

(2019) 08 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15002 Of 2019 (O&M)

Shweta Dhull & Others

APPELLANT

Vs

State Of Haryana & Another

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Haryana Civil Service [Executive Branch] Amendment Rules, 2016 — Rule 11, 20(3)

Citation : (2019) 08 P&H CK 0030

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Gurminder Singh, Harpriya Khaneka, Vishal Garg Narwana, Nitin Sachdeva, Sunil Kumar Nehra, Anurag Goyal, Aakanksha Sawhney, Ravinder Bangar, Sandeep Saini, Naman Jain, Chander Singh, Bhanu Sharma, Ravi Kadian, Vineet Kumar, B.B. Bagga, Santlal Barwala, Sajjan Singh, Rajat Gautam, Azad Singh, Ishpuneet Singh, Adarsh Tiwari, Neeraj Gupta, Shalini Atri, Ashish Pannu, Shreenath A. Khemka, Rishabh Gupta, Puneet Bali, Arun Gupta, H.N. Mehtani, Kanwal Goyal, Shruti Jain Goyal

Final Decision : Dismissed

Judgement

Amit Rawal, J

This order of mine shall dispose of 28 Civil Writ Petitions bearing No.15002 of 2019 (Shweta Dhull & others Versus State of Haryana & another), 16596 of 2019 (Ratish Moar & others Versus State of Haryana & another), 16184 of 2019 (Wazir Dalal Versus State of Haryana & others), 16355 of 2019 (Vibhu Pratap Singh & others Versus State of Haryana & another), 15314 of 2019 (Naman Sharma Versus State of Haryana & another), 16548 of 2019 (Amit Kumar & others Versus State of Haryana & another), 16653 of 2019 (Deepak & others Versus Haryana Public Service Commission), 16568 of 2019 (Hardeep Singh Versus State of Haryana & another), 15331 of 2019 (Ayush Goyal Versus State of Haryana & another), 17339 of 2019 (Pooja Choudhary Versus State of Haryana & another), 17340 of 2019 (Dinesh Versus State of Haryana & another), 17366 of 2019 (Gagan Deep & others Versus State of Haryana & another), 15063 of 2019

(Bhupinder & another Versus State of Haryana & another), 17111 of 2019 (Aastha Chauhan Versus State of Haryana & another), 17810 of 2019 (Amit Kumar & another Versus State of Haryana & another), 17815 of 2019 (Vivek & another Versus State of Haryana & another), 16706 of 2019 (Neha Chandel Versus State of Haryana & another), 16765 of 2019 (Vaibhav Versus State of Haryana & others), 17374 of 2019 (Pooja Dhaka Versus State of Haryana & another), 16359 of 2019 (Amar Singh & others Versus State of Haryana & another), 15835 of 2019 (Randeep Malik Versus Haryana Public Service Commission), 17477 of 2019 (Rajbir Singh & others Versus State of Haryana & another), 14739 of 2019 (Ashwani Kumar Versus State of Haryana & another), 18682 of 2019 (Rahul Geer Versus State of Haryana & another), 19534 of 2019 (Rohit Sharma Versus State of Haryana & another), 19794 of 2019 (Renu Versus State of Haryana & another), 19931 of 2019 (Sugandha Versus State of Haryana & others) and 17051 of 2019 (Nisha Versus State of Haryana & another), as the common questions of facts are involved. In all the writ petitions, challenge has been laid for setting-aside the final result dated 21.05.2019 (Annexure P-11) declared by the Haryana Public Service Commission for Haryana Civil Services [Executive Branch] and other Allied Services Preliminary Examination-2017 being totally vitiated owing to numerous, pervasive mistakes and wrong setting of question papers. The facts are being taken from CWP No.15002 of 2019.

Facts of the case of the petitioners Respondent No.2-Haryana Public Service Commission (for short, Commission) caused an Advertisement No.3 of 2018-19 dated 02.08.2018 seeking recruitment of 166 posts of Haryana Civil Service (Executive Branch) and other Allied Services and the last date for submission of the applications was fixed as 04.09.2018. As per Clause 6 of the advertisement, the Scheme of Examination envisaged, a preliminary examination meant only for the purpose of screening/short-listing, consisting of two papers, i.e., General Studies and Civil Services Aptitude Test with negative marking. The advertisement also specified that the question papers would be set bilingual, i.e., in English and Hindi and candidates 12 times the number of advertised posts would be invited for main examination. The aforementioned advertisement was issued under the Haryana Civil Service [Executive Branch] Amendment Rules, 2016 (for short, 2016 Rules), where under the Scheme of Examination, 200 marks were kept for preliminary examination, 600 marks for main written examination and 75 marks for personality test. The preliminary examination would be objective type/ multiple choice consisting of the aforementioned subjects. The Civil Services Aptitude Test (CSAT) envisaged the following parameters:-

