

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 15TH DAY OF NOVEMBER 2021/24TH KARTHIKA, 1943

WP(C) NO. 24158 OF 2021

PETITIONER:

TEJAS GIRISH MENON, 18 YEARS,
S/O. GIRISH THEKKE PALAZHI,
PALAZHI, MURINGOOR, THRISSUR-680 311.

BY ADV P. DEEPAK

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF EDUCATION, 122-C,
SHASTRI BHAVAN, NEW DELHI-110 001.
- 2 NATIONAL TESTING AGENCY,
REPRESENTED BY ITS DIRECTOR,
C-20, IA/8, SECTOR 62,
IITK OUTREACH CENTRE,
DISTRICT NOIDA,
UTTAR PRADESH-201 309.

R1 BY SRI. S MANU, ASGI

R2 BY ADV. SHRI. NIRMAL S, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15.11.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 15th day of November, 2021

The petitioner who has appeared for the National Eligibility Cum Entrance Test (NEET) (UG), 2021 has approached this Court filing this writ petition seeking to call for the records leading to Ext.P6 Final Answer Key published by the 2nd respondent in relation to NEET (UG)-2021 in so far as it gives 'Option No.1' as the correct option to Question No.184 of Question Paper Coded '05'. The petitioner further seeks to command the 2nd respondent to revise the Answer Key for Question No.184 of Question Paper Coded '05' as 'Option No.4' instead of 'Option No.1' and revise the marks awarded to the petitioner consequent thereto.

2. The petitioner states that the Question No.184 in the Question Paper Coded '05' assigned to the petitioner

and its answer options, were as follows:

“184. Venereal (*sic*) diseases can spread through:

- (a) Using Sterile Needles
- (b) Transfusion of blood from infected person
- (c) Infected Mother to Foetus
- (d) Kissing
- (e) Inheritance

Choose the correct answer from the options given below:

- (1) (b) and (c) only
- (2) (a) and (c) only
- (3) (a), (b) and (c) only
- (4) (b), (c) and (d) only”

The petitioner opted the answer at Sl.No.4, i.e., “(b), (c) and (d) only”.

3. When the Answer Key was released by the 2nd respondent, the answer to Question No.184 was given as Option No.1 [(b) and (c) only]. The Answer Key indicated that Venereal diseases can spread only through transfusion of blood from infected person and infected mother to foetus, and not through kissing. The answer given in the Answer Key is wrong and therefore the petitioner challenged the

Answer Key paying requisite fee. However, the respondents have rejected the challenge made by the petitioner.

4. The petitioner would submit that he has scored 695 out of 720 securing All India rank of 293 and All India Counselling rank of 301 with percentage of 99.977. The petitioner will be in a much higher position if the Answer Key is corrected, in respect of Question No.184.

5. The petitioner submits that paragraph 13.2.3 of the Information Bulletin published by the 2nd respondent makes it incumbent on the 2nd respondent to verify a challenge made by a candidate to the Provisional Answer Key with the help of a panel of experts. This has not been done by the respondent, which has resulted in grave miscarriage of justice. The stand of the respondents that Option No.1 to the Question No.184 is the correct answer, is ex-facie erroneous. To say that venereal diseases can

spread only by 'transfusion of blood from infected person' and through 'infected mother to foetus' and not by 'kissing', is clearly at variance with even the rudimentary text books on venereal diseases.

6. The petitioner pointed out that Ext.P8 text Book published for Biology for Higher Secondary (Class XII) by the Council of Higher Secondary Education, Odisha would show that infection may spread through any type of sexual contact involving external genitalia, the anus or the mouth. Ext.P9, which is a relevant extract of text book published for Biology-Zoology for Higher Secondary Second Year by the Department of School Education, Government of Tamil Nadu would also establish that infections like Hepatitis-B and HIV are transmitted sexually as well as by sharing of infusion needles, surgical instruments etc. with infected people. This would clearly indicate that venereal diseases are ordinarily transmitted through sexual intercourse or

intimate physical contact with infected person. Therefore “kissing” should also be accepted as a mode of transmission of venereal diseases.

7. The petitioner further relied on Ext.P10 which is an extract of the core modules prepared by the Telangana Open School Society (TOSS). Ext.P10 defines sexually transmitted diseases to mean diseases that are transmitted through sexual contact and via the mucous membrane and secretions of the sexual organ, throat and rectum. Relying on Ext.P11, the petitioner pointed out that Educational Boards which have issued Exts.P8, P9 and P10 are all recognised Boards of Education. The petitioner also relied on Ext.P12 copy of the web page in relation to sexually transmitted diseases maintained by the National Health Portal, Government of India. It is clearly stated therein that Syphilis is a sexually transmitted infection (STI) caused by the spirochete bacterium *treponema pallidum* and that it

can be passed to another person through kissing or close physical contact. Relying on Exts.P8 to P12, the petitioner urged that the exclusion of 'kissing' as a mode of infection of sexually transmitted diseases in the Answer Key, is unacceptable and misleading.

