
(2015) 07 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 1784 of 2015

Subham Dutt

APPELLANT

Vs

The Convenor and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 6 ABR 140 : (2015) 4 BomCR 720

Hon'ble Judges : Anoop V. Mohta, J;V.L. Achliya, J

Bench : Division Bench

Advocate : Kevic Setalvad, Senior Advocate, V.M. Thorat, Pooja Thorat, Sumit Patni i/b Som Shankar Sinha, for the Appellant; Ravi Kadam, Rishabh Sancheti, Satish Upadhyay and Abhay Itagi instructed by M.V. Kini and Company, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anoop V. Mohta, J.—Rule. Rule made returnable forthwith.

Heard finally by consent of the parties.

2. The Petitioner has prayed as under:--

"a)to correct the model answers and re-assess the Impugned Results dated 20th May 2015 on the basis of the corrected model answers;

b)to allot all the students seats on the basis of marks/rankings as determined post re-assessment of the Impugned Results dated 20th May, 2015.

c)thereby directing the Respondent No. 1 to re-assess the entire answer sheets of all the students appearing for the CLAT, 2015 examinations on the basis of the correct model answers;

d)direction under Article 226 of the Constitution of India thereby directing the Respondent No. 1 to reassess the entire answer sheets on the basis of the correct model answers and award One mark each to all those students who have

attempted these disputed questions or in the alternative direct that the disputed questions should not be considered while computing the ranking or the markings and while allotting the seats in the institutions participating in CLAT, 2015;

e) That pending the hearing and final disposal of this Petition the Respondent No. 1 be enjoined from issuing the 3rd allotment list i.e. 21st June, 2015.

f) That pending the hearing and final disposal of the Petition, this Hon'ble Court stay the operation of the impugned results dated 20th May, 2015;

g) That pending the hearing and final disposal of the Petition, the Petitioner and other similarly placed students (whomsoever has attempted these questions) be awarded 1 mark each for attempting these questions.

h) That pending the hearing and final disposal of the Petition, the Respondent No. 1 be directed not to consider these questions during the process of allotment of seats in the institutions as preferred by these students.

i) That pending the hearing and final disposal of the Petition, the Respondent No. 1 and all the participating institutions be restrained from allotting all the seats.

j) That pending the hearing and final disposal of the Petition, the Respondent No. 1. and all the institutions participating in CLAT, 2015 be directed to keep at least 15 seats as a provision for post re-assessment changes in the markings and the rankings of the students."

3. The basic events are as under:--

"The Petitioner is aged 18 years, residing at the address mentioned in the cause title of the Petition. The Petitioner is a student who has just cleared his Class XII board examinations by a score of 94.15% under the Maharashtra Higher Secondary State Board. The Petitioner has given examination of Common Law Admission Test, 2015 (for short, "CLAT-2015") to pursue his aspiration in one of the National Law Universities. The Petitioner has secured a rank 278 in the CLAT-2015. Results declared on 20 May 2015 and thereafter revised."

4. Respondent No. 1 has conducted the CLAT examinations in the country for the year 2015. Respondent No. 2 is the Union of India. The role of this Respondent (CLAT) is quite limited. Their expertise on the subject/topic/field is also limited, on the basis of which compulsory 200 objective questions and key answers were prepared and announced, so also the self study kit.

5. CLAT is a non-statutory body created for the convenience of the students seeking admission to the various National Law Universities in the country under Memorandum of Understanding (MOU). An entrance test is conducted to provide a list of candidates on the basis of "merit-cum-preference" to each University for admission to their UG/PG programs, as per the qualifications, reservation and other conditions laid down under the respective statutes of the participating Universities. CLAT is an all India entrance examination conducted on rotation by 16 National Law Universities for admissions to their UG and PG programmes (LLB

and LLM).