"Paper 2: Civil Services Aptitude Test : 100 marks -Comprehension - Interpersonal skills including communication skills -Logical reasoning and analytical ability -Decision making and problem solving -General mental ability - Basic numeracy (numbers and their relations orders of magnitude etc., Class X level) Data Interpretation (charts, graphs, tables, data sufficiency etc. Class X level) with the following note:-

- (i) Both the question paper shall be of the Objective type (multiple choice questions)
- (ii) Both the question papers shall be set bilingual i.e. In English and in Hindi.
- (iii) Each paper shall be of two hours duration.
- (iv) For each wrong answer, one fourth (0-25) mark will be deducted."

Petitioners submitted their applications in the prescribed format in order to participate and appear in the examination. In the Civil Services Aptitude Test Paper, fifteen (15) questions were completely out of syllabus and in General Studies, the questions were blatantly erroneous as their construction had no sense. In other words, few of the questions had more than one correct answer and even in some the correct answer was not mentioned in the options. The candidates, being apprehensive of negative marking, did not attempt the aforementioned questions having two answers.

To overcome the hurdle, written representations, Annexure P-7 (Colly) were made to respondent No.2 but no action was taken.

On 01.04.2019 vide Annexure P-8 (Colly), respondent No.2 published the answer keys of all the four sets of question papers, i.e., Paper-I and Paper-II. The procedure for inviting objections was cumbersome and complicated as the time prescribed was only two days, i.e., w.e.f. 02.05.2019 till 5.00 PM on 04.05.2019. Respondent No.2 in a most arbitrary and unreasonable manner issued the final result on 21.05.2019 (Annexure P-11) of the preliminary examinations even before publishing the revised answer key with a view to frustrate the rights of the candidates and, therefore, no chance was given to the candidates in challenging the revised answer key, but on the next date, i.e., 22.05.2019, revised/final answer keys of both the papers (Annexure P-12) were published and following, action, was taken on the objections:-

- (i) Paper-I-Total 26 changes -10 questions were deleted -For 8 questions answer keys were revised/changed -For 8 questions two of the given options were stated to be correct.
- (ii) Paper-II-Total 5 changes -1 question deleted -For 4 questions answers were revised/changed.

The deleted questions were marked as 'X'. It was made clear that the marks would be awarded proportionately to all the candidates.

Stand of respondent No.2-HPSC

A preliminary objection has been raised with regard to maintainability of the writ petitions in not impleading the candidates, who passed the aforementioned test. On receipt of the representations, Expert Committee for review and comments was constituted and as per its comments, questions No.5, 33, 42, 51, 53, 60, 74, 91, 97 and 99 of question booklet series 'A' for General Studies and question

No.24 of question booklet series `A' for CSAT exam were found to be incorrect and ambiguous and as a result, 10 questions for General Studies and 1 question for CSAT exam were deleted. Eight questions were found to having two options to be correct, i.e., questions No.10, 11, 12, 19, 56, 57, 75 and 90. Commission had given marks to all those candidates who opted any one of these two correct options and by taking into consideration the aforementioned discrepancies, the assessment of the candidates was done and result was prepared on percentile basis.

Clause 3 of the instructions clearly envisaged that the Paper-I of General Studies, each item was printed both in Hindi and English and comprising four responses (answers). Candidates were given chance to select the response which they wanted to mark and in case "the candidates felt more than one correct answer, the response could be marked the one considered to be best." The Commission made the candidates, aware, that they had to choose the best correct option.

Arguments of the petitioners

Mr. Gurminder Singh, learned Senior Counsel assisted by Ms.Harpriya Khaneka, Advocate, representing the petitioners in CWP No.15002 of 2019 and other learned counsel representing the petitioners in various writ petitions, in support of the pleadings, raised the following submissions:-

1) Respondent No.2 failed to ensure fair and transparent process of recruitment in conducting the examination owing to the discrepancies in the question papers as noticed above. In fact, bilingual setting of the preliminary examination papers by causing amendment in the rules, i.e, 2016 Rules and Rule 11, for the first time, introduced that the question papers to be set bilingually, i.e., in English and Hindi languages and there was no such provision prior to the amendment.

