

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) No. 17060/2022 & CM. APPL. No.54072/2022**

Date of Decision: 19.01.2023

IN THE MATTER OF:

ASHISH SINGH
S/O SHRI RAJENDRA SINGH
R/O 178, KUCHWALI CHAJALAIT,
MORADABAD, UTTAR PRADESH-244504

....PETITIONER NO. 1

DR. PRAJAKTA ANAND MENE
W/O SH. ANAND MENE,
R/O KASAR GALLI, KALAMNURI,
HINGOLI, MAHARASHTRA-431702.

....PETITIONER NO. 2

ARCHANA FATTE SINGH KADAM,
R/O 876, KADAM COLONY,
AMAR PLAZA, LAXMI NAGAR RAVIVARPETH,
PHALTAN, SATARA, MAHARASHTRA-415523

....PETITIONER NO. 3

DIGVIJAY SINGH
S/O SH. VIRENDRA SINGH PARMAR,
R/O RANA PO RANA, RAJGARHI UTTARKASHI,
UTTARAKHAND-249141.

....PETITIONER NO. 4

SANJU
D/O SH. BAHADUR SINGH
R/O H. NO. 95, NABADIKUENKE PASS,
DABARIBALODA, DABRIBALODA,
JHUNJHUNUN, RAJASTHAN-333707.

....PETITIONER NO. 5

KHANDHDIYA ANKIT RAJNIBHAI
S/O SH. KHANDHDIYARAJNIBHAI.

R/O YAMUNA NIKUNJ, GUNDAWADI STREET,
STREET NO. 8/16, HANUMAN FLOOR MILL,
GUNDAWADI MAIN ROAD, RAJKOT,
GUJARAT-360002.

....PETITIONER NO. 6

ARTI SHARMA
D/O SH. HEMANT KUMAR SHARMA
R/O 228, LAXMI NAGAR, NIWARU ROAD,
JHOTWARA, JAIPUR, RAJASTHAN-302012.

....PETITIONER NO. 7

MINAKSHI KHUSHAL SAWARKAR
D/O SH. KHUSHALSAWARKAR
R/O 0, 0, SELOTI, BHANDARA,
MAHARASHTRA-441809.

....PETITIONER NO. 8

PARMAR KAUSHIK KUMAR VASHRAMBHAI
S/O SH. VASHRAMBHAI,
R/O VADIVISTAR, ALIDAR ROAD,
SONAPARA, GIRSOMNATH,
BODIDHAR, GUJARAT-362560.

....PETITIONER NO. 9

SURAJ VIJAY SINGH SURYAWANSHI
S/O SH. VIJAY SINGH SURYAWANSHI
R/O 01, 01, GUJARICHOWKBAJAR,
KALAMNURI, HINGOLI, MAHARASHTRA-431702.

....PETITIONER NO. 10

NEHA YADAV
D/O DH. SHIVNARAYANYADAV,
R/O HOUSE NO. 25, WARD NO. 02,
NEAR BUS STAND, VILLAGE REHTI,
GURADKHEDA, SEHORE,
MADHYA PRADESH-465446.

....PETITIONER NO. 11

AKANKSHA SAINATH SOMWANSHI
R/O LADGAV ROAD, SWAMI SOMNATH NAGAR,

MHASKI, AURANGABAD, MAHARASHTRA-423701.

....PETITIONER NO. 12

ROHIT DILIP GAIKWAD
S/O SH. DILIP GAIKWAD
R/O SHIVAJI NAGAR, NILANGA,
LATUR, MAHARASHTRA-413521.

....PETITIONER NO. 13

GEETHU RAMESAN K
D/O SH. RAMESAN K U,
R/O KATTEZHATH GEETHU BHAVAN,
KUMPPANEZAM, MANAKUNNAM,
ERNAKULAM, POOTHOTTA, KERALA-682307.

....PETITIONER NO. 14

NEHA SUDARSHAN PHULPAGAR
R/O KAREGAON ROAD, SHRIRAM NAGAR,
PARBHANI, MAHARASHTRA-431401.
SANTVANA
D/O SH. SATYA NARAYAN,
R/O VILLAGE-DHAREM, BHIWANI,
HARYANA-127309

....PETITIONER NO. 15

SANTVANA
D/O SH. SATYA NARAYAN,
R/O VILLAGE-DHAREM, BHIWANI,
HARYANA-127309

....PETITIONER NO. 16

HEMANT MOHAN RAO SADAR,
S/O SMT. JYOTI MOHAN SADAR,
R/O KAULKHED JAHANGIR, AKOLA,
MAHARASHTRA-444102.

....PETITIONER NO. 17

GANDARA JAYKUMAR
S/O SH. HEMARAJ BHAI,
R/O VILLAGE-DHRANGADA, SOYAL,
JAMNAGAR, GUJARAT-361210.

