

(1996) 01 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : 111/1996

Competent Authority Entrance Examination, Jammu and Kashmir Srinagar, through its Chairman, Civil Secretariat, Srinagar.

APPELLANT

Vs

Wasim Ashraf & Ors

RESPONDENT

Date of Decision : 11-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) KashLJ 435

Hon'ble Judges : A.Q.Parray, J and A.M.Mir, J

Bench : Division Bench

Advocate : R.A.Jan, M.Abdul Qayoom, J.A.Kawoosa, G.A.Lone, Advocates appearing for the Parties

Judgement

1. By this common judgment, we propose and proceed to dispose of the bunch of LPAs which are referred to hereinafter and the CMPs filed

alongwith these appeals. These appeals relate to and arise out of entrance examination conducted by the Competent Authority, Entrance

Examinations (in short CAEE) for admission to MBBS/BDS courses for the year 1995.

2. The Information Brochure issued in this behalf by the CAEE makes out that selection for admission to MBBS/BDS courses shall be made on

the basis of competitive entrance examination and will be in the form of multiple choice questions and each multiple choice question shall be

followed by four options, out of which one will be correct/most appropriate and the other three will be only destructors as is envisaged under Rule

12.1.2 read with illustration 2 in the said Information Brochure and for each correct answer in the answer sheet, the candidates has to get one

mark and for incorrect answer, he will not be given any mark, that means that incorrect answer/option will not be valued. The question booklet

which will be provided to the student/candidates will be of four series. viz Series A, Series B, Series C and Series P, only to avoid copying or

unfair means by the candidates as because a person appearing in A series will be surrounded by other series of students namely B,C, and D and

they will not be in a position to communicate with each other or to help each other in such examination, obviously on the ground that though the

question in all the series will be same, but they will be numbered differently in different series. To that aspect, we will come later on while discussing

the questions and the answers which are disputed by the respondents before us.

3. The Information Brochure further provides that the number of questions so put will be seventy. Each question will carry one mark and all

question are compulsory. Each candidate has to appear in three papers/subjects for seeking admission to MBBS/BDS courses. First paper/subject

will be that of Physics, second Chemistry and third paper of biology with 11/2 hours duration in each paper.

4. The other salient features of the Information Brochure which requires mention is that the CAEE does reserve a right to rectify any bona fide

error/lapse/mistake etc. that comes to its notice as per Rule 9.16 of the Information Brochure. So under this method of multiple choice question

papers, each candidate has to mention relevant question of the proposed answers to the questions in this answer sheet and that question is being

evaluated as per the answers settled by the paper settlers in his key and the relevant answer is being fed to the computer and as such, all the

answer sheets are computerised and results evaluated, so far so good.

5. However, when a controversy is being joined by the students/candidates regarding correct answer fed to the computer as per key given by the

paper settlers appointed by the CAEE is found demonstratively wrong and as per prescribed text books on which reliance is being made by the

respondents before us and such controversies are not being entertained by the courts In light of the judgement given by the Apex Court in AIR

1983 1230 and !IR 1984 SC 1402, wherein similar point was agitated by the candidates and their lordships of the Apex Court were of the

opinion that if a paper settler commits an error while indicating the correct

answer to the question set by him, can the student who answers that question correctly be failed for the reason that though their answer is correct, it does not accord with the answer supplied by the paper settler as the key answer to the competent authority holding the examination, and when demonstratively such answer has been found as not correct, meaning thereby that the answer given in the key was not found correct as per text books which are commonly read by the students and that those text books leave no room for doubt that the answers given by the students are correct and the key answer is incorrect. So on that count, apex court held that student is not to be penalised by not giving him marks for the correct answer. So the case falls one under the purview of assessment of marks or we may say that it comes under the evaluation of the left out question on the count being found not correct as per key answer by the competent authority. In case when the answers was found by the competent authority as not correct as per the key, the answer fed to the computer did not mark or not valued for such answer was given by the Computer/competent authority.

6. When we consider and feel that the answer given by the student supported by text books and also by the expert opinion appointed in this behalf by the court in one of the cases, of which reference will be made subsequently, has been found that the answer given by the student was correct and that the answer provided in the key by the paper settlers and fed to the computer was incorrect, the said question has remained without proper valuation of the left out mark and to assess this mark and to evaluate the left out question and to evaluate the question correctly as per demonstration and allegation of the petitioners/respondents before us, will amount to rectification of the wrong which has crept in. It will not be reevaluation as is being projected by learned counsel for the appellants that no reevaluation as per rules is admissible. We do not find that such an exercise amounts to reevaluation but falls within the purview of assessment/evaluation of the left out question and such things are being provided by the very rules as reflected in the Information Brochure as we have referred to hereinabove. So the argument on that count of learned counsel for the appellant stands answered accordingly.