2) Vires of Rule 11 were challenged by filing Civil Writ Petition No.5438 of 2015, which was disposed of on 21.10.2016 and the same was upheld. The intention for introduction of bilingual papers was for the purpose of giving opportunity to candidates from Hindi medium schooling background to participate in the screening process, which was earlier in favour of the candidates proficient in English language;

3) There was no application of mind, for, 15 questions in paper CSAT were out of syllabus and secondly, yet again discriminatory against the candidates who come from a Hindi medium background. Petitioner Nos.10, 14, 16, 17, 18, 26, 28, 35, 43, 58 and 60 were disadvantaged despite being intelligent and meritorious owing to rural background.

4) The translation was totally incorrect. An attempt has been made to refer to Question 34 of series `A', whereas in vernacular language of Hindi, whatever was written in English has been transcribed as it is. 15% of the questions were of the nature of English Comprehension Skills Test, though the English language Comprehension Skills Test competent was not a part of the syllabus of paper-II,

thus, the very nature of its assessment was not in accordance with Hindi translation as it could not be attempted by the candidates with Hindi medium background.

5) It is for the first time the negative marking was introduced. The petitioners were apprehensive of negative marking despite knowing that one question had two answers. Reference has been made to Question No.57 of series `A', Paper-1 despite knowing both C and D to be correct answers, did not attempt the question fearing negative marking.

6) There were certain questions in which the correct answer options were not provided. For example, in Paper-1 General Studies, question in set `B' was that "who discovered the scientific function of cells in 1665" and four names were given, whereas as per answer given in the original key was `A', but the objection of the petitioners was that it was not Robert Hooke, but the inventor was Theodor Schwann and Matthias Jakob Schleiden. Similarly, the answer to the question "which State of India is the largest producer of chillies and turmeric and the options were (a) Uttar Pradesh, (b) Andhra Pradesh, (c) West Bengal and (d) Maharashtra and the answer given in the original key was (a) West Bengal, whereas in the revised key it was B-Andhra Pradesh. In fact, the correct answer is that `Andhra Pradesh' is the largest producer of chillies and `Telangana' is the largest producer of turmeric. Many other examples were pointed out in the writ petitions to demonstrate the question had two answers. The question "what is the name of new dwarf planet which was discovered in 2005" and the answer given in the original key was Eric and in the revised key was Eris.

7) Objections of the petitioners were not dealt with in correct perspective. To overcome the hurdle of the objection qua non-impleadment of the candidates, i.e., 12 times of the number of the advertised post, reference was made to two judgments, i.e., Rajesh Kumar & Ors. Versus State of U.P. & Ors., (2005) 5 SCC 172 and Shankarsan Dash Versus Union of India, (1991) 3 SCC 47.

8) In order to buttress argument, it was argued that the examinations have to be conducted as per statutory rules and selection has to be made by giving strict adherence to the statutory rules. Court cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. In support of the aforementioned argument, reliance was laid to three judgments, i.e., Neeraj Rathi & Anr. Versus State of Haryana & Anr., CWP No.17139 of 2014 decided on 04.05.2015, Ramesh Kumar Versus High Court of Delhi and another, (2010) 3 Supreme Court Cases 104 and Gurpreet Singh Bhullar & Another Versus Union of India & Others, (2006) 3 SCC 758. It was contended that the Commission should follow the statutory rules while making direct selection. It cannot take any decision being violative of statutory rules. Also relied upon the ratio decidendi culled out in Manish Ujwal and others Versus Maharishi Dayanand Saraswati University and others, 2005 (13) SCC 744, where, the re-evaluation was ordered to be directed on the basis of the right key answers as it was found that the ranking of the candidates was affected due to

the incorrect and erroneous key answers. Reliance was also laid to the judgment rendered in *Guru Nanak Dev University Versus Saumil Garg and others*, 2005(13) SCC 749 (Para 6) to contend that where the candidates aspiring to seek admission in MBBS/BDS courses found that 8 key answers supplied by the University to be demonstrably incorrect and 7 were incapable of giving correct answers. Hon'ble Supreme Court emphasized that the questions posed must have only one correct answer out of the four options given and responsibility is on those who finalise the key answers. If none of the answers is correct, it becomes their duty to say that none of the answers is correct. The remedial measure is that it should be taken before the answers are evaluated so as to avoid the litigation. Reliance was also laid to *Gourav Jain Versus Haryana Public Service Commission*, 2009 (15) SCT 716 (P&H), wherein noticing four offending questions to be deleted, the Selection Commission was directed to give marks on percentile basis regarding four question papers and *Puneet Mehta Versus State of Punjab and others*, 2011(1) SCT 396, that the knowledge and the merit of the candidate cannot be correctly evaluated if the answer to the question in the answer key was not correct.

