

(1992) 03 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No's. 4186, 4482, 4616, 4627, 4661, 4691, 4740, 4761, 4822, 4887, 4891, 4928, 4929, 4936, 4941, 4942, 4946, 5098, 5423, 5425, 5467, 5469, 5481, 5508, 5565, 5655, 5761, 5776, 5790, 5800, 5803, 6130, 6151, 6168, 6190 and 6587 of 1991 and 107, 347, 5

Raghunath Pradhan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) 2 OLR 317

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : H.M. Drrat, G.D. Tripathy, A. Deo, A.K. Baral, A.K. Choudhury, A.K. Misra, A.K. Rath, A.R. Dash, A.S. Naidu, Ashok Mohanty, B. Dash, B. Pradhan, B.C. Panda, B.H. Mohanty, B.K. Nayak, B.K. Sahu, B.L.N. Swamy, B.P. Mohanty, B.P. Tripathy, S.K. Mohanty, B.R. Satangi, B.R. Savangi, B.S. Tripathy, C.A. Rao, D. Misra, D.N. Subudhi, D.P. Mohanty, D.P. Sahoo, Devananda Misra, G. Misra, G. Mohanty, G.B. Dash, G.C. Acharya, G.C. Misra, H.M. Dhal, J. Das, J. Gupta, J. Patnaik, J.K. Bastia, J.K. Khuntie, Jairaj Behera, K.B. Panda, K.P. Misra, L. Samantray, M. Pradhan, M.K. Badu, M.M. Das, M.R. Mohanty, Md. Irsad, Milan Kanungo, Muktaawdu Sahoo, N.C. Pati, N.K. Barik, N.K. Mohanty, N.N. Misra, O. Patra, O.R. Mohapatra, P. Misra, P. Mohanty, P.C. Das, P.C. Kar, P.K. Ghose, P.K. Misra, P.K. Mohanty, P.K. Patnaik, P.K. Rath, P.R. Das, R.K. Kar, R.K. Nayak, R.K. Patnaik, R.N. Naik, S. Latif, S. Mallick, S. Mohanty, S.B. Jena, S.D. Das, S.K. Behera, S.K. Das, S.K. Padhi, S.K. Padhr, S.K. Patnaik, S.K. Pradhan, S.K. Ray, S.K. Samantray, S.N. Mohapatra, S.P. Choudhury, S.P. Misra, S.R. Patnaik, S.R. Satpathy, S.S. Rao, U.C. Parrda, U.K. Lenka, V. Narasingh, Y. Das and N.C. Mohamy, for the Appellant; R.K. Patra, Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—These writ applications are of the "annual check, up category" filed by candidates who appear at the Annual Entrance Examination for selection of candidates for admission to the MBBS/BDS courses. Present applications pertain to 1991-92 session. Such applications have become almost a ritualistic

feature, and candidates question correctness of the questions set and/or answers indicated to be correct answers and seek this Court's "check up". For the examination in question, the question paper contained 150 multiple choice objective questions. Four alternative answers were indicated against each question. According to the examining body only one of them is the correct answer. The body selects the correct answer or most appropriately correct answer which is normally called the "key answer". A candidate is required to cross the alphabet box which stood for the answer, which according to him, was the correct or most appropriately correct answer.

2. According to the petitioners, either a large number of questions are wrong, none of the alternative answers is a correct answer, or, the alternative answers contained more than one correct or most appropriately correct answer. By way of traversal, the opposite parties have averred that the answer indicated by the candidates should be the same as the key answer chosen, and even if two alternatives could be correct, or most appropriately correct answer, no credit can be given if the answer indicated by the candidate does not tally with the key answer. The key answers selected by the committee is the correct answer for the purpose of evaluation, even if the second correct answer is one of the alternatives suggested. Reliance has been placed on a decision of the Madhya Pradesh High Court in *Kumari Anjali Saxena Vs. The Chairman, Professional Examination Board, Bhopal and Others*, .

