAR KAURAV, J

JULY 27, 2023/nc

⁷ 2017 SCC OnLine Del 9379