6. On 24 December 2014, on 25 December 2014, Respondent No. 1 issued the First Admission Notification, thereby calling upon the Law aspirants to make applications for pursuing the Higher education in the National Law Schools covered under CLAT-2015. On 1 January 2015, Respondent No. 1 started accepting the Online application forms for CLAT-2015. 15 April 2015 was the last date for submission of the Online application. On 19 April 2015, the Admit cards/ Hall tickets were made available to the Petitioner thereby, confirming the date of examination. 10 May 2015 was the date of examination. On 20 May 2015, the Results i.e. Merit list (category-wise) along with the notice to the candidates for indicating their choices of university preferences using online candidate portal was published. Respondent No. 1 along with the marksheet had also issued a Model Answer sheet on the basis of which the Corrections/marking/checking of the Answer sheets has been done. The Petitioner scored 102.5 and had secured a rank 258.

7. The Petitioner, on perusal of the Model Answer paper realized that there were several questions which have been answered incorrectly in the Model Answer sheet and on the basis of these incorrect answer the corrections/marking/checking of the Answer sheet has been done. The impact of the same is that the Answers which were given by the Petitioner have been unfortunately been considered as a wrong answer to the question and a negative mark of (-0.25) has been allotted which instead could have been (+1). The Students were supposed to indicate the University wise preference on the basis of Merit-cum-preference which would be used as criteria for allocating the seats.

8. On 6 June 2015, Respondent No. 1 issued a Notification. On the basis of the Notification, the Petitioner's rank fell from 258 to 278. On 9 June 2015, Respondent No. 1 published its first 1st indicative seat allocation list. On 10 June 2015, the Petitioner filed its representation before Respondent No. 1, setting out the details of the grievance along with the proper references and the reasoning and thereby requested to consider the same at the earliest. The grievance of the Petitioner is in respect to the findings of Respondent No. 1 in terms of questions id No. 1730, 1708, 1733, 1828, 1836, 1826 and 1882.

9. Admittedly, the Petitioner was heard on 15 June 2015 by the Respondents' Expert, but not dealt with any of the question in detail with reference to the material referred and relied as recorded in the documents/chart dated 10 June 2015, marked "X" on this record. CLAT proceeded further and has been announcing the results.

10. One Mr. Anand A. Nair, resident of Kerala filed a Writ Petition bearing No. WP(C). No. 17817 of 2015 before the Hon'ble Kerala High Court at Ernakulam, against Respondent No. 1 herein and other Respondents mentioned therein on the same issue. On 15 June 2015, the Hon'ble Kerala High Court at Ernakulam was pleased to direct Respondent No. 1 herein to keep the issuance of 2nd

Allotment list for CLAT-2015 in abeyance for 2 weeks and issued notice to the Respondents in that Petition to appear and file their replies to the same. On 15 June 2015, Respondent No. 1, as stated, in non compliance of the Order of the Hon"ble Kerala High Court, Ernakulam issued 2nd allotment list after payment of the counseling fee. The Petitioner has participated in the admission process all along and has also deposited a counseling fee of Rs. 50,000/- (Rupees Fifty Thousand Only). The Petitioner has been allotted admission at the National Law University, Jodhpur. The case of the Petitioner is that because of the incorrect responses provided in the Model Answer sheet, the Petitioner has lost out 7 marks and a much improved ranking, which would enable him to get through the college of his preference as mentioned in the Allotment list.

11. The relevant subsequent events and the schedule which are necessary for further discussion are as under:--

12. The Petitioner filed this Writ Petition on 20 June 2015. In view of the urgency expressed, we have heard the matter and passed following orders, from time to time.

On 20 June 2015:--

"1. Heard. Issue notice of final disposal to the respondents, returnable on 23rd June, 2015.