3. In a multiple choice objective test the key answer should be the correct or most appropriately correct answer, and the rest should be either wholly incorrect, or incorrect though appear to be correct. That is the distinctive feature between a multiple choice objective test and the traditional system of examination. In the latter system, the candidates are required to give essay type answers. In this background, it is imperative that the answers to the questions as indicated must not carry two correct answers. That would be unfair to the candidate. As observed by the Supreme Court in *Kanpur University and Ors. v. Samir Gupta and Ors.* : AIR 1933 SC 1230 the key answer should be assumed to be correct, unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning, or by a process of rationalisation. 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. The view was echoed in *Priyadarshini Acharya and Others Vs. State of Orissa and Others*, to which one of us Pasayat, J. was a party. The view of the Madhya Pradesh High Court in *Kumari Anjali Saxena's case* (supra) was not subscribed to it. The examiner and the examining body should ensure that two correct answers are not indicated. That is imperative because the candidate has a chance of not getting credit of any mark even though he has given correct answer, merely because of the fact that any question has been chosen as the key answer. That would be unreasonable involving an element of gamble in selection of candidates by an examination.

4. The learned counsel for the opposite parties has also urged that the Court being not an expert in technical matters should not tinker with the view of the examiners of the examining body. Though the argument is attractive, it is not sound. Where the method adopted or decision taken is clearly unreasonable and perverse and demonstratively wrong the Court has to act and should not shun to interfere because the key answer has been suggested by experts, or. the examining body.

5. A large number of questions were attacked, as indicated above on various grounds. We have considered the grounds of the parties and materials placed by them. Though by various orders we had directed the examining body to specifically meet the grounds of attack pressed into service by the petitioners, casual indifference was shown by the body. We had specifically directed on 16-12-1991 filing of a counter affidavit, dealing with the challenges in respect of 38 questions. We had indicated that in view of the large number of questions involved, the matter was to be considered in a joint sitting of the question setters and the moderators, and a counter affidavit was to be filed on the basis of the information tendered by them. The counter affidavit was directed to be filed by 10-1-1992 and the matter was directed to be placed on 15-1-1992. On the prayer of the learned counsel for State, the matter was adjourned to 12-2-1992. An additional affidavit was filed by the Chairman of the MBBS/BDS Examination Board annexing xerox copies of the proceedings of the meeting held on 17-1-1992 and letters of the Professors and Heads of Departments of Post Graduate Departments of Physics, Chemistry, Zoology and Botany and each one of them has affirmed that the questions and the answers, were correct and there was no mistake. The said additional affidavit is by the Chairman which is hereinafter referred to as "additional affidavit". Since no attempt had been made to meet the specific challenges, we directed the Chairman to file detailed counter affidavit in respect of the question which categorised in our order dated 16-12-1991. It was clearly indicated that if no satisfactory counter affidavit was filed, no adverse inference was to be drawn. No further counter affidavit has been filed, and the learned counsel for opposite parties stated before us that no further affidavit was intended to be filed.

6. Though large number of questions and answers thereagainst were presented for scrutiny, after carefully considering the materials placed, and on hearing the learned counsel, we find that except nine questions and answers relating thereto which we shall elaborately deal with, the rest cannot be characterised to be demonstratively wrong.

7. Question No. 25 (Physics) reads as follows :

"An yellow flower looked through red glass will appear ;

(a) black

(b) blue

(c) yellow

(d) red"

The key answer has been stated by the opposite parties to be (a). The petitioners assert, that none of the answers is correct. To substantiate their stand they, produced a piece of red glass and an yellow flower to demonstrate that it will not appear black; We have looked at the yellow flower through the red glass. We are satisfied that the key answer is wrong and none of the alternatives is correct. All the answers being wrong, each candidate shall be entitled to one mark. However, those who have already been awarded marks for answering (a) as the correct answer shall not be awarded any further mark.

Correctness of question No. 33 (Physics) and alternative answers in respect of that question have been characterised as wrong. It has been accepted by the opposite parties in the counter affidavit filed by the opposite parties that the question had no answer and one mark has been given to each candidate. In view of the stand in the counter affidavit, nothing further would have been necessary. But, we shall revert to this question later on.

Question No. 36 (Physics") reads as follows :

"Which of the following statement is not true ?

- (a) ultrasonic sounds have frequency beyond the limits of audibility ;
- (b) ultrasonic sounds move with the velocity of sound ;
- (c) ultrasonic sounds are produced" by piezoelectric generator ;
- (d) supersonic sounds move with the velocity of sound."