9) As regards paper-II, items 1-5, 36-40 and 51 to 55 were 10 not set in bilingual.

10) Procedure of inviting objections was followed by the Public Commission only on the basis of the findings of the coordinate bench of this Court in *Ramandeep Kaur Versus Council of Scientific And Industrial Research (CSIR)*, 2017 (4) S.C.T. 329, *Rekha and Ors. Versus State of Haryana and Ors.*, 2018(1) S.C.T. 110, wherein this Court ordered by scrapping 11 questions though by accepting the dictum that normally the Court would not interfere into decision of the expert committee, but finding the questions to be ambiguous direction was issued to give the marks on percentile basis. Also relied upon the decision of the LPA Bench in the same very judgment and *Mahipal Singh and others Versus State of Haryana & Ors.*, 2019(2) S.C.T. 436 and *Sanjay Singh Versus U.P. Public Service Commission, Allahabad & Others*, AIR 2007 SC 950, wherein Hon'ble Supreme Court noticing the answers to be incorrect, ordered for marks on percentile basis and the procedure for giving the same. While relying upon *Gunjan Sinha Jain and Ors. Versus Registrar General, High Court of Delhi*, 2012 (23) SCT 656, it was argued that the result declared regarding Delhi Judicial Service (Preliminary) Examination was challenged on the premise that for some questions, the answers reflected in the answer keys were correct. There were certain categories of the questions, where the answer in respect of one question was more than one correct option. Also laid reliance upon *Kanpur University, through Vice-Chancellor and others Versus Samir Gupta and others*, (1983) 4 Supreme Court Cases 309, that where the candidates gave correct answer are entitled to full marks after having found that the answer key supplied by the paper setter was wrong. Correctness should be ascertained from the standard and prescribed text-books and not merely on the basis of inferences. Reliance was laid to Para 18 of *Mahipal Singh's case (supra)*, where the action of deleting the question was

accepted, but it was argued that in the present case, the questions have been retained which had two answers. It was also argued that 65000 candidates had appeared and 2211 candidates have cleared the preliminary examination.

Arguments of respondent-Haryana Public Service Commission Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Arun Gupta, Mr.H.N.Mehtani and Mr.Kanwal Goyal, Advocates submitted that the writ petitions are not maintainable as the petitioners, who participated in the examination, attempted the questions but remained unsuccessful, cannot challenge and take chance for selection. In support, relied upon the case law in *Ku. Rashmi Mishra Versus Madhya Pradesh Public Service Commission & Ors.*, 2006(4) S.C.T. 792. The Court is not an expert which can sit over the arm-chair of the Committee and examine the answers by analyzing the published answer keys. In other words, it was submitted that the scope of judicial review on opinion of set key is very limited. Once the Commission had already constituted the Expert Committee and dealt with the objections, the result cannot be challenged. Reliance was laid to *Richal & Ors. Etc. etc. Versus Rajasthan Public Service Commission & Ors. Etc. etc.*, 2018(2) S.C.T. 773.

It was next contended that there is no provision of re-evaluation of the marks under the statute or the rules. If at all, there was any discrepancy in framing of the question paper, it would apply to all the candidates sitting in the examination and not the petitioners as out of 65000, 2211 candidates were found successful. This Court cannot assume the role of expert and should not overstep their jurisdiction to upset the opinion of experts. In support of this contention, relied upon *U.P.P.S.C. Through its Chairman & Anr. Versus Rahul Singh & Anr.*, 2018(3) S.C.T. 298. The Commission did not address the issue on objection, but even went ahead and formed a Committee and noticed that 8 questions had two answers and 10 had wrong answers, which have been correctly deleted. The marks have been given on percentile basis. There was a complete mode for the questions as the parameters for CSAT exam not only involved skills but other intellectuals of the candidates and particular set of questions, therefore, rightly not set in bilingual, i.e., with Hindi. Emphasis laid in the judgment rendered in *Guru Nanak Dev University's case (supra)*, that a passing reference to a situation, cannot be considered the basis for deletion of the questions having two correct answer.

It was also contended that the decision making process is neither illegal nor arbitrary as it has applied uniformly to all the candidates. Expert Committee Consisted of Professors from reputed Universities/ Colleges of concerned subject, thus, were neutral expert. Commission has spent almost 1.25 crores for conducting the examination, whereas 2211 had cleared the examination. In case the prayer of the petitioners is accepted for cancellation of the result, the candidates, who have been selected, stand to suffer without being heard on merits. The questions pertained to comprehension were required to set in one language and cannot be translated as the entire purpose of testing of language

skill of the candidates would be defeated because 33 marks have been assigned for English Main. The note given under the specific question was also notified in the advertisement, which has not been challenged till date. It is hyper-technical approach adopted by the candidates and, thus, prayed for dismissal of the writ petitions.

