* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th AUGUST, 2022

IN THE MATTER OF:

\+ **LPA 225/2021 & CM APPLs.24695/2021 & 47088/2021**

NATIONAL BOARD OF EXAMINATION ..... Appellant

Through: Mr. Maninder Singh, Senior Advocate with Ms. Ruchira Gupta, Ms. Nancy Shah, Mr. Prabhas Bajaj & Ms. Ashita Chawla, Advocates

versus

ASSOCIATION OF MD PHYSICIANS .....Respondent

Through: Mr. Adit S. Pujari and Ms. Aparajita Sinha, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present appeal has been filed under Clause X of the Letters Patent Act, 1865, read with Section 10 of the Delhi High Court Act, 1966, against the Judgement dated 05.07.2021 passed by this Court in W.P.(C) No. 918 of 2021 whereby the writ petition filed by the Respondent herein was allowed.

2. The facts, in brief, leading to the instant appeal are as under:

a) It is stated that the Screening Test Regulations, 2002, made by the Medical Council of India (now National Medical Commission) in exercise of its powers under Section 33 of the India Medical Council Act, 1956, instituted the Foreign Medical Graduate Examination (*hereinafter referred to as the "FMGE"*)

Screening Test which must be taken by any Indian citizen/Overseas Citizen of India (OCI) who has been conferred a primary medical degree from a foreign medical institution, but wishes to be provisionally or permanently registered with the MCI or any State Medical Council on or after 15.03.2002. The FMGE is conducted by the Appellant herein - National Board of Examination *(hereinafter referred to as the "NBE").*

b) On 04.12.2020, the NBE conducted the FMGE (Screening Test) December, 2020, which is a multiple-choice examination consisting of 300 questions. In order to pass, one needs to score 50% in the examination, and there is no negative marking for incorrect answers. Post-exam review of all the questions on the FMGE Screening Test was conducted between 07.12.2020 and 12.12.2020, and it is stated that no error was found in the same. The results of the FMGE Screening Test were announced on 18.12.2020.

c) Representations were made to the NBE alleging that one question was technically incorrect. Pursuant to this, the NBE constituted a five-member Expert Committee on 11.01.2021 to look into the issue. *Vide* report dated 15.01.2021, the Expert Committee concluded that the said question was technically correct, and *vide* Notice dated 16.01.2021, NBE clarified that the result declared on 18.12.2020 was the final result.

d) Thereafter, W.P.(C) 918 of 2021 was filed by the Respondent herein, an association consisting of Indian citizens who hold degrees in medicine from foreign universities, claiming that there was a patently erroneous question in the examination

paper. During the course of the proceedings, the Respondent herein restricted its relief to the grant of one additional mark to the candidates who had taken the said paper.

e) As the alleged incorrect question pertained to the Sample Registration System (SRS), *vide* Order dated 05.07.2021, the learned Single Judge directed the Registrar General and Census Commissioner of India *(hereinafter referred to as the "RGI")* to file a short affidavit. The question has been reproduced as follows:

> *"Sample Registration System gives information about all except:*
> *a. Birth rate; b. Death rate; c. Maternal Mortality rate; d. Infant mortality rate".*

f) The SRS stated that information is provided by them for all the four choices, i.e. birth rate, death rate, maternal mortality rate and infant mortality rate. On the basis of this affidavit, the learned Single Judge pronounced the impugned Judgement dated 05.07.2021 wherein W.P.(C) 918 of 2021 was partly allowed and the following direction was given:

> *"**46**. For the reasons aforesaid, the writ petition is partly allowed in the above terms. The respondent is directed to treat the disputed question (set out in paragraph 4 above) as deleted from the FMGE (December 2020), and to award one extra mark to those candidates who were assessed as having answered it incorrectly. In the event any candidate thus achieves the passing score of 150 marks, they would be treated as having passed the FMGE (December 2020). The aforesaid directions be complied with within four weeks from today."*

g) Aggrieved by the Judgment dated 05.07.2021 in W.P.(C) 918 of 2021, the Appellant herein has approached this Court by way of the instant appeal.

3. Mr. Maninder Singh, learned Senior Counsel appearing for the Appellant-NBE, submits that the impugned Judgement does not conform with the settled law of the land inasmuch as the Supreme Court has held in Kanpur University, Through Vice Chancellor and Ors. v, Samir Gupta and Ors., **(1983) 4 SCC 309,** that the key answer supplied by the paper-setter should be assumed to be correct, and that the correctness should be ascertained from standard and prescribed textbooks, and not merely on the basis of inferences.

