

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PRACHI
 PRANESH
 NANDIWADEKAR

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 Date: 2024.04.11
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WRIT PETITION NO.4371 OF 2024

1. Pruthviraj Bhanudas Dhavale)
 Age: 12 years, Occu. Student,)
Since Minor Through His Natural Guardian)
 Age : 39 Years, Occu.: Agrculturist)
 R/O.: Vadagaon Rasai, Tal: Shirur,)
 Dist.: Pune-41221.)
2. Mrunmayi Rajaram Koli)
 Age:12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
 Shri. Rajaram Ragunath Koli)
 Age:47 Years, Occu.: Teacher)
 R/O.: Nagache Kumathe, Tal: Khatav)
 Dist.: Satara-415506.)

..Petitioners

Versus

1. The Union of India,)
 Through Secretary of Department of Higher Education,)
 Having its address at:)
 302 – C, SHASTRI BHAWAN, NEW DELHI -)
2. The Union of India)
 Through the Secretary of Defence,)
 Having its office address at:)
 South Block, New Delhi-110011)
3. National Testing Agency)
Through its Directorate)
 Having its address at:)
 1st Floor, NSIC-MDBP Building)
 Okhla Industrial Estate, New Delhi-Directorate)
 Official E-mail id: genadmin@nta.ac.in)
4. The Sainik School Society)
 Through its secretary)
 Having its office address at:)

Room No.101, D-1 Wing Sena Bhawan,
New Delhi-110011

)
)
.. Respondents

**WITH
WRIT PETITION NO.5041 OF 2024**

1. TULJA RAJU BALGUDE)
Age: 12 years, Occu. Student,)
Since Minor Through His Natural Guardian)
Shri. Raju Eknath Balgude)
Age:50 Years, Occu.: Govt. Service,)
R/O.: Karanje-Pul, Tal: Baramati,)
Dist.: Pune – 412306)
2. VIGHNESH JYOTIRAM PHADTARE)
Age:12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Jyotiram Anna Phadtare)
Age:44 Years, Occu.: Govt. job)
R/O.: Ndegaon Tambe, Tal: Satara)
Dist.: Satara – 415004)
3. SHRAVAN SHANDIP MANE)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Sandip Dinkar Mane)
Age : 37 Years, Occu.: Service)
R/O : Dhangarwadi, MIDC Satara)
Tal: Satara, Dist.-Satara)
Dist.: Satara – 415004)
4. PRAJAWAL ANAND MORE)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Anand Shivaji More)
Age: 43 Years, Occu.: Agriculturist)
R/O: Sasurve, Tal: Koregav)
Dist.: Satara – 415004)
5. SANGRAM RAVINDRA MHASKAR)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Ravindra Mhaskar)

- Age: 44 Years, Occu.: service,)
R/O: Deep Enclave, Karjat Road,)
R K Residency, Badlapur, Thane – 421503)
6. ARNAV YEDU KALBHOR)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Yedu Sadashiv Kalbhor)
Age: 36 Years, Occu.: Agriculturist)
R/O: Ranjangaon Sandas, Pune – 421503)
7. MUGDHA RAJENDRA NAIKWADI)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Rajendra Tukaram Naikwadi)
R/O: Nagar Lane, At Post: Charan, Tal: Shirala)
Dist.- Sangli)
8. YASH DNYANESHWAR SUKRE)
Age: 12 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
Shri. Dnyaneshwar Hanumant Sukre)
Age: 38 Years, Occp.: Agriculturist Distributor)
R/O: Flat no.202, 2nd floor, wing A-7,)
Jai Bhawani, Opp Sagar Darshan Tower,)
Sector-18, Nerul west, Navi Mumbai,)
Thane- 400706)
- ..Petitioners

Versus

1. The Union of India,)
Through Secretary of Department of Higher Education,)
Having its address at:)
302 – C, SHASTRI BHAWAN, NEW DELHI -)
2. The Union of India)
Through the Secretary of Defence,)
Having its office address at:)
South Block, New Delhi-110011)