I have heard the learned counsel for the parties, appraised the paper book, judgments cited at bar and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

26 changes, deletion of 10 questions, revision of 8 questions, 8 question having two answers to be correct in Paper-I, 5 changes, deletion of 1 question and revision of 4 questions in Paper-II, negative marking and setting up of the Expert committee are not in dispute. The objection of Mr. Bali regarding the maintainability of the writ petitions after having participated in the examination to some extent can be accepted, but cannot be a straight jacket formula to take away the right of an affected person/candidate in case there is revelation of blatant mistakes at the hands of the question setters, therefore, the ratio decidendi culled out in the judgment *Ku. Rashmi Mishra (supra)* would not be directly applicable. The objection of Mr. Bali is, thus, hereby overruled. .

As regards the other objection qua non-impleadment of 2211 candidates, I am of the view that it would not be necessary for the petitioners to implead them as the terms and conditions of the advertisement and the brochure published do not envisage that the marks obtained in the preliminary examination would be considered for the main examination. It is not a selection process. It makes the candidates eligible for the purpose of sitting in the main examination by screening of their skills, answering the questions in two sets of papers meant for preliminary examination. Both sides cited the judgments. In *Rajesh Kumar and Shankarsan Dash* cases (*supra*), it was laid that the candidate in merit has no indefeasible right to appointment. In other words, the impleadment of selected candidates at this stage of the process would not be necessary and, therefore, the objection is hereby rejected.

The column pertaining to the scheme of examination in Clause 6 of the advertisement is reproduced herein below:-

"6. SCHEME OF EXAMINATION

- (i) Preliminary Examination (for screening only) 200 Marks
- (ii) Main Written Examination 600 Marks
- (iii) Personality Test 75 Marks (For details, please see the Instructions for Candidates & Brochure).

The candidates applying online application form for the Preliminary Examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination for which they are

admitted by the Commission viz. Preliminary Examination, Main (Written) Examination and Personality Test (Viva-voce) will be purely provisional subject to their satisfying the prescribed eligibility conditions. If at any time before or after the Preliminary Examination, Main (Written) Examination and Personality Test (Viva-voce), it is found that they do not fulfill any of the eligibility conditions; their candidature for the examination will be cancelled by the Commission. If any of their claims is found to be incorrect, they will render themselves liable to action by the Commission.

Notes:

(1) The Preliminary Examination is only for short listing of category wise candidates on the basis of marks obtained by them in both the subjects (General Studies & CSAT).

(2) For each wrong answer, one fourth (0.25) mark will be deducted.

(3) The question paper will be got printed bilingual i.e. Hindi (being regional language) & English except language papers.

(4) The marks obtained in Preliminary Examination will not be counted towards final selection.

(5) All the candidates who apply for Preliminary Examination will be admitted provisionally for Preliminary Examination subject to fulfillment of all eligibility conditions. At this stage, no scrutiny of their online application forms will be carried out by the Commission.

(6) Candidates twelve (12) times the number of advertised posts including bracketed candidates, if any, in their respective categories in order of merit will be admitted to the Main Examination.

(7) Candidates who qualify for the Main Examination will have to apply again for which they will be informed separately along with application form & instructions for Main Written Examination.

(8) Candidates thrice (3 times) the number of advertised posts including bracketed candidates, if any, in their respective categories in order of merit of Main Examination will be called for Personality Test (Viva-voce)."

Even Appendix-I attached to the brochure also contained the same instructions as set out in the advertisement, so there is no need to reproduce the same in order to avoid repetition.

The question papers handed over to the candidates, i.e., Paper-I and Paper-II both contained the instructions to be followed by the candidates. For the sake of brevity, instructions of Paper-I read as under:-

"1. Use only BLUE/BLACK Ball Point Pen

2. Check the QUESTION BOOKLET thoroughly. In case of any defect - Misprint,

missing questions get the question booklet changed. No complaint shall be entertained after the exam in this regard.

3. This test booklet contains 100 items (questions). Each item is printed both in Hindi and English. Each item comprises four responses (answers). You will select the response which you want to mark on the Answer Sheet. In case you feel that there is more than one correct response, mark the response which you consider the best. In any case, choose ONLY ONE response for each item.

4. All Questions are COMPULSORY. Each Question carries one mark. For each wrong Answer, one fourth (0.25) mark will be deducted.