....PETITIONER NO. 18

VAGHELA RENIL DIPAKBHAI
R/O CHANDARVO, NEAR NADODABORDING,
20-KRISHANA PARK-1, 80 FEET ROAD,
WADHWAN CITY, SURENDRA NAGAR,
GUJARAT-363030.

....PETITIONER NO. 19

PARIKSHIT PRABHULING KORKE
S/O SH. PRABHULING KORKE
R/O SIDDHESHWARNIWAS, VITTHAL COLONY,
LATUR, MAHARASHTRA-413512.

....PETITIONER NO. 20

SHIVANI SHARMA
D/O SH. DEVENDRA SHARMA
R/O 454/654, INDRA NAGAR,
AGAR ROAD, UJJAIN,
MADHYA PRADESH-456001.

....PETITIONER NO. 21

JOSHI JAY NARESHBHAI
S/O SH. NARESHBHAI
R/O I-53, AYUSH TENAMENT-99,
YOGESHWAR PARK NI, BAJUMA, NIKOL,
GANDHINAGAR, DEHGAM, GUJARAT-382350.

....PETITIONER NO. 22

BHANU PRATAP SINGH
D/O SH. HARPAL SINGH
R/O HOUSE NO. 16/3, JEEWAN NAGAR,
GURU BAGH COLONY, LUDHIANA,
PUNJAB-141010.

....PETITIONER NO. 23

NIDHI RAJKUMAR MATE
D/O SH. RAJKUMAR MATE
R/O POST -KHAPA, KHAPA (TUMSAR),
BHANDARA, MAHARASHTRA-441912.

....PETITIONER NO. 24

ASHA
D/O SH. VIRENDER SINGH
R/O HOUSE NO./WARD NO. 304/8,
DADRI, DEFENCE COLONY, MAHENDERGARH CHUNGI,
BHIWANI, HARYANA-127306.

....PETITIONER NO. 25

BHATT RUTVIJ SUNIL KUMAR
R/O 40, JAYMAHARAJ DUPLEX,
VANIYAVAD COLLEGE ROAD, NADIAD,
KHEDA, GUJARAT-287001.

....PETITIONER NO. 26

LANGADE VAISHNAVI MALLINATH
D/O MALLINATH LANGADE,
R/O VISHVANATH NAGAR, ANDUR,
ANDORA, OSMANABAD, MAHARASHTRA-413603.

....PETITIONER NO. 27

SHITAL DILIP KANDHARE
R/O GANGA NAGAR, HINGOLI,
MAHARASHTRA-431513.

....PETITIONER NO. 28

KARISHMA EKKA
D/O SH. FULCHANDRA EKKA
R/O WARD NO. 19, KHARWAT,
BAIKUNTHPUR(M), KORIYA,
CHHATISGARH-497335.

....PETITIONER NO. 29

AMRIT JINDAL
S/O SHRI MAHESH CHAND
R/O 1/230, BEHIND CENTRAL BANK OF INDIA,
SADAR BAZAR, DELHI CANTT., DELHI-110010.

....PETITIONER NO. 30

Through: Petitioner no.1 I person with Mr.
Sarfaraz Khan & Mr. Mirza Amir
Baig, Advocates.

Versus

UNION OF INDIA
THROUGH SECRETARY,
MINISTRY OF AYUSH,
GPO COMPLEX, B-BLOCK,
AYUSH BHAWAN, INA,
NEW DELHI-110023.

.....RESPONDENT NO. 1

ALL INDIA INSTITUTE OF AYURVEDA
THROUGH DIRECTOR,
MATHURA ROAD, GAUTAMPURI,
SARITAVIHAR, NEW DELHI-110076

.....RESPONDENT NO. 2

NATIONAL TESTING AGENCY,
THROUGH CHAIRPERSON,
DT FLOOR, NSIC-MDBP BUILDING,
OKHLA INDUSTRIAL ESTATE,
NEW DELHI-110020.

.....RESPONDENT NO. 3

..... Respondents

Through: Ms. Monika Arora, CGSC with
Mr. Subhrodeep Saha & Mr. Yesh
Tyagi, Advocates.
Mr. Sanjay Khanna, Standing
Counsel with Ms. Pragya
Bhushan, Mr. Taran Sokhi & Mr.
Kara Sokhi, Advocates for
National Testing Agency.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition under Article 226 of the Constitution of India has been filed by the petitioners seeking directions against the respondents to modify the answers to question Nos. 69, 75 and to drop question No. 95 of All India Ayush Post Graduate Entrance Examination (hereinafter 'AIAPGET-2022').
2. The brief facts of the case are that on 25.07.2022, National Testing Agency (hereinafter 'NTA') invited online applications for AIAPGET-2022 for admission to Post-graduate Ayush Courses for the Academic Session 2022-23. All the petitioners have submitted their online applications in accordance with the said public notice. Subsequently, on 15.09.2022, AIAPGET-2022 was conducted.
3. On 22.10.2022, provisional answer key and question paper were released. An opportunity was then provided to the candidates to make their submissions or to challenge the provisional answer key. It appears that not only the petitioners but large number of candidates challenged the correctness of the questions which is the subject matter of the instant petition. It is also stated that on 09.11.2022, final key was released and the final result was also declared.
4. In the order dated 15.12.2022, this court has summarized the questions and objections as under :-