8. The learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Kanpur University through Vice Chancellor and others v. Samir Gupta and others** [(1983) 4 SCC 309] wherein it was held that in a system of 'multiple choice objective type test', care must be taken to see that questions having an ambiguous import are not set in the papers. Furthermore, when the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it. In

the case of Question No.184 under challenge, it is obvious that the Answer Key of the respondent is grossly incorrect and a timely decision should be taken by the respondents to delete the same.

9. The learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Abhijit Sen and others v. State of U.P. and others** [(1984) 2 SCC 319) to contend that the Apex Court extended the concept of suspected questions so as to include tricky questions also. The Hon'ble Apex Court in **Abhijit Sen and others** (supra) held that when a tricky question is set by the paper-setter where one of the essential aspects namely, the range has not been indicated anywhere in the question, the alternative answer should also be treated as correct answer and the students should be entitled to get the mark for the correct answer.

10. The learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Manish Ujwal and others v. Maharishi Dayanand Saraswati University and others** [(2005) 13 SCC 744] wherein it was held that it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. First and paramount reason being the welfare of the student, as a wrong key answer can result in the merit being made a casualty. The second reason is that the fact that the courts are slow in interfering in educational matters, casts a higher responsibility on the University while preparing the key answers. Thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students.

11. The learned counsel for the petitioner further relied on a Division Bench judgment of this Court in **State**

of Kerala v. Fathima Seethi [2002 (3) KLT 871] which held, following the judgment of the Hon'ble Supreme Court in **Samir Gupta** (supra), that it is imperative that the answers to the questions indicated must not carry two correct answers. In the present case, in respect of Question No.184, two correct answers do exist, contended the counsel.

12. The learned counsel for the petitioner further relied on the judgment of this Court in **Mamatha Sudheendran and another v. National Testing Agency** [2019 SCC Online Ker.18479] in which this Court held that while considering challenges made to the answer key, when it is evident that the answer accepted by the authorities are wrong, then there should be no hesitation to direct the authorities to delete the wrong answer from the test. If the matter is beyond the realm of doubt, it would be unfair to penalise the student for not giving an answer in accordance

with the answer key which is demonstrated to be wrong.

13. The 2nd respondent entered appearance and contested the writ petition filing a statement. The 2nd respondent stated that the question for NEET (UG) are framed by the concerned Subject Experts. They are then finalised by the Subject Experts and Answer Keys are framed. After the conduct of examination and before application of the keys, the keys are once again verified by the Subject Experts. Thereafter, the questions along with the respective answer keys (as provisional) and the OMR/ answer sheets of the candidates are uploaded/displayed on the website. The candidates are given option to challenge any of the questions.

14. The challenges/objections received are then again placed before the respective Subject Experts. In the present examination, 4070 challenges were received from the candidates. The Subject Experts concerned went

through the challenges/objections and considered each and every aspect of the challenges.

15. The learned Standing Counsel for the 2nd respondent pointed out that the Subject Experts scrutinised 443 challenges to Question No.184 and opined that there is no change in the provisional answer keys to Question No.184. According to the 2nd respondent, the final answer key to Question No.184 is option No.1 which provides the correct answer as “(b) and (c) only”.

16. The learned Standing Counsel for the 2nd respondent pointed out that four answers are given as options to Question No.184. The (b) and (c) are clear enough answers, which indicate that, in the case of answer (b), it is the transfusion of blood from “infected persons” that can result in infection. The answer (c) also indicated that infection can cause only from “infected mother” to foetus. An infected person is required for transmission of venereal

disease. Kissing by itself need not cause any infection, in the absence of the involvement of an infectious person. It is only when kissing is made by an infected person that a venereal diseases can spread. Therefore since the option at (b) and (c) were specific and clear, that such infection can be only through an infected person, the option No.(d) kissing need not necessarily be a cause of infection by itself. It is in that context that the Subject Experts decided that Option No.1 is the correct answer. The conclusion of the Subject Experts cannot be interfered with in a proceeding under Article 226, contended the learned counsel for the 2nd respondent.

