

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6805 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 7289 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

JAYESH NEBHABHAI KAMBARIYA

Versus

STATE OF GUJARAT**Appearance In SCA No. 6805 of 2021:**

MR DADHICHI L LIMBOLA(10936) for the Petitioner(s) No.

1,10,11,12,13,14,15,16,17,2,3,4,5,6,7,8,9

MR DIPAK R DAVE(1232) for the Respondent(s) No. 4

MR MAULIK NANAVATI, ADVOCATE FOR NANAVATI & CO.(7105) for the Respondent(s) No. 2,6

NOTICE SERVED for the Respondent(s) No. 1,3,5

Appearance In SCA No. 7289 of 2021:

MR RAJVI PATEL for the Petitioner(s) No. 1,2,3

MR DIPAK R DAVE(1232) for the Respondent(s)

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**Date : 30/06/2022****CAV JUDGMENT**

1. Special Civil Application No. 6805 of 2021 has been filed with to direct the respondents to declare the attempt answer keys and raw marks of the petitioners and to elaborate the normalization method of the examination. It is further prayed therein to direct the respondent authorities not to initiate the process of awarding appointment letters to selected candidates till the disposal of the petition.

2. Special Civil Application No. 7289 of 2021 has been filed praying for quashing and setting aside the decision of the respondent in awarding the normative score to the petitioners in the computer based test conducted by the respondent on 27.03.2021 and further to direct the respondent to reevaluate the marks of the petitioners taking into consideration the answer key as published by the respondent on its website and accordingly the petitioners be considered for provisional and final merit and appointed as per the advertisement in question.

3. Both these petitions are filed by candidates who had appeared for the recruitment process pursuant to an advertisement dated 26.12.2019 for the posts of Vidhyut Sahayaks with the respondents – Paschim Gujarat Vij Company Ltd. (PGVCL), Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL) and Dakshin Gujarat Vij Company Ltd. (DGVCL). The case of the petitioners is that the recruitment was based on an online computer based recruitment test which was conducted in different batches. The test results were declared on 09.03.2021. According to the petitioners, they were hopeful to get their raw marks and attempt answer keys of these examinations. One of the electricity companies uploaded the answer keys of the examination but thereafter within 30 minutes of uploading of the same removed it from the official website. Applications were made to obtain raw marks

and answer sheets under the RTI which were rejected.

4. Mr. D. L. Limbola, learned advocate for the petitioners of Special Civil Application No. 6805 of 2021 would submit as under:

(I) The petitioners have a fundamental right to know their raw marks and get the answer keys. This would lead transparency and there is no reason why confidentiality should be maintained in not disclosing the marks of the petitioners.

(II) It is evident from the uploaded answer keys which was subsequently removed that a few candidates who have got marks 100 out of 100 and whereas one candidate has got 104 marks out of 100 which made the respondents realise the controversy and remove the results from the website.

(III) The petitioners have all the right to atleast know their raw marks i.e. actual marks before normalization and attempt answer keys. This would help them prepare in the competitive examinations and improve in the upcoming examinations. In support of his submissions that there should be transparency, he relied on a decision of the Apex Court in the case of **Mradul Mishra vs. Chairman, UP Public Service Commission, Allahabad reported in 2018(3) ApexCJ 359**. He submitted that the Apex Court had observed that permitting a candidate to inspect his answer sheet does not involve any public interest and once the identity of the examiner is not disclosed the candidates are entitled to inspect their mark sheets. He also relied on a decision of the Apex Court in the case of **Kerala Public Service Commission and Others vs. The State Information Commission and Others rendered in Civil Appeal No.**

823-854 of 2016, paras 9 and 10 to submit that permitting the candidates to see their marks would ensure fair play in the competitive environment. There was no reason, therefore, why the marks could not be seen.

