Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8575 OF 2022

Somnath Jotiram Chavan & Ors …Petitioners

Versus

The State of Maharashtra & Ors …Respondents

WITH

INTERIM APPLICATION NO. 17760 OF 2022

IN

WRIT PETITION NO. 8575 OF 2022

Nilesh Maruti Thakan & Ors …Applicants

In the matter between

Somnath Jotiram Chavan & Ors …Petitioners

Versus

The State of Maharashtra & Ors …Respondents

WITH

WRIT PETITION NO. 10092 OF 2022

Suraj Sanjay Pawar & Anr …Petitioners

Versus

The State of Maharashtra & Ors …Respondents

WITH

INTERIM APPLICATION NO. 17884 OF 2022

IN

WRIT PETITION NO. 10092 OF 2022

Abhijeet Arun Kale & Ors ...Applicants

In the matter between

Suraj Sanjay Pawar & Anr …Petitioners

Versus
The State of Maharashtra & Ors …Respondents

Mr Sandeep Dere, *for the Petitioner in WP/8575/2022.*
Mr Ajinkya Udane, *with Asim Sarode, Ajit Deshpande, i/b Trunal Tonpe for Petitioner in WP/10092/2022.*
Mr PG Sawant, AGP, *for the Respondent No.1-State in both WPs.*
Mr Ashutosh Kulkarni, *with SS Diwan for Respondent No.2 (MPSC) in both WPs.*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 6th September 2022

PC:-

1. The two Writ Petitions assail an order dated 8th February 2022 of the Maharashtra Administrative Tribunal. The impugned order dealt with a number of Original Applications. The Applicants were candidates who appeared for an examination conducted by the Maharashtra Public Service Commission("**MPSC**"). The challenge before the MAT was to the decision of the MPSC in deleting three questions Nos. 17, 27 and 90. The prayer was that MPSC be directed not to delete these questions but to allocate the marks to these applicants on the base of their answers.

2. To appreciate the controversy, it is necessary to note that the MPSC pattern gives one mark for a correct answer and deducts 0.25 marks for an incorrect answer. The MPSC issued an advertisement on 28th February 2020 for a Group – B combined examination for the post of Police Sub Inspector, Sales Tax Inspector and Assistants in Mantralaya. The preliminary examination was conducted on 4th

September 2021. Nearly three lakh candidates appeared. MPSC published its first answer key on 7th September 2021, and, following its usual practice, solicited objections to this first answer key. In all, 4686 objections came in to MPSC in regard to 60 of the 100 questions in the examination paper. MPSC forwarded these objections to various experts. Questions 23 and 43 were cancelled but these are not in dispute in the present Writ Petition. The same questions were also in paper sets B, C and D and were also cancelled accordingly. The answer keys to questions 87 and 90 were changed by MPSC and MPSC then issued a revised answer key on 17th November 2021. This second answer key also came in for criticism. It is at this stage that MPSC referred disputed questions Nos. 17, 27 and 90 to experts.

3. We straight away turn to these three contentious questions in the examination paper. They are part of the impugned order.

> *"17. Which of the following is the best quality iron ore?*
> *(1) Hematite (2) Limonite*
> *(3) Magnetite (4) None of the above."*
> *Answer key : (1) Hematite*

> *"27. Observe the following statements:*
> *a. Verul caves is in Aurangabad district.*
> *b. Chambhar caves is in Pune district.*
> *c. Chikhaldars hill station is in Raigad district.*
> *d. Gautala National Park is in Jalgaon district.*
> *Which of the above statement is/are correct?*
> *(1) Only a statement is correct. (2) Only b and c Statements are correct*
> *(3) Only a and d (4) All the above*

Statements are correct. *Statements are correct.*
Answer key : (3) Only a and d statements are correct.

"90. The Indian Space Organization(ISRO) will launch an unmanned campaign in December, 2020.
(1) Gangayaan
(2) Vyom Mitra
(3) Robonaut
(4) Fedor"
Answer key : (1) Gangayaan"

4. Question 17, on a reference to texts, received conflicting answers and part of the difficulty was the difference between saying that one of the four options is "finest" as opposed to "best". This is obviously a matter of perception and how one chooses to read the descriptor. There is, as the MAT noted, a difference between *the best* and *the finest* — a distinction we see all too often at our own Bar. This conflict being noted MPSC decided to cancel the question.

5. Question 90 was also found to be incorrectly framed because the date was wrong. The date should have been November 2020 and not December 2020, and, in any case, because of the Covid pandemic only one space craft was ever launched so there was no question of a multiple choice. That question was correctly therefore deleted.