5. Best you mark the Answer, read the instructions on the back page of the OMR (Answer) Sheet as well as on the Question Booklet and fill the particulars in the OMR (Answer) Sheet carefully and correctly. Incomplete & Incorrect particulars may result in your OMR (Answer) Sheet not being evaluated by the Computer.

6. Answer Sheets will be collected only after the completion of the Examination and no candidate shall be allowed to leave the Examination Hall earlier. After completing the test, hand-over the OMR (Answer) Sheet to the Invigilator.

7. For Rough Work, 2 Blank Sheets have been provided in the Question Booklet itself. No extra Sheet will be provided under any circumstances.

8. Write the QUESTION BOOKLET SERIES in the space provided on the OMR (Answer) Sheet, by darkening the corresponding circles.

9. Candidate should write his/her Name, Roll Number, Question Booklet Series and other specific information in the space provided on the Question Booklet as well as on the OMR (Answer) Sheet.

Note: The Question Booklet is bilingual. In case of any difference/ambiguity between English & Hindi version, the English version shall be considered as final/correct."

Similar instructions were of Paper-II. However, as regards the direction for 5 items 1-5, 36-40 and 51-55 following directions were given:-

"Directions for the following 5(five) items no.1 to 5:

The following 5 items are based on the following passage in English to test the comprehension of English Language and therefore these items do not have Hindi version."

The stand of Mr.Bali is that those were the questions posed to the candidates for assessment of the parameters laid down under the CSAT consisting of comprehension, interpersonal skills including communication skills, logical reasoning and analytical ability, decision making and problem solving as they wanted to become HCS or an officer in the Allied Services.

There cannot be a answer in bilingual, failing which the whole purpose of

ascertaining their capability would not be achieved, therefore, the argument of Mr. Gurminder Singh that Commission did not conduct the test strictly in accordance with the amended Rules 2016 is not sustainable and hereby rejected, accordingly, the ratio culled out in Ramesh Kumar and Gurpreet Singh Bhullar's cases (supra), would not be applicable.

Now the question to be pondered is whether 8 sets of questions having two answers would be a ground for setting-aside the entire preliminary examination or not. Much stress and emphasis was laid to the observations recorded in Paragraphs 6 and 11 of Manish Ujwal's case (supra). The same read as under:-

"6. We are not referring to the answers given by the experts from the Jodhpur and Udaipur Universities in respect of other questions in view of the difference of opinion and are proceeding only on the basis of the erroneous key answers in relation of the aforesaid six questions. As to the impact of evaluating answers by feeding incorrect keys, at present, it may not be exactly possible to comment, also keeping in view the adopting of negative marking system and a very tough cut-throat competition amongst the students.

11. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case."

No doubt, it has been observed that the question posed must have only one correct answer out of the four options and the responsibility fastened on the person analyzing the key answers. It is the duty cast upon them to avoid any

ambiguity, but noticing the aforementioned in Para 11 extracted above, Hon'ble Supreme Court in order to safeguard the interest of the candidates directed for re-evaluation of the eight questions. The paper was set for seeking admission in medical and other professional courses, i.e., entrance test.

The law with regard to having two answers is no longer *res integra* in view of the law laid down in *Ankit Khare Versus The High Court of M.P.*, 2012 ILR (M.P.) 2372 (Para 12), *Nirmal Kumar Deva Versus The State of Jharkhand and others*, 2015(3) AIR Jhar R.216 (Paras 6 and 8) and *Abhijit Sen and others Versus State of U.P. and others*, 1984 AIR (SC) 1402 (Para 4).

Para 12 of judgment *Ankit Khare*

12. Thus, from perusal of the relevant extract of the book, it is apparent that both the options i.e. option "B" namely Vitamin B and option "C" namely Vitamin C are correct answers. If the candidate has marked Vitamin C as correct answer, he would not get one mark though he is entitled to one mark as his answer to the question is correct.

Paras 6 and 8 of judgment *Nirmal Kumar Deva* 6. As against the above, Mr.Rajesh Kumar, the learned counsel appearing for the respondent-Jharkand Academic Council, Ranchi submits that, the objections were examined by the experts and the final model answers were prepared by them. Reiterating the stand in counter-affidavit it is stated that in cases where two answers for one question were found correct, both the answers were accepted as correct and full marks has been allotted to such answers. In those cases, where more than two answers were found correct, the candidates were given full marks for that question and thus, uniformity was maintained and there was no arbitrariness and discrimination in evaluation of OMR sheets.

