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

% **Date of order: 11th October, 2022**

\+ W.P.(C) 13513/2022 & CM APPL. 41108/2022

SAGAR SRIVASTAVA ..... Petitioner

Through: Mr. Tatsat Shukla and Mr. Dhiraj Kumar, Advocates

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Advocate for R-1
Mr. Rupesh Kumar and Ms. Pankhuri Shrivastava, Advocates for NTA

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The present petition is being filed by the Petitioner, inter-alia, seeking the quashing of the final answer key for Set R-5 of NEET(UG) Exam 2022, which was uploaded on the website of National Testing Agency (hereinafter referred to as "NTA") through a press release dated 7th September 2022.

2. The Respondents had launched online portal for registration for NEET(UG) Exam 2022 and the Petitioner had registered his name for the same exam. The Respondents uploaded the Admit Card for the NEET(UG) Exam 2022 and the exam was conducted on 17th July 2022.

3. The provisional answer key along with OMR Sheet and Response Sheet was uploaded on the official website of NTA on 31st August 2022 with an option to challenge the answer of questions as uploaded on the website. The Petitioner challenged the provisional answer key vide his payment ID CPABZYUGY3 dated 1st September 2022.

4. Aggrieved by the non-consideration to his challenge, the Petitioner has approached this Court by way of the present writ petition.

5. Learned counsel appearing on behalf of the Petitioner has made a vehement plea that the Respondents have failed to appreciate that the petitioner herein, being a laborious and hard-working student appeared in the exam of NEET(UG) 2022 to become a Doctor and for this he has relied on the contents of the NCERT book of Biology, which even as per Respondents, is the guiding base for preparing for NEET (UG) Exams.

6. He further submitted that the Petitioner has approached the NTA for clarification by challenging the provisional answer key as uploaded on the official website of NTA. However, the Respondents have failed to consider his challenge submitted online for the three disputed questions (Q.114, Q.172 and Q.177) of the relevant question paper set.

7. It is submitted that after going through the contents of the book of Biology of Class 11th and 12th of NCERT, it is apparent that question/answer keys were incorrect.

8. Learned Counsel for strengthening his arguments has relied on a judgment of the Hon'ble Supreme Court in ***Guru Nanak Dev University v. Saumil Garg,*** **Civil Appeal No. 5276 of 2005** decided on 24th August 2005, wherein it was held that:

> *"11. What is paramount is the interest of the student community. Merit should not be a casualty. We feel that the interest of the students would be adequately safeguarded if we direct the Appellant University to evaluate the answers of the foresaid eight questions with reference to the key answers provided by CBSE and the university of Delhi, which are the same and not with reference to the key answers provided by the Appellant University."*

9. *Lastly*, it is submitted that in the above-said discussion on facts as well as law, the present writ petition may be allowed and inter alia, the answer key so uploaded by NTA be quashed and set aside.

10. *Per Contra*, learned counsel appearing on behalf of the Respondent No. 2, NTA submitted that the combined results of the examinations conducted on 17th July 2022 and 4th September 2022 were declared on 7th September 2022 on the official website of NTA, through a Press Release. To make the examination system transparent, NTA has evolved the scheme of displaying the Question Paper and Recorded Responses for the examinees for verification.

11. Further it is submitted that an opportunity was provided to the candidates to challenge the answer keys formulated by the NTA. The challenges/objections received are then again placed before the respective Subject Experts. The objections so received are considered and examined exhaustively by the Subject Experts of NTA. If the Subject Experts on examining the objections finds merit in it, then on their advice 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.

12. Further, it is submitted that the final answer keys are decided by the experts, after the challenges received from the candidates are settled by the respective Subject Experts. The Result is then declared on the basis of the final/revised answer key recommended by the respective subject experts only.

13. It is submitted that similar process was followed in the present case, NTA displayed the provisional answer keys, OMR answer sheets and recorded responses to the candidates during the period 31st August 2022 to 2nd September 2022. Public Notice to the same effect was also issued for information of the Candidates on the Portal (neet.nta.nic.in).