According to the key answer (d) is the correct one. According to the petitioners both supersonic sound and ultrasonic sound mean the same thing and therefore, both (b) and (d) are correct answers. For resolution of the controversy, it is desirable to find out what ultrasonic and supersonic mean. There are many sounds which the human ears cannot catch unaided. The scientists are devising methods for detecting such sounds and also for producing them. "Ultra" means beyond and "sonic" refers to speed. The study of these sounds is called "Ultrasonics". The name "supersonic" also used to be applied to such sounds. Presently, however, the word is used to , describe speeds exceeding that of sound in the air. The sound waves of frequency lower than the audible limit are called infra-sonics. Supersonics is being referred to the velocities higher than the velocity of sound. In "Text Book of Sound" by Khanna and Bedi, "The Books of Popular Science" by Helen Merrick" these aspects have been detailed. In the former book it has been stated that the sound waves in which the frequencies are "above the "limits of human audibility", i, e., greater than 20,000 cycles per second, are referred to as "ultrasonics" or "supersonics", but the latter term is now being used only to refer to velocities greater than that of sound. Be that as it may, both (b) and (d) are correct answers. Those candidates who have

indicated (b) to be the correct answer are entitled to a mark each.

Question No. 70 (Chemistry) reads as follows :

"A solid dissolves in water to form a conducting solution. On cooling, the solid decomposes to give off a gas and form another solid. This behaviour would be characteristic of;

(a) CCl₄

4

(b) NF₃

a

(c) NaHCO₃

(d) graphite"

While the key answer is indicated to be (c), the petitioners assert that none of the answers is correct. In the letter of the Professor of Chemistry, Utkal University annexed to the additional affidavit, it has been stated as follows :

"NaHCO₃ ionises to sodium ion (Na⁺) and bicarbonate ion

(HCO₃⁻) on dissolution in water. It also decomposes to give carbon dioxide a gas, and a solid i.e., sodium carbonate." With reference to "Text Book of Inorganic Chemistry" by P.L Soni, it is urged that the decomposition is possible by heating and not by cooling. The question refers to cooling and not heating. In the letter of the professor, there is no advertence to the cooling aspect, On cooling that is lowering the room temperature, no solid gives out gas and forms another solid. On consideration of the materials placed before us, we are satisfied that none of the alternative answers indicated is correct. Every candidate, except those who have been awarded .mark for the question under consideration, shall be awarded one mark.

Question No. 110 (Botany) reads as follows :

"In jute plant jute fibre is derived from :

(a) xylem tissue

(b) phloem tissue

(c) collenchyma

(d) sclerenchyma"

The indicated correct answer is (b). The petitioners assert the most correct answer is (d). In "A Text Book of Botany" by A. K. Nanda, it has been stated that sclerenchymatous cells are known as fibres. It has been also stated that the fibres are elongated sclerenchymatous (thick walled-cells that form the bulk of

mechanical or supporting tissue in the plants. The average length of fibres ranges from 1 mm. to 3 mm; but in some fibre yielding plants like flax, hemp, jute etc. it may range from 3 cm. to more than 30 cm. It is true that best fibres can be obtained from the pericycle and phloem of various plants. It is relevant to refer to "Text Book of Botany" by A.K. Nanda, A. C. Dutta and other authors, according to which fibres are derived from modification of dead schlerenchymatous tissues. Phloem of jute consists of both living and dead tissues. The later tissues as indicated above are schlerenchymatous.

In the above premises, a candidate who indicates (d) to be correct answer cannot be wrong. Every candidate who has indicated (d) to be the correct answer is entitled to a mark.

Question No. 113 (Zoology) reads as follows :

"Nephridia of earthworm is present in

- (a) first segment only
- (b) last segment only
- (c) pharyngeal region only
- (d) all segments"

The key answer indicated is (d). The petitioners submit that none of the answers is correct. We have considered the various text books produced before us in this regard. We find that in pheretima the excretory system consists of large number of fine coiled tubes called "Nephridia" which are present in every segment except in the first two or three segments. Obviously therefore the key answer is wrong. The letter of the Head of Department of Zoology, Utkal University annexed to the additional affidavit filed by the Chairman indicates that the "nearest correct answer is (d) all segments" (underlining by us). Key answer should be only correct answer and nothing else. It is not that the question does not have a correct answer. So there is no justification to say that the key answer is nearest correct answer. In respect of this question, each candidate shall be entitled to one mark unless he has already been awarded a mark.