3. National Testing Agency)
Through its Directorate)
 Having its address at:)
 1st Floor, NSIC-MDBP Building)
 Okhla Industrial Estate, New Delhi-Directorate)
 Official E-mail id: genadmin@nta.ac.in)
4. The Sainik School Society)
 Through its secretary)
 Having its office address at:)
 Room No.101, D-1 Wing Sena Bhawan,)
 New Delhi-110011)
- .. Respondents

WITH
WRIT PETITION NO.5042 OF 2024

1. TEJAL MILIND OVHAL)
 Age: 12 years, Occu. Student,)
Since Minor Through His Natural Guardian)
 Shri. Milind Ramesh Ovhal)
 Age: 39 Years, Occu.: Govt. Service,)
 R/O.:Vikasnagar, Tal: Satara,)
 Dist.: Satara – 4150053)
2. OVI NITIN PATIL)
 Age:11 Years, Occ: Student,)
Since Minor Through Her Natural Guardian)
 Shri. Nitin Vyankatarao Patil)
 Age: 47 Years, Occu.: Private service)
 R/O.: Hanegaon Tai – Degloor,)
 Dist.: Nanded – 43174)
- ..Petitioners

Versus

1. The Union of India,)
 Through Secretary of Department of Higher Education,)
 Having its address at:)
 302 – C, SHASTRI BHAWAN, NEW DELHI -)
2. The Union of India)
 Through the Secretary of Defence,)

- Having its office address at:)
 South Block, New Delhi-110011)
3. National Testing Agency)
Through its Directorate)
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4. The Sainik School Society)
 Through its secretary)
 Having its office address at:)
 Room No.101, D-1 Wing Sena Bhawan,)
 New Delhi-110011)
- .. Respondents

Mr. Abhishek Nandimath a/w Mr. Suyash Khose i/b Mr. Gaurav Kalekar
 for the petitioners.

Ms. Naveena Kumai for respondent nos.1 & 2-UOI.

Mr. Rui A. Rodrigues for respondent no.3 -NTA.

**CORAM : A.S. CHANDURKAR &
 JITENDRA JAIN, JJ.**

DATE : 5th April 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr. Kumai, learned counsel waives service for respondent nos.1 & 2-UOI. Mr. Rodrigues, learned counsel waives service for respondent no.3. By consent of the parties, the petition is heard finally. These three petitions are disposed off by common order since the issue involved in all the petitions are identical. However, for sake of present judgment, we will aver to the facts of Writ Petition No.4371 of 2024.

2. By this petition, under Article 226 of the Constitution of India, the petitioners have challenged the results published on 13 March 2024 and the answer key issued by respondent no.3 on the ground that the answers to the questions set by respondent no.3 are incorrect on the questions are not correctly worded.

Brief facts are as under:-

3. The petitioners are students of class 5th and 6th and seeks admission in the school run by respondent no.4. For securing the admission to the said school, an examination is conducted by respondent no.3-National Testing Agency (NTA) and on the basis of the results, the candidate's admission process is further continued.

4. On 28th January 2024, respondent no.3-NTA conducted an examination in which the petitioners appeared. The petitioners opted for Marathi language for instructions and also for language section out of 13 languages prescribed by respondent no.3-NTA. Subsequent to the examination, respondent no.3-NTA supplied answer keys to the candidates and invited objections to the answers. Petitioners objected to around 19 questions inter alia on the ground that the answer keys provided by respondent no.3-NTA are not the correct answers and/or the questions are not properly worded. Respondent no.3-NTA on receipt

of the said objections, evaluated the objections by an expert committee and accepted the petitioners objection only qua one question.

5. On 13th March 2024, respondent no.3-NTA declared the results and both the petitioners secured 13,371 and 12,234 rank and qualified for the second round of the admission process. However, the petitioners are aggrieved by the action of respondent no.3-NTA in not accepting the objections raised by them qua 18 questions. The grievance of the petitioners is that if the objections to these 18 questions are accepted then the petitioners ranking on merit list would go up and therefore the present petition is filed.

