

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

MAT 917 of 2024

IA No. CAN 1 of 2024, CAN 2 of 2024, CAN 3 of 2024, CAN 4 of 2024, CAN 5 of 2024, CAN 6 of 2024, CAN 7 of 2024, CAN 8 of 2024, CAN 9 of 2024, CAN 10 of 2024, CAN 11 of 2024, CAN 12 of 2024, CAN 13 of 2024, CAN 14 of 2024, CAN 15 of 2024, CAN 16 of 2024, CAN 17 of 2024, CAN 18 of 2024, CAN 19 of 2024, CAN 20 of 2024, CAN 21 of 2024, CAN 22 of 2024 & CAN 23 of 2024

**W.B. Board of Primary Education & Ors.
Vs.
Mousona Mitra & Ors.**

With

MAT 1008 of 2024

With

IA No. CAN 1 of 2024, CAN 2 of 2024, CAN 3 of 2024 & CAN 4 of 2024

**W.B. Board of Primary Education & Ors.
Vs.
Yesmina Khatun & Ors.**

With

MAT 1060 of 2024

With

IA No. CAN 1 of 2024, CAN 2 of 2024

**Parthajit Banik & Ors.
Vs.
Mousona Mitra & Ors.**

Appearance:

For the Appellants : **Mr. Subir Sanyal, Adv.**

MAT 917 of 2024 & Mr. Dwarika Nath Mukherjee, Adv.

MAT 1008 of 2024

Mr. Ratul Biswas, Adv.

Mr. Kaushik Chowdhury, Adv.

For the Appellants

: **Mr. Piush Chaturvedi, Adv.**

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Mr. Chittapriya Ghosh, Adv.

Mr. Somesh Ghosh, Adv.

Ms. Priyanka Saha, Adv.

Ms. Maitrayee Chatterjee, Adv.

For the Respondents

: **Mr. Bikash Ranjan Bhattacharyya, Adv.**

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Mr. Bikram Banerjee, Adv.

Mr. Saikat Sutradhar, Adv.

Ms. Sagarika Goswami, Adv.

For the Respondents

: **Mr. Bikash Ranjan Bhattacharyya, Adv.**

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Mr. Sudipta Dasgupta, Adv.

Mr. Bikram Banerjee, Adv.

Ms. Dipa Acharyya, Adv.

Mr. Arka Nandi, Adv.

Ms. Sutirtha Nayak, Adv.

Ms. Shalini Ghosh, Adv.

For the Applicant

: **Mr. Jishnu Chowdhury, Adv.**

CAN 17 of 2024 in

Mr. Arkadeb Biswas, Adv.

MAT 917 of 2024

Mr. Andalon Sarkar, Adv.

For the State

: **Mr. Sirsanya Bandyopadhyay, Adv.**

MAT 917 of 2024

Mr. Ritesh Kumar Ganguly, Adv.

For the State : **Mr. Arindam Chattopadhyay, Adv.**
MAT 1008 of 2024 **Ms. Lipika Chatterjee, Adv.**

For the Applicants : **Mr. Firdous Samim, Adv.**
CAN 18 of 2024 & CAN 20 of **Ms. Gopa Biswas, Adv.**
2024 in MAT 917 of 2024 **Ms. Payel Shome, Adv.**
Ms. Sampriti Saha, Adv.
Mr. Avijit Kar, Adv.
Ms. Mohona Das, Adv.

For the Applicants : **Mr. Firdous Samim, Adv.**
CAN 2 of 2024 & CAN 3 of **Ms. Gopa Biswas, Adv.**
2024 in MAT 1008 of 2024 **Ms. Payel Shome, Adv.**
Ms. Sampriti Saha, Adv.
Mr. Avijit Kar, Adv.
Ms. Mohona Das, Adv.

For the Applicants : **Ms. Riya Das, Adv.**
CAN 5 of 2024 to CAN 15 of **Ms. Tanushree Roy, Adv.**
2024 in MAT 917 of 2024

For the Applicants : **Mr. Ali Ahsan Alamgir, Adv.**
CAN 2 of 2024, CAN 3 of 2024 **Ms. Rabia Khatoon, Adv.**
CAN 4 of 2024 & CAN 16 of **Ms. Soma Mal, Adv.**
2024 in MAT 917 of 2024 **Ms. June Modak, Adv.**

Judgment on : **23.08.2024**

Harish Tandon , J.