7. Now, in these appeals which have arisen out of number of petitions moved

before different benches of this court, the common allegation put by the petitioners/respondents herein is that three questions in Biology, two questions in Chemistry and about two questions in Physics have been wrongly answered in the key provided by the paper settlers to the competent authority and thereby wrong key has been fed to the computer and the petitioners before Single Benches have suffered due to such wrong key and these questions have not been valued at all for obvious reasons because computer has to mark/ value a question which is replied in accordance with the answer fed to the computer. So it is not the defect in the computer that it has not marked the answer and valued the answer as is required to be done, but it is how feeding has been given to the computer that it has to mark. The machine has not erred. It is the human hand which is alleged to have erred in the matter under controversy.

8. Now in order to appreciate the compass of the questions which are being canvassed that they have been wrongly answered in the key answer

prepared by the competent authority at the behest of paper settler, the answers which have been put to challenge are regarding question No. 15,

48 and 67 of Series A of Biology paper corresponding to question Nos. 29,9 and 22 of Series B, corresponding to question Nos. 63,19 and 10

of Series C and corresponding to question Nos. 44, 60 and 56 of Series D.

Question No 15 of Biology paper of Series A, corresponding to question No. 29 of Series B, corresponding to question No. 63 of Series C and

corresponding to question No.44 of Series D reads:

Xylem is endarch in the

- 1.root of bean
2. root of sun flower
3. root of maize
4. stem of sun flower

Question No. 48 of SeriesA corresponding question No.9 of Series B, corresponding to question No. 19 of Series C and corresponding to

question No. 60 of Series D go biology paper reads:

Which one of the following regulatory functions is associated the secretion of duodenal origin?

1. Stimulates gastrin secretion

2. Stimulates flow of pancreatic enzymes
3. Stimulates flow of pancreatic juices poor in enzymes
4. Stops gastric secretion

Question No. 67 of biology paper of Series A corresponding to question No.22 of Series B, corresponding to question No. 10 of Series C and

corresponding to question No. 56 of series D reads:

Which one of the following phyla is characterised by cylindrical, triploblastic, pseudocoelomate body having distinct mouth and anus?

1. Platy helminthes
2. Nemathelminthes
3. Annelida
4. Echinodermata

Similarly in Chemistry paper, the answer which have been put to challenge are regarding question No. 40 of Series A corresponding to question

No. 36 of Series B, corresponding to question No. 54 of Series C and corresponding to question No.3 of Series D which reads

The order of electron affinity of halogens is

1. $F > Cl > Br > I$,
2. $Cl > Br > F > I$
3. $Cl > F > Br > I$
4. $I > Br > Cl > F$, and question No. 47 of Series A corresponding to question No. 8 of Series B corresponding to question No. 18 of Series C and

corresponding to question No. 59 of Series D of Chemistry paper reads.

Ramsay isolated argon by:

1. fractionation of liquid air;
2. fractionation of liquid oxygen;
3. by passing nitrogen obtained from air over heated magnesium;
4. by passing hot air over the heated metal.

9. Likewise in writ petition No. 281/1996 and No. 339 of 1996 titled Yasfir Bashir Versus State and others and Miss Natasha Din versus State

and others, the answer which has been put to challenge is regarding question No. 50 of Series A corresponding to question No. 10 of Series B,

corresponding to question No. 21 of Series C and corresponding to question No. 61 of Series D of Physics paper which

The energy of a particle of mass m and having an associated wave length λ is (h is Planks constant and c is the speed of light)

1. $\frac{hc}{\lambda}$ 2. $h\lambda$ 3. h 4. $\frac{A}{2}$

$\frac{2m\lambda}{A}$, $\frac{2}{A}$, $\sqrt{2m\lambda}$, $2m\lambda^2$

10. From the records it transpires that after the petitioners and other joined the issue that the answer given by them to the questions and the options

shown by them are correct, whereas same have not been duly marked and evaluated by the competent authority which has resulted in lesser

awards to the petitioners. By different Single Benches in certain cases, directions seem to have been issued to the competent authority to look to

the grievances of the petitioners and find out as to how far the grievances projected by them regarding the key answers and the answer options

given by them (the petitioners) are correct and in case the contentions raised by the petitioners are found correct, they be accordingly given due

weight age/credit of the marks and the mistakes be rectified. But as usual it did not appeal with the competent authority and in one of such cases

which came to be filed in Jammu wing of this court by one Talib Hussain and registered as OWP No. 910 of 1995, one of the candidates

competing for the said examination had put a challenge of like nature and has also identified above three questions in biology and two questions in

chemistry and claimed that he had given correct answer to the questions and his answers are supported by standard text books prescribed by the

NCERT and the J&K State Board of School Education. We are making reference to Talib Hussain's case because this is the basis case in which

court had appointed experts of repute and asked them to look to the grievances of the petitioner and see to the answers given by him and find out

whether answer given by Talib Hussain was correct and if so, to how many marks is he entitled to.