6. The controversial aspect is question 27, and it is only this that counsel for the Petitioners press before us. The MPSC's answer key was that statements (a) and (d) were correct namely that

the "Verul caves are in Aurangabad district" and that "the Gautala National Park is in Jalgaon district". Experts differed, and therefore the MPSC deleted the question itself. There is no controversy that answer (a) is indeed correct. But Gautala is not a National Park at all. It is a designated Wildlife Sanctuary, one that has a distinct statutory status under the provisions of the Wildlife Protection Act 1972. Very different considerations apply to a Wildlife sanctuary as compared to those applicable to a National Park. Equally importantly, the Guatala Wildlife sanctuary is not in Jalgaon district alone. It straddles the Jalgaon and Aurangabad districts.

7. As it happens, these Writ Petitioners managed to get the correct answer to a wrongly framed question. They selected (a) as being the only correct answer. This is probably a matter of chance.

8. We consider it from two perspectives. There would have been candidates who selected both (a) and (d) as the answer to question 27 and this would have been in consonance with MPSC's published answer key. But that answer was wrong because option (d) itself was wrong. Option (d) could not therefore be allowed to continue in the manner in which it stood, and this left only options (a), (b) and (c). These Petitioners chose option (a). But the request to the MAT to undelete the MPSC deletion would have had the effect of completely unbalancing the entire equation.

9. As a result of these deletions, the total number of questions was reduced from 100 to 95. What the request of the Petitioner's essentially amounts to is that *for them* there should be 96th question

on which they should receive one additional point. We do not see how that can be done. An introduction of a 96th question would undoubtedly result in negative marks being assigned to very many other candidates, none of whom are before this Court, and none of whom were before the MPSC. Equally, it is not possible to say that for other candidates the examination should be of 95 questions, but for these Writ Petitioners alone it should be treated as being of 96 questions.

10. The request by counsel for the Petitioners in both Petitions that the matter be referred to an expert is entirely without substance. No expertise is required in a matter that is plainly of fixed geography. The limits of the Gautala Wildlife Sanctuary are known, declared and notified. Its status as a Wildlife Sanctuary (and not as a National Park) is also a matter of statutory recognition. That the limits of the Gautala Wildlife Sanctuary cover parts of both Jalgaon and Aurangabad districts cannot be disputed. No question arises, therefore, of inviting the opinion of any other expert.

11. Once we view it like this, i.e., that questions 17 and 90 were correctly deleted and that question 27 had to be deleted to balance competing equities and interests, then there is no substance whatsoever to these Petitions.

12. Mr Dere for the Petitioners invites our attention to the decision of the Supreme Court in *Ran Vijay Singh and Others v State of Uttar Pradesh & Ors*.[1] His reliance on paragraph 14 of this decision

1(2018) 2 SCC 357

is inapposite. That paragraph only notes the litigation history that brought the matter to the Supreme Court. But as Mr Kulkarni for MPSC points out, the principles of law and the decision's ratio are set out in paragraphs 30, 31 and 32. Indeed paragraph 30 itself makes it clear that what follows is the pronouncement of the *Ran Vijay Singh* Court on law. We reproduce those three paragraphs.

> "**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 statue, 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 statue, 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 scrutinize 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

> 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 large impact of all this is that public interest suffers."
>
> (*Emphasis added*)

13. As the emphasized portion shows, the Petitioners cannot claim the benefit of doubt. They cannot rely on, let alone invoke sympathy or compassion. They have no legally enforceable right to canvas in a writ petition. The reason is provided in paragraph 31 that judicial interference does not only affect the Petitioners, as we have noted, but affects the complete body of candidates. The entire examination process is derailed. This is why the *Ran Vijay Singh* Court deprecated the practice of interference by Courts in the results of examinations.

14. What is suggested to us is that the Petitioners be allowed to sit for the main examination on 11th September 2022, but that their results be withheld subject to the outcome of these Writ Petitions. Other than delaying the inevitable, we do not see what purpose would be achieved by that. In any case, since we are disposing of these petitions finally, no question of making such an order arises.

15. Indeed, we would venture to suggest that except in the most exceptional circumstances, there should not be such interim interventions by a Court for the simple reason that allowing the benefit to even a single candidate (let alone 250) irredeemably alters

the balance in regard to the other candidates who have managed to cross the qualifying threshold criteria. There will be questions of seniority in ranking or of the correctness of the numerical listing that will then ensue. Those adversely affected by such Writ Petitions will have to be heard. They are not even parties to this Writ Petition.