4. The learned Senior Counsel argues that the allegedly incorrect question was not such that it would require judicial intervention and that the learned Single Judge's approach in awarding one mark to all candidates is untenable in law as the Courts must exercise their powers within a limited scope of judicial review in academic matters. He states that in U.P. Public Service Commission v. Rahul Singh, **(2018) 7 SCC 254**, the Supreme Court had observed that when it came to conflicting views with regard to key answers in an exam, then the Courts must bow down to the opinion of the experts and cannot take on the role of the experts in academic matters. The learned Senior Counsel further states that in the instant case, the learned Single Judge had erred by calling for an affidavit on behalf of the Registrar General and Census Commissioner, when he had no jurisdiction to do so, and that no consent had been sought from the Appellant herein before the said decision was taken by the learned Single Judge.

5. Mr. Maninder Singh, learned Senior Counsel appearing for the Appellant, cites Ran Vijay Singh and Ors. v. State of Uttar Pradesh and Ors.,

(2018) 2 SCC 357, to submit that sympathy or compassion must not play any role in the matter of directing or not directing re-evaluation, and that Courts must take into account the internal checks and balances that are put in place by the examination authorities before interfering in the same. Mr. Singh submits that in the instant case, a post-exam review had been conducted for the benefit of the students, and that another review had been conducted by a body of five experts when the representations started coming in. He states that in the both the instances, it was found that there was no error in the question, and the Court cannot now interfere after a body of experts has given its opinion to the contrary. He further states that the learned Single Judge did not have the jurisdiction to either call for the short affidavit on behalf of the RGI nor rely on it for the purpose of arriving at the conclusion that the said question was incorrect.

6. *Per contra*, Mr. Adit S. Pujari, learned Counsel for the Respondent, submits that the short affidavit filed by the Registrar General and Census Commissioner in compliance of the Order dated 07.05.2021 categorically notes that SRS provides information about all the four metrics and this demonstrates that the impugned question does not have one correct answer. He submits that the decision of the learned Single Judge was based on the response of the RGI, the actual body responsible for the SRS – a fact not under dispute by either of the parties, whose affidavit stated that SRS includes Maternal Mortality Ratio.

> **"4.** *That in this regard it is most respectfully submitted that the Sample Registration System (SRS) is the largest demographic survey, conducted by office or the Registrar General India in the country that among other indicators provide direct estimates of maternal mortality ratio through a nationally representative sample. It is submitted that Verbal Autopsy (VA)*

> *instruments are administered for the deaths reported under SRS on a regular basis to yield cause specific mortality profile in the country. 5. Therefore, it is submitted that that Sample Registration System includes Maternal Mortality Ratio. Copy of the letter dated l7.05.2021 issued in this regard is annexed herewith as Annexure A.*"

7. Mr. Pujari submits that the legal precedents cited by the Appellant herein have been aptly dealt with by the learned Single Judge in the impugned Judgement dated 05.07.2021 before arriving at the conclusion that the question in contention in the FMGE Screening Test 2020 is so palpably wrong that it requires the interference of this Court. He further submits that U.P. Public Service Commission v. Rahul Singh (supra) does not completely bar the Courts from entering into the academic field, but states that the candidate must demonstrate that the key answers are patently wrong on the face of it.

8. Mr. Pujari, learned Counsel for the Respondent, relies upon the judgement of this Court in Salil Maheshwari v. High Court of Delhi,**2014 SCC OnLine Del 4563,** to submit that if a key answer is not objective, single, correct answer of all the four options provided, then the Court reserves the authority to award additional marks to those candidates who have chosen a different answer. He states that such an approach would not be contrary to Kanpur University (supra). He further states that Kanpur University categorically observes that in a system of 'Multiple Choice Objective-type test', care is to be taken by the examiner that questions having an ambiguous import are not set in the papers, and the answers to the questions are clear and unequivocal.

9. The learned Counsel for the Respondent submits that the learned Single Judge was conscious of the limited scope of judicial intervention accorded to the Court in academic matters, and therefore, it was only after undertaking all the necessary precautions to verify and seek a response from the authority that administers the SRS, did the learned Single Judge arrive at the conclusion that the question was patently erroneous in nature. He states that it has also been recorded in the Order 07.05.2021 that it is undisputed by both the parties that the SRS has been established by the RGI, and in wake of this, the short affidavit of the RGI supplants the views of the Expert Committee, whose expertise lies in the field of Community Medicine.

10. Heard Mr. Maninder Singh, learned Senior Counsel appearing for the Appellant, Mr. Adit S. Pujari, learned Counsel appearing for the Respondent, and perused the material on record.