2. The petitioner after clearing his Class-12th Board examination by securing 94.15% from the Maharashtra Higher Secondary State Board, has given examination of Common Law Admission Test, 2015 ("CLAT, 2015"). Result of the same was declared on 20th May, 2015. The petitioner has secured a rank 258 in the CLAT, 2015. On 6th June, 2015, the revised list was published and respondent No. 1 issued a notification because of complaints so received. Because of the notification, the petitioner's rank fell from 258 to 278. On 9th June, 2015 respondent No. 1 published first indicative seat allocation list. The petitioner filed its representation/objection on 10th June, 2015 in respect of the 7 questions. No hearing was given to the petitioner by respondents. The petitioner waited for the same.

3. A petition was filed in Kerala High Court at Ernakulam on 15th June, 2015, on the basis of similar objection raised by the petitioner therein. Interim order was passed against respondent No. 1. However, as stated, in non-compliance of the same, on 15th June, 2015 itself 2nd list was published without considering the objections so raised. The petitioner being resident of Mumbai, approached this Court on 19th June, 2015. In view of urgency so expressed by the Counsel for the petitioner, the present matter is kept today i.e. 20th June, 2015, in Chamber. 3rd list will be declared by respondent No. 1, on 21st June, 2015. If the petitioner's objections are accepted/considered, he will be in a position to get the admission in desired college as per the procedure so announced, though the petitioner submitted fees under protest.

The declaration so filed by petitioner on 21st May, 2015 is as under :

"I understand that my admission shall be subject to the verification of the documents by the allotted NLU(s) in respect of my claims about eligibility and reservation, if any. I also understand that my admission in case of my age exceeding 20 years (22 years in case of SC/ST/PWD) shall be provisional and subject to final decision of the appropriate court in this matter. The respondent No. 1 has already declared that the allotment/admission shall be subject to outcome of the petition."

4. Due to heavy rain in Mumbai, the State as well as High Court of Bombay declared holiday on Friday i.e. 19th June, 2015. 20th June, 2015 was the working Saturday but due to the same reason, it has also been declared as Holiday. Therefore, in view of urgency so expressed by the learned Counsel appearing on behalf of the petitioner, the matter is kept on 20th June, 2015 in Chamber.

5. On Friday, this Court permitted the petitioner to serve copy of the petition on the contesting respondent No. 1. The statement is made that, office of respondent No. 1 has refused to accept copy of the writ petition. The petitioner undertakes to file affidavit of service by Monday. However, pursis is filed today stating therein about rejection of service by respondent No. 1.

6. Learned Counsel appearing for the petitioner took us through the averments so made including their statement referring to the 7 questions. As the other side is absent and this matter requires urgent attention of all the concerned, we are inclined to give one more opportunity to the respondents to place before us the decision on the question so raised by the petitioner. The submission is that as the averments and statements made by the petitioner are similar to the to the objection so raised in the judgments so cited (2005) 13 SCC 749 and 2002(3) Bom CR 219 and in such matters to avoid further complications, it is desirable that further proceedings referring to the final list needs to be stayed immediately. Therefore, at this stage, keeping all points open including contentions raised by the petitioner, we are inclined to keep this matter on 23rd July, 2015 (HOB) for final disposal.

7. As office is closed today, we direct the parties to act on the basis of authenticated copy/steno copy of this order.

8. Parties are at liberty to communicate this order by all possible modes in addition to regular mode of service. Hamdast is also permitted."

On 23 June 2015

1. This is in continuation of order dated 20th June, 2015.

2. Considering the averments made, the name of Respondent No. 3 is deleted from the array of Respondents.

3. The learned Senior Counsel appearing for Respondent No. 1, on instructions,

submitted that as the matter is coming for the first time, they would like to file a short affidavit referring to the averments/objections so raised regarding those seven questions. According to Respondent No. 1, the Expert Body has already taken a decision even noting the objections so raised by the Petitioner and proceeded further to publish first revised allocation list on 9th June, 2015, second list on 15th June, 2015. Third allocation list was published on 21st June, 2015. Based upon these lists so published, the concerned candidates must have proceeded further including payment of counseling fee. The Petitioner himself paid the requisite payment after second list.