Question No. 131 (Zoology) reads as follows :

"Coagulation of blood inside the body is prevented due to the presence of".

- (a) thromboplastin
- (b) fibrinogen
- (c) heparin
- (d) fibrin

The key answer indicated is (d). The petitioners submit that the correct answer is (c). We have been referred to "A Text of Zoology" by R. D. Vidyarthi; "Biology"

by Clauder A.Villee; "Animal Physiology" by Dalella and Varma; "Animal Physiology" by S.C. Rastogi. The Head of the Department in the letter annexed to the additional affidavit has stated that among the most important anti-coagulants in the blood are, those that remove thrombin from the blood; the most powerful of these are "Fibrin" that are formed during clotting; Heparin in minute quantities aids in preventing coagulation in normal circulatory system. Accordingly it is stated that Fibrin is the most correct answer. Petitioners state that due to presence of Heparin coagulation is prevented inside the body. Presence of Fibrin only helps in entrapping the corpuscle that may come out of blood. On consideration of the rival stands, and taking into account views expressed by several authors, it can be held that those candidates who have indicated (c) to be the correct answer are also entitled to a mark each.

Question No. 132 (Zoology) reads as follows ;

"Glycolysis is the breakdown of :

- (a) glycoproteins to Amino acids
- (b) glucose to lactic acid
- (c) glycogen to glucose
- (d) ATP to AMP and pyrophosphate"

The key answer indicated is (c). Petitioners assert that the correct answer is (b). They have referred to the views of authors Dalella and Verma in the book "Plant Physiology", D. Misra in "Higher Secondary Botany", A. Dube in "An Introduction to Fungi". In the letter of the head of the Department (Zoology) annexed to the additional affidavit at the Chairman it is accepted that some authorities indicate that "glycolysis" means splitting of glucose molecules to molecules of pyruvic acids and (b) could be nearly correct as well. In addition to the books referred to by the learned counsel, we have referred to other books. In "Comparative Animal Physiology" C. Ladd Prosser and Frank A. Brown Jr. have stated that "Glycolysis" is usually written as producing lactic acid, but this may be excreted, may be oxidised or may react to other compounds. H.R. Singh in "An Introduction to Animal Physiology and related Bio-Chemistry" states that the cellular breakdown of glucose, through a series of glycolytic enzymes to lactic acid is called glycolysis. We have referred to Dorland's Illustrated Medical Dictionary. According to it, "glycolysis" is the breaking down of sugars into simpler compounds chiefly pyruvate or lactate. The indubitable position that emerges in the above set up is that those candidates who have indicated (b) to be the correct answer are entitled to one mark each.

Question No. 135 (Zoology) reads as follows :

"Which of the following animals has both endoskeleton and exoskeleton ?

- (a) cockroach

(b) earthworm

(c) frog

(d) snake"

While the key answer is Indicated to be (d). the petitioner assert that (c) is also a correct answer. It is highlighted that in the courses of studies the complete system of frog is prescribed. reference is made to the book Hihgher Secondary Zoology". We find that the learned authors M.C. Das and U.C. Patro state as follows ;

"The skeletal system of frog is of two types :

(i) Exoskeleton

(ii) Endoskeieton"

In the letter annexed to the additional affidavit, ft is stated tits most correct answer is (d) (snake). It has not been disputed that frog i" also a correct answer. A candidate who had answered the question as (c) cannot be denied one mark for the answer.

Question No. 143 (English) reads as follows ;

"The tigers.....in the forest.

(a) roar

(b) bra

(c) growl

(d) howl"

White (c) is indicated to be the key answer, petitioner the correct answer is (a). Though no basis has been indicated. learned counsel for the State submits that (a) cannot be a correct answer, because a tiger does not roar, only a lion roars.

We have looked up the Oxford English Dictionary and Webster Universal Dictionary. "Growl" and "Roar" have been described as follows ;

"Growl: (a) An act of growling ; a low angry guttural sound" uttered by an animal ; (Oxford) ;

(b) to utter a deep rumbling noise in the throat, expressing inflation or menace or menace, as an angry dog (Webster)"

Gay in Fables" wrote "Let him the lion first control, and still the tigers famished growl."