14. It is further submitted that during the window period, the Petitioner/candidate filed objections to Q. Nos. 114, 172 and 177 of "R5", and all the objections, including the one preferred by the Petitioner were placed before the Subject Experts. Upon examining the objection to Q. Nos. 114, 172 and 177 of R5, the Subject Expert(s) did not find any merit in the challenges preferred by the candidates and accordingly, rejected the challenges and retained the provisional answer key. Accordingly, on the basis of the opinion of the expert[s], the answer key(s) was finalized, and the result was declared.

15. He further submits that the format of the *Multiple Choice Question Paper Exam* as in the present case is such that, four options will be provided to a question and only one is considered to be the most appropriate/correct answer. It is submitted that the purpose of posing question with multiple options is to test the knowledge, clarity,

intelligence and capability of the candidates to think out of the box and complete the exam within a particular frame of time.

16. Learned counsel has relied on ***H.P. Public Service Commission v. Mukesh Thakur,*** **(2010) 6 SCC 759,** wherein the Hon'ble Supreme Court inter-alia, held that it was not permissible for the High Court to examine the question paper and the answer sheet itself particularly when the examining body has assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it was for all the candidates appearing in the examination and not for the Respondent/candidate alone.

17. Further, the learned counsel has relied on ***Ranvijay Singh v. State of U.P,*** **(2018) 2 SCC 357,** wherein the Hon'ble Supreme Court summarized the law on the subject and held that:

> *"the court should not at all reevaluate or scrutinize the answer key. It has no expertise and academic matters are best left to academicians. Court should presume the correctness of the Answer Key and proceed on that assumption. In the event of doubt, the benefit of doubt should go to the examination authority, rather than the candidate."*

18. Learned counsel has lastly relied on a recent judgment by a co-ordinate bench of this Hon'ble Court, in the case of ***Freya Kothari v. Union of India & Ors.,*** **W.P.(C) 13668 of 2022** decided on 22nd September 2022, wherein challenge to answer key issued by the NTA impugned herein including challenge to Q. No. 114 and Q. 172 impugned herein was dismissed with the following observations:

> *"36. This Court does not find that the answers provided in the answer key for the question Nos.*

63, 127, 133 and 164 are such demonstrably wrong and incorrect to fall within the parameters set by the Hon'ble Apex Court warranting judicial interference.

37. The law as settled by the Hon'ble Apex Court as well as this Hon'ble Court does not permit this Court to doubt the wisdom of the experts. This Court does not feel the issues raised to be within the scope of judicial review.

38. In view of the above, this Court finds no merit in the writ petition. The same, along with all the pending applications, is hereby dismissed"

19. Heard learned counsel for the parties and perused the record. I have given thoughtful consideration to the submissions made by the parties.

20. The issue as to the extent and power of the Courts to interfere in matters of academic nature has been the subject matter of a number of judicial decisions and is no longer *res integra* as it has already been settled by the Hon'ble Supreme Court as well as by this Court.

21. In ***Kanpur University, through Vice Chancellor and Others vs. Samir Gupta and Others, (*1983) 4 SCC 309** , the Hon'ble Supreme Court while dealing with a case relating to the Combined Pre Medical Test held as follows:

"16……..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 rationalization. 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……"

22. In ***Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others*, (2018) 2 SCC 357),** the Hon'ble Supreme Court after referring to a catena of judicial pronouncements summarized the legal position in the following terms:-

> *"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:*
> *30.1. 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;*
> *30.2. 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 is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;*
> *30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left*
> *30.4. The court should presume the correctness of the key answers and proceed on that assumption; and 30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."*
> *"31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process*

does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, 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. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; 8 whether their result will be approved or disapproved by the court; whether they will get

> *admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."*

23. Therefore, a strong burden is placed on the candidates to not only demonstrate that the key answer is incorrect but also that there is a glaring mistake which is totally apparent on the face which requires no inferential process or reasoning to show that the key answer is wrong. At the cost of re-iteration, it can be said that the law is *black and white* qua the present subject-matter that the Constitutional Courts must exercise great restraint and should be reluctant to entertain a plea challenging the correctness of the key answers.

24. In the present case, the Respondents have followed an elaborative process to consider the objections so raised by the candidates. All the objections have been duly considered by the Subject Experts and it is only after that the final answer key has been finalized. This Hon'ble court cannot sit as an appellate authority over the wisdom and expertise of the experts. Courts cannot be expected to usurp the powers 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.