Submissions of the Petitioners:-

6. The petitioners submit that insofar as the 18 questions for which the objections are raised, the answer key provided by respondent no.3-NTA are incorrect for the reasons stated in the petition, namely, either the question was having wrong spelling which would lead to a wrong answers, the questions and the words used therein are grammatically incorrect, wording of the sentence in the question is incorrect, in the absence of a specific word, the question is wrong, the question as framed does not make any sense etc.

7. The petitioners have taken us through the questions, the options as per answer key provided by respondent no.3-NTA and the options/answers which the petitioners have opted and the reason why according to the petitioners the objections are required to be accepted. The petitioners further submitted that since the language opted was in Marathi that could be the reason for wrong answer keys provided by respondent no.3-NTA. The petitioners further submitted that if these objections are accepted then merit list of the petitioners would improve. The petitioners have also relied upon various decisions in support of their submissions and prayed that the objections raised be accepted and respondent no.3 be directed to revise the merit list or the answers to these questions may be re-evaluated or re-examined.

Submissions of Contesting Respondent No.3 - NTA:-

8. Per contra, respondent no.3 submits that after the receipt of the objections, same were forwarded to the panel of experts and thereafter the decision was taken with respect to only one question and the objections to the balance questions were rejected. Respondent no.3 submitted that since the issue has been examined by an expert body, this Court should exercise restraint from interfering in the evaluation and admission process. Respondent no.3 further submitted that the answer keys provided to each question were not so absurd so as to shock the

consciousness of the Court and it was further submitted that if two answers are possible and according to respondent no.3 one particular answer is the appropriate answer then the issue has to be decided in favour of the authority conducting the exam. Respondent no.3 further relied upon various clauses of the brochure issued in support of its submission that the objections raised by the petitioners cannot be accepted. Respondent no.3 further submitted that the petitioners are already qualified for next round of counseling and further lakhs of students have appeared for the exam and it would not be appropriate for this Court to interfere. The respondent no.3 has further relied upon various decisions of the Supreme Court and prayed that the present petition is required to be dismissed.

Analysis and Conclusions :-

9. Before we delve upon to analyse the contentions of the parties, it would be necessary to reproduce some of the impugned questions and the reasons by the petitioners by way of illustrations : -

“a. Question No. 6 from the Test Booklet Code No. A and question No. 23 from the Test Booklet Code No.B -

प्रश्न- रिकाम्या जागी योग्य शब्द लिहा "अकबरच्या सैन्याने चित्तोडगड च्या किल्ल्याला.....

पर्याय -

- 1) बंद केले
- 2) घेरले
- 3) हिसकावून घेणे
- 4) पाहिले

Answer marked by Petitioner No. 1 in AISSEE: Option No. 4

Answer marked by Petitioner No. 2 in AISSEE: Option No. 2

Answer Published by NTA in its Answer-Key: Option No. 3

Reason submitted by Petitioner to NTA:- अकबरच्या सैन्याने चित्तोडगडच्या किल्ल्याला घेरले (वेढा घातला) हा पर्याय योग्य आहे, किंवा हिसकावून घेतला जात नाही जिंकला जातो म्हणून योग्य पर्याय घेरले (वेढा घातला) हाच आहे.

b. Question No. 8 from the Test Booklet Code No. A -

प्रश्न- खाली दिलेल्या पर्यायातून विरुद्ध अर्थी शब्द निवडा धमकी / धमकावतो

- 1) धोका किंवा भिती
- 2) विचारपूर्वक / समंजसपणे
- 3) सुरक्षित
- 4) भरभराट

Answer marked by Petitioner No. 1 in AISSEE: Option No. 2

Answer Published by NTA in its Answer-Key: Option No. 3

Reason submitted by Petitioner to NTA:: धमकी / धमकावणे याचा विरुद्धार्थी शुद्ध विचारपूर्वक समंजसपणे हे योग्य

उत्तर आहे. उत्तरसुचीमधील उत्तर हे सुरक्षित पर्याय क्र 3 सुरक्षित हे उत्तर चुकीचे आहे.

c. Question No. 9 from the Test Booklet Code No. A:

खाली दिलेल्या पर्यायातून निदीष वाक्य ओळखा.

