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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) 8682/2024**

MANAS PYASI

.....Petitioner

Through: Mr. Sameer Kumar and Ms.
Somi Sharma, Advocates

versus

NATIONAL TESTING AGENCY & ORS.Respondents

Through: Mr. Sanjay Khanna, Mr.
Tarandeep Singh, Mr.
Karandeep Singh and Ms.
Tavleen Kaur, Advocates for
R-1
Mr. T. SinghDev, Mr. Aabhaas
Sukhramani, Ms. Anum
Hussain, Mr. Abhijit
Chakravarty, Advocates for
NMC
Mr. Rakesh Kumar, CGSC for
UOI and Mr. Vedansh Anand,
G.P.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present writ petition filed under Article 226 of the Constitution of India, the petitioner seeks declaration of question



number 11 of Physics-Section A of 'T5' Test Booklet, of National Eligibility-cum-Entrance Test (Undergraduate), 2024 [hereinafter '*NEET (UG)-2024*'] as either incorrect or dropped question in terms of Clause 3.2 of Information Bulletin of NEET (UG)-2024, and a direction that 04 marks be granted to all the candidates irrespective of whether the question was attempted or not. In addition, the petitioner also prays that in respect of question number 23, it be declared that option 1 is the only correct option and grant of prescribed marks for question no. 23 to the candidates marking option 3 also as the correct option be disallowed.

2. Brief facts of the case are that the petitioner herein had appeared in NEET (UG)-2024 on 05.05.2024. Pursuant to conduct of the examination, the respondent no. 1 i.e. NTA had issued the provisional answer key and *vide* public notice dated 29.05.2024, NTA had invited candidates to challenge the said answer key. It is stated that the petitioner had presented an online challenge against the provisional answer key, as envisaged under Clause 14.2 of the brochure, however the same remained unanswered, as there is no provision for individual response to the objection. The petitioner further states that on 04.06.2024, NEET UG-2024 results were declared and his all India ranking is 4954 in General Category and is ranked 11083 in NEET All India Rank. However, he has a grievance with respect to question numbers 11 and 23 of the 'T5' Test Booklet.

3. **Learned counsel appearing on behalf of the petitioner** argues that the overall rank of the petitioner has been adversely affected due to non-compliance of Clause 3.1 of Chapter 3:



Examinations Scheme, which reads as follows:

“3.1 Syllabus of the Test NMC (National Medical Commission) has notified the syllabus of NEET (UG)-2024. The Question Paper will be based on the given syllabus (Appendix-III), which is available on the NMC Website (<https://www.nmc.org.in/neet/neet.ug>).”

4. It is argued that question number 11 in ‘T5’ Test Booklet in Physics Section-A, which is a compulsory section, was based on ‘radioactivity’, however, the ‘radioactivity’ topic is not a part of the new syllabus as shown in Appendix-III, though it used to be in the NEET syllabus in previous years. It is further submitted that Clause 3.2 under the head ‘Pattern of the Test’ and sub-head ‘Important Points to note’, states as follows:

“if none of the options is found correct or a Question is found to be wrong or a Question is dropped then all candidates who have appeared will be given four marks (+4), irrespective of the fact whether the question has been attempted or not attempted by the candidate.”

5. It is argued, on the basis of the above rule, that question number 11, which is out of syllabus i.e. not from the syllabus curriculum, either ought to have been dropped or a bonus 04 marks ought to have been given. It is submitted that since the petitioner had attempted the said question, irrespective of the fact that his answer was correct or incorrect, he should be given either 04 bonus marks or the said question should be dropped and no marks should be given to anyone for this question, which would bring parity amongst all the candidates.

6. Learned counsel appearing on behalf of the petitioner further submits that the petitioner does not wish to press the prayer *qua*



question no. 23, since the same has already been dealt with, by the Hon'ble Supreme Court of India, *vide* order dated 23.07.2024 passed in *W.P.(C) 335/2024*.

7. Therefore, the petitioner prays for declaration of question number 11 as either dropped or incorrect question, and for consequent award of 04 bonus marks to all the candidates who appeared in NEET (UG)-2024.

8. On the other hand, **learned counsel appearing on behalf of respondent no. 1 i.e. NTA** submits that in terms of Chapter 14.2 of the Information Bulletin, the NTA had displayed the Scanned images of OMR Answer Sheets and Recorded Responses of NEET (UG)-2024 of all the candidates, including the petitioner, along with Provisional Answer Keys on its website. It is also submitted that through Public Notices to the same effect, all candidates were informed about an opportunity 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. It is also stated that the challenges/objections so received, are then placed before the respective subject experts of NTA who examine the same exhaustively and if the subject experts, on examining the objections, find merit in it, then on the advice of the subject experts, the NTA modifies its answer key accordingly and gives appropriate benefit to the candidates. However, if the subject experts are of the view that the answer contained in the answer key is a correct answer, no modification in the answer key is carried out.

