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

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Date of decision: 08.08.2024

+ **W.P. (C) 10585/2024 & CM APPL. 43547/2024**

NIVRITI BATHLA

.....Petitioner

Through: Ms. Suriti Chowdhary, Ma.
Abiha Zaidi, Mr. Anuj Manoj
Bhave, Mr. Pritam Raman
Giriya, Ms. Devna and Mr.
Sudhanshu Sharma, Advocates

versus

NATIONAL TESTING AGENCY & ANR.Respondents

Through: Mr. Sanjay Khanna, Standing
Counsel, Ms. Pragya Bhushan,
Mr. Karandeep Singh, Mr.
Tarandeep Singh and Ms.
Tavleen Kaur, Advocates for
R-1
Mr. Mohinder J.S. Rupal,
Advocate for R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India by the petitioner, praying for issuance of appropriate writ against the respondents directing them to award appropriate marks and to re-publish scores and give other reliefs to



the petitioner in relation to Common University Entrance Test (Undergraduate) [‘CUET (UG)-2024’] held on 15.05.2024, 16.05.2024 and 17.05.2024.

2. **Learned counsel appearing on behalf of the petitioner** states that the petitioner had specifically challenged the inconsistency in the Accountancy Paper of CUET (UG)-2024 held on 17.05.2024 between the instructions given in the examination question, booklet and the Information Bulletin and the answer key published by respondent no. 1 i.e., National Testing Agency [‘NTA’] on 25.07.2024. It is stated that the petitioner herein had appeared for the CUET (UG)-2024 and had particularly faced an issue with the Accountancy paper held on 17.05.2024 with regard to the answers in the Final answer key for Question nos. 7 and 22 in Test Booklet Code ‘A’. It is stated that the answer of Question no. 7 has been wrongly assessed as option no. 2, and for Question no. 22, two correct answers have been suggested which is contrary to the instructions and answers given in the latest NCERT textbook as available on the NCERT website, and the same has adversely impacted the score of the petitioner herein.

3. Learned counsel for the petitioner states that on 07.07.2024, respondent no. 1 i.e. NTA had published the provisional answer key. The students/candidates were given time to raise objections against the answer key. The petitioner herein had raised objections *qua* Question no. 7 but the same was of no avail. It is stated that on 25.07.2024, respondent no. 1 had published the Final answer key, wherein it was observed by the petitioner that for Question no. 7 of



Test Booklet Code 'A', only option no. 2 was declared as correct, which is wrong since the correct option to the particular question can be both option no. 1 and option no. 2. It is stated that this particular question is ambiguous in nature and as per the latest edition of the NCERT textbook of Accountancy, both the options i.e. option no. 1 and 2 are the correct answers. It is further stated by learned counsel for the petitioner that the answer key is contrary to the instructions of the exam that categorically states that marks will be awarded to those candidates who have marked any of the correct options, if more than one option is found to be correct, which is the case here. The Question no. 7 of Test Booklet Code 'A' is extracted hereunder for reference:

"7. A, B and C are partners sharing profit in the ratio of 3:2:1. C died on 1 st July 2023. On this date, final accounts were prepared to ascertain profits for the period, it resulted in a profit of Rs 1,75,000 to the firm. To give effect to the above.:
1) Profit and loss account will be debited
2) Profit and loss appropriation account will be debited
3) Profit and loss account will be credited
4) Profit and loss appropriation account will be credited. "

4. It is also argued that in respect of Question no. 22 of Test Booklet Code 'A', option nos. 1 and 2 were both declared as correct which is contrary to the answer given in the NCERT textbook available on the NCERT website, as per which only the option no. 2 i.e. 'Realisation Account' is the correct answer. It is argued that the NTA has wrongly awarded marks even to the wrong option and such award is contrary to the instruction that only the most appropriate answer will be awarded the marks. Learned counsel for the petitioner



further argues that marks have been awarded to students who have marked both these options, thereby benefiting those who had guessed an answer or inevitably marked the answer they had thought was right, even though the NCERT Book categorically states that only option no. 2 is the correct answer. The Question no. 22 of Test Booklet Code 'A' is extracted hereunder for reference:

"22. On dissolution of a firm, bank overdraft is transferred to:

- 1) Bank Account*
- 2) Realisation account*
- 3) Partners' capital account*
- 4) Partners' loan account"*

5. Learned counsel for the petitioner submits that the action of NTA in dealing with these two questions is arbitrary and therefore, the result declared by the NTA gives arbitrary and unfair marks to various candidates without application of mind, which is in violation of the rights of all candidates who do not benefit from this arbitrariness and end up losing their ranks.

6. **Learned counsel for respondent no. 1 i.e. NTA**, on the other hand, argues that since the petitioner herein had not attempted Question no. 22 in Test booklet Code 'A' of Accountancy paper of CUET (UG)-2024, the petitioner has no locus to seek the relief, as sought in this petition, before this Court. Learned counsel for the respondent also draws the attention of this Court to Clause 12.3 of Information Bulletin of CUET (UG)-2024 which deals with the marking scheme of examination and the same reads as under:

“12.3. MARKING SCHEME OF EXAMINATION



For Multiple Choice Questions: To answer a question, the candidates need to choose one option corresponding to the correct answer or the most appropriate answer. However, if any anomaly or discrepancy is found after the process of challenges of the key verification, it shall be addressed in the following manner:

- i. Correct answer or the most appropriate answer: Five marks (+5)
- ii. Any incorrect option marked will be given minus one mark (-1).
- iii. Unanswered/Marked for Review will be given no mark (0).
- iv. If more than one option is found to be correct then Five marks (+5) will be awarded to only those who have marked any of the correct options.
- v. If all options are found to be correct then Five marks (+5) will be awarded to all those who have attempted the question.
- vi. 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 attempted the dropped question will be given five marks (+5) marks.”