11. Ld. Counsel for the appellants made a forceful argument before us that the experts appointed by the court had not business to recast the

questions as set in the paper and to suggest the appropriate answers.

12. To meet this argument, we would like to refer to the Information Brochure itself issued by the Competent Authority which lays down a

condition that out of four answers, one is correct/most appropriate and the other choices are only destructors. In no way question has been recasted

by the expert. It is a misconceived notion put forth by the counsel for the appellants. For example when we take question No. 15 of Series A of

biology paper which reads:

Which one of the following phyla is characterised by cylindrical, triploblastic, peudocoelemate body having distinct mouth and anus?

13. In the said question word 'peudocoelemate' is not correctly worded and unless words 'with' after 'p' is not added making it 'pseudocoelemate', it

does not carry any meaning. So in case the experts have said like that and corrected the spelling in the question making it intellegible, it cannot be

said that they have recasted the question

Similarly question No. 48 of Series A of biology paper reads:

Which one of the following regulatory functions is associated the secretion of duodenal origin?

Here again the question lacks 'with' between the word 'associated the and unless and until word 'with' is not substituted, the question is not

intelligible. The expert has substituted word 'with' so as to read the question as:

Which one of the following regulatory functions is associated with the secretion of duodenal origin?

Thus by putting the question in correct form and making them intelligible, which otherwise lack these words as added by the experts, it cannot be

said that the experts have recasted the questions. So the contention raised by learned counsel for the appellant are not only misconceived but also

misleading. Thus by adding word 's' in psedocoelemate' to read it as pseudocelrriate and add word with in between associated the, there is no

recasting of the question and is accordingly ruled out against the appellants.

We have heard learned counsel for the parties and perused the files in each case.

14. In order to fully appreciate and understand the scope of grievances of the petitioners/respondents before us, we scanned through the questions,

the key answer and supposedly correct answer indicated by the petitioners in their writ petitions with reference to question booklets of all the

series as also the answers as given in the master key maintained by the competent authority and produced in original before us for our perusal. As

because the question as formulated, numbered and described differently for different series, so we perused and demonstrated all such questions

with reference to the question booklets in which those are contained and disputed.

15. Though we are not experts in the field covered by these petitions, we don't have a working knowledge of the said field either, so option with

us is to go through the books which have been referred and demonstrated before us in support of the answers given by the students/petitioners.

Such an exercise seems to have been undertaken by a coordinate bench of this High Court in the Sessions of 1989 vide judgment dated 23rd April

1991. Some while undertaking similar exercise and also taking help of the expert opinion which has already been furnished to the Jammu wing of

this court, we cannot indicate the true answers to these appeals by merely ticking off one of the two options open to us, either to allow or to

dismiss the appeals in the words of his Lordship Justice Chanderchud, the then Chief Justice of India. 'Ticking is the privilege of the new

generation of students. We have to give reasons in support of our answers. Thus on this count, let us, therefore, start with the dispute answers of the

biology paper as per 'key'.

Question No. 15 of the SeriesA at the cost of repetition is reproduced hereunder:

Xylem is endarch in the

1. root of bean
2. root of sun flower
3. root of maize
4. Stem of sun flower.

16. The answer given by the petitioners/ respondents herein as choice No.(4) as 'stem of sun flower', where as key answer provides the answer

as option No. 3 as correct answer which reads 'Root of maize'. The answer given by the petitioner is supported by NCERT Text book class 12th

and 11th part I which provides:

The primary structure of a dicotyledonous stem may be well understood by using sun flower as an example.

Protoleium lies towards the centre of the axis in an arrangement called endarch.

Foundation of Biology by Kochhar and Arora also provides correct answer to the

question under reference which reads.

The sun flower stem may be taken as an example

Xylem in which the protoxylem faces the centre is said to be endarch.

Same answer is also given by Biology A Text Book of Senior Secondary Schools, Class XII Part I by Das Etc. which provides:

In a stem the first formed xylem (protoxylem) is located towards the pith and later formed xylem (metaxylem) towards the outer side. This

arrangement of xylem is termed Endarch.

Same answer is also provided by Modern Biology Vol.II (For Class CII) by Rastogi which provide:

This condition of xylem is known as endarch or centrifugal while in roots it is exarch or centripetal i.e. the, metaxylem lies towards centre.

The answer given by the petitioners/respondents herein is also supported by a Textbook of Botany for PreUniversity Students) by Vasishta.

