

(2018) 06 MP CK 0108

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12595, 12441, 12400, 12405, 12298, 12524, 12719, 12303 Of 2018

Abhishek Bharthare

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 06 MP CK 0108

Hon'ble Judges : VIVEK RUSIA, J

Bench : Single Bench

Advocate : Ishita Agrawal, Ayush Pande, Gagan Bajad, Akash Sharma, V.P.Khare

Final Decision : Dismissed

Judgement

SET-

A", "SET-

B", "SET-

C", "SET-

D", "MODEL

ANSWER", "AMENDED

ANSWER KEY

SET-A, SET-B, SET-C, "SET-

D", "MODEL

ANSWER", "AMENDED

ANSWER KEY

19, 47, 74, 1, A, D

21,49,76,3,B,C

23,51,78,5,C,A

24,52,79,6,D,A

25,53,80,7,B,C

26,54,81,8,C,A

27,55,82,9,B,A

45,73,100,27,B,A

80,8,35,62,B,C

81,9,36,63,A,D

As stated above none of the petitioners have produced any material in their writ petition in respect to challenge of deletion of 5 questions.,,,,,

Learned Counsel for the petitioner tried to impress this Court in respect of answer to some questions out of 5 but no such documentary material has.,,,,,

been produced before the Court.,,,,,

The Full Bench of this Court in case of Nitin Pathak vs. State of M.P. & others reported in 2017(4) M.P.L.J. 353 held that while exercising the power.,,,,,

of judicial review this Court is not to take up itself the revaluation of model answer key either itself or through Court appointed expert. The Full Bench.,,,,,

has considered all the judgments given by the Apex Court while answering the question referred to the Full Bench.,,,,,

Para 26,27,28,29,30,31 and 32 are reproduced below:-",,,,,

26. Therefore, while exercising the power of judicial review, this Court is not to take upon itself the revaluation of Model Answer Key either itself or",,,,,

through Court appointed Expert, who is none else but a delegate of the Court. The Court in exercise of power of judicial review,if sufficient material",,,,,

exists to return a finding that Model Answer Key is palpably incorrect that no reasonable person would find the same to be acceptable, than the Court",,,,,

could direct the examining body to re-examine the answer key but cannot take over the function of the Commission in finalizing the answer key itself.,,,,,

27. The Honâ??ble Supreme Court in a judgment reported as Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683 that in the name of judicial",,,,,

activism judges cannot cross their limits and try to take over functions which belong to another organ of the State. The Court held as under:-",,,,,

17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to,,,,,

make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative,,,,,

functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions,,,,,

which belong to another organ of the State.,,,,,

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd.* ,,,,,

v. Workmen (2007) 1 SCC 408; and *S.C. Chandra v. State of Jharkhand* (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).",,,,,

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for",,,,,

any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and",,,,,

there will be a reaction.,,,,,

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There",,,,,

is broad separation of powers under the Constitution and each organ of the Stateâ?"the legislature, the executive and the judiciaryâ?"must have",,,,,

respect for the other and must not encroach into each otherâ?"s domains.,,,,,

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in,,,,,

India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:,,,,,

â?"When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because",,,,,

apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.",,,,,

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty",,,,,

of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might",,,,,

behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the",,,,,

people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.â??",,,,,

(Emphasis supplied),,,,,

We fully agree with the view expressed above. Montesquieuâ??s warning in the passage abovequoted is particularly apt and timely for the Indian,,,,,

judiciary today, since very often it is rightly criticised for â??overreachâ?? and encroachment into the domain of the other two organs.â??",,,,,

28. The scope of interference in academic matters has been examined by the Supreme Court in many cases. In Basavaiah (Dr.) v. Dr H.L. Ramesh,",,,,

(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640, the Court held as under:-",,,,

â??38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very",,,,,

limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent,",,,,

wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an",,,,,

endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.,,,,,

29. Supreme Court in another judgment reported as University Grants Commission v. Neha Anil Bobde, (2013) 10 SCC 519, held that in academic",,,,,

matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since",,,,,

those issues fall within the do-main of the experts the Court. The Court held as under:,,,,,

â??31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued,",,,,

the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao,,,,,

AIR 1965 SC 491; Tariq Islam v. Aligarh Muslim University (2001) 8 SCC 546 a;nd, Rajbir Singh Dalal v. Chaudhary Devi Lal Uni-versity (2008) 9",,,,,

SCC 284, has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is",,,,,

wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally",,,,,

are. UGC as an expert body has been entrusted with the duty to take steps as it

may think fit for the determination and maintenance of standards of,,,,,
teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria",,,,,,
which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates",,,,,,
declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a,,,,,
teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges.,,,,,,
UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or",,,,,,
discriminatory or violative of Article 14 of the Constitution of India.â??,,,,,,

30. Thus, we are of the opinion that the judgment of this Court in Chan-chal Modi's case (supra) does not lay down correct law.",,,,,,

31. In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to court appointed",,,,,,

expert as the courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key.,,,,,,

It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.",,,,,,

32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic",,,,,,

matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise",,,,,,

of preventing the abuse of power be itself guilty of usurping power.,,,,,,

Similar issue came up for hearing before the Apex Court in case of UPPSC and ano. vs. Rahul Singh and ano.(Civil Appeal No.5838/2018) vide,,,,,

judgment dt. 14.6.2018 the Apex Court has held that the Constitutional Court must exercise great restraint in such a matter and should be reluctant to,,,,,

entertain the plea challenging the correctness of the key answer.,,,,,,

Para 12 to 14 are reproduced below:-,,,,,

â??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.â??,,,,,,

Shri Akash Sharma, learned Counsel for the petitioner has placed reliance over the judgment passed by the Apex Court in case of Richal & ano vs.",,,,,,

Rajasthan Public Service Commission & ors.reported in 2018(2) SCT 773 in which the Apex Court has directed the Rajasthan Public Service.,,,,,,

Commission to revise the result of all the candidates including the appellants on the basis of report of Expert Committee.,,,,,,

In this case, by way of interim order dt. 16.1.2018 the Apex Court had already directed to constitute a Committee of expert to examine the model",,,,,,

answer and thereafter by way of final order has directed for revision of the result on the basis of report but in the present cases, the MPPSC as per",,,,,,

Clause 5.2 of the advertisement had already constituted an Committee and examined the model answers. None of the petitioners submitted any,,,,,

objection therefore, they are now estopped from challenging the decision of Committee." ,,,,,

In view of the above, no case for interference is made out. All the writ petitions are, accordingly, dismissed." ,,,,,