5. Ms. Rajvi Patel, learned counsel appearing in Special Civil Application No. 7289 of 2021 would submit that the only reason why the petitioners were insisting that their marks be reevaluated and their marks be shown is to promote transparency in the administration. She would submit that no harm will occur if the respondents are directed to reveal the information regarding raw marks of the petitioners as comparing the normalized score, with the score that the petitioners expected, there is serious discrepancy and if the petitioners are shown the attempt answer keys together with their marks they would know where they committed fault and also reveal the shortfalls made by the respondents.

6. Mr. Maulik Nanavati and Mr. Dipak Dave, appeared for the respondent electricity companies. Mr. Nanavati, learned advocate would submit that looking to the prayers made in the petition, the candidates cannot have a right to receive their raw marks or attempt answer keys. The advertisement broadly outlined the format of the examination clearly stating that normalization of marks methodology shall be adopted. The examination was conducted in multiple shifts. The general rules which were part of the advertisement did not provide for disclosure of raw marks. He would submit that it is well settled that once the candidates had participated in the examination without objecting to the selection process subsequently no grievance could be voiced by the petitioners in the absence of a condition permitting disclosure of raw marks.

6.1 Mr. Nanavati, learned advocate would also raise a preliminary

objection that in one of the petitions the prayer was to restrain the company from initiating the process of awarding appointment letters. Such a prayer could not be granted without joining selected and appointed candidates. He would rely on a decision in the case of K.H. Siraj vs. High Court of Kerala [(2006) 6 SCC 395].

6.2 On the issue of disclosure of raw marks and answer sheets, Mr. Nanavati would submit that there is no legal or fundamental right for the petitioners to know their raw marks and attempt answer key. In absence of any legal right available and a corresponding legal obligation, no writ of mandamus could be issued. Explaining the propriety of normalization methodology annexed to the advertisement, he would submit that it is a process to adjust values measured on different scales to a notionally common scale. The formula of normalization was made know to all participants and in view of the decision in case of **Manish Kumar Shahi vs. State of Bihar reported in (2010) 12 SCC 576** after having participated in the selection it could not be challenged. Also reliance was placed on the decision in the cases of **Ashok Kumar vs. State of Bihar [(2017) 4 SCC 357]**, **Chandra Prakash Tiwari vs Shakuntala Shukla [(2002) 6 SCC 127]**.

6.3 Mr. Nanavati would submit that the process of normalization is a recognized method when examinations are conducted in multiple shifts it is common knowledge that to ensure comparability of question papers in view of subjectivity in difficulty levels perceived by the authors there are chances in variation in difficulty levels and therefore the process of normalization of marks is a universally recognized adopted formula.

6.4 Mr. Nanavati would further submit that the company has

completed the process of selection. The marks scored by each of the appearing candidates came to be published, there is no allegation of any personal prejudice against the petitioners in the entire petition and the only reason the petitioners are forwarding to challenge the methodology of marks is that they had obtained less marks than expected. Such a ground cannot be a ground for reevaluation and recalculation of marks and this court under Article 226 of the Constitution of India should not interfere.

7. Considering the submissions made by learned counsels for the parties, if the advertisement for recruitment to the posts in question is perused, condition no. 13 to 17 of the general terms and conditions read as under:

“13. The tentative syllabus for the exam will be including but not limited to following topics/areas and emphasis could differ.

The exam will be conducted by On-line or OMR mode considering the number of candidates eligible as per registration.

There will be six (6) sections in multiple choice question paper having approximate weightage for each section as under:

Section – I	General Knowledge	10%
Section – II	English Language	20%
Section – III	Maths & General Science	15%
Section – IV	Analytic & Logical Reasoning	15%
Section – V	Computer knowledge	20%
Section – VI	Gujarati Language and Grammar	20%

“The Question Paper Will Be In English & Gujarati Language Only”

14. The question paper for the exam shall be consisting of

100 questions and the paper shall be of 100 marks. There shall be negative marking system and 1/4th mark for each wrong answer shall be deducted to arrive at total marks scored.