25. In the instant case, all the 3 questions impugned here require an elaborative process of argumentation and reasoning. This is clear from

the submission of the Petitioner in the writ petition which has been reproduced below:

"QUESTION PAPER SL NO 7000242(AOLBH)
SET R-5
OF NEET(UG) EXAM HELD ON 17 JUL 2022

Question 114: *Read the following statements about the vascular bundles:*

(a) In roots, xylem and phloem in a vascular bundle are arranged in an alternate manner along the different radii.
(b) Conjoint closed vascular bundles do not possess cambium.
(c) In open vascular bundles, cambium is present in between xylem and phloem.
(d) The vascular bundles of dicotyledonous stem possess endarchprotoxylem.
(e) In monocotyledonous root, usually there are more than six xylem bundles present.

Choose the correct answer from the options given below:

(1) (a),(c),(d) and (e) only
(2) (a),(b) and (d) only
(3) (b),(c),(d) and (e) only
(4) (a),(b),(c) and (d) only
Answer as per NTA:- (3) (b),(c),(d) and (e) only

Answer as per Petitioner: (l){Due to unavailability of correct option, petitioner chose option (1). The answer of NTA is also incorrect. Hence, it is a wrong question. Marks for this wrong question as a bonus should be given to the petitioner.}
Justification: *Statement (b), (c), (d), (e) are correct statement but statement (a) is also correct*

as per NCERT Biology textbook class 11th page 90 section 6.2.3. So, statement (a), (b), (c), (d) and (e) all are correct statement and no options are available for correctness of statement (a), (b), (c), (d) & (e). So, there is no correct option in the question. Hence marks should be given to the petitioner for this question.
Reference: *Para 6.2.3 on page 90 of Chapter 06 of Biology of Class (NECRT Book) attached as Annexure P-10*

Question 172: *Given below are two statement:*
Statement I:
The release of sperms into the seminiferous tubules is called spermiation.

Statement II:
Spermiogenesis is the process of formation of sperms from spermatogonia.
In the light of the above statements, choose the most appropriate answer from the options given below:
(1) Statement I is incorrect but statement II is correct.
(2) Both Statement I and Statement II are correct
(3) Both Statement I and Statement II are incorrect.
(4) Statement I is correct but Statement II is incorrect.
Answer as per NTA:- *(4) Statement I is correct but statement II is incorrect*
Answer as per Petitioner: *(3) Both statement I and Statement II are incorrect.*
Justification: *Both the statement I and statement II are incorrect as per text in NCERT class 12th Biology textbook on page number 47 section 3.3.The text from*

NCERT mentions the word "from' for the release of sperm and the statement I in the question mentions the word "into" instead of "from" given in NCERT for
the same process. The meaning of the two word from and into is entirely different and the two words are certainly not synonyms. Any student who has read NCERT textbook and has been expected to read NCERT textbook for NEET is highly likely to consider the statement I given in the question as incorrect hence the answer should be option (3) and not option (4) as given in the official answer key released by NTA. Hence, marks should be given for this question to the petitioner.

Reference: *Para 3.3 on page no 47 of Chapter 3 of Biology for class 12^ (NECRT Book) attached as Annexure P-11.*

Question 177: *Which of the following statements are true for spermatogenesis but do not hold true for Oogenesis?*

(a) It is result in the formation of haploid gametes.
(b) Differentiation of gamete occurs after the completion of meiosis.
(c) Meiosis occurs continuously in a mitotically dividing stem cell population.
(d) It is controlled by the Luteinisinghormone(LH) and Follicle Stimulating Hormone (FSH) secreted by the anterior pituitary.
(e) It is initiated at puberty.