4. The learned Senior Counsel appearing for Respondent No. 1 has also submitted that they would like to take appropriate steps to club all the matters pending in various High Courts including Allahabad, Rajasthan and Kerala, apart from this petition, as the issue is with regard to All India CLAT-2015 examination.

5. The Petitioner has also placed on record a chart giving reasons for correctness of chosen options with remarks and its sources. That chart is taken on record and marked "X" for identification.

6. The learned Senior Counsel appearing for the Petitioner has submitted that a case is made to grant an interim relief at least to the extent to stay of further steps based upon the last list so published. The dates of admission against allotment list will be completed by participating NLU(s) from 24th to 27th June, 2015. The fourth and final allotment list will be published on 1st July, 2015 and admission against fourth allotment list will be completed from 2nd to 4th July, 2015, the admission process will be closed on 6th July, 2015.

7. However, considering the averments so made and the time so taken to file present petition and the stages so crossed as recorded above and as other students/candidates must have already proceeded further based upon the lists so published, specifically first and second list, we are not inclined to grant any relief so prayed, unless we hear Respondent No. 1 after the affidavit/reply, which they are filing by day after tomorrow i.e. 25th June, 2015.

8. Stand over to 25th June, 2015 (HOB)."

13. The Respondents, as noted, have filed short reply/affidavit dated 25 June 2015 and expressed their submissions as under, apart from preliminary objections about the maintainability, delay and mis-joinder or non-joinder and the scope of Judicial Review in such matters.

"10. That the answering respondent, before adverting to the issues raised by the present Petitioner, seeks to bring the following facts to the kind notice of this Hon'ble Court:

.....

f. Ex-post the results, certain complaints were received including that of the present Petitioner with regard to certain questions in the exam paper. It was

found that in most cases each person had complained about questions which affect her/his result individually. However keeping the larger common interest of all candidates, those questions where a dispute was raised or a complaint was received, were reconsidered by a panel of experts. For the purposes of the confidentiality of examination process, the answering respondent seeks to crave leave not to disclose the name of the experts who reviewed those complaints, such details will be kept ready in a sealed envelope for the kind perusal of this Hon'ble Court.

11. Specifically with regard to the representation of the present Petitioner dated 10th of June, 2015, he chose to send it by speed post, which was received vide inward No. 1443/15 on 16.6.2015. At the same time, on 15th June 2015 the Petitioner's father came in person and met the officials and served a copy of the representation dated 10.6.2015.

12. The Petitioner had raised dispute regarding 7 questions, out of which 3 were already re-considered by the panel of experts. Yet, to ensure fairness and due process, the four other questions were also referred to experts, who gave their opinion rejecting the objections raised by the Petitioner. Since the name of the experts cannot be revealed due to the requirement of maintaining complete confidentiality; a copy of the said proceedings will be kept ready for the kind perusal of the Hon'ble Court.

.....

13

a. It is submitted that all the questions which the petitioner has mentioned were, inter-alia, re-examined by experts after receiving the representations from certain candidates.

b. Based upon the recommendations of the expert committee, Question No. 35 (Question ID 1744) was nullified and one mark was given to all candidates who have appeared in the examination and in Question No. 186 (Question ID 1907) equal marks were given to all candidates who have chosen either of the option "C" or "D" as their correct option. This is duly reflected on all students individual question papers also, and is accordingly incorporated in the revised rank list.

c. The experts did not find any discrepancy in any other questions."

14. After hearing the learned Senior counsel appearing for the Petitioner, to make position clear so far as the merits of the questions so raised supported by the resources, we have passed the following order as on 25 June 2015. The matter was adjourned to 30 June 2015. No additional classificatory affidavit filed till this date.

15. On 25 June 2015, this Court has passed the following order:

"1. Heard learned Senior Counsel appearing on behalf of the respective parties.