“2. The challenge in the writ petition is with regard to three questions which appeared in the All India Ayush Post Graduate

Entrance Examination (AIAPGEE)-2022 and their answer keys given in the Final Provisional Answer Keys [Annexure P-4 (colly)]. The said questions are question nos.69, 75 and 95, which alongwith answer options, read as under:-

“Question No.69

Given below are two statements:

Statement (I) : The weaning to be started when teeth eruption starts according to Ayurveda.

Statement (II) : The weaning to be started only after completion of one year of age.

In the light of the above statements, choose the correct answer from the options give below:

- 1. Both Statement (I) and Statement (II) are true.*
- 2. Both Statement (I) and Statement (II) are false.*
- 3. Both Statement (I) is true but Statement (II) is false.*
- 4. Both statement (I) is false but Statement (II) is true.*

Options:-

- (1) Option ID 273*
- (2) Option ID 274*
- (3) Option ID 275*
- (4) Option ID 276*

Question No.75

Given below are two statements :

Statement (I) : Raktamokshana is contraindicated in Avabahuka.

Statement (II) : Rakamokshana indicated when Rakta is involved.

In the light of the above statement, choose the most apporiate answer from the options given below:

- 1. Both Statement (I) and Statement (II) are correct.*
- 2. Both Statement (I) and Statement (II) are incorrect.*
- 3. Both Statement (I) is correct but Statement (II) is incorrect.*
- 4. Both Statement (I) is incorrect but Statement (II) is correct.*

Options:

- (1) Option ID 297*
- (2) Option ID 298*
- (3) Option ID 299*
- (4) Option ID 300*

Question No.95

Which of the following is the most dangerous position of appendix?

- 1. Retrocecal*
- 2. Paracolic*
- 3. Retroperitoneal*
- 4. Pelvic*

Options

- (1) Option ID 377*
- (2) Option ID 378*
- (3) Option ID 379*
- (4) Option 380”*

*3. Insofar as question no.69 is concerned, the contention of the petitioner is that the correct answer should be option (1) ID No.273 which is “both statement (I) and statement (II) are true” whereas the answer keys, both Provisional as well as Final, provided the correct answer option (3) ID No.275. In support of his contention, the learned counsel for the petitioner has drawn the attention of the court to a book titled as “Astang Sangrah Uttartantra Indu Tika Adhyay 1, Shlok No.40 on Page No. 634 (at page 90 of the paper book), where according to the petitioner the correct answer has been mentioned. The translation of the said Shloka is at page 91 of the paper book and reads as follows:-
“After one year of age and eruption of teeth in a child, weaning should be started.”*

4. Similarly, in regard to question no.75, the contention of the petitioner is that in terms of the Provisional Answer Key, option (1) ID No.297 was the correct answer, however, when the Final Answer Key was uploaded option (4) ID No.300 was replaced as correct answer. The learned counsel for the petitioners contends that option ID No.297 should be the correct answer and not option ID No.300, which was replaced. The learned counsel invites the attention of the Court to the Book titled – “Sushruta Samhita Sutrasthan”, in support of his contention.

5. Similarly, in respect of question ID No.95, the contention of the petitioner is that none of the four options given in this question contains the correct answer and, therefore, the marks allocated to this question should be awarded to all the candidates who had taken the examination. To fortify his contention the learned

counsel draws the attention of the court to the medical book at Annexure P-7 (Colly).

5. Learned counsel appearing for the petitioners while taking this court through question Nos. 69, 75 & 95 submits that the relevant material brought on record along with the writ petition would clearly indicate that the answers finalized by the experts are palpably wrong. According to him, by no stretch of imagination any prudent person who has little understanding with respect to the subject concerned, would come to the conclusion of accepting the answers finalized by the experts. He further states that despite the material and the expert opinion brought on record by the petitioners to justify their submissions, the respondents have not placed on record any material to substantiate the view taken by the experts. He further states that the respondents are completely silent about the justification and they have merely stated that the objections so received from the candidates were placed before the 'Expert Committee' and it has been decided to take a particular view.

