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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 02.08.2024

Pronounced on : 06.08.2024

+ **W.P.(C) 8605/2024 & CM APPL. 35266/2024**

ANAVADYA. V

.....Petitioner

Through: Mr. Setu Niket, Ms. Esha Mazumdar, Ms. Unnimaya, Mr. Ishan Singh and Ms. Chetna, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. T. SinghDev, Mr. Aabhaas Sukhramani, Ms. Anum Hussain, Mr. Abhijit Chakravarty, Advocates for NMC
Ms. Pankhuri Shrivastava and Mr. Alekshendra Sharma, Advocates for R-3/NTA

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:-

“A. Issue a Writ of Certiorari or any other appropriate Writ, Order or Direction in the nature thereof, quashing and setting aside the final 27 answer key for the Question Booklet S1 to the extent of question ID 12, 30 and 125;



B. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature thereof, directing the Respondents to revise the final answer key by deleting question no. 12 and 33 and awarding 4 marks each and correcting the answer to Question no. 125 to option no. 3 and awarding 5 marks (4 marks for correct answer and 1 mark towards negative marking) and revising the final result accordingly;

C. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature thereof, directing the Respondents to constitute an expert committee comprising of independent subject matter experts to consider the challenge raised by the Petitioner with further direction to revise the result in terms of the recommendations of the expert committee in a time bound manner and prior to commencement to counselling;

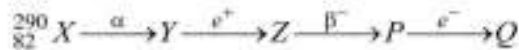
D. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature thereof, directing the Respondent No. 3 to henceforth publish on their website, the reasons for rejecting on the challenge to a question and the reasons thereof; E. Award costs of the proceedings to the Petitioner;”

2. Brief facts of the case are that the petitioner herein had appeared as a general category candidate in the NEET (UG)-2024 test on 05.05.2024 conducted by the National Test Agency (‘NTA’)/ respondent no. 3 for admissions in undergraduate MBBS/BDS etc., Courses. The NTA *vide* public notice dated 29.05.2024 had invited candidates to challenge the provisional answer key. The petitioner herein being aggrieved by two answers wrongly recorded and two questions from the deleted syllabus still being included in the provisional answer key, preferred her challenge to the provisional answer key on 30.05.2024 after paying the requisite fee. Despite the NTA extending the deadline for challenges to 01.06.2024, the final result and rank of candidates were hastily declared on 04.06.2024,



instead of the originally stated date of 14.06.2024. The petitioner contends that the NTA failed to duly consider the materials and objections submitted, resulting in an arbitrary final answer key and incorrect results. This premature declaration of results has led to a situation where the petitioner, despite being highly meritorious, is denied the rightful benefit, while candidates who received marks based on incorrect answers are given preference. Thus, the present writ petition has been filed.

3. **Learned counsel appearing on behalf of the petitioner** states at the outset, that he is only confining his challenge to question numbers 33 and 125. It is further stated that the petitioner is not pressing any further reliefs as prayed for in the writ petition. Learned counsel for the petitioner draws this Court's attention towards question number 33 of the question booklet 'S1', and the same is extracted hereinunder:



In the nuclear emission stated above, the mass number and atomic number of the product Q respectively, are:

- (1) 288, 82
- (2) 286, 81
- (3) 280, 81
- (4) 286, 80

4. In regard to the challenge to above question, it is stated that the same was out of the syllabus notified by the National Medical Commissioner ('NMC')/ respondent no. 2 and, therefore, the petitioner did not attempt it as it would entail negative marking. It is submitted that as per the practice of NTA, the candidates are required



to be awarded 4 grace marks for each question which were beyond the syllabus.

5. Further, learned counsel for the petitioner draws this Court's attention towards question number 125 of the question booklet 'S1', and the same is extracted hereinunder:

125. Given below are two statements.

Statement I : Bt toxins are insect group specific and coded by a gene *cry1Ac*.