16. Indeed, in *Ran Vijay Singh* itself we note the observations of the Supreme Court as to the limits of the High Court's jurisdiction even under Article 226 of the Constitution of India. In paragraphs 33 and 34 the Supreme Court in *Ran Vijay Singh*, the Supreme Court said:

> **"33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.**
>
> **34. Having come to the conclusion that the High Court(the learned Single Judge as well as the Division Bench) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers,** the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process

and depend on the result declared on 14-9-2010 or to go by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment."

(*Emphasis added*)

17. The MAT considered the factual background and as the rival submissions, including a great deal of learning that was cited before it. In paragraph 19, MAT noted that the MPSC had deleted the question 27 and this could not be faulted. The observation of the MAT in paragraph 22 are indeed interesting. (Pages 80, 81 of the Writ Petition No. 8575 of 2022). The MAT said this:

"22. **It is to be noted that unequal treatment given to the candidates appearing for the examination and unequal treatment given to the Questions are two different things.** The M.P.S.C. has corrected the answer key of Question No. 87 after considering experts opinion that the correct answer was available. This decision was taken by the M.P.S.C. because there was no dispute in the opinion expressed in respect of Question No. 87. **However, in respect of Question No. 27 the opinion given by the experts were conflicting. Therefore, the treatment given to Question No. 87 and Question No. 27 and their Answer Keys is different. But this will not in any case lead to discrimination or violation of Article 14 or Article 16 of the Constitution so far as Applicants are concerned. The Applicants cannot claim legal right against the decision of the M.P.S.C. because the decision taken is applicable uniformly to all the candidates who appeared for the examination. We**

> **understand the plight of the Applicants that they have lost the marks, however, in examinations chance is often a determinant.**"
>
> (*Emphasis added*)

18. We believe this approach is completely correct. What is being canvassed before us is precisely the opposite: viz., that the Petitioners should be given preferential treatment and the uniform applicability of the MPSC deletion decision should not made applicable to the Petitioners. That is a submission that only needs to be stated to be rejected.

19. Finally, the MAT considered the question of the power of the MPSC and again held on the basis of cogent material that the MPSC had the power to take an appropriate decision.

20. It is impossible to render a decision in favour of these Petitioners, whether interim or final, without adversely affecting the very many of candidates who have been able to meet the qualifying criteria and are eligible to sit for the main examination on 11th September 2022. There is no principle under which an exception can be carved out for these Petitioners. Even basic notions of equity and justice would not permit such a preferential treatment.

21. Finally, we remind ourselves that although styled as Writ Petitions assailing the MAT order, what we are really being asked to do is to undertake a judicial review of an *administrative* action, i.e., the decision of the MPSC to delete some questions. But that presents a hurdle of its own for these Petitioners, for then we are

concerned only with the decision-making process, not the decision itself. If that be so, and it is not shown to us how MPSC's decision-making process is at all vulnerable, there can be no question of interference.

22. We find no infirmity in the impugned decision of the MPSC nor the impugned order of the MAT. The MAT's order is, to our mind, closely reasoned and balances perfectly the competing equities.

23. In parting, we note with great disapproval that Suraj Sanjay Pawar has somehow managed to be a petitioner in two different petitions. He is the 2nd Petitioner in Writ Petition No 8575 of 2022, in which Mr Dere appears for all the Petitioners. Pawar has also filed Writ Petition No 10092 of 2022, where he is separately represented by Mr Udane. Pawar has done so without any leave of the Court. Mr Udane says that Pawar's independent second petition has a wider challenge (to the deletion of all three Questions Nos 17, 27 and 90), though the earlier Writ Petition No. 8575 of 2022 (where Mr Dere appears) is one in which the argument is confined to Question No 27. Having joined Mr Dere's other clients in Writ Petition No. 8575 of 2022, Pawar could not have filed another petition of his own, at least not without leave of the court. He cannot be represented as a petitioner by two separate advocates, effectively canvassing in one Petition only a limited point and then trying to expand it in another petition. In any case, there is no merit at all in the challenge to the deletion of Questions Nos 17 and 90, for the reasons already noted.

24. We find no merit in these Petitions and no reason to interfere with the impugned order of the MAT.

25. The Petitions are dismissed.

26. In the facts and circumstances of the case, there will be no order as to costs.

(Gauri Godse, J) **(G. S. Patel, J)**