

(1983) 12 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No"s. 4116 to 4119 of 1983

Abhijit Sen and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-1983

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 28

Citation : AIR 1984 SC 1402 : (1983) 2 SCALE 912 : (1984) 2 SCC 319 : (1984) 1 SCR 983 : (1984) 16 UJ 218

Hon'ble Judges : V. D. Tulzapurkar, J;Sabyasachi Mukherjee, J

Bench : Division Bench

Advocate : R.K. Garg and A.K. Gupta, for the Appellant; Shobha Dikshit, for the Respondent

Final Decision : Allowed

Judgement

V.D. Tulzapurkar, J.—Civil Appeal Nos. 4092-4114/83 (Kanpur University and Ors. v. Samir Gupta and Ors.) and Civil Appeal Nos. 4068-4091/83 (Kanpur University and Others Vs. Samir Gupta and Others, were disposed of by this Court by its Judgment dated September 27, 1983. The instant appeals by four failed students though connected with the aforesaid appeals and arising out of a common judgment of the Allahabad High Court dated 24-2-1982 could not, for some reasons, be disposed of along with the aforesaid appeals and have been assigned to this Bench. The defects, that emerged on record in implementing and carrying out the 'Multiple Choice Objective Type Test' while holding a 'Combined Pre-Medical Test' which was done pursuant to the orders issued by the State Government in that behalf u/s 28 of the U.P. State Universities Act, 1973 by the Kanpur University in 1982 for giving admission to the 7-Medical Colleges in the State of Uttar Pradesh for the 1983 session, have been pointed out, elaborately discussed and commented upon by this Court in its judgment dated September 27, 1983 and therefore it is unnecessary for us to dilate on those aspects of the matter again while disposing of the instant appeals. Suffice it to say that this

Court has expressed therein a clear and categorical view that if the 'key-answer' (i.e. the answer which the paper-setter has supplied to the University as the correct answer and which has been fed into the Computer) is shown to be demonstrably wrong that is to say, such as no reasonable body of men well versed in the particular subject would regard it as correct and if the answer given by a student is correct if regard be had to acknowledged text-books or books which the student was expected to read and consult before appearing for the test it would be unfair to penalise the student for not giving an answer which accords with the 'key-answer' that is to say with an answer which is demonstrated to be wrong. The contentions raised in the instant appeals will have to be considered within these parameters indicated in the judgment.

2. At the outset it may be stated that Civil Appeal No. 4116/83 (filed by Appellant Abhijit Sen) and Civil Appeal No. 4118/83 (filed by Appellant Satyendra Vikram Singh) were not pressed before us and have to be dismissed. Kumari Shivani Aggarwal and Kumari Sunita Khare (the appellants in Civil Appeal No. 4117 and 4119 of 1983) have challenged the University's decision which decision has been upheld by the Allahabad High Court) of refusing them admission to the M.B.B S. course in any of the seven Medical Colleges. Learned Counsel appearing for them contended that the 'key-answer' supplied by the Paper setter to question No. 31 in Zoology Paper (being Alternative No. 2) was wrong or incorrect and the answer given by both the appellants (by ticking Alternative No. 4) was the correct answer according to recognised text-books and therefore each one of these appellants was entitled to an addition of 4-marks (three marks for giving correct answer plus 1 mark which had been wrongly deducted by treating their answers as wrong) and if such addition of 4-marks was made each one was entitled to get admission. In the case of Kumari Sunita Khare (appellant in Civil Appeal No. 4119/83) her Counsel raised a further similar contention with regard to Question No. 100 in Zoology-paper as according to him the 'key-answer' supplied by the papers setter (being Alternative No. 3) was clearly wrong or incorrect while the answer given by that appellant (by ticking Alternative No. 4) was the correct answer according to recognized text-books and therefore so far as she was concerned even if her contention with regard to Question No. 31 was not accepted she was entitled to addition of four marks (3 for giving correct answer plus 1 mark which was wrongly deducted by treating her answer as incorrect) in regard to Question No. 100 and even on this basis she would be entitled to get admission. Counsel for the respondents did not dispute before us that if the two appellants or either of them is found entitled to an addition of four marks as suggested on their behalf they will have to be given admission to M.B.B.S. course but counsel disputed the validity of the contention urged on behalf of the appellants that 'key-answer' supplied by the paper-setter to either Question No. 31 or Question No. 100 in Zoology-paper was wrong or that the answers furnished by the appellants were correct. Counsel urged that since the court was embarking upon a course of finding out and determining the correct answer having regard to the recognised text-books or authoritative books on the

subject it would be immaterial whether the 'key-answer' supplied by the paper setter was found to be wrong, not being in conformity with the correct answer determined by the Court, but the appellants would not be entitled to addition of four marks unless their answers were in conformity with the correct answers found by the court. In other words according to counsel for the respondents if a situation was reached where both the answers, namely, the one given by the appellants as well as the 'key-answer' supplied by the paper-setter, were found to be wrong with reference to the correct answer as determined by the Court the appellants should not succeed. We think there is considerable force in this last admission made by the Counsel for the respondents.

3. Question No. 31 the Zoology-paper together with the suggested answers reads thus:

31. In the vertebrates Oxygen is transported by the blood as follows:

- (1) Absorbed (typographically wrongly typed as Absorbed) to the surface of R.B.C.
- (2) Combined with Hemoglobin to form a complex,
- (3) Dissolved in plasma,
- (4) In all the above ways.