Now let us examine question No. 48 of Series A which is again reproduced hereunder

Which one of the following regulatory functions is associated with the secretion of duodinal origin?

1. Stimulates gastrin secretion;
2. stimulates flow of pancreatic enzyme;
3. stimulates flow pancreatic juices poor in enzymes.
4. stops gastric secretion.

The answer given by the petitioners/ respondents herein is choice No.4 stops gastric secretion whereas key hoas provided the answer as option

No.3 stimulates flow pancreatic juices poor in enzymes.

The answer given by the petitioner is supported by NCERT Text book for Higher Secondary Schools, (ClassXI,XII) Part I prescribed by J&K

State Board of School Education at page 23 and 24, which reads

i.Secretion from the duodenum which stimulates the flow of the pancreatic juice poor in ensymes.

ii. Pancreazymen which helps produce the flow of pancreatic enzymes.

iii. Enterogastrone which released from the duodenum helps in the stoppage of gastric secretion.

Best and Taylor's physiological basis of Medical Practice, Twelfth Edition by John B. West. M.D. Ph.D, D.Sc. at page Nos. 608, 609,40:

CCK containing cells are located in the mucosa of the duodenum and jejunum.

The established physiological actions of CCK are pancreatic enzyme secretion (Stubbs and Stabile, 1985) Secretion containing cells are

located in the duodenum and jejunum. The established physiological effect of secretion is the stimulation of ductal secretion from the pancreas.

This is a high volume secretion that is alkaline because of its high bicarbonate concentration.....

Secretin causes inhibition of gastric emptying and gastric acid secretion.

The answer is also supported by Text Book of Medical Physiology Eighth Edition by Arthur C. Guyton, MD which reads

Basic stimuli of pancreatic Secretin Gastrin, which is liberated in copious quantities during the gastric phase of stomach secretion. Cholecystokin in

(CCK) which is secreted by the duodenal and upper jejunal mucosa when food enters the small intestine.

Secretin, which is secreted by the same duodenal and jejunal mucosa when highly acid food enters the small intestine.

The first three of the above stimuli, acetylcholine gastrin, and Cholecystokin, all stimulate the acinar cells of the pancreas much more than the

ductal cells. Therefore, they cause the production of large quantities of digestive enzymes but relatively small quantities of fluid to go with the

enzymes.

Secretin, in contrast to the other three basic stimuli, mainly stimulates the secretion of large quantities of sodium bicarbonate solution by the ductal epithelium.

The answer is also supported by text book viz. Review of Medical Physiology, fifteenth edition by William F. Ganong, MD which reads:

"a hormone called Cholecystokin produced contraction of the gall bladder whereas a separate hormone called pancreaticozymin increased the

secretion of pancreatic juice rich in enzymes. In addition to causing contraction of the gall bladder and secretion of a pancreatic juice rich in

enzymes, CCK augments the action of secretin in producing secretion of an alkaline pancreatic juice.

Secretin increases the secretion of bicarbonate by the duct cells of the pancreas

and biliary. It thus causes the secretion of a watery alkaline

pancreatic juice....It also augments the action of CCK in producing pancreatic secretion of digestive enzymes. It decreases gastric acid

secretion.....

The answer is also supported by the text book of 'Modern Biology Vol III by Dr. B.B. Rastogi which reads

When acidic chyme from stomach enters duodenum, its acid and fats stimulate duodenal mucosa to liberate hormone secretin and pancreaticozymin.

Secretin: Stimulates cells of intralobular to secrete watery portion of pancreatic juice and the bicarbonates.

Cholecystokinin: Pancreozymin (CCKPZ) It induces acinous cells of pancreas to secrete pancreatic juice.

17. The above reference book make out that there are three choices given in the question paper which are correct, excepting the one which has

been adopted by the key i.e. choice No.3, which is not correct. So the petitioners having given choice No.4 as correct answer which reads:

Stops gastric secretion.

18. This answer is also supported by the expert opinion appointed by the court. So the respondents who have answered question No. 48 of Series

A corresponding to their respective series have answered the question correctly by obtaining option No.4 as correct answer and as analysed by us

and demonstrated before us by reference books and the text books and the expert opinion, such students/petitioners are entitled to one mark for

evaluation of their answer to this question which has been left out on the count that it was wrong as per key answer and has not been evaluated.

Similar is the case with question No. 67 of Series A of Biology paper, which reads:

Which one of the following phyla is characterised by cylindrical, triploblastic, pseudocoelomate body having distinct mouth and anus?

The answer given by the petitioner/respondents to this question is choice No.2 i.e.