6. It is also argued that whether the view taken by the experts is based on any material or not, has not been brought on record. According to him, it was incumbent upon the respondent No.3-NTA to have at least placed on record the expert opinion, so that the petitioners could have verified the material relied on by the respondent No.3. He further submits that he is conscious of the fact that the courts in exercise of power under Article 226 of the Constitution of India has a limited scope to interfere into academic matters. According to him, if a grave injustice has occurred, this court can always interfere into the same and pass appropriate directions. To further elaborate, he states that his endeavor is

not to finalize any particular answer at this stage but to refer the entire material to the experts who can form their independent second opinion.

7. Learned counsel appearing for the respondent No.3-NTA opposes the prayer, and he states that the entire examination of the question papers was strictly in accordance with the applicable rules and regulations. While referring various provisions of the examination rule book, he states that after examination is over, the answer keys are uploaded after inviting objections on the answer keys. There is a provision of formation of the Expert Committee. Entire objections are placed before the Expert Committee. Once the Expert Committee takes a view, the same becomes final. According to him, it is for the experts to decide which out of a set of given available options to a question would be the correct answer. He states that it is not within the jurisdiction of the High Court to go into the merits of the question and to determine that some other options were more suitable to the one which has been finalized by the experts.

8. He has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Ranvijay Singh Vs. State of U.P.*¹ and on the decision of the Hon'ble Division Bench of this Court in the case of *National Board of Examination Vs. Association of MD Physicians*².

9. I have heard the learned counsel for both the parties and perused the record.

10. It is settled law that the answer key supplied by the paper setters should normally be assumed to be correct and the correctness should be

¹ AIR 2018 SC 52

² 2022 SCC OnLine Del 1538

ascertained from standard and prescribed text books and not merely on the basis of inferences.

11. What is being contended in the instant case is that the material placed on record by the petitioners indicates that the correct answers were different than those finalized by the experts. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***Kanpur University & Ors. Vs. Samir Gupta & Ors.***³.

12. 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.

13. With respect to objection to the answer key, this court in the matter of ***Atul Kumar Verma v Union of India & Anr.***⁵ in Paragraph No. 22 held as under :-

"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

³ (1983) 4 SCC 309

⁴ (2018) 7 SCC 254

⁵ 2015 SCC OnLine Del 10316

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."

14. 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 Family Welfare & Ors.*** and ***Amrit Adarsh v. The Chairman, Central Board of Secondary Education & Anr.***⁶.

15. In the instant case, what is to be seen is the process followed by the respondents and the manner in which the objections received were considered. It is the specific case of the respondents that the candidates were given an opportunity to challenge the answer key during the period of 22.10.2022 to 25.10.2022 upto 9.00 PM by paying a fee of Rs.200/- per question. They state that in total, 152 objections were received against the answer key of question No.69 and 42 objections were made against answer key of question No.75. According to them, 32 objections were received with respect to answer key of question No.95. After receiving all the objections within the aforesaid window period, the same were placed before the Expert Committee. The subject experts examined and verified all the challenges. In the post evaluation scrutiny, the subject experts have opined that with respect to question No.69, option 3 is the correct answer, with respect to question No.95, option 4 is the correct answer and with respect to question no.75, option 4 is the correct answer.

16. Paragraph Nos.10 & 11 of the counter affidavit filed on behalf of the respondent No.3-NTA are reproduced as under:-

⁶ 2017 SCC OnLine Del 9379

*“10. That the Provisional Answer Keys, and Question Papers with Recorded Responses were displayed on the official website (aiapget.nta.nic.in) for all candidates who appeared for AIAPGET-2022. Further, the candidates, were given an opportunity to challenge the same during the period of 22.10.2022 to 25.10.2022 (up to 09:00 P.M.) by paying a fee of 200/- (Rupees Two Hundred only) per question challenged as a non-refundable processing fee. A true copy of the Public Notice dated 22.10.2022 is annexed herewith and marked as **Annexure R3/2**.*

11. That during the aforementioned period, Challenges/ objections received by the Respondent and the same were placed before the respective Subject Expert(s) for their consideration and decision. In total 152 objections were received against Answer Key of Q. No. 69, 42 challenges against Answer Key of Q no. 75 & 32 challenges against Answer Key of Q. no. 95 in AIAPGET 2022 examination. All the objections received within the window period were placed before the subject-expert. The said challenges were placed before the Subject-Experts, who examined and verified all the challenges. Post evaluation and scrutiny, the Subject Expert(s) have opined as under:

- a. Question No. 69- Option 3 (Option ID: 275) is the Correct answer;*
- b. Question No. 95 - Option 4 (Option ID: 380) is the Correct answer,*
and
- c. Question No. 75 -Option 4 (Option ID: 300) is the correct option.”*

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’.

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 alongwith the pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 19, 2023

nc