2. In continuation of earlier orders dated 20th June, 2015 and 23rd June, 2015.

3. We have also gone through the files submitted by the learned Senior Counsel for respondent No. 1, including a report of the Expert Committee, as referred to in paragraph Nos. 10(f), 11 and 12 of the short affidavit filed by respondent No. 1 dated 25th June, 2015. Having perused the same, we are of the view that, at this stage, for passing any further orders, it is desirable that the concerned respondents should get the clarification from the Expert Committee referring to the objections so raised by the petitioner, supported by the resources/sources and the remarks on the pages to the petition from 128 to 133 (representation/objections dated 10th June, 2015), which are already provided to respondent No. 1.

4. Importance of additions or deductions of marks can not be overlooked in any competitive examinations. Here as stated, there are 7 such answers, which may affect the merit of the petitioner or such other students.

5. An envelope, containing Expert Committee's recommendations given by Dr. Ram Manohar Lohiya National Law University, Lucknow, is placed on record. The same is opened in the Court. We have gone through the same and again sealed it. The said envelope be kept in the custody of Prothonotary and Senior Master/Registrar (O.S.), High Court, Bombay and be made available to this Court as and when required.

6. Stand over to 30th June, 2015 (HOB).

7. Parties to act on the basis of an authenticated copy. "

16. We are inclined to record now, as by single liner answers, the expert has decided the objections and retained their published key answers. We could not left the issue unanswered/unattended like this, as the process of admission itself involved, thousands of law students. Even after going through the objections and the answer keys and the supportive material placed on record, we are convinced that a case is made out for reasoned explanation/clarification. We are not convinced by the single liner order of the experts as the questions involved are of general nature and certainly not technical or complicated in nature. We are not expressing anything on merits of these objections/questions in this Writ jurisdiction. Let the Respondents' Expert Panel/Committee deal with the same in accordance with law, at their own level, by answering the objections with reasons and take further steps/actions accordingly.

17. We have noted the submissions of the learned Senior counsel appearing for the Respondents including paragraph No. 16 of the affidavit referring to the following observations:--

"16. The answering respondent relies on the law laid down by the Hon'ble Supreme Court in Kanpur University and Others Vs. Samir Gupta and Others, AIR 1983 SC 1230 : (1983) 2 SCALE 89 : (1983) 4 SCC 309 : (1984) 1 SCR 73 :

"We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. 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". (Para 16)."

Therefore, as the case is made out, we are inclined to interfere with the examination process of CLAT-2015.

18. The learned Senior counsel appearing for Respondent No. 1, expressed that they are required 3 to 4 more days to appoint Experts Panel/Committee to clarify those questions and to pass appropriate order, as some of the experts are out of India. The whole process requires at least two weeks time. They are unable to take any reasoned decision on the objections so raised immediately. The references so recorded in order dated 25 June 2015 remained unanswered with reasons, till this date. The time is short, in view of the schedule so fixed and even for further follow up by all. Considering the situation and involvement of the public at large, we had granted time, so that appropriate decision could be taken by Respondent No. 1-CLAT of their own. The situation is that further time is required to file additional affidavit/clarification to the objections so raised. We are declined to grant further time, as this would definitely hamper the whole admission procedure and the prescribed time so announced for other related purposes, as 6 July 2015 is the last date even for the closure of admission process by CLAT-2015. Even if they submit the clarification/decision of 7 questions so raised, considering the judicial power and the scope, it will be difficult to take final decision to select and/or grant marks, positive and/or negative, to the questions/answers given by the Petitioner and/or the other similarly situated students and/or to revise the whole merit list. It is for the concerned Respondents to take decision after clarification and/or revaluation and/or re-assessment of the questions/answers.