15. In case of Written Test examination, the evaluation of the OMR Sheets of the written test shall be done on computer, as per entries made in OMR Sheets by the Candidates. As the evaluation is done on the Computer by scanning thereby eliminating manual evaluation, rechecking or 'inspection of OMR Sheets, subsequent to written test, will not be entertained by the Company.

16. In the OMR sheet, there will be five options A,B,C,D, and E where "E" Option indicate nonattempt of particular question and no negative mark will be deducted for such selected option for that particular question.

17. In case of Online Test examination, if the applications are received in large number, than examination scheduled to be held in multiple batches and candidates scores should be as per normalization methodology before result declaration (Annexure – I)."

7.1 Condition No. 17 specifically points that in case of an online test examination, if the applications are received in large numbers then the examination will be held in multiple batches and candidate's score should be as per normalization methodology before result declaration. Even the admit card for the computer based test which had instructions to the candidates categorically stated that since the test is scheduled in multiple batches, the normalization methodology will be applied and the score will be finalised accordingly. The normalization methodology is available on the website. Even in the advertisement, extensively the process and the formula of normalization was explained.

7.2 Apart from the petition being barred on the ground of not joining

the candidates who are appointed and selected, in context of the prayer made in Special Civil Application No. 6805 of 2021 of restraining the companies from initiating the process of awarding the appointment orders, the principal relief which is sought by the petitioner of disclosure of raw marks cannot be a matter which can be said to be having backing of legal sanction. Merely because an averment is made in the petition that they are unemployed individuals preparing for competitive examinations and disclosure of raw marks and attempt answer keys would facilitate their improvement in the upcoming examinations is no ground on which a writ of mandamus can be granted.

8. Considering the propriety of normalization methodology, it will be in the fitness of things to reproduce the contents of the affidavit-in-reply filed by the company.

“Propriety Of Normalisation Methodology

13. Normalization is a process to adjust values measured on different scales to a notionally common scale. It is done to evaluate the performance of the candidates on the basis of similar exam parameters and aims to adjust the difficulty levels across different shifts of exams. In the present case, a total of 23,000 applications were received for the advertised posts. This required conducting of exams in multiple shifts. Such scenario was envisaged at the time of issuance of advertisement, and therefore it was expressly mentioned in the advertisement itself that normalization method shall be adopted for adjusting the marks of all the candidates appearing in the examination. Even the arithmetical formula to be adopted for normalizing the marks was specifically mentioned in the advertisement.

14. The adoption of normalization procedure, together with the formulae, was made known to all the aspirants by the respondent company, leaving no scope for any surprise for any of the candidates appearing in the examination. Even the petitioners knew about the procedure of normalization of

marks using a pre-determined arithmetical formula. They did not object to the adoption of methodology or the application of a particular formulae. They did not even seek any kind of clarification in respect of the normalization procedure proposed to be followed by the respondent company. They, instead, participated in the selection process.”

9. On the twin grounds therefore that the process of normalization is a well recognised concept of calculating marks when the examinations are conducted in multiple shifts and also on the aspect of the challenge made by candidates after having participated in the selection, on both grounds the petitions deserve to be dismissed. The decision relied on by Mr. Nanavati in the case of **Manish Kumar** (supra) reads as under:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgements in Madan Lal vs. State of J & K reported as (1995) 3 SCC 486, Marripati Nagaraja vs. State of A.P reported as (2007) 11 SCC 522, Dhananjay Malik vs. State of Uttaranchal reported as (2008) 4 SCC 171, Amlan Jyoti Borooah vs. State of Assam reported as (2009) 3 SCC 227 and K.A. Nagamani vs. Indian Airlines reported as (2009) 5 SCC 515.”

10. No legitimate expectation can be made so as to no writ can lie on the principle of the candidates having a legitimate expectation to get their

marks known or attempt answer keys. Merely because the apprehension of the petitioners is that they had got less marks than expected is no ground on which a challenge to the adoption of normalization procedure can be sustained.

11. In view of the above, the petitions are dismissed being devoid of merit. No costs.

DIVYA

(BIREN VAISHNAV, J)