17. The learned Standing Counsel for the 2nd respondent further submitted that 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. In the present case, a large amount of reasoning is required to establish that option No.1 is not the correct answer. The learned Standing Counsel for the 2nd respondent relied on the judgment of the Hon'ble Apex Court in **Ran Vijay Singh and others v. State of U.P. and others** [AIR 2018 SC 52] and in **H.P. Public Service Commission v. Mukesh Thakur and others** [2010(6) SCC 759]. The learned Standing Counsel urged that it is not permissible for the High Court to examine the question paper and the answer sheet itself particularly when the examining body has assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it was for all the candidates appearing in the examination and not for the respondent/candidate alone. The Standing Counsel for the 2nd respondent also pointed out that the judgment of the learned Single Judge of this Court in **Mamatha**

Sudheendran and another v. National Testing Agency

(supra) has been challenged by the National Testing Agency and a Division Bench of this Court has stayed the operation of the said judgment in W.A. No. 123/2020.

18. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent. I have also heard the learned ASGI representing the 1st respondent.

19. The issue arising for consideration is as to whether the answer key giving option No.1, i.e., (b) and (c) only to the question No.184 is to be interfered with. The contention of the petitioner is that venereal diseases can spread through kissing also. Therefore the appropriate answer will be “(b), (c) and (d) only” given at Sl.No.4. The petitioner has given that answer. Since the option No.4 is the correct answer, the petitioner should be granted marks for the said correct answer. The petitioner has promptly

challenged the answer key on the stipulated date itself. The petitioner has made available sufficient materials to conclude that the answer key is not correct. Exts.P8 to P12 documents are not properly considered by the respondents while deciding the challenge against the answer key.

20. Going through the answers given to Question No.184, it is evident that answer option No. (b) states that venereal diseases can spread though transfusion of blood from infected persons. Answer option (c) provides that venereal diseases can spread through infected mother to foetus. At the same time, answer No.(d) does not indicate that the intended kissing is by an infected person. The stand of the respondents is that unless the kissing is by an infected person, there is no likelihood of spread of venereal diseases.

21. When the answer options given by the respondents at (b) and (c) are clear and specific, the

approach of the students gains importance. When two of the answers indicate existence of an infected person to spread venereal disease, the other options at (a), (d) and (e) does not speak of any infected person. The stand of the Subject Experts is that when the options at (b) and (c) specifically speaks about the existence of an infected person for transmission of venereal diseases, the other options should be read in that context. The approach and sharpness of the students answering questions in a competitive examination for admission to a high professional Degree Course, is important. This Court finds that the reasoning given by the respondents which is based on the opinion of Subject Experts, to conclude that Sl.No. (1), (b) and (c) is the correct answer, is convincing.

22. As held by the Hon'ble Apex Court in **Ran Vijay Singh and others** (supra), it is the onus of the candidate to demonstrate that the key answer is incorrect and also that it

is a glaring mistake which is apparent. It is not enough for the candidate to show that the key answer is wrong by an inferential process and reasoning. In the present case, taking into consideration the explanation given by the respondents, it cannot be said that the answer given in the answer key is incorrect or is a glaring mistake.

23. It is a settled proposition of law that in academic matters the academicians and academic bodies are the experts. This will be especially so when the examinations are related to admission to higher professional courses. It will be highly improper for the courts to go into the correctness of the answers contained in the Answer Key, unless of course the answers are glaring mistakes. Experts are the best judges in such matters.

24. In this case, questions were prepared by the Subject Experts. The answers were finalised by the Subject Experts after verification of Answer Keys. The

OMR answer sheets and Answer Keys (provisional) were uploaded and displayed on the website of NEET (UG). Objections in respect of answer keys were received. The objections were examined by the Subject Experts of the National Testing Agency. Final Answer Keys were decided by the Subject Experts after due consideration of the objections.

25. In the judgment in **Kanpur University** (supra), the mistake occurred in the Answer Keys was consequent to a wrong translation and the answer was glaringly wrong. It was in such circumstances that the Hon'ble High Court of Allahabad interfered in the matter and the Hon'ble Apex Court refused to unsettle the judgment of the High Court. The facts involved in the present case do not warrant any interference in the Answer Keys. The facts based on which the judgment in **Abhijit Sen and others** (supra) was decided, were also based on a tricky question. The

question No.184 concerned in this case cannot be described as a tricky question.

26. In the judgment of the Division Bench of this Court in **State of Kerala v. Fathima Seethi** (supra), the questions in issue were 'suspect questions', which are incapable of being asked as objective multi choice questions, in that they have no 'most appropriate answers'. Question No.184 in the present case cannot be said to be a suspect question.

In the circumstances, this Court find no reason to interfere in the matter and grant relief to the petitioner. The writ petition is therefore dismissed.