- (1) करमणूक
- (2) कर्मनूक
- (3) करमनुक
- (4) कर्मणुक

Answer marked by Petitioner No. 1 in AISSEE: Option No. 2

Answer Published by NTA in its Answer-Key: Option No. 1

Reason submitted by Petitioner to NTA: सदर

प्रश्न आपणाकडून चुकीचा विचारण्यात आला आहे एकतर निदीष हा शब्द मराठीमध्ये नाही व आपण दिलेले पर्याय हे 1) करमणुक 2) कर्मनुक 3) करमनुक 4) कर्मणुक हे पर्याय वाक्यामध्ये नसून शब्दामध्ये आहेत त्यामुळे वरील किंवा सदर प्रश्नाचा योग्य अर्थबोध होत नाही तरी सदर प्रश्न चुकल्यामुळे प्रश्नाचे मार्क मिळावेत हि नम्र विनंती.

Above question is wrongly asked as the word निदीष is not in Marathi language. The question was having wrong spelling and meaning, a candidate has to draw presumption before answering. And the question asked about the sentence and the options are given in word not in sentence. Therefore, the entire exercise to answer a question would be against

the scheme of examination. The said question does not have correct meaning. The said question should be recognized as an incorrect.

d. Question No. 10 from the Test Booklet Code No. A -

खाली दिलेल्या शब्दाचा विरुद्धार्थी शब्द लिहा/निवडा. शमाशीलता

- (1) पुनर्स्थापना करणे
- (2) नाकारणे
- (3) माघार घेणे
- (4) प्रतिशोध बदला घेणे

Answer marked by Petitioner No. 1 in AISSEE: Option No. 1

Answer Published by NTA in its Answer-Key: Option No. 4

Reason submitted by Petitioner to NTA : शमाशीलता हा शब्द चुकीचा आहे व क्षमाशीलता हा शब्द बरोबर आहे व शमाशीलता या शब्दाचा आपण दिलेल्या पर्याया पैकी एकही पर्याय बरोबर नाही प्रश्नच चुकल्यामुळे या प्रश्नाचे मार्क मिळावेत

The word शमाशीलता is grammatically incorrect and that word is not in Marathi language. The word was having wrong spelling and meaning, a candidate has to draw presumption before answering. As none of the option for the word शमाशीलता is correct. The said question should be recognized as incorrect.

e. Question No. 74 from the Test Booklet Code No. A - प्रश्न- अशा कोनाचा प्रकार सांगा ज्याचे माप १४६० आणि ८२° असून या दोन कोनांतल्या अंतरापेक्षा २६० पेक्षा अधिक आहे पर्याय: -

- 1) तीव्र कोन
- 2) अस्पष्टकोन
- 3) काटकोन
- 4) बृहत्कोन / प्रविशाल कोन

Answer marked by Petitioner No. 1 in AISSEE: Option No.4

Answer Published by NTA in its Answer-Key: Option No. 3

Reason submitted by Petitioner to NTA: सदर प्रश्नाची वाक्यरचना चुकीची असल्यामुळे आणि त्याची क्रिया कशी करावी हे या प्रश्नावरून समजत नाही. तरी प्रश्न चुकीचा असल्यामुळे आणि त्याची क्रिया कशी करावी हे या प्रश्नावरून समजत नाही तरी प्रश्नच चुकीचा असल्यामुळे प्रश्नामधून योग्य अर्थबोध होत नाही तरी सदर प्रश्न हा १४६० आणि ८२० कोनांमधील फरकापेक्षा २६० ने जास्त असलेल्या कोनाच्या प्रकाराचे नाव सांगा? - (१४६० - ८२०) + २६० = ६४० + २६० = ९०० असे म्हणजेच काटकोन येईल तरी प्रश्न चुकीमुळे सर्व पर्याय बरोबर समजून मार्क मिळावे

The wording of this question is wrong and does not make any sense. A candidate has to draw presumption before answering. From the wording of question, it does not understand how to solve it. Also, the names of triangles are in Hindi language i.e. option 1, 2, and 4 are in Hindi language. Therefore, above question and answer are incorrect. In the final answer key, option 3 is given by the National Testing Agency i.e. Respondent No.1.