11. In the wake of the COVID-19 pandemic, it has become abundantly apparent that the duty discharged by doctors is of utmost importance, and appropriate reverence must be accorded to the medical professionals who risk their lives day-in and day-out for the betterment of others. It has also become apparent that the ratio of medical professions to the population of our country is abysmal, and requires a drastic investment into the medical field in order for the country to produce more efficient doctors. While certain standards are prescribed by the Indian Medical Council for the medical schools that function in India itself, granting permission to those doctors who pursue medicine from foreign medical schools becomes a complicated process. *Inter alia,* in order to maintain the standards of the medical profession in India, the Foreign Medical Graduate Examination Screening Test is conducted bi-annually for those foreign medical graduates

who wish to be registered with the Indian Medical Council and, therefore, practise in India.

12. It is this Foreign Medical Graduate Examination Screening Test, particularly the one held on 04.12.2020, that is the subject matter of the instant appeal before this Court. The issue herein arises out of a question regarding the data that is provided under the SRS, the largest demographic sample survey, which is administered by the Office of the Registrar General, India, under the aegis of the Ministry of Home Affairs. While it is the prerogative of the candidates (Respondent herein) who have taken the FMGE Screening Test 2020 that the SRS includes the Maternal Mortality Rate, the Appellant here contends otherwise. Holding in favour of the Respondent herein, the learned Single Judge *vide* its impugned Judgement dated 05.07.2021 has interfered in the issue and accorded one mark to every candidate who has incorrectly answered the question which, as per the learned Single Judge, is patently erroneous.

13. The scope of judicial review when it comes to correctness of key answer has been considered time and again by the Supreme Court wherein the norm has been to entertain such challenges on a very limited ground and give due weight to the opinions of subject experts. In Kanpur University (supra), as cited by the learned Senior Counsel for the Appellant, the Supreme Court repelled the challenge to the key answer and made the following observations:

> *"**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.

16**. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong.* ***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 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 contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."*

(emphasis supplied)

14. Referring to Kanpur University, the Supreme Court, in U.P. Public Service Commission v. Rahul Singh (supra), had observed that constitutional courts must exercise restraint in matters of this nature and

should be reluctant to entertain a plea challenging the correctness of the key answers. The relevant portion of the said judgement has been reproduced as follows:

> *"**12**. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The constitutional courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case [Kanpur University v. Samir Gupta, (1983) 4 SCC 309] , the Court recommended a system of:*
>
> > *(1) moderation;*
> >
> > *(2) avoiding ambiguity in the questions;*
> >
> > *(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.*
>
> ***13**. As far as the present case is concerned, even before publishing the first list of key answers the Commission had got the key answers moderated by two Expert Committees. Thereafter, objections were invited and a 26-member Committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these Committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then*

come to the conclusion as to which of the answers is better or more correct.

***14**. In the present case, we find that all the three questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain textbooks. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.*

***15. In view of the above discussion, we are clearly of the view that the High Court overstepped its jurisdiction by giving the directions which amounted to setting aside the decision of experts in the field**. As far as the objection of the appellant Rahul Singh is concerned, after going through the question on which he raised an objection, we ourselves are of the prima facie view that the answer given by the Commission is correct."* (emphasis supplied)

15. In yet another decision of the Supreme Court in Ran Vijay Singh and Ors. V. State of U.P. and Ors. (supra), certain conclusions were laid down with regard to the Court's ability to substitute its own views for that of the examiners and award additional marks consequently. The same have been reproduced as under:

*"**30**. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:*

***30.1**. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;*

30.2. *If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;*

30.3. *The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;*

30.4. *The court should presume the correctness of the key answers and proceed on that assumption; and*

30.5. *In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*

31. *On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.*

32. *It is rather unfortunate that despite several decisions of this Court, some of which have been*

discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

16. This Court has also deliberated upon how Courts must curb their temptation to interfere with the question paper and answer key in the face of a counter view of subject experts. In Atul Kumar Verma v. Union of India, **2015 SCC OnLine Del 10316**, this Court had held as follows:

> *"17. **Unless the Courts, though accustomed to resolve/adjudicate on disputes, curb their temptation to interfere with the question paper and answer key inspite of counter view, of other subject experts, being brought before them and there being thus a dispute as to which view is correct, the Universities and the examining bodies on whom the said function has been entrusted, would loose their sheen and the respect in which they are held. I would go to the extent of saying that if the Courts, which cannot possibly be experts in all subjects, on the basis of opinions to the contrary obtained from other 'independent' subject experts, were to start setting aside the questions and answer keys bona fide prepared by the subject expert and who bona fide continues to believe in correctness thereof, we may reach a day where no self respecting expert would agree to partake in the exercise of setting the question papers and answer key (and which mostly is honorary or for nominal remuneration) for the fear of his/her opinion, bona fide held being pitted against that of other in Court and his name and honour being sullied in the process. We, in my opinion, ought not to allow our Universities and examining bodies being so reduced to a 'medium' as the Supreme Court observed in Tata Cellular instead of Centres of learning and expertise. If they have ceased to be so, the jurisdiction under Article 226 ought to be exercised to set right their functioning rather than the Court taking over the mantle of correcting the question paper set and answer key thereto framed by them."*** (emphasis supplied)