8. From the materials on record, it is apparent that in the representations dated 31.05.2013 and 05.06.2013 submitted by the petitioner, the petitioner did not raise any grievance with respect to Question Nos.43, 123, 127 and 143. Much after the Revised Model Answer Key was published, the petitioner allegedly submitted the representation to the Jharkhand Academic Council however, neither a copy of those representations have been brought on record nor do I find any reference of such representation in order dated 20.12.2013. It is also apparent that Jharkhand Academic council, Ranchi after inviting objections from the candidates, has taken action on the recommendation of the subject experts. The final model answers were prepared on the opinion of the experts and therefore, it is difficult to accept the contention of the petitioner that the final model answers also contained wrong answers for question nos.43, 123, 127 and 143. The course material and the Question Booklet have been brought on record however, it does not appear that the answers selected by the petitioner were the alleged correct answers for question nos.43, 123, 127 and 143. In the counter-affidavit, it has been disclosed that in cases where more than two answers were found correct, full marks were allotted for both answers and where more than

two answers were found correct, full marks were given to all the candidates. In the present case, the Model Answer Key was revised on the recommendation of the experts and a modified Answer Key was published. I find no infirmity in the decision of the respondent-Jharkhand Academic Council. Insofar as, contention that the JAC was required to constitute board of Experts, I find that in order dated 20.12.2013, this court has observed that "if In the opinion of JAC or the Board of Experts, as may be constituted for that purpose, more than one answer to any question is found correct, Jharkhand Academic council shall review the answer sheets of the petitioner". It is thus clear that there was no mandatory direction by this Court to constitute a Board of Experts. After considering the representation of the petitioner, the same has been rejected by the Jharkhand Academic Council, Ranchi vide order dated 04.01.2014. The writ petition does not disclose that the options for question nos.43, 123, 127 and 143 have been correctly opted by the petitioner."

Para 4 of Abhijit Sen

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. Freese 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. Freser 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."

A cumulative reading of the aforementioned findings, extracted herein above, leads to an irresistible conclusion that the petitioners have raised the objection by blowing out of proportion. It is unfortunate that the petitioners have not been able to clear the preliminary examination. Mr. Bali made a statement that the Board has given marks to all the candidates, who have attempted either of the questions, i.e., before publication of answer key and afterwards. In such circumstances, the objection of the candidates that they were apprehensive of not attempting the questions owing to the negative marking is wholly preposterous and hereby rejected.

As regards the objection with regard to not setting of few questions in bilingual, I am of the view that as per the note, the result of the preliminary examination will not have any bearing on the candidate to appear in the main examination. It is only a passage of undergoing screening test to enable him/her to sit in the main examination. No person is deprived for calling for Personality/Viva-voce test unless attains forty five percent (45%) marks in the aggregate of all the written papers and a score of minimum thirty three percent (33%) marks each in English and Hindi (compulsory papers). Clause III of the notification dated 05.05.2016 reads as under:-

(III) Personality Test : 75 Marks

(i) Total number of candidates to be admitted to the Main Written Examination shall be 12 times the number of advertised vacancies, including bracketed candidates, if any. Similarly, the total number of candidates to be called for personality test shall be three times, including bracketed candidates, if any, of the advertised vacancies. Ex-Servicemen and dependents of the Ex-Serviceman shall also have to appear in all the papers including optional subjects.

(ii) No candidate shall be called for Personality/Viva-voce test unless he attains forty five percent marks in the aggregate of all the written papers and a score of minimum thirty three percent (33%) marks each in English and Hindi Language (compulsory papers). The final selection shall be based on the merit list to be prepared on the basis of total marks obtained by the candidate in the Main Written Examination and Personality/Viva-voce Test i.e. out of 675 marks and keeping in view the preference of services exercised by the candidates. The candidates shall write their answers in Hindi or English (except the language or literature papers). The papers of General Knowledge and optional subjects unless otherwise directed shall be answered either in Hindi language or English Language but no candidate shall be permitted to answer any one paper partly in Hindi and partly in English. The candidates shall not be allowed the option to answer these papers in any other medium but the papers except Hindi Language or literature papers shall be set bilingual i.e. in English and Hindi.

(iii) The syllabi for Main Written examination which shall be of graduate level, shall be notified by the Government. Thereafter the Government in consultation with the Commission may change/amend/revise the syllabus for the Preliminary or Main Examination after notifying in Official Gazette.

(iv) The cost of application form and Examination fee shall be decided by the Commission in consultation with the Government. Failure to deposit the fees prescribed for the Examination by the last date of receipt of application form will render a candidate ineligible to appear in the Examination."

A candidate who is not capable to comprehend or understand the questions only in English to understand the personality and other capabilities by complaining to have not set in bilingual will not be able to overcome the hurdle of obtaining 33% marks in English, a compulsory paper as it would amount to downgrading the level of assessment for such a high post, thus, the argument of the learned counsel for the petitioners on this point is rejected.