Nemathelminthes and not Annelida as is suggested by the Key answer of the competent authority. In support of their answer, the

petitioners/respondents have relied upon NCERT book class 11th and 12th Part I, which provides

Phylum Nemathelminthes They are unsegmented, bilaterally symmetrical,

Triploblastic and pseudocoelomate.

Alimentary canal is provided with distinct mouth and anus.

Reliance has also been placed on CBSE text book class 11th part II which provides:

Nemathelminthes The Round Worms related organisms. The elastic, tapered body with a circular cross-section (hence the same round worm) has as pseudocoelom.

Petitioners have also referred to Anilam Biology by E.L. Jordan and H.C. Nigam which provide:

One of the thoroughly studied nematodes is *Ascaris* of man which is described below:

The space between the body wall and alimentary canal is not a true coelom but a pseudocoel, because it is bounded by muscles outside and the cuticle of the intestine inside.

Annelida: They are truly coelomate animals." They have also relied on Modern Biology by Dr. V.B. Rastogi which provide

Phylum Nemathelminthes or Nematoda (Roundworms) These are bilaterally symmetrical, triploblastic and pseudocoelomates.

Thus the answer to this question has also been put to challenge by the respondents before us and have submitted that the correct answer given by

them is option No. IV and not option No. III as given in the key answer supplied to the competent authority by the examiners and they have based

their contentions by relying on the test books referred to hereinabove, and also analysed by us and supported by expert opinion, as such they are

entitled to one mark each for each answer to the question per evaluation of their answers to these questions which have been left out on the count

that these are wrong answers as per 'key' answer and have not been thus evaluated.

19. Now coming to the questions of Chemistry paper which are referred in the writ petitions for the purposes of demonstration that the answer in

the key is incorrect. Firstly question No. 40 of Series A corresponding to question No. 36 of Series B, Corresponding to question No. 54 of

Series C and corresponding to question No. 3 of Series D reads:

The order of, electron affinity of halogens is

1.F>Cl>Br>I

2.Cl>Br>F>I

3.Cl>F>Br>I

4.I>Br>Cl>F

The answer of this question has also been put to challenge by the respondents before us and have submitted that the correct answer given by them

is option No.3 i.e. Cl>F>Br>I and not option No. 2 as given in the key answer supplied to the competent authority by the examiner i.e.

Cl>Br>F>I. The respondents have based their contentions by relying on CBSE Textbook page 370. For understanding the question and its

answer in its right perspective, let us make it clear as to what F, Cl, Br, and I stands for and what is their electronic value F stands for Fluorine Cl

stands for chlorine Br stands for Bromine I stands for Iodine.

The electronic value of each halogen is shown as under, as per Advanced Inorganic Chemistry;

F = 339

Cl = 355

Br = 331

I = 320

As per CBSE, the electronic value of each halogen is as under:

F =333

Cl = 349

Br = 325

I =296

Thus on close scrutiny of the electronic value of each halogen, even a lay man can easily say which is greater than which i.e. Cl>F>Br>I, which is

also the answer given by the petitioners/respondents herein. The opinion given by the experts also falls in line with the answer given by the

petitioners/respondents before us as correct answers i.e. option No.3. Accordingly respondents are entitled to one mark for such correct answer

out of the four choices suggested.

20. Similarly in chemistry question booklet question No. 47 of Series A corresponding to question No.8 of Series B, corresponding to question

No. 18 of Series C and corresponding to question No. 59 of Series D regarding which issue has been joined by the respondents that they have

given correct answer and the answer given in the master key being incorrect, reads as under:

Ramsay isolated argon by

1. fractionation of liquid air
2. fractionation of liquid oxygen
3. by passing nitrogen obtained from air over heated magnesium
4. by passing hot air over heated metal

21. The answer of this question has also been put to challenge by the respondents before us and have submitted that the correct answer given by

them is option No.3 i.e. "by passing nitrogen obtained from air over heated magnesium" and not option No.1 i.e. 'Fractionation of liquid air' as

given in the key answer supplied to the competent authority by the paper setters. The respondents before us have also based their contentions by

relying on Text book of Chemistry for 11th and 12th Class II published by Jammu and Kashmir State Board of School Education which provides:

By passing nitrogen obtained from air repeatedly over heated magnesium. Ramsay obtained small amount of a residual gas. Spectroscopic

examination of this gas showed that it was a new gas, different from nitrogen. From its inertness it was named argon (meaning inert).

The answers given by the petitioners also gets support by the expert opinion and as such, the petitioners/respondents before us who have given the

answer as option No.3 as correct are entitled to one mark of this question.