It may be stated that in Alternative No. 1 above the first word typed is 'Absorbed' (meaning 'to take in') which is obviously a typographical, or printing mistake for the word "Absorbed" (meaning 'get attached' or 'collect on') for, grammatically the word 'Absorbed' would be followed by 'in' and not 'to'. This would also be clear from the word 'the surface' which follow in as much as there cannot be any absorbing to the surface. The correct word is 'Absorbed' meaning get attached to the surface or get collected on the surface. It is therefore, clear that the first alternative read correctly would run thus : "Absorbed to the surface of R.B.C." Now the key-answer' supplied by the paper-setter was Alternative No. 2 whereas both the appellants had ticked Alternative No. 4 as the correct answer. Both sides, for the purpose of claiming that each one's answer is the correct answer, have relied upon the following passage appearing at page 547 of the text-book 'Medical Physiology' by Arthur C. Guyton, M D. of international repute under the heading 'Transport of Oxygen in the Blood' ;

Normally, about 97 per cent of the oxygen transported from the lungs to the tissues is carried in chemical combination with hemoglobin in the red blood, cells, and the remaining 3 per cent is carried in the dissolved state in the water of the plasma and cells.

In our view on a careful reading of the a for said passage, oh which the both sides have relied, both the 'key-answer' supplied by the paper-setter as well as the answer given by the two appellants will have to be regarded as wrong. The aforesaid passage clearly shows that in vertebrates Oxygen is transported by the

blood in ways as given by two alternatives namely, Alternative No. 2 and 3, 97 percent by Alternative No. 2 and the remaining 3 per cent by Alternative No. 3 and there is no reference whatsoever to Alternative No. 1 as being one of the ways in which such transport takes place. Counsel for the respondents urged that since 97 per cent of Oxygen was transported in chemical combination with Hemoglobin in the red-blood cells that was pre-dominant way in which the transport takes place and therefore the 'key-answer' which referred to Alternative No. 2 would be the correct answer. It is not possible to accept this contention for the reason that in the question set it was not asked as to what was the pre-dominant way in which Oxygen is transported by the blood and therefore Alternative No. 2 cannot be said to be the correct answer. In our view both the Alternatives together (Alternative No. 2 and 3) would be the correct answer. Further, since Alternative No. 1 has nowhere been mentioned in the passage quoted above as being one of the ways in which transport of Oxygen takes place the appellants by ticking Alternative No. 4 which suggested that such transport takes place in all the three ways mentioned earlier which included Alternative No. 1 would also be clearly wrong. Counsel for the appellants relied upon the words 'and cells' in the last portion of the passage ("the remaining 3 per cent is carried in the dissolved state-in the water of the plasma and cells") for contending that the Alternative No. 1 was also one of the ways in which such transport takes place. It is not possible to accept this contention for the simple reason that the last portion of the passage on which reliance has been placed speaks of 3 per cent being carrying in the dissolved state in the water of the plasma and cells while the Alternative No. 1 speaks of transport by being absorbed i.e. by getting attached to the surface of the R.B.C. Obviously, therefore, the inclusion within their answer by the appellants of Alternative No. 1 as being one of the ways in which such transport takes place was clearly wrong. In this view of the matter we do not think that either of the appellants is entitled to an addition of four marks as suggested by counsel on their behalf by reason of their answer given to Question No. 31.

4. Turning to Question No. 100 in Zoology-paper (with which only the appellant Kumari Sunita Khare is concerned) that question reads :

100. A scout bee finding a food source communicates to the other worker bees the location of the food source-

- (1) Can not communicate the direction of food source ? .
- (2) Can communicate the direction of food source through its round dance ?
- (3) Can communicate the direction of food source through its tail wagging dance ?
- (4) Can communicate the direction of food source through its round dance as well as tail wagging dance ?

The 'key-answer' supplied by the paper-setter was Alternative No. 3 while

according to the Appellant Alternative No. 4 was the correct answer. In Biological Science' by William H. Gregory and Edward H. Goldman while dealing with the 'bee language' on page 391 the following passage occurs-

... A peculiar 'bee dance' is performed by returning scouts. If the food is close, a round dance is performed. If the food is farther than 100 yards, a special tail wagging dance is staged. The direction of the food is also indicated.

In the book 'Special Organization' on Honey-bees by Dr. V. Frieser at page 42 the author has, while dealing with the. 'dance language', given further refinement thus :

when the forage is located within 28 meters of the colony, on its return home, the successful forager performs a 'tail wagging dance.

when the forage is located 100 meters or more away from nest a successful forager performs a 'tail wagging dance.

From the above passages of the learned Authors one thing is very clear that the range plays a very important part in deciding whether the scout bee or the successful forager on return home would perform a round dance and according to Gregory and Goldman if the food is close-by a round dance is performed and if the food is further than 100 days a tail-wagging dance is performed whereas according to the refinement given by Dr. Frieser if the food is located within 28 metres a round dance would be performed but if it is located at the distance of 100 meters or more tail-wagging dance is performed. Now the question set by the paper-setter makes no reference whatsoever to any range with reference to which the candidate is called upon to give his answer to the question and in the absence of any reference to the range according to the aforesaid passages Alternative No. 4 would be the correct answer and not Alternative No. 3 which had been supplied as 'key-answer' by the paper-setter. In our view it is a case of tricky question being set by the paper setter where one the essential aspects namely, the range has not been indicated anywhere in the question. Placed in that situation the appellant Kumari Sunita Khare was right when she ticked Alternative No. 4 as being the correct answer to the question set.

5. In view of what is stated above only one appeal namely, Civil Appeal No. 4119/83 of Km, Sunita Khare deserves to be allowed. We allow it accordingly with cost and direct the respondents to give her admission to the M.B.B.S. course in the 1983 session. The other three appeals are dismissed but there will be no orders as to costs.