

10.03.2025
Item No.ADSL 1
Ct. No.01
RP/SM

MAT 343 of 2025
With
IA No.CAN 1 of 2025

**Hon'ble High Court at Calcutta Represented
by Registrar General
Vs.
Pratik Bhattacharya**

Mr. Joydip Kar, Sr. Adv,
Mr. Kallol Basu, Adv.
....For the High Court Administration

Mr. Aniruddha Chatterjee, Sr. Adv.
Ms. Gargi Goswami, Adv.
Mr. Sourav Gucchait, Adv.
...For the Respondent

1. This intra-court appeal filed by the High Court Administration is directed against the order dated 7th March, 2025 passed in WPA 4644 of 2025.
2. The respondent-writ petitioner, a practicing advocate, presently acting as an Assistant Public Prosecutor in Sealdah Court has filed the writ petition praying for issuance of mandamus by specifically directing the appellant to forthwith award two marks each to the question nos.18 to 24 so as to enable the writ petitioner to sit for the phase-2 main examination, which is scheduled to be held on 11th March, 2025. An alternate prayer was sought for to re-evaluate the answers after deleting the wrong answer and out of syllabus questions. In the writ petition the learned Single Bench did not call for affidavit but directed the

appellant/High Court Administration to furnish written instruction, which was placed on record. The issue raised before the learned writ Court was concerned to one question, namely, question no.25. The said question reads as follows.

“25. What is the amount of compensation payable on the death of any person arising out of use of a motor vehicle on the principle of “no fault”?

(A) Twenty five thousand rupees;

(B) Fifty thousand rupees;

(C) Seventy five thousand rupees;

(D) None of the above”

3. As could be seen the above question is a multiple-choice question to be answered by the candidate in the manner and mode adopted for answering the multiple-choice question by choosing the closest option to the question. Learned Single Bench proceeded to examine the question and four options given and opined that because the administration had initially published a draft key answer mentioning the correct answer to be Option B but subsequently altered it to option D, therefore, the selection committee was also not sure about the answer when the examination took place and proceeded to grant benefit of doubt to the respondent/ writ petitioner even though the correct option is D “None of the above” was there. The admit card shows that the

main examination which is scheduled to be held on 11th March, 2025 has been uploaded subject to the result of this appeal. In other words, the direction issued by the learned Single Bench to award two marks has been complied with and apart from the writ petitioner certain others also would be entitled to sit for the main examination. Learned advocate appearing for the appellant/High Court Administration has produced corrigendum dated 10th March, 2025 in which the names of 18 candidates, who have been shown to be qualified to sit for the written competitive test Phase-2, has been mentioned and the respondent/writ petitioner's name is in serial no.17. Thus, technically speaking, the respondent-writ petitioner cannot be stated to have any grievance since the order and direction issued by the learned Single Bench has been implemented, however, which is subject to the outcome of this appeal. As per the notification dated 30th August, 2024 the marks obtained in the preliminary test would not be carried forward in the written second phase. Furthermore, the notification under the heading 'Plan of Examination' states that the preliminary test will be conducted through OMR sheets in duplicate. The answer key of the preliminary test will be published after the test, for inviting objections from the candidates, if any, within seven days from the date of

such publication of the answer-key. Any objection filed beyond the stipulated time shall not be entertained. This 'Plan of Examination' is with a view to give the candidates an opportunity to place their objection, if any, against the tentative key answer and this principle has been mentioned after various decision of the Hon'ble Supreme Court to ensure transparency in the matter. Therefore, we do not agree with the finding of the learned Single Bench to the extent that the learned Single Bench, in fact, made certain observations about Selection Committee. It may be true that certain options in the tentative key answer may be incorrect and upon perusal of the objection of the candidate the error could have been rectified. That by itself cannot be a reason to comment upon the caliber and manner in which the Selection Committee has proceeded with the matter. If that is the conclusion arrived at then the question of granting benefit of doubt to the petitioner would not arise, more particularly, in the light of the finding recorded by the learned Single Bench in the unnumbered third paragraph in page 7 of the impugned order to the effect that "even though the correct answer that is option "D"- "None of the above" was there.

3. Be that as it may, the Court has to examine the jurisdiction and the scope of interference in the said

matter under Article 226 of the Constitution of India. The earliest of the decisions was in the case of ***Kanpur University, Through Vice-Chancellor & Ors. vs. Samir Gupta & Ors.*** reported in **(1983) 4 SCC 309**. The facts and circumstances in the said case was in respect of Combined Pre-Medical Test which fell under the provisions of UP State Universities Act, 1973. The questions which were put up to challenge were also multiple choice question and the Hon'ble Supreme Court while considering the issue held that the key answer should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by inferential process of reasoning or by a process of rationalisation. It was further held that it must be clearly demonstrated to be wrong that is, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. The decision in ***Kanpur University*** (supra) was considered by the Hon'ble Supreme Court in ***Ran Vijay Singh & Ors. vs. State of UP & Ors.***, reported in **(2018) 2 SCC 357 (AIR 2018 SC 52)**. In the said case the learned Single Bench of the High Court observed that the job of the selection member could not have been completed by mere holding a selection without caring whether examination is being conducted correctly and properly, whether all

the questions have been framed in a proper manner, whether the answer(s), if it is multiple choice examination, have been given with due care and caution so as to leave no scope of error or mistake therein. The order passed by the learned Single Bench was challenged in appeal before the Division Bench which was dismissed and which order was put to challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court referred to the decision in the case of ***Himachal Pradesh Public Service Commission vs. Mukesh Thakur*** reported in **(2010) 6 SCC 759** wherein it was held that 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 merits of the candidates. It was further held that if there is discrepancy in framing question or evaluation of answer, it could be for all the candidates appearing for the examination and not for respondent no.1 therein only. After reference to the decision in ***Secy., W.B. Council of Higher Secondary Education vs. Ayan Das*** reported in **2007 (8) SCC 242**, it was reiterated that there must be a finality attached to the result of the public examination and in the absence of statutory provision re-evaluation of answer scripts cannot be

permitted and that it could be done only in exceptional cases and as a rarity.