19. Strikingly, there are various such issues/objections have been raised in the various High Courts, including Allahabad, Keral, Madhya Pradesh and Rajasthan. All these matters are revolving around various objections of CLAT-2015. The decision, even if any, given by the one Authority and/or one Court, it would not serve and/or solve the problems, as it is question of relying on "merit-cum-preference" basis for allotting admission/seats to the respective University/college. It is for the Respondents, ultimately to take final decision in the interest of all, at the earliest. No steps taken or pointed out to club all these pending matters at one place/Court, as recorded in order dated 23 June 2015.

20. There are other questions as stated to be wrong, which are subject matter of other Petitions in other High Courts, which cannot be overlooked even by Respondent No. 1's Expert Panel. Anyway, if the answers which they have announced/published are correct, they are free to take decision, which will be without prejudice to the rights and contentions of the parties. But, if the questions so raised by the Petitioner and if the issues are decided in his favour

and/or in favour of such similarly situated students, there is no reason that the concerned Respondents should not decide and/or take decision to re-valuate and/or re-assess the marks and prepared the merit lists in accordance with law.

21. However, considering the scope and purpose of writ jurisdiction, the merits of those answers and further cause of action be decided and/or considered by the Respondents' Expert Panel/Committee. However, considering the totality of the matter, apart from pendency of the litigations in various other High Courts a case is made out for appropriate order. It is already recorded that all these admissions would be subject to further order of the Court. Such type of statements/declarations, as stated, are recorded for all other students also. We have granted time to the Respondents to respond immediately even on the merits of the matter. As no response is coming positively and they still want time, therefore, in the interest of justice, instead of halting the whole process, we are directing Respondent No. 1-The Convenor CLAT-2015 to appoint an Expert Panel/Committee and take decision on the objections so raised in accordance with law and pass appropriate order accordingly. This in no way to mean and/or restrict the Respondents to decide the other disputable questions, so raised by the Petitioners and/or such other persons so that the appropriate final decision can be taken, basically in respect of 7 objections so raised by the Petitioner and/or for all the similarly situated persons/students to avoid multiplicity and the confusion in the mind of all, at earliest.

22. Normally, there is no question to interfere with the single liner Expert Panel/Committee decision. Therefore, instead of passing any interim order, we have asked the explanation from the Respondents, but after going through the same and after considering the submissions of the learned counsel appearing for the parties and specifically the objection so raised with supporting material, we are of the opinion that the Expert Panel/Committee must take decision with reasons so that everybody concerned will be aware of the decision so taken and/or answer so given by them and including correctness of Respondents' answer keys.

23. The submission is made by the learned Senior counsel appearing for the Petitioner, referring to the Judgments so cited above that a case is made out to pass the order to the extent of setting aside all the lists so prepared and to interfere with the whole process of the examination so conducted by CLAT-2015. However, considering the scope and purpose, including the judgments so cited and referred and as there are issues with regard to the certain questions and as the Respondents have a power and authority to re-assess and re-evaluate all such objections, therefore, instead of disturbing the whole examination process, the Expert Panel/Committee and/or the Respondent Authority may pass appropriate order for re-valuation and/or re-assessment of the list, including maintaining the answer key published by them. Ultimately, it is for the Respondents Authority to take decision at the earliest to avoid further complications and the confusion in the minds of the people at large. Such confusion at this stage itself required to be corrected by all the concerned.

24. The basic issues with regard to the rights and/or entitlement of students referring to the marks, positive and/or negative, in this competitive examination is quite settled. One mark can make and/or mar the career of students of his choice, specifically when his wish and/or desire, based upon the hard-work and/or endeavour he/she has made, which needs to be respected by all. The legitimate expectation is clear that the student if has answered correctly the compulsory questions, he is entitled for the legitimate marks. The rejection and denial of such mark, if answer is correct, is definitely unacceptable to any one. We are not inclined to overlook this, in this era of competition, at entrance level of any examinations/courses.