Choose the most appropriate answer from the options given below:
(1) (b),(c) and (e) only
(2) (c) and (e) only
(3) (b) and (c) only

(4) (b),(d) and (e) only
Answer as per NTA:- *(1) (b),(c) and (e) only*
Answer as per Petitioner*: (3) (b),(c) only {Due to unavailability of correct option petitioner chose option (3). The answer of NTA is also incorrect. Hence, it is a wrong question. Marks for this wrong question as a bonus should be given to the petitioner.}*

Justification: *There is error with the language given in the statement (c) in the question. The use of word "**continuously**" in the said statement gives a different meaning to the concept as mentioned in the NCERT class 12th Biology textbook page number 47 section 3.3. "Some of the spermatogonia called primary spermatocyte periodically undergo meiosis." The text from NCERT quoted above mentions the word "**periodically**" while the statement (c) in the question given in NEET question paper mentions the word "**continuously**" instead of "**periodically**" given in NCERT for the same process. The meaning of the two*
*word **periodically** and **continuously** is entirely different and the two words are certainly not synonyms any student who has read NCERT textbook and has been expected to read NCERT textbook for NEET is highly likely to consider the statement (c) given in the question as incorrect. The answer of NTA is also incorrect. Hence, it is a wrong question. Marks for this wrong question as a bonus should be given to the petitioner.*

Reference: *Para 3.3 on page no 47 of Chapter 3 of Biology for class 12'^^ (NECRT Book) attached as **Annexure P-11 .”***

26. It is pertinent to refer to a recent decision by a co-ordinate bench of this Court in ***Freya Kothari v. Union of India,*** **W.P. (C) 13668/2022**, an identical challenge was made to the answer key issued by Respondent No. 2 and answer to Q. 114 and Q.172 which has been assailed in this instant writ petition were rejected. The relevant portion of the judgment is reproduced below:

> *33. It is obvious from the perusal of the extract of the NCERT textbook relied upon by the petitioner that the answers are debatable and therefore, it is beyond the scope of judicial review.*
> *34. As held by the Hon'ble Division Bench of this Court in the case of Kishore Kumar vs. High Court of Delhi (supra), the interference, in such cases, is restricted only in cases where arbitrariness is ex-facie demonstrable*
> *35. The Hon'ble Division Bench of this Court in a recent judgment dated 05.08.2022 in the case of National Board of Examination vs. Association of MD Physicians: LPA 225/2021, in similar circumstances where the alleged incorrect questions were challenged in relation to the screening test, conducted in exercise of power under Section 33 of Indian Medical Council Act, held as under:*
>
> *"17. The foregoing cases cement the finding that Judges are not and cannot be experts in all fields, and the opinion of experts cannot be supplanted by a Court overstepping its jurisdiction. It needs to be demonstrated by a candidate that the key answers are patently wrong on the face of it, and if there is any exercise conducted by the Court wherein the pros and cons of the arguments given by both sides need to be taken into consideration, that will inevitably amount to unwarranted interference on*

the part of the Court. When there are conflicting views, it is incumbent upon the Court to bow down to the opinion of the experts which, in this case, was the Expert Committee constituted by the NBE.

18. The submissions made by the learned Senior Counsel hold weight inasmuch as the Court cannot step into the shoes of the examiner and render an opinion contrary to that of the Expert Committee. If the error in the question is manifest and palpable, and does not require any elaborate argument, then the Writ court may choose to intervene. However, where the errors do not show their heads without a detailed and elaborate probe into the opinions of experts, the Court must stay its hands. It would not be prudent for a Court to conduct itself like an expert in a subject alien to it when an entire body of experts has arrived at a contradictory stand. It is also not for the Courts to interfere in such matters, except in absolutely rare and exceptional cases, especially in view of the fact that the instant examination pertains to the practice of medicine – a field that requires the exercise of utmost care and caution."

36. This Court does not find that the answers provided in the answer key for the question Nos. 63, 127, 133 and 164 are such demonstrably wrong and incorrect to fall within the parameters set by the Hon'ble Apex Court warranting judicial interference.

37. The law as settled by the Hon'ble Apex Court as well as this Hon'ble Court does not permit this Court to doubt the wisdom of the experts. This Court does not feel the issues raised to be within the scope of judicial review.

38. In view of the above, this Court finds no merit in the writ petition. The same, along with all the pending applications, is hereby dismissed.

27. In view of the above-said discussion on facts and law, I do not find any merit in the instant writ petition and accordingly, it is dismissed.

28. Pending applications, if any, also stands dismissed.

29. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 11, 2022
Dy/mg