22. Now coming to the physics subject for which also issue is being joined by two petitioners viz. Yasfir Bashir versus State and others in writ

petition No. 281 of 1996 and Miss Natasha Din Versus State and others in writ petition No. 339 of 1996 regarding question No. 50 of Series A

corresponding to question No. 10 of Series B, corresponding to question No. 21 of Series C and corresponding to question No. 61 of Series D.

The question reads:

The energy of a particle of mass m and having an associated wave length λ is (h is Planck's constant and c is the speed of light)

1. h^2
2. hc
3. $\frac{h^2}{2m\lambda^2}$
4. $\frac{hc}{\lambda}$

$2m \times 2 \times V \times 2mA. 2mh^2$

The correct answer ticked by petitioners/respondents named above as option No.2 is correct, and not choice No.1 $h^2/2m \times 2$ as fed to the computer by

the competent authority as per key answer. The experts in the field on the subject have opined that as per Einstein mass energy relation $E = mc^2$.

As per De Broglie wave length again

$\lambda = h/c$ or $mc = h/\lambda$ multiplying both sides by c we get $mc^2 = hc/\lambda$, but $mc^2 = E$. So $E = hc/\lambda$.

∧???

In addition to the expert opinion furnished and referred to us, the petitioners/respondents before us have supported their answer by referring to

following text books

1. NCERT textbook for class XII, Vol II part II page 461.
2. Physics for class XII by N.K. Bajaj page 617.
3. Fundamentals of Physics by Resnick, Halliday and Walker page 1133.
4. Numerical problems in physics by R.S. Bharaj page 389.

23. While hearing arguments, learned counsel for the respondents referred to the comparative tables prepared by them and annexed with the writ

petitions showing and demonstrating as to what are the key answers fed by the competent authority at the behest of the paper setters to the

computer and what are the correct answer born out by the test books and supported by prescribed books to the students by the NCERT and the

Central Board of School Education. A cursory view of these tabulations also summarises our above noted exercise done by us in the foregoing

paras as indicated and discussed.

24. The contentions raised by the appellants that the petitioners have come to the court after a lapse of considerable time and after more than four

months, they have approached the court for redressal of their alleged grievances. These petitions are thus hit by doctrine of laches because in such

cases apex court has been very strict in disallowing admissions to professional colleges at a belated stage when courses are in mid of the session

and that the petitioners by different tactics succeed in getting provisional admissions when their cases are yet to be considered and without making

any basis on humanitarian or other considerations, admissions are being granted

by the High Court. Such practice has been deplored. In support of his contentions, Mr. Kawoosa has referred to AIR 1992 SC 932, 1989 SC 1513, AIR 1993 SC 2638 and AIR 1994 SC 595. 28. It may be noted that we have gone through the authorities minutely, it is a fact that the examinations conducted by the competent authority try to keep all the secrecy and sanctity of the examinations, but grievance is not against that which is highlighted. The petitioners/respondents before us have agitated their grievances that they have not been given due value for their correct answers, but for the fact that there is not transparency of the results and the procedure been transparent on this aspect that while declaring the results, they should have declared the key of their answers also so that students could check their lapses, if any, and could come up before the courts of laws and agitate their grievances.

26. In a case before the apex court of such nature, their Lordships have observed that it is because out of the generosity of the University that the students got the knowledge that the key answers furnished by the paper setters turned out to be wrong. So the frankness and fairness shown by the University, they published the key answers along with the results of the test, so the candidates filed writs before the High Court contending that the answers ticked by them were correct and the key answers wrong. The court accepted their contentions.

27. Identical pleas are before us. The respondents/students claim that the answer they have ticked and mentioned in the answer sheets are correct and the answers suggested by the paper setters in the key and fed to the computer are incorrect. But in case they have delayed in putting such challenge, that is obvious because the CAEE is not so transparent. The result mentioned the names of the successful candidates only. No key is published along with the results and so on.

28. It may be brought on record that it is after delayed persuasions and protracted litigation that the students/respondents came to know about the result and about the mischief having been done to them by the competent authority who maintain complete secrecy and sanctity of the examinations. We can safely say so as because number of petitions were filed before learned Single Benches of this court and in which invariably directions were given to the competent authority to look to the grievances of the

petitioners and to see whether the claim made by them regarding correctness of the answers, if correct and if so to what extent, and redress their grievances and appoint experts of their own and at their own, other than the examiners who have already set papers.

29. As we have already observed that deaf ear was given to such directions on one or the other pretext and avoided. It is on that count that the court was constrained to appoint experts to opine in the matter. Had the competent authority issued the key and published the key simultaneously with the result of the students and shown the transparency of their process, could have understood their lapses and projected the students/candidates grievances well in time and at the earliest In that count, no doubt plea would be available to the competent authority that the petitioners whosoever comes or knocks the doors of the court late, will not be entitled to any relief because they themselves incapacitated the court in giving him/them relief due to his own/ their latches. In those cases plea of latches can be acceptable and reasonable. Otherwise taking a student by surprise or keeping top secrecy of the key which have been fed to the computer and obviously if a wrong answer is fed to the machine it is not the machine which is to error, it is human hand which has made the error. Machine don't err. There can be human error that cannot be ruled out.