A piquant situation has arisen in the aforesaid mandamus appeals as to whether the Court should usurp the power of the statutory authority in an academic field in finding either the fault in framing the questions or in the answer keys in the competitive examination under the power of judicial review. At the first blush, we were not convinced at the interim stage with the submissions advanced by the respondents as we find that the scope or jurisdiction enshrined in the judicial review as succinctly laid down by the Apex Court in catena of decisions does not permit the directions passed by the Single Bench in the impugned order but after giving an anxious thought we find that several directions were passed at the *inter locutory* stage by the Single Bench which were duly complied by all the parties including the appellant and therefore, we felt it necessary to bring quietus to such issue in adopting a mechanism eroding any concept of ambiguity to prevail or may prevail into a large number of students in evaluating such answers. We are conscious that in today's world the competition has become tougher and reached to a considerable height where a single mark or a fractional mark shall impact on the opportunity to the aspiring candidates to pursue the technical courses or to achieve the position in the recruitment/selection examination.

The law on the subject i.e., the scope of the jurisdiction exercised by the High Court under Article 226 of the Constitution has been succinctly laid down in the Three-Judge Bench decision of the Apex Court in case of ***Kanpur University, Through Vice-Chancellor & Ors. vs. Samir Gupta &***

Ors., reported in (1983) 4 SCC 309, the Apex Court was considering the identical situation where the examination was conducted through a multiple choice question one of which is correct and the dispute was raised to the correctness of a choice given in the answer keys subsequently published. In one hand, the Apex Court observed that the controversy would not have arisen if the examining body do not publish the answer keys and the evaluation would remain secret but at the second breath, it was observed that it would have more ramification and the fairness shall be compromised in this regard and therefore, it would be proper to publish the answer keys which would bring transparency and the fairness in the entire system. It was highlighted that if the wrong choice/answer is accepted by the examining or the selection committee the wrong would continue and the candidate who has studied the subject and excel the knowledge and the proficiency therein, gave the correct answer would still be evaluated negatively. It was thus, held that the examiner or the State Government must find out the solution and adopts the policy uniformly in percolating the sense of fairness in their conduct in the following:

“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 text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.”

The aforesaid Three-Judge Bench decision is reiterated and restated in a subsequent decision of the Apex Court rendered in case of ***Ran Vijay***

Singh & Ors. vs. State of UP & Ors., reported in (2018) 2 SCC 357 and ***Uttar Pradesh Public Service Commission & Anr. Vs. Rahul Singh & Anr., reported in (2018) 7 SCC 254***. However, in the interregnum between the ***Kanpur University (supra)*** and the ***Rahul Singh (supra)*** another judgment of the Apex Court in case of ***Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr. reported in (2010) 6 SCC 759*** held in the same tune and cautioned the exercise of judicial power by the High Court in examining the question papers and the answer sheets itself in the following:

“20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”

The law as its stand unequivocally runs to the effect that the points touching upon the academic fields should be left to the academicians and the High Court should not interfere in a mechanical manner simply some of the aspiring candidates or aspiring examinee has approached the Court

flagging an issue on the wrong framing of the question or wrong choice in the answer keys. Equally, we do not find any absolute embargo in the aforesaid decisions in exercising the judicial review in this regard as we think that the real purpose is to bring correctness in the questions and the answers as the wrong if allowed to sustain would vitally affect the academic career. Though we feel that the Single Bench ought not to have ventured deep into the aforesaid aspect but after noticing that several orders were passed in the aforesaid writ petition directing the respondent authorities to file report from the experts on the correctness of the answer keys which have been duly complied with and subsequently found the dissenting opinion in this regard and directed the further expert of committees to evaluate the situation and submit their opinion and views taken independently to the Vice-chancellor of the Visva Bharati University who was further directed to constitute a committee of his choice to take a final view thereupon, we intend to deal with the questions raised in the instant appeal.

The Visva Bharati has no role to play in the curriculum nor the text books so prescribed or taught at the different medium by the respective States and therefore, subverting the views and the opinions of the independent committee to the Visva Bharati University to act as an Apex institution shall percolate a wrong signal. To put an end to impasse as the large number of litigations are pouring in the dockets of this court, we feel that the moment the Writ Court has undertaken such exercise and the respondent authorities have implemented, the order it would be proper to

constitute a committee comprising of the various experts of the different universities or the institutions to throw the light on the issues.

We therefore, modify the impugned order to the extent that instead of submitting the views, reports and the opinions by the Board as well as the writ petitioner independently, the issues can be referred to a committee consisting of one member to be nominated by the Board having a proficiency in a subject in relation to the questions over which the dispute has been raised, one member from the University of Calcutta in the relevant subject and one member to be nominated by the Vice-chancellor of the Visva Bharati University having a knowledge and expertise in the particular subject. We are conscious that there would be a multiple committee as the dispute has been raised on the several questions and the answer keys given for it but in our opinion it would bring a quietus to an issue and percolate a sense of fairness and transparency. The nomination shall be completed within fortnight from the date of the communication of the order by the respective authorities. The State shall provide all logistic to the committee members and shall also pay an adequate remuneration/honorarium as may be fixed.

With these directions, the aforesaid appeals are disposed of. We expect that the Writ Court to decide the matter on merit after the reports are filed by the committees within a reasonable time.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)