Statement II : Bt toxin exists as inactive protoxin in *B. thuringiensis*. However, after ingestion by the insect the inactive protoxin gets converted into active form due to acidic pH of the insect gut.

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

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

6. Learned counsel for the petitioner with respect to aforesaid question submits that his challenge to the said question was for Statement 1 i.e., *Bt toxins are insect group-specific and coded by a gene cry1Ac*. The challenge by the petitioner is on the ground that the answer notified by NTA i.e. Option No. 4 was incorrect since the correct answer was Option No. 3. The petitioner in support of the challenge placed reference to the 2016 Edition and current editions of the NCERT Textbook as well as research papers. According to the petitioner, all the scientific material clearly establishes that not all Bt. toxins are coded by a gene *cry1Ac* and the said statement is scientifically incorrect since gene *cry1Ac* is only responsible for the coding of Bt toxin affecting the cotton bollworm. Thus, the NTA hastily and without proper consideration declared the final result and rank of candidates. Although the final result was originally scheduled for release on 14.06.2024. However, the result was prematurely



declared on 04.06.2024, while objections were still being accepted until 01.06.2024. The petitioner contends that the final answer key was issued arbitrarily, without due application of mind, and without objectively considering the materials submitted by the petitioner. The premature declaration of the results, contrary to the announced date, has adversely affected the petitioner's rights.

7. **Learned counsel appearing on behalf of the NTA**, on the other hand, states that in terms of Chapter 14.2 of the Information Bulletin, respondent No. 3 i.e. NTA displayed the Scanned images of OMR Answer Sheets and recorded responses of NEET (UG) 2024 of all candidates, including the petitioner, along with provisional answer keys from 29.05.2024 to 31.05.2024 (up to 11:50 PM) which was extended later till 01.06.2024 (up to 11 AM). It is also submitted that through public notices to the same effect, all candidates were informed that an opportunity was given to make an online challenge against the Provisional Answer Key, by paying a non-refundable processing fee of Rs. 200/- per answer challenged, within the stipulated time period.

8. As far as the present case is concerned, it is submitted that the petitioner herein had challenged three questions i.e. question numbers 12, 33 and 125 of question booklet 'S1'. However, since the petitioner is only challenging question numbers 33 and 125, the learned counsel for NTA submits that question number 33 has been challenged on the grounds that it is out of syllabus question, however, the NTA had placed the said question before the Subject Experts and they have opined that the syllabus includes '*composition and size of*



nucleus’ and *atomic masses*’ in Unit No. 18 under the chapter *Atoms and Nuclei*’, and thus, question number 33 according to the Subject Experts is intended to quantify the understanding of the students about the basic composition of nuclei and relevant changes in shape and size of nuclei because of the emission of the abovementioned particles. With regard to question number 125, it has been opined that the question pertains to Bt toxin. While Statement I regarding the gene cry IAc is true, but Statement II regarding prototoxin is incorrect as prototoxin is activated by the alkaline pH in the gut of the insect and not acidic pH as stated in Statement II. Therefore, Option No.4 (Statement I is true but Statement II is false) is the correct option.

9. Learned counsel for the NTA argues that as per declared norms of the examination, the Revised/Final Answer Key are applied in response to all the candidates and based on the Revised/Final Answer Key only the result is prepared and declared. Learned counsel states that the candidates including the petitioner herein have been awarded marks based on their actual performance. It is further stated that pursuant to the order dated 13.06.2024 passed by the Hon’ble Supreme Court in W.P. (Civil) 368/2024 Re-test was held for candidates granted compensatory marks on 23.06.2024 and vide Public Notice dated 30.06.2024, revised scorecard of all the candidates of NEET UG-2024 was released by respondent No. 1. All India Rank for counselling was also revised while scores of the candidates remained the same. It is stated that in terms of the directions passed by the Hon’ble Supreme Court in W.P (Civil) No.