Sd/-
N. NAGARESH
JUDGE

APPENDIX OF WP (C) 24158/2021

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE SCREENSHOT OF QUESTION NO.184 AND TH QUESTION PAPER CODED 05.
- Exhibit P2 A TRUE COPY OF TH SCREENSHOT OF THE WEBPAGE IN RELATION TO SYPHILIS DISEASE MAINTAINED BY THE NHP, INDIA.
- Exhibit P3 A TRUE COPY OF THE SCREENSHOT OF THE WEBPAGE IN RELATION TO SEXUALLY TRANSMITTED DISEASES MAINTAINED BY THE UNITED STATES NATIONAL LIBRARY OF MEDICINE.
- Exhibit P4 A TRUE COPY OF THE SCREENSHOT OF THE CHALLENGE MADE BY THE PETITIONER IN RELATION TO QUESTION NO.184.
- Exhibit P5 A TRUE COPY OF THE INFORMATION BULLETIN (RELEVANT EXTRACT ONLY) PUBLISHED BY THE NTA IN RELATION TO NEET (UG) 2021.
- Exhibit P6 A TRUE COPY OF THE FINAL ANSWER KEY IN RELATION TO QUESTION PAPER CODED '05' PUBLISHED ON 01/11/2021.
- EXHIBIT P7 A TRUE COPY OF CHAPTER 4 (RELEVANT EXTRACT ONLY) OF THE TEXT BOOK PRESCRIBED BY THE NCERT FOR CLASS XII
- EXHIBIT P8 A TRUE COPY OF THE TEXT BOOK (RELEVANT EXTRACT ONLY) PUBLISHED FOR BIOLOGY FOR HIGHER SECONDARY (CLASS XII) BY THE COUNCIL OF HIGHER SECONDARY EDUCATION, ODISHA
- EXHIBIT P9 A TRUE COPY OF THE TEXT (RELEVANT EXTRACT ONLY) PUBLISHED FOR BIOLOGY-ZOOLOGY FOR HIGHER SECONDARY SECOND YEAR BY THE DEPARTMENT OF SCHOOL EDUCATION,

	GOVERNMENT OF TAMIL NADU
EXHIBIT P10	A TRUE COPY OF THE CORE MODULES (RELEVANT EXTRACT ONLY) PREPARED BY THE TELANGANA OPEN SCHOOL SOCIETY (TOSS)
EXHIBIT P11	A TRUE COPY OF THE LIST (RELEVANT EXTRACT ONLY) OF RECOGNISED EDUCATIONAL BOARDS PREPARED BY THE COUNCIL OF BOARDS OF SCHOOL EDUCATION (COBSE), GOVERNMENT OF INDIA AND THE RANK ASSIGNED TO "BIOKNOWLEDGY"
EXHIBIT P12	A TRUE COPY OF THE WEBPAGE IN RELATION TO SYPHILIS DISEASE MAINTAINED BY THE NHP, INDIA
EXHIBIT P13	A TRUE COPY OF THE WEBPAGE IN RELATION TO SEXUALLY TRANSMITTED DISEASES MAINTAINED BY THE UNITED STATES NATIONAL LIBRARY MEDICINE
EXHIBIT P14	A TRUE COPY OF THE REPORT TITLED 'DISEASES YOU CAN GET BY KISSING' PUBLISHED IN THE TIMES OF INDIA DATED 27/03/2017
EXHIBIT P15	A TRUE COPY OF CHAPTER 3 (RELEVANT EXTRACT ONLY) OF THE INFORMATION BULLETIN PUBLISHED IN RELATION TO NEET (UG)-2021.

RESPONDENTS' EXHIBITS

ANNEXURE R2 (a)	TRUE COPY OF THE PUBLIC NOTICE ISSUED BY THIS RESPONDENT DATED 15/10/2021
ANNEXURE R2 (b)	TRUE COPY OF THE OMR SHEET PERTAINING TO THE PETITIONER WITH ROLL NO.2812013047 AND TEST BOOKLET NO.3056327
ANNEXURE R2 (c)	TRUE COPY OF THE SCORE CARD OF THE PETITIONER ISSUED ON 01/11/2021
ANNEXURE R2 (d)	TRUE COPY OF THE CALCULATION SHEET OF THE PETITIONER

ANNEXURE R2 (e)	TRUE COPY OF THE SUBSTANTIATING DATA FOR THE CHALLENGE SUBMITTED/UPLOADED BY THE PETITIONER
ANNEXURE R2 (f)	TRUE COPY OF THE FINAL ANSWER KEYS OF TEST BOOKLET CODE '05'
ANNEXURE R2 (g)	2ND PAGE WHICH DEALS WITH THE CAUSES OF SYPHILIS AS PUBLISHED IN NATIONAL HEALTH PORTAL OF GOVT.OF INDIA.