10. It is by now well settled that under Article 226 of the Constitution of India, this Court in exercise of its power of judicial review can only examine the decision making process and not the decision. In the facts of the present case where the answers to the questions/ framing of the questions etc. have been challenged, this Court certainly is not an expert to take upon itself the role of the examiner for ascertaining what should be the correct answer or how the question should have been framed. Furthermore, if there are more than one likely answers to a particular question and there is a difference of opinion between the candidates and the authority conducting the test as to which is the correct answer, certainly, this Court cannot give its opinion on whether the candidate is correct or authority conducting the test is correct. The petitioners' grievance is that the answers are not correct or questions are not framed properly which this Court cannot adjudicate upon in exercise of its jurisdiction under Article 226 of the Constitution of India.

11. In Information Bulletin issued by respondent no.3-NTA for AISSEE-2024 exam, in clause 13.2 (c), it is expressly stated that the challenges made by the candidates will be verified by the NTA with the help of panel of subject experts and if found correct, the answer key will be revised accordingly and such finalised key shall not be subject to

any further challenge. In clause 13.10 of the said bulletin, it is explicitly made clear that there is no provision for re-checking/re-evaluation of the answer sheets and no correspondence in this regard will be entertained. In the instant case before us as per the affidavit-in-reply of respondent no.3, on receipt of the objections from the petitioners, same were referred to panel of expert and out of 19 objections, one objection was accepted and the balance 18 objections were rejected by the experts. Therefore, in our view, when experts have examined the objections with respect to the answers to the questions asked in the exam and other issues raised by the petitioners, this Court in its exercise of its judicial review cannot sit in appeal over the views expressed by the experts. Therefore even on this count, no judicial interference is warranted moreso in the light of the aboveresferred provisions contained in the Information Bulletin of respondent no.3-NTA.

12. The reasons given by the petitioners in the petition in support of their objections are not of such a grave nature that the answers on face of it are palpably wrong but the answers are such on which two views could be possible. If that be so, then as per the decision of the Supreme Court in case of *Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors., 2018 (2) SCC 257*, the answers which according to the

authority conducting the test are correct should be accepted. Therefore on this count also and following the decision of the Supreme Court, this Court cannot permit the petitioners to seek prayer for re-verification or re-valuation. It is best left to the authority conducting test to decide which is the correct answer moreso, when it is not the case of palpably wrong answers.

13. The AISSEE-2024 exam was conducted across India and almost 1,59,000 students appeared. Insofar as the exam in Marathi language is concerned, 6130 candidates appeared and out of which 4766 candidates have qualified for the examination including the petitioners before us. Except few petitioners who are before us, there is no challenge made by the others with respect to the questions objected by the petitioners. If the questions framed were so palpably incorrect then all or majority of the candidates would have raised the grievance. This fact also shows that it only the perception of the petitioners on questions and answers which is sought to be raised and not by all the candidates. Therefore on this count too, we cannot accept the submission made by the petitioners that the answer key provided by respondent no.3-NTA is incorrect or the questions are not properly framed.

14. In the Information Bulletin, it is very clearly mentioned that there would be no re-checking/re-evaluation of the answer sheets. The candidates are made aware about the said condition before appearing for the exam. The petitioners having appeared for the exam with their eye open to the said condition are bound by the same and therefore cannot seek re-checking/re-evaluation of the answer sheets. Therefore even on this count, the prayers made by the petitioners cannot be granted.