9. It is submitted on behalf of the NTA that in respect of question



number 23 of 'T5' Test Booklet challenged by the petitioner herein, the Hon'ble Supreme Court has already dealt with the same and on the basis of an Expert Opinion received from the Director, IIT, Delhi, the Hon'ble Supreme Court has held that only option 4 is the correct answer to the said question. In respect of question number 11, which the petitioner has challenged, it is argued that the said question is not an out of syllabus question since the question is well covered in the syllabus prescribed in the Information Bulletin under Unit 18, which covers all the topics of 'Radioactivity'.

10. Learned counsel for the NTA argues that the final answer keys are decided by the experts, and the result is declared on the basis of the final/revised Answer Key recommended by the respective subject experts only. It is stated that the candidates including the petitioner herein have been awarded marks based on their actual performance. It is also submitted that as per the initial result declared by the NTA, the petitioner herein had scored 615 out of 720 marks. However, 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 on 23.06.2024 and *vide* Public Notice dated 30.06.2024, revised score card of all the candidates of NEET (UG)-2024 was released by NTA. All India Rank for counselling was also revised while scores of the candidates remained the same. Thereafter, in terms of the directions passed by the Hon'ble Supreme Court in *W.P. (Civil) No. 335/2024* on 23.07.2024, re-revised Score Cards have been issued on account of the revision of the Answer Key of NEET (UG)-2024. It is stated that the petitioner herein has now scored 675



out of 720 marks, with NEET All India Rank of 9210 and General Category Rank of 4189, and has qualified for NEET (UG)-2024 as her score is more than the cut-off declared for the unreserved/general category.

11. It is also submitted on behalf of NTA that there is no provision for rechecking or revaluation of the answer sheets. It is further argued 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 examination 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, no finality would be achieved to such exams. In this regard, reliance has also been placed on the following decisions: (i) *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (1984) 4 SCC 27; (ii) *Freya Kothari v. Union of India & Others* W.P.(C) 13668/2022.

12. This Court has **heard** arguments addressed by learned counsel for the petitioner as well as learned counsel for the NTA, and has perused the material placed on record.

13. The grievance of the petitioner, in a nutshell, is that the question, numbered as 11 in his test booklet i.e, T5, in the NEET (UG)-2024, ought to be either dropped or declared wrong since the same was based on the topic 'radioactivity', which was not a part of the syllabus for NEET (UG)-2024. Thus, since the impugned question is from out of prescribed syllabus as per Clause 3.1, the



same must be declared dropped or incorrect and bonus marks must be awarded to all candidates as per Clause 3.2 of Information Bulletin. The NTA, however, has refuted the claims of the petitioner and has submitted that the impugned question number 11 is well-covered within the syllabus prescribed in the Information Bulletin for NEET (UG)-2024.

14. The question number 11, of T5 Test Booklet of NEET (UG)-2024, which has been challenged by the petitioner in the present petition, reads as under:



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

15. However, this Court notes that in the contents of the counter-affidavit filed by the NTA, the opinion of the NTA experts has been mentioned, who have opined as follows:

“... With respect to Q. 11 above, it is noteworthy to mention that the question is well covered in the syllabus prescribed in the Information Bulletin under Unit 18, which covers all the topics of “Radioactivity”. Relevant extracts of the same are reproduced herein as follows:

“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 fusing.”

Hence, the answering respondent has nowhere acted contrary to its Information Bulletin...”

16. 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.

17. The NTA has already issued an Answer Key wherein option (2) has been declared as the correct answer to question number 11 of T5 Test Booklet, and the question has not been held to be an out of syllabus question. While examining such matters, the jurisdiction of this Court is circumscribed by the law which is well-settled in this regard, in a catena of pronouncements by the Hon’ble Supreme Court. It is a well-settled position of law that the scope of judicial adjudication and jurisdiction in such matters is limited. The Hon’ble Apex Court in case of *Kanpur University v. Samir Gupta* (1983) 4 SCC 309, while dealing with the issue of challenge to an answer key by the students, had observed 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)

18. One may also refer, with advantage, to a decision in case of *UPSC v. Rahul Singh (2018) 7 SCC 254* wherein 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)

19. In case of *Wajda Tabasuum v. NTA, W.P. (C) 1260/2021*, the Hon’ble Apex Court *vide* order dated 30.11.2021, though in context of challenge to answer key to a question in NEET (UG)-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.”

(Emphasis supplied)

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. This Court's attention was also drawn towards the findings of Coordinate Bench in case of *Freya Kothari (supra)*, where while hearing a challenge to answer key of some questions of NEET (UG)-2022 Examination, this Court emphasized that the Courts cannot sit over the decision taken by the experts in the field of science, who are responsible for setting up the question paper and deciding appropriate answers for such questions, and cannot substitute its own opinion with the wisdom of the experts.

23. 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 on the questions in dispute wherein 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*'. Further, as per the subject experts, the size of the nucleus undergoes changes under various conditions including emission of B particles, alpha particles, positron and electrons, etc. and according to the Subject Experts, this 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.

24. Therefore, this Court is of the opinion that when academic and subject experts of NTA have opined that the impugned question has been prepared from the prescribed syllabus of NEET (UG)-2024, this Court cannot doubt the wisdom of the experts and substitute its opinion in place of the same.

25. Accordingly, the present petition is dismissed alongwith pending application, if any, being devoid of merit, but without any order as to costs.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 6, 2024/at