17. The foregoing cases cement the finding that Judges are not and cannot be experts in all fields, and the opinion of experts cannot be supplanted by a Court overstepping its jurisdiction. It needs to be demonstrated by a candidate that the key answers are patently wrong on the face of it, and if there is any exercise conducted by the Court wherein the pros and cons of

the arguments given by both sides need to be taken into consideration, that will inevitably amount to unwarranted interference on the part of the Court. When there are conflicting views, it is incumbent upon the Court to bow down to the opinion of the experts which, in this case, was the Expert Committee constituted by the NBE.

18. The submissions made by the learned Senior Counsel hold weight inasmuch as the Court cannot step into the shoes of the examiner and render an opinion contrary to that of the Expert Committee. If the error in the question is manifest and palpable, and does not require any elaborate argument, then the Writ court may choose to intervene. However, where the errors do not show their heads without a detailed and elaborate probe into the opinions of experts, the Court must stay its hands. It would not be prudent for a Court to conduct itself like an expert in a subject alien to it when an entire body of experts has arrived at a contradictory stand. It is also not for the Courts to interfere in such matters, except in absolutely rare and exceptional cases, especially in view of the fact that the instant examination pertains to the practice of medicine – a field that requires the exercise of utmost care and caution.

19. Furthermore, this Court finds it pertinent to note that the learned Counsel for the Respondent was unable to demonstrate the consent of the Appellant in calling for the short affidavit on behalf of the RGI. When the conducting body (Appellant) itself had facilitated a post-exam review of all the questions between 07.12.2020 to 12.12.2020, and had found that there was no technically incorrect question, it was not open to the learned Single Judge in its jurisdiction under Article 226 to call for a short affidavit from the RGI to furnish further information on this aspect. Furthermore, the Appellant had also constituted a five-member Committee with experts in the

field of Community Medicine to look into the correctness of the contentious question, and *vide* report dated 15.01.2021, the said Expert Committee had concluded that the question was technically correct and valid.

20. Nowhere has the Appellant denied that Maternal Mortality Rate is not an indicator that is published by the SRS, however, sufficient material has been provided by the Appellant to demonstrate that the SRS bulletin (May 2020, Volume 53 No.1) describes only three parameters (Birth Rate, Death Rate, and Infant Mortality Rate), and that the data provided by these indicators is then used to calculate other derived indicators, such as the Maternal Mortality Rate. The Special Bulletin on Maternal Mortality in India 2016-2018 published in July 2020 also indicates that the data pertaining to Maternal Mortality Rate is accumulated through the administration of Verbal Autopsy (VA) instruments and is a derived indicator, not a basic indicator such as Birth Rate, Death Rate and Infant Mortality Rate. In the face of the material on record as well as the repeated findings of the experts, the learned Single Judge has erred by placing incorrect reliance solely on the short affidavit filed by the RGI.

21. The learned Counsel for the Respondent's reliance on Salil Maheshwari (supra) is of no consequence. While this Court concedes that there is no blanket bar on judicial review in academic matters, however, the same is only permissible where the decision is so manifestly and patently erroneous that no reasonable person, similarly circumstanced could have taken it. In the matter before this Court, it cannot be said that the question was such that it was patently erroneous and warranted the interference of the learned Single Judge. Similarly, citing Anjali Goswami and Ors. v. Registrar General, Delhi High Court, **2019 SCC OnLine Del 6829,** also does not come to the aid of the Respondent. More than 6000 candidates had opted for

the correct answer as stipulated by the Appellant. Merely because other candidates faced confusion and were not aware of the answer cannot be a ground to deem ambiguity in the same. Further, the key answers had been verified by experts at multiple levels, and by calling for a response from the RGI and then relying upon the same, this Court is of the opinion that the learned Single Judge has clearly exceeded its jurisdiction by interfering in the examination and awarding one mark to all candidates who had chosen the incorrect answer.

22. In view of the aforesaid observations, this Court is, therefore, inclined to allow the instant appeal and set aside the impugned Judgement dated 05.07.2021 passed by the learned Single Judge in W.P.(C) 918 of 2021.

23. Accordingly, the LPA is disposed of, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2022
Rahul