"Roar:"(a) A full, deep, prolonged cry uttered by a lion or other large beast ; (Oxford)

(b) to utter, produce, a deep, hoarse loud, rumbling, or vibrant, inarticulate sound (Webster).

Tennyson in Enone 213" wrote "The panthers roar came muffled, while I sat Low in the valley."

On a conspectus of the two words, it is clear that (a) is the most appropriate answer. "Growl" relates to an irritated, menacing, angry state of an animal. Tigers in the forest are not always in such state. (Therefore, roar is the appropriate word. In view of our conclusion, every candidate who has answered (a) as the correct answer shall be entitled to one mark.

8. We accordingly direct that the cases of the candidate who have approached this Court till today shall be considered afresh, keeping in view our observations in respect of nine questions indicated above, and their results be published after fresh valuation within two weeks from today. On re-valuation those of the candidates who secure 114 or more marks shall be entitled to admission. It is submitted by the learned counsel for State that all the seats have been filled up. The petitioners, however, contend that several seats are available, though they belong to various pools. Steps shall be taken by the State Government for release of those seats if they are still vacant. If necessary additional seats shall be created for the eligible candidates by the State Government. It is true that creation of seats may pose great difficulty for the authorities, but they are solely responsible for the impasse. Year after year, controversies relating to correctness of questions and/or answers are on the rise. In Priyadarshini Acharya's case (supra), this Court had observed that the questions should be modulated by a body of experts chosen by the State Government, and objective type questions should be set in such a manner that questions having ambiguous import are not set. Answers should contain one correct answer and the rest should be either incorrect or nearly correct leaving no scope for reasoning or argument except merely involving tick-marking the correct answer. Similar was the view of the Supreme Court in Kanpur University's case (supra). The question has to be clear and equivocal, and if attention of the Government or the examining body is drawn to any defect in the key answer or to any question, timely decision should be taken to declare the exclusion of the suspect question from the paper so that no marks are assigned to it. It has been submitted by the learned counsel for State that the key answer has been published keeping in view the decision of this Court in Priyadarshini Acharya's case (supra). We, however, find that it has not improved the situation in any manner, and number of litigations is increasing. The suspect questions/answers, show increased trend. We feel that the question paper along with the key answer should be published along with declaration of result. That would enable the candidates to point out the defect if any in a particular question or answer. As indicated (supra), the examining body has rendered practically no assistance for resolution of the disputes raised before us. To err is human, and to accept it adds to the dignity of the person making such acceptance. The attitude of the experts and the

examining body, however seems to be "We can do no wrong ; and even if we are wrong, we shall assert we are right". They can put to shame the fictional school-master of "The Deserted Village" by Oliver Goldsmith, who argued with impudicity though vanquished. In the counter affidavit filed on 4th December, 1991, it was accepted that question No. 33 was not correct answer and accordingly, one mark was given to every candidate. In the additional affidavit filed by the Chairman, it was asserted that the answer in respect of question No. 33 was correct. We are surprised that in the proceeding of the meeting of question setters and moderators, it was stated that in respect of question No. 33 there was no ambiguity and the answer was correct. To similar effect is the letter given by the Professor and Head of the Post Graduate Department of Physics dated 30-1-1992 annexed to the additional affidavit. This is a case of absolute non-application of mind. A better conduct was expected from a person who holds the post of Head of Post Graduate Department of Physics. The Chairman of the Selection Board should have also looked into this aspect instead of merely annexing the xerox copy of the proceeding of the meeting and the letters of the various Heads of Departments. The authorities should be more careful and such laconic and casual filing of affidavits and documents should be avoided. With the hope that the situation shall be healthy and less number of candidates shall seek "annual check up" in the years to come, we dispose of these writ applications with observations and directions indicated above, No costs.

Since we have given directions in respect of nine questions, obviously candidates who have secured 105 or more marks come within the zone of consideration. Only in their cases the authorities shall verify the answer papers and not in respect of other cases. So far as the candidates who have secured less than 105 marks are concerned, they are not entitled to any relief on the basis of directions given by us supra.

S.K. Mohanty, J.

I agree.