It is also settled law that the Court cannot assume the role and character of the Expert Committee to re-assess their decision until and unless decision is irrational or fallacious and that too by lifting the veil, but once the Expert Committee found 10 questions to be incorrect and deleted the same, all the candidates even who have cleared and otherwise been given marks on percentile basis. An attempt has been made in this Court that the criteria for taking percentile marks as laid down in Sanjay's case (supra), has not been followed. It would be in the fitness of things to extract relevant paragraph 21 of the aforementioned judgment. The same reads thus:-

"21. But the question is whether the raw marks which are converted into scaled scores on an artificial scale which assumed variables (assumed mean marks and assumed standard deviation) can be considered as 'marks finally awarded' or 'marks obtained'. Scaled scores are not marks awarded to a candidate in a written examination, but a figure arrived at for the purpose of being placed on a

common scale. It can vary with reference to two arbitrarily fixed variables, namely 'Assumed Mean' and 'Assumed Standard Mean'. We have dealt with this aspect in greater detail while dealing with question (iii). For the reasons given while considering question (iii), we hold that 'scaled scores' or 'scaled marks' cannot be considered to be 'marks awarded to a candidate in the written examination'. Therefore, scaling violates Rule 20(3) and Note (i) of Appendix-II of Judicial Service Rules."

In the instant case, the Commission on the basis of the expert opinion has taken corrective steps by deleting the questions and causing announcements that the marks of the deleted questions were awarded proportionately to all the candidates by declaring result on percentile basis.

The announcements (Annexures P-12 and P-13) are extracted herein below:-

"Annexure P-12

ANNOUNCEMENT

The Haryana Public Service Commission has declared the result of HCS (Ex.Br.) & Other Allied Services Preliminary Exam-2017 on 21.05.2019. Accordingly, the Revised/Final Answer Keys for General Studies are produced below.

Note:

1. The alphabet 'X' below denotes the questions which have been deleted. Marks of these deleted questions/answers have been awarded proportionately to all the candidates and accordingly, the result has been prepared on percentile basis.
2. There are eight questions for which two options were found correct. Four these questions, marks have been awarded to all those candidates who have marked any one of these two correct options."

"Annexure P-13

ANNOUNCEMENT

The Haryana Public Service Commission has declared the result of HCS (Ex.Br.) & Other Allied Services Preliminary Exam-2017 on 21.05.2019. Accordingly, the Revised/Final Answer Keys for CSAT are produced below.

Note:

The alphabet 'X' below denotes the questions which have been deleted. Marks of these deleted questions/answers have been awarded proportionately to all the candidates and accordingly, the result has been prepared on percentile basis."

The aforementioned declarations have not been disputed and cannot be said to be not in the knowledge of the petitioners.

I need not extract the ratio decidendi culled out with regard to the role of the Court to sit on the arm-chair of the expert. I would be citing only one judgment

on this point in order to avoid repetition, i.e., Varun Chandiok Versus Haryana Public Service Commissioner and another, 2015(3) S.C.T. 826. Paras 9 and 10 of the same read thus:-

"9. We do not find that the said judgment provides any assistance to the arguments raised. The action of the University in giving credit to all the students, whether they have attempted the questions or not, was found to be unjustified. In the present case, the examining body has taken a conscious decision that credit or discredit of such questions shall not be given to any student irrespective of the fact whether a student has attempted such questions or not. Therefore, all students have been assessed on the basis of 120 questions rather than on the basis of 125 questions. Numerous eventualities can be conceived as a result of such decision; such as, a candidate, who has answered the questions correct, has been deprived of the marks, whereas a candidate, who has not understood the questions correctly and not attempted the same or attempted wrongly, would stand to benefit.

10. In a writ petition, we are not to examine the numerable circumstances, which may ensue as a result of deletion of such questions. As a part of judicial review, the jurisdiction of this Court is to examine the decision making process. Whether the decision making process of deleting the questions is so arbitrary, unreasonable or irrational that it cannot be sustained. The examining body is the most suitable to decide, whether such questions are vague or the options are incorrect or not possible. Such decision of the examining body has to be respected. The decision of the examining body that questions need to be deleted cannot be said to be arbitrary, unreasonable or irrational, which may warrant interference by this Court in exercise of its writ jurisdiction."

For the reasons mentioned above, I do not find any merit in the contentions raised by the learned counsel for the petitioners, thus, the writ petitions are wholly devoid of merit and without any substance. No ground for interference is made out. Resultantly, the same are dismissed.