335/2024 *vide* order dated 23.07.2024, re-revised Score Cards have been issued on account of the revision of the Answer Key of NEET UG-2024 Test. It is stated that the petitioner herein has qualified for the NEET UG-2024 Test as her score is more than the cut-off declared for the unreserved/general category. It is also submitted that there is no provision for re-checking or re-valuation of the answer sheets.

10. **Learned counsel for the petitioner**, in rebuttal, states that since he has obtained the opinion of two experts regarding the impugned question, this Court, in the interest of justice, should therefore draw its conclusion about the correct answer as it may deem appropriate. It is also stated that since he has the opinion of two experts in his favour, it will not be appropriate to only consider the opinion of the expert committee constituted by the NTA.

11. However, the **learned counsel for the NTA** fervently argues that three experts of the committee had given their opinion *qua* question in dispute, which is not after the filing of the present petition, but in the month of June 2024. It is, therefore, stated that the opinion of the experts produced by the NTA, which has been accepted by the majority of the students who have appeared in the examination, should be taken to be correct. It is also submitted that if there is any difference in the version of the candidate and examination conducting body based on the records, the version of the official exam conducting body ought to be given precedence over the candidate's claim and the said version of the examination conducting body is required to be upheld by the Courts. It is stated that in case



any other view is taken by this Court, there would not be finality to such exams. This Court's attention has also been drawn to the judgment in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27. To support this proposition, reliance has also been placed upon a judgment of the Co-ordinate Bench of this Court in *W.P.(C) No. 13668/2022* titled *Freya Kothari v. Union of India & Others* decided on 22.09.2022. Learned counsel for the NTA further submits that the Hon'ble Apex Court *vide* interim orders dated 23.07.2024 passed in *W.P. (Civil) No.335/2024* in the case of *Vanshika Yadav v. Union of India & Others* had permitted the question to be considered afresh since it was a pan-India objection and about 13,000 students had raised objection to the said questions in dispute in that case. Further, in the present case, only the petitioner has raised this question and the entire schedule and counselling should not be disturbed due to one candidate. Learned counsel also states that as per judicial precedents, this Court cannot re-appreciate the same as it does not pass the test of patent illegality.

12. This Court has **heard** arguments addressed on behalf of both parties and has perused the material on record.

13. At the outset, it is noted that the questions in question paper Booklet Code 'S1', which were challenged by the petitioner are as under:



S. No.	Question ID	Petitioner Answer Options
1	12	None of these (as the question was from deleted syllabus)
2	20	2
3	33	None of these (as the question was from deleted syllabus)
4	125	3

14. The petitioner herein is challenging two specific questions i.e. question numbers 33 and 125, in the question booklet no. S1 in the NEET (UG)-2024 examination. For question number 33, the counsel for the petitioner argues that it was out of the syllabus and should not have been included, which led the petitioner to skip it to avoid negative marking. It was further contended that as per NTA's practice, the petitioner should be awarded 4 grace marks for this out-of-syllabus question. For question number 125, the petitioner disputes the correctness of the answer provided by the NTA. It is argued that the correct answer is different based on scientific sources, including the NCERT textbook and research papers, which contradict the NTA's provided answer.

15. The extent of judicial review in cases challenging the assessment of test papers on the grounds of allegedly incorrect answer keys is well-settled.

16. In *Kanpur University v. Samir Gupta* (1983) 4 SCC 309, the Hon'ble Supreme Court in relation to the challenge by the students to the answer key held as under:



“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...**”

(Emphasis supplied)

17. Further, it shall also be useful to take note of the decision passed by the Hon’ble Apex Court in the case of *UPSC v. Rahul Singh* (2018) 7 SCC 254. In the said case, too, the candidate was aggrieved with the answer key issued by the authority concerned. In para 12 to 14 of the judgment, the Hon’ble Supreme Court cautioned all Courts, dealing with such matters, in the following words :

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In *Kanpur University case (supra)*, the Court recommended a system of - (1) moderation; (2) avoiding ambiguity in the questions; (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the 9 Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested.



Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.

14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. **When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.”**

(Emphasis Supplied)

18. In the case of *Wajda Tabasuum v. NTA*, W.P.(C) 1260/2021, the Hon’ble Apex Court *vide* order dated 30.11.2021 held that it would be beyond the remit of the Court to conduct an exercise of re-assessing the correctness of the solutions when the same had already been examined by a Committee of three subject experts. The relevant observations of the Hon’ble Apex Court read as under:

“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.”

19. This Court’s attention was also drawn towards the findings of



Coordinate Bench in case of *Freya Kothari (supra)*, where under similar circumstances and while hearing challenge to answer key of some questions of NEET (UG)-2022 Examination, this Court held as under:

“27. The petitioner, in the present case, has challenged and is doubting the decision of the experts in the field of medical science who are responsible for setting up the question papers and deciding the appropriate answers for such questions.

28. It is a matter of fact that various objections raised are duly considered by these experts and final answers are published and there is no material before this Court to doubt the decision taken by such experts.

29. Moreover, this Court is not an expert in the field of medical science to sit over the decision taken by the experts and substitute it with its own wisdom.

30. As noted above, the scope of judicial review in such cases is limited.

31. It can be seen that the questions asked from the candidates are tricky and their answers cannot be argued to be in a straitjacket formula, as sought to be done by the petitioner.”

20. In the facts and circumstances of the case, it shall also be useful to take note of the observations of the Hon’ble Division Bench of this Court in case of *Siddharth Mishra v. Union Public Service Commission W.P.(C) 11099/2023*, wherein the petitioners while assailing an order passed by Central Administrative Tribunal, Delhi had argued that a large number of questions in the Civil Services Aptitude Test (CSAT) 2023 were out of syllabus. While dismissing the petition, the Hon’ble Division Bench of this Court held that it cannot examine or question the wisdom of the panel of experts that has prepared the question paper, and re-assess the relative merits of



the questions and it also cannot sit in appeal against the considered decision of the panel of academic experts. The relevant observations in this regard are extracted hereunder:

“12. Before the Tribunal, the learned counsel for the UPSC had referred to the judgments of the Supreme Court in ***Ranjan Kumar & Ors. v. State of Bihar & Ors.***, (2014) 16 SCC 187; ***Bedanga Talukdar v. Saifudaullah Khan & Ors.***, (2011) 12 SCC 85; ***Ashok Kumar & Anr. v. State of Bihar & Ors.***, (2017) 4 SCC 357; and ***Union of India & Ors. v. Mahendra Singh***, 2022 SCC OnLine SC 909. The Tribunal had rightly observed that the said judgments restrain judicial bodies/fora from interfering with competitive selection processes merely on the ground that some of the candidates may have questioned the selection process or the syllabus of the examination, even though they had voluntarily participated in the examination. It is not for this Court to examine or question the wisdom of the panel of experts that has prepared the question paper, and re-assess the relative merits of the questions. This Court cannot sit in appeal against the considered decision of such a panel of academic experts, unless such decision is demonstrated to be manifestly arbitrary, malafide or illegal. Such is not the case here...”

21. The aforesaid decision of the Hon’ble Division Bench of this Court was upheld by the Hon’ble Apex Court in *SLP (Civil) 19885/2023* vide order dated 06.09.2023.

22. After reviewing the judicial precedents on similar issues this Court is of the opinion that as a general norm, the Courts cannot disregard the Subject Experts opinion placed on record by the exam conducting agencies. Further, after careful consideration of the present case, this Court finds that the NTA had obtained the opinion of Subject Experts consisting of three specialists in the relevant field. This report was placed before this Court.



23. Additionally, the learned counsel for the petitioner has also submitted opinions from two other subject experts. However, this Court recognizes that experts may have varying opinions based on their experiences, perceptions, and analyses. Different research papers and studies might lead to divergent views on a particular question and its correct answer.