25. The learned Senior counsel appearing for the parties have cited various Judgments for and/or against in support of their contentions. In Kanpur University, Through Vice Chancellor and others V s. Samir Gupta and others (1983) 4 Supreme Court Cases 309, the Hon''ble Supreme Court has dealt with a situation of similar type. A multiple choice objective type test was conducted, the key answers supplied by the paper-setter were wrong. It is held that, the students is entitled to full marks if answer is correct and the correctness needs to be ascertained from standard and prescribed text-books and not merely on the basis of inferences. The issue of publication of key answers along with the result of the test was also in issue and ultimately, after accepting the candidates'' case has recorded as under:--

"15 The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system."

The Hon''ble Supreme Court ultimately, directed the Authorities to grant the benefits of the marks and also directed to admit the students to the MBBS Course.

26. In Manish Ujwal and others v. Maharishi Dayanand Saraswati University and others (2005) 13 Supreme Court Cases 744 the Apex Court has directed to give marks/reliefs whereby after noting erroneous key answers in similar type

multiple choice objective test. The Supreme Court has also directed to re-evaluate all the questions to prepare merit list on the basis of corrected marks/numbers, if any. The Supreme Court has also directed to publish a fresh merit list.

27. In *Guru Nanak Dev University v. Saumil Garg and others* (2005) 13 Supreme Court Cases 749, the Apex Court while dealing with the multiple choice objective type test where the key answers provided by the authority were incorrect and directed the university to re-evaluate the answers of the questions so referred. The Supreme Court, ultimately has directed to give marks to the students who attempted to answer those objectionable questions. It is observed to give credit to those who attempted the objectionable questions or some of them.

28. The Division Bench of this Court in *Jimmy Abraham Thomas and Ors. v. The State of Maharashtra and Ors.* 2002(3) BomCR 219 by overruling the preliminary objection that disturbing any examination process, would have large scale dislocation, as many students must have taken their admission in different colleges as per the allotments so referred above. They must have paid fees also. However, ultimately by allowing the Writ Petition, this Court directed to publish and implement the revised merit list and ordered to grant admission to the students strictly in accordance revised list to the colleges of their choices.

29. In the present case the submission is also made to quash the whole process by relying on the Supreme Court Judgment *Tanvi Sarwal v. Central Board of Secondary Education and Ors* Writ Petition (Civil) No. 298/2015, Dated 15th June, 2015. (Supreme Court). We are not inclined to accept this submission to avoid further delay and the admission process. The objections so filed, if decided for and/or against, the Respondents and/or its Authority, would be in position to take decision being Expert Panel/Committee, to revise the list after due assessment, if objections are correct, and if the objections are rejected by giving reasons, they can maintain the merit lists so prepared. Ultimately, they have to take decision based upon the facts and the law.

30. The learned Senior counsel appearing for the Respondents as referred and read and distinguish the Judgments so cited by the Petitioner and also relied upon the Supreme Court Judgment in *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 . The Apex Court in para 31 observed that:--

"31. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, Regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it

would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others, AIR 1981 SC 1009 : (1981) 1 SCALE 437 : (1981) 2 SCC 484 : (1981) 3 SCR 34 : (1981) 13 UJ 333 ; Chhavi Mehrotra (Miss) Vs. Director General Health Services, (1994) 2 JT 212 : (1994) 2 SCALE 497 : (1994) 2 SCC 370 ; and Arvind Kumar Kankane. Vs. State of U.P. and Others, AIR 2001 SC 2800 : (2001) 6 JT 260 : (2001) 5 SCALE 23 : (2001) 8 SCC 355 : (2001) 3 SCT 1131 : (2001) AIRSCW 2851 : (2001) 5 Supreme 589 ."]

Based upon this Judgment, we have passed this order.

31. We have also recently in Ms. Ruchashree Sangole and Ors. v. Director, Medical Education and Research (DMER) and Anr. Writ Petition (L) No. 1681 of 2015 dated 12 June 2015, directed the State to add one mark as Experts also conceded to the position to add one mark to all those students who attempted to answer the questions having two probable answers.