30. So merely rechecking the papers, option which is given under the Information Brochure will not serve the purpose and does not cover the grievances of the petitioners/respondents before us. The grievances as projected by the respondents are only to be rectified as we have said it so at the cost of repetition.

31. From the Information Brochure, we do find that the paper question booklet which is to be supplied to the students/candidates of different series, though they contain same questions in the subject in which they have to sit in the text, but there is variation of serial number of the questions. There is no grievances on that score, as it assures fairness in the examinations because a student who is attempting A series and a candidate sitting adjacent to him attempting B series and another candidate on his left or right attempting C or D series paper, they will not be in a position to communicate each other as because there is variation of question of numbers

and the possibility of copying is ruled out. There is no dispute on that count.

32. Students are required to fill up answer sheets which are provided to them, of which a sample is given in the Information Brochure. Why the

students are asked to handover questions papers i.e. question booklet also is not intelligible to us? What is left in case the question papers i.e.

question booklet will be allowed for the students to carry home so that he can conveniently sit at home and check his performance to make the

examinations fully transparent and to rule out arbitrariness as is being projected by the students or their parents subsequently, by filing writ petition

after writ petition or by following litigative thrust, which will be to a large extent eliminated. The question booklet paper provided to the candidates

in case he carries home, does it make any exposure to the competent authority or its secrecy and sanctity? The paper which has been attempted

by a candidate is no more a sacred cow to be loved or worshiped, when the same as per Information Brochure issued by the CAEE is to be

destroyed after three months of declaration of results per rule 15.1 of the said Brochure. We think that it will inculcate more confidence in the

student community in particular and their parents in general in case henceforth the competent authority decides that the question paper booklet

which is being provided to the students in such competitive examination is allowed to be carried home by the students so that there is no pilferage

by underhand means or other means done to the question booklet paper which is being complained by underhand means or other means done to

the question booklet paper which is being complained of oftenly in this respect.

33. Now the challenge which has been specifically put by the candidates/petitioners/respondents before us in OWP No. 422 of 1995 titled Wasim

Ashraf Khan Versus State and others, OWP No. 281 of 1996 titled Yasfir Bashir Versus State and others, OWP No. 3 of 1996 titled Arshid

Hussain Banday versus State and others, OWP No. 339 of 1996 titled Natasha Din versus State and others, OWP No. 338 of 1996 titled Bilal

Ahmad versus State and others and OWP No. 477 of 1996 titled Nasir Shamas versus State and others ki respect of three questions of biology

paper under No. 15, 48 and 67 of Series A corresponding to question Nos 29, 9 and 22 of Series B, corresponding to question Nos. 63, 19 and

20 of Series C and corresponding to question Nos. 44, 60 and 56 of Series D, the answers/options whereof given by the petitioners/respondents

before us as per the expert opinion furnished to us and the exercise undertaken by us as per prescribed text books are correct and as such, all the

respondents before us are entitled to one mark for each correct answer, meaning thereby that they are entitled to three marks each in biology

paper.

34. Similarly the respondent before us who has specifically put challenge to chemistry question Nos. 40 and 47 of Series A in OWP No.3 of 1996

titled Arshid Hussain Banday versus State and others and regarding which, they have given correct answers as per the expert opinion made

available to us and as per the exercise undertaken by us, he is also entitled to two marks for giving correct answer to such questions.

35. likewise in OWP No. 281 of 1996 titled Yasfir Bashir versus State and others and OWP No. 339 of 1996 titled Natasha Din versus State

and others, the respondents have specifically put challenge to question No.50 of Series A corresponding to question No. 10 of Series B,

corresponding to question No. 21 of Series C and corresponding to question No. 61 of Series D of physics paper and as per the expert opinion

furnished to us and the exercise undertaken by us while taking support of the text books prescribed by the concerned authorities, the respondents

have given correct answer to these questions and are as such entitled to one mark each. Thus the merit position so achieved of the

respondents/petitioners or which emerge, entitle them for admission to the MBBS course and we allow the same.

36. It may not be out of context to mention that if the State Government wants to avoid recurrence of such lapse and multiplicity of litigation, they

may think on the proposition and suggestion and ask the competent authority to see and hold concensus of the key answers to be fed to the

computer by the competent authority the key answers suggested by the paper setter be got examined by expert committee consisting of men of

highest integrity and speciality in the field by moderating the key answers suggested by the paper setters and to see which is the correct/ most

appropriate/moderated answer to be substituted in the key to be fed to the computer before evaluation of the answer sheets of the students. This

exercise may be undertaken only after the answer sheets of the candidates/students have been received by the competent authority after holding the test, thus to maintain secrecy and sanctity of the examinations/tests conducted by the CAEE.