24. Further, this Court notes that as per judicial precedents, Courts are not experts in the subject matter and should only adjudicate based on the law on the subject and its application in the facts and circumstances of the particular case. The questions in dispute had been placed before Subject Experts constituted by the exam conducting authority i.e., the National Testings Agency and the Subject Experts have already given their opinion *qua* the same.

25. In respect of question number 33, it has been opined that the syllabus includes '*composition and size of nucleus*' and '*atomic masses*' in Unit No. 18 under the chapter '*Atoms and Nuclei*'. This Court has also perused the contents of the Information Bulletin published by the NTA, for NEET (UG)-2024, wherein it has been mentioned in Clause 3.1 of Chapter 3: Examination Scheme that the question paper shall be based on the syllabus declared by National Medical Commission, which has been annexed as Appendix-III to the Information Bulletin. In the said Appendix-III, the syllabus pertaining to 'Physics' contains the following topics:



UNIT 18: ATOMS AND NUCLEI

Alpha-particle scattering experiment; Rutherford's model of atom; Bohr model, energy levels, hydrogen spectrum. Composition and size of nucleus, atomic masses, Mass-energy relation, mass defect; binding energy per nucleon and its variation with mass number, nuclear fission, and fusion.

26. Further, as per the subject experts, the size of the nucleus undergoes changes under various conditions including emission of β particles, alpha particles, positrons and electrons, etc. and according to the Subject Experts, the question is intended to quantify the understanding of the students about the basic composition of *nuclei* and relevant changes in shape and size of nuclei because of the emission of the abovementioned particles. Thus, the subject experts have negated the challenge of the petitioner. Therefore, this Court is of the opinion that it cannot substitute its own understanding for that of the experts, who are better equipped to address the complexities and nuances of the subject.

27. In respect of question number 125, the committee of subject experts have opined that option no. 4 i.e. "Statement I is true but Statement II is false" is the correct option.

28. During the course of arguments, the petitioner also prayed for the impugned questions being referred for correct answers to a third party, as has been done by the Hon'ble Apex Court in case of *Vanshika Yadav v. Union of India & Others W.P. (Civil) No.335/2024* in respect of one question. However, in this Court's opinion, as per the judicial precedents and guidelines in this regard laid down by the Hon'ble Apex Court, once the questions challenged in the present petition have already been dealt with by the concerned



Subject Experts of NTA, re-appraisal of the decision of the subject experts is not permissible. It is also to be noted that the question which was referred to the Subject Expert for opinion by the Hon'ble Apex Court in case of *Vanshika Yadav (supra)* was on account of NTA treating two options as correct answers to one question, and moreover, the said question had been disputed by more than 13000 students, which is not the case herein. In case this course is adopted, there will be a never-ending process of receiving objections on the basis of different views on the subject regarding the questions in the competitive exams and exams will never be conducted smoothly.

29. This Court notes that after the subject experts have examined and evaluated the impugned questions, the results have already been declared and the counselling is scheduled to commence from 14.08.2024. Therefore, the results as well as the schedule for counselling cannot be disturbed at this stage, *sans* any ground to hold that the impugned question numbers 33 and 125 of Question Booklet No. S1 of NEET (UG)-2024 are incorrect or the answers thereto, as finalised by the NTA, are incorrect.

30. This Court further reiterates that where the error is not self-evident, the Court cannot reappreciate, reanalyse or reassess for itself the correct answers to the disputed questions. Thus, when the facts of the present case are viewed in the background of the judicial precedents such as the decision of *UPSC v. Rahul Singh (supra)* and *Wajda Tabasuum (supra)*, this Court is of the opinion that no case for interference by this Court is called for.

31. In view of the above discussion, this Court is unable to allow



the present writ petition and the same is, therefore, dismissed with no orders as to costs. Pending applications also stand dismissed.

32. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 06, 2024/A