32. The delay and/or laches, even if any, in the present case specifically when the similar objections are raised in other High Courts, but the Respondents unable to take decision by its own and as this required consideration, the Expert Panel/Committee needs to take decision with reasons. Therefore, the course which we have adopted in the interest of all, by directing the Respondents who though independently cannot take decision of its own, being not expert in the field, and required to appoint Expert Panel/Committee to take decision. We direct them to do so and complete the process without further delay.

33. Therefore, taking overall view of the matter, we are also of the view that the case is made out to appoint Expert Panel/Committee, as early as possible, preferably within 5 days from today and refer the objections, 7 questions or other connected issues for clarification/explanation immediately. The Expert Panel/Committee to take decision with reasons on all the objections/questions, within 3 days thereafter. The Expert Panel/Committee to take decision and actions for re-preparing or revising the merit list of candidates (CLAT-15) after re-valuation and/or assessment, if required, or pass or declare such results/merit list immediately within 4 days thereafter. It is made clear that (CLAT-2015), the whole merit list and all subsequent process therefore, will be subject to outcome of the Expert Panel/Committee's decision, so referred above, which will be taken as early as possible to avoid further delay of any kind.

34. It is made clear that in view of above, and the Supreme Court Judgment so referred, we are inclined to observe that all admissions of CLAT-2015 as already recorded subject to the final decision of CLAT-Respondent No. 1 after completion of above formalities so ordered.

35. We have to express that, in the background, there is no choice but to pass the following order which may affect even the lists so already declared and/or published but if the case is made out and if ultimate decision goes in favour of the Petitioner and/or similarly situated person, for revision and/or re-valuation or

re-assessment, the Respondents have to take effective steps even of re-valuation and reappraisal and revision of the list at the earliest. We are not inclined to set aside the whole process, as revaluation and reassessment is possible and effective way, which will save money and time of everyone. Therefore, in the interest of justice and to avoid further delay, we are inclined to dispose of the present Writ Petition so that the matter can proceed further, instead of keeping issues pending in this High Court.

36. In this world of competition, every strata of the Society, is involved. It is necessary to take effective steps at every stage of conducting such competitive examinations; including all preparation and/or setting up of questions/key answers/objections, hearing and declaration of merit list. The effective corrective measure needs to be provided for every stage of such examination under the guidance/supervision of experts in the subjects.

37. Having once recorded above reasons, we are inclined to observe that all similarly situated students/candidates who have attempted these questions, cannot be deprived of their respective marks, if any, merely because, technically all other affected parties have not been heard. The action of the Respondents, if contrary to law, impermissible, discriminating, arbitrary, the High Court is empowered to invoke the constitutional provisions, hence the following order.

38. Therefore, we are inclined to pass the following order.

ORDER

"a) Respondent No. 1-CLAT to appoint an Expert Panel/Committee, as early as possible, preferably within 5 days from today and refer 7 objections/questions or other connected issues, for clarification/explanation, for their consideration immediately.

b) The Expert Panel/Committee to clarify and/or take decision with reasons on all the objections/questions, as recorded within 3 days thereafter, by following the due process of law.

c) The Expert Panel/Committee to take effective decision and actions for re-preparing and/or revising the merit list of candidates, if necessary, (CLAT-15) after re-valuation and/or assessment, if required, or pass or declare such results/merit list immediately, within 4 days thereafter.

d) It is made clear that (CLAT-2015), the whole merit list and all subsequent process, will be subject to outcome of the Expert Panel/Committee's decision, so referred above, which will be taken as early as possible by all the concerned, to avoid further delay of any kind.

e) Writ Petition is accordingly disposed of, with liberty.

f) Rule disposed of accordingly.

g) There shall be no order as to costs."

The parties to act on the basis of an authenticated copy of this order.