15. A similar issue that is posed for our consideration arose before the Supreme Court in ***Wajda Tabassum & Ors. Vs. National Testing Agency & Anr.*** decided on 30th November 2021 in Writ Petition (Civil) No.1260 of 2021 and it is important to note the order passed therein which reads thus :-

- “1. The grievance of the petitioners relates to the solutions in the Hindi and English versions of Question No 2 of Section A in the Physics Paper (Code P2) of the NEET (UG) 2021 examination.
2. Having regard to the submission that the answers to the same problem in the English and Hindi media would vary, based on the absence of the expression “amplitude of current” in the Hindi version, Mr Tushar Mehta, Solicitor General, had, on the previous occasion, assured the Court that the solution would be evaluated again by a Committee consisting of three experts.
3. The first respondent constituted a Committee of three Professors from IIT Guwahati, Delhi Technological University, Delhi and National Physical Laboratory, Delhi for evaluating the solutions in both the English and Hindi versions of Question No 2 of Section A in the Physics Paper of the NEET (UG)

2021 examination.

4. The conclusion of the evaluation has been set out in paragraph 9 of the affidavit which has been filed by the Joint Director of the first respondent and is extracted below:

“9. I submit that the Committee Members held a meeting on 27.11.2021 for the purpose of evaluation of solutions to Question No.2 of Section A in the Physics Paper of NEET (UG) 2021 both in Hindi and in English and concluded that the correct solution (answer) to said Question No.2 is 5Ω both in Hindi as well as English also the answer would be same i.e. 5Ω by providing the following explanation:

(a) In Question, the word “ धधरधध ” should be understood as the amplitude of current which is also reflected from the circuit diagram as well as question statement, highlighting the alternating source.

(b) In Question, “धधरधध” word is mentioned, which certainly does not mean the “rms” value. Any confusion can be easily clarified from the given circuit diagram.”

5. Ms Archana Pathak Dave, Counsel appearing on behalf of the petitioner, has made an earnest endeavour to persuade this Court that based on the underlying material in the XIIth standard Board examination, there would be a variation in the solutions to the above problem in English and Hindi as a result of a difference in translation.

4. It would be beyond the remit of this Court to conduct an exercise of re-assessing the correctness of the solutions. The first respondent, which is the agency entrusted with the duty of conducting the NEET (UG) 2021 examination, while responding to the apprehensions of the students, had the matter scrutinized again by three subject experts. Hence, it would not be open to this Court to substitute its own view. In the circumstances, having given our anxious consideration to the submission which has been urged on behalf of the petitioners, we are unable to interfere. The petition is accordingly dismissed.

5. Pending application, if any, stands disposed of.”

(emphasis supplied)

16. In our view, it would not be prudent for this Court to act like an expert in a subject alien to it when body of experts has arrived to a contrary stand. This Court certainly does not possess the expertise in the subject and cannot substitute expert's opinion with its own. Such course of action would be beyond the scope of judicial review.

17. We now propose to deal with the decisions cited by the petitioners.

18. The petitioners have relied upon the decision of the Madras High Court in case of ***K. Vinopratha Vs. The Teachers Recruitment Board & Anr.*** in Writ Petition No.22129 of 2022. In the said petition, the answer to the question as per the authority conducting the test was such that it was obvious a mistake and therefore, it is on this backdrop that the Madras High Court decided the issue in favour of the candidate. In the said decision, the Court came to the conclusion that the views expressed by the expert was arbitrary which is not the case of the petitioners before us nor the objections raised are found to be palpably incorrect.

19. The next decision relied upon by the petitioners is the decision of the Supreme Court in case of ***Kanpur University through***

Vice-Chancellor & Ors. Vs. Samir Gupta & Ors., (1983) 4 SCC 309. In this case, there was no expert opinion on the answer key issued by the authority conducting the exam. In the present case before us, the objection raised by the petitioners were referred to the experts and it is only on recommendation from the experts panel that respondent no.3 rejected the objections raised by the petitioners. Therefore even on this count, the said decision is distinguishable on facts and cannot take the case of the petitioners any further.

20. In view of our above reasoning, we are not inclined to interfere in exercise of writ jurisdiction. The writ petition stands dismissed. No costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.