7. Learned counsel for the NTA states that Clause 12.3 (iii) and (iv) provide that since the marking scheme of the examination lays down that unanswered/marked for review will be given no marks and if more than one option is found to be correct, then five marks (+5) will be awarded to only those who have marked one of the correct options. It is stated the petitioner herein cannot be granted any relief since she has not attempted Question no. 22. It is also stated that the contention of the learned counsel for the petitioner regarding the petitioner being adversely affected since those who have attempted an incorrect answer will be benefitted by two options being declared as correct, though one of them is not correct as per the NCERT, is without any merit since the petitioner did not attempt the said



question at all.

8. Learned counsel for the respondent/NTA also submits that as far as Question no. 7 is concerned, the subject experts have already given their opinion to NTA, after examining the objections, and have opined that the correct answer to Question no. 7 is option no. 2. This expert opinion was placed before this Court too, for perusal. Therefore, it is prayed that the present petition be dismissed.

9. This Court has **heard** arguments on behalf of both sides and has perused the material on record.

10. The grievance of the petitioner herein is that the petitioner who had appeared in CUET (UG)-2024, though had not attempted Question No. 22 of Test Booklet Code 'A', since NTA has declared the answer of the said question to be both Option nos. 1 and 2, which has benefited those who had guessed an answer or inevitably marked the answer they had thought was right i.e. option no. 1, even though the NCERT Textbook categorically states that only option no. 2 herein is the correct answer. It is the case of the petitioner that this action on part of NTA violates the rights of candidates, who had not attempted the said question considering the same as ambiguous and gives an undue benefit to the students, who had guessed or inevitably marked the answer. It is also the case of petitioner that the final answer declared by NTA to Question no. 7 of Test Booklet Code 'A' is also incorrect.

11. This Court has perused the information bulletin of CUET (UG)-2024, which in its Clause 12.3 clearly states that a candidate, who does not answer or attempt a question, cannot be awarded any



marks against such a question. It is to be noted that though in the petition, it has been mentioned that petitioner had marked one of the options as an answer to Question no. 22, the learned counsel for the petitioner herein does not dispute the fact that the petitioner, in fact, had not attempted Question no. 22 of her Test Booklet. The respondent/NTA had also produced the OMR sheet of the petitioner, which further clarifies that the petitioner had not attempted the said question.

12. Having observed so, this Court is of the opinion that a candidate who is appearing in CUET (UG)-2024 is bound by its Information Bulletin published by NTA, and while considering the allocation of marks to a particular candidate, strict compliance has to be made with the provisions of the Information Bulletin, including Clause 12.3 which provides the marking scheme of the examination. It is further noted that the petitioner has not challenged the validity of the said clause and thus the allocation of marks has to be carried out in accordance with the Information Bulletin.

13. Learned counsel for the petitioner had also argued that the NTA's decision to declare two correct answers for Question No. 22 of Accountancy paper of CUET (UG)-2024 has placed the petitioner at a disadvantage, since candidates who either guessed or marked option no. 1 as answer for this question, which is incorrect as per petitioner, have gained an unfair advantage over the petitioner. In this regard, this Court observes that it is not within its purview to assess the merits or potential benefits conferred upon candidates due to the declaration of two correct answers for a particular question by the



expert committee. Further, in this Court's view, the petitioner herein has no locus to challenge the benefit given to candidates who had selected the correct answer to Question no. 22, solely on the ground that the question has two correct responses.

14. In addition to the aforesaid, this Court has also perused the opinion of the two subject experts submitted by the NTA, who have opined as to why and how both the options i.e. option no. 1 and 2 are correct answers to Question no. 22, as have been declared by NTA in the Final Answer Key.

15. Insofar as petitioner's contention regarding incorrect answer key, declared by NTA, for Question no. 7 of the Test Booklet Code 'A' of CUET (UG)-2024 is concerned, this Court is of the opinion that the said question had been placed before a Subject Expert by the exam conducting authority i.e., the NTA, and the Subject Expert has already given his opinion on Question no. 7 that option no. 2 i.e. '*Profit and loss appropriation account will be debited*' is the correct answer since the question was asked in context of preparation of final accounts. Thus, the subject expert has negated the challenge of the petitioner herein.

16. This Court is further of the considered opinion that this Court is not an expert in the subject of Accountancy, and it has to only adjudicate cases based on the settled law and its application in the facts and circumstances of the particular case. Having observed so, this Court notes that while examining such matters, the jurisdiction of this Court is circumscribed by the law which is well-settled by way of a catena of pronouncements by the Hon'ble Supreme Court. 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)

17. One may also refer, with advantage, to a decision in 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 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. The Coordinate Bench of this Court in case of *Freya Kothari v. Union of India & Others W.P.(C) 13668/2022*, while hearing challenge to answer key of some questions of NEET (UG)-2022 Examination, 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. Considering the aforementioned judicial precedents, this Court is of the opinion that it cannot disregard the opinion of the subject experts, placed before this Court by the exam conducting agency i.e. NTA, who after examining the objections of the present petitioner, have opined that the Final answer key declared by the NTA, in respect of Question nos. 7 and 22 is correct.



21. Thus, in view of the foregoing discussion, this Court is of the opinion that the relief as prayed for by the petitioner cannot be granted.

22. Accordingly, the present petition is dismissed along with pending application.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 8, 2024/ns