37. It may also be noted and instructions be given to the examiners/paper settlers by the competent authority that they should avoid to ask ambiguous questions, having ambiguous answers as because this multiple choice question type papers and examination system involves merely the tick marking of the correct answers. It leaves no scope for reasoning or argument. The answer is one of the suggested answers in this type.

38. Attention of the competent authority is also drawn to the fact that in case of any defect in the key answer or any ambiguity in the question booklet regarding question set in the examination is brought to the notice of the competent authority by any person aggrieved of such ambiguity, prompt and timely action must be taken by excluding the suggested question and by deleting the same from being awarded any mark, has also been directed accordingly by the apex court in AIR 1983 SC 1203.

39. At the cost of repetition, it may also be directed that the competent authority shall hence forth see to it that the candidates/students appearing in such competitive test be allowed to carry home the question booklet which has been provided to him and the instructions prohibiting such practice in the Information Brochure be accordingly amended. When ever results are being published, alongwith results key answers be also published and the competent authority should be generous enough in doing so, as to enable the students to check their lapse and in case of any grievance, they will resort to appropriate remedies available to them under the procedure and the rules.

40. Before parting with the judgement, we may also like to observe that some petitions are pending before Single Benches of both wings of this court on these very points and same shall be disposed off in light of our judgement, provided that the petitioners therein also make out a case for interference as the students/candidates/respondents in these petitions have done. However, no further petition on the subject pertaining to the admission of MBBS/BDS course 1995 on the identical pleas of disputed key answers is entertained or taken under consideration, if the same have

been filed after the matter was finally heard by this Division Bench of the court on 23101996, to be the cut off date for entertainment of such

petitions. So we hope that no further/ fresh petition will be entertained by the court after the said cut off date regarding the admission arising out of

the competitive/entrance tests conducted by the CAEE for the session 1995 for MBBS/BDS courses in the State of Jammu & Kashmir.

41. The new academic session is in the offing. Notices already stand issued for holding of such examinations/competitive test for the session 1996.

The CAEE shall undertake the exercise within fifteen days from today as to how many candidates who are already petitioners before different

benches of this court and whose petitions are pending before Single/Division benches are being benefitted by our findings and conclusions as set

forth in the foregoing paras and shall see to it and in case by such exercise candidates more than fifty are benefitted and in that eventuality, the

selection will be notified and the respondent/ State/authorities in the Medical College Srinagar/Jammu shall start Alfa Session for such newly

identified candidates, it shall not be a back log to be carried forward for the new academic session and shall be admitted in the said Alfa session

without losing any further time. In the meantime, the petitioners who have already been admitted provisionally by Single Benches be allowed to

continue their studies and the stay orders issued in this behalf shall also stand vacated and the CMPs are disposed of accordingly.

42. It may be noted that none of the admitted/selected candidates already undergoing the studies should be ousted/retrenched. The candidates

who have already been selected by the CAEE shall not be disturbed and no fresh exercise in their case shall be undertaken, except in the event of

changing of their merit by making them eligible for MBBS course instead of BDS course, in case the cut off merit of the disciplines allows such

exercise.

43. It may also be brought on record that the question which have been demonstrated and are being challenged before us by different

respondents/petitioners in different subjects and examined by us and accorded consideration and value/mark for such correct answer, should count

in favour of the respective respondents/petitioners and the questions which have not been demonstrated/argued and projected before us but are

pleaded in different petitions pending before Single or the Division Benches of this court should be got examined and properly valued by

independent experts except the paper settlers and in case the contentions/submissions of the respective petitioners are substantiated, the

consequential selections, if any, be made and admissions granted without any further delay.

44. For the reason stated hereinabove, the appeals excepting LPA No. 165 of 1996 titled Nasir Shamas versus State and others, being

misconceived are accordingly dismissed and the writ petitions, out of which these appeals have arisen also stand disposed of in light of the

observations and directions made hereinabove.

45. Now as regards LPA No. 165 of 1996 titled Nasir Shamas versus State and others, the appellant Nasir Shamas had already been given the

relief for being found entitled to admission to MBBS course from BDS course on the basis of merit which is achieved by him as stated hereinabove

and the appeal of the Competent Authority viz. LPA No. 148 of 1996 against him also stands dismissed and the appeal(LPA No. 165 of 1996)

titled Nasir Shamas versus State and others is disposed of accordingly.