4. After, referring to various decisions the legal principle/conclusion arrived at in those decisions were culled out in the paragraph 30, which reads as follows:-

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it demonstrates very clearly, without any “inferential process of reasoning or by a process of rationalization” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters best left to academics; (iv) the Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

5. As could be seen from the above, contingencies/conclusions have been culled out and the last of which would be relevant, which states in the event of doubt, the benefit should go

to the examination authority rather than to the candidate. Further, the Hon'ble Supreme Court held that "there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates." Further, on facts in the said case it was found at the first instance that "the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible."

6. At this juncture, we note to point out though the present examination is to the post of District Judge, nonetheless the legal principle which has been culled out is the jurisdiction of the court under Article 226 of the Constitution of India and such principle will apply across the board regardless of what is the nature of the examination which is the subject in issue.
7. The Hon'ble Division Bench of the High Court of Madras in ***Master Ganesh. R vs. The State of Tamil Nadu, W.P. No.1301 of 2021*** has taken note of the decision of the Hon'ble Supreme Court and observed that "in exercise of the limited

authority of judicial review available in this jurisdiction, the Court has to yield to the examining authority and not supplant its opinion over that of the examining authority.” Thus, as cautioned by the Hon’ble Supreme Court a circumspect approach has to be adopted in such matters.

8. Further, in **AIR 1984 SC 1543** reported in ***Maharashtra State Board of Secondary and Higher Education and Anr. Vs. Paritosh Bhupesh Kurmarsheth and Ors.*** which is an authority for the proposition that the wisdom of the policy maker in regard to providing for revalidation or denying it, is not within the domain of judicial authority. This general circumspection in exercising power under Article 226 of the Constitution, even in matters where subject-matter of sale within the expertise of the court (such as pertaining to law subjects etc.) was spelt out in ***Mukesh Thakur (supra)***. It is reiterated that what is to be taken note of is that the subject examination was multiple choice question pattern and the examinee is required to select one option which is the closest to the question. The examinee cannot expand or rewrite the question itself in order to impart his ideas or reasoning on the question. The learned advocate

for the respondent/writ petitioner would contend that the syllabus does not specify the year of enactment, it merely says the Motor Vehicles Act. If that is so, then nothing prevents the examining authority from asking a question without specifying the year as the syllabus does not prescribe the year of enactment. Therefore, it will not be permissible for the writ petitioner to interpret the syllabus that too after having sat in the examination.

9. It is further argued on behalf of the respondent/writ petitioner that with the amendment of the Motor Vehicle Act in the year 2019, the principle of 'no fault' liability has been done away with and does not exist after such amendment. Therefore, the Question No.25 seeking answer for amount of compensation for 'no fault' liability is on the face of it appears to be incorrect.

10. In order to examine the aforesaid issue it would be apposite to reproduce section 140 sub-section (3) (as it stood prior to amendment 2019) and section 164 sub-section (2) (post amendment) as hereunder:-

“(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act,

neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.”

“2. In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.”

11. Upon cursory reading of the provision, as above, it manifests that section 164 though not explicitly categorized under ‘no fault’ liability, however, it operates in conjunction with provisions that do establish ‘no fault’ liability. Claims under section 164 can be pursued without establishing the wrongful act or negligence of the Vehicle owners or driver, which is hallmark of principles of ‘no fault’ liability. Thus, the argument advanced on behalf of the respondent-writ petitioner that principles of ‘no fault’ liability has no existence after amendment of the Act in 2019 and therefore, Question No.25 based on ‘no fault’ liability is incorrect, falls short of merit.

12. Therefore, we are of the view that the learned Single Bench erred in issuing the impugned directions coupled with certain observations against the Selection Committee. Accordingly, the order and direction issued by the learned Single Bench requires to be set aside.

13. However, since a Corrigendum dated 10th March, 2025 has been issued and a list of 18 candidates have been found to be qualified to sit for the Written Competitive Test (Phase-II) scheduled to be held on 11th March, 2025, we find that if the same is disrupted it will cause confusion in the minds of the candidates and it will be inequitable to do so at this juncture despite the fact that the information has been published without prejudice to the High Court Administration to canvass the correctness of the order passed in the writ petition in this appeal, namely, MAT/343/2025. Therefore, while interfering with the order passed by the learned Single Bench setting aside the findings, we do not propose to interfere with the final conclusion drawn therein as the Corrigendum dated 10th March, 2025, has been issued and the 18 candidates who are members of the Bar, will be eligible to appear for the Written Competitive Test (Phase-II) to be held on 11th March, 2025 along with the candidates who are Judicial Officers in the West Bengal Judicial Service.

14. With the above observation, the appeal along with the application is allowed and is accordingly, disposed of.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[BIVAS PATTANAYAK, J.]