$~

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

Date of decision: 05th July, 2021

\+ **W.P.(C) 918/2021 with CM APPL. 2480/2021** *(for directions)*

ASSOCIATION OF MD PHYSICIANS ..... Petitioner

Through: Mr. Adit S. Pujari & Ms. Kajal Dalal, Advocates.

versus

NATIONAL BOARD OF EXAMINATIONS ..... Respondent

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha and Mr.Abhishek Kumar Shrivastava, Advocates for R/NBE.
Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocates for UOI.

%

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

Facts

1. The petitioner-association consists of Indian citizens who hold degrees in Medicine from foreign universities. In order to register themselves with the Medical Council of India (now National Medical Commission), foreign medical graduates are required to take a screening test called the Foreign Medical Graduate Examination [hereinafter, "FMGE"], which is conducted by the respondent/ National Board of Examinations [hereinafter, "NBE"]. The present

writ petition concerns the FMGE conducted on 04.12.2020 [hereinafter, "FMGE (December 2020)"].

2. Before adverting to the submissions of the parties, it may be noted that the FMGE (December 2020) was a multiple choice examination consisting of 300 questions. In order to pass, a candidate was required to correctly answer 150 questions, i.e. score 50% in the examination. There was no negative marking for wrong answers.

3. In the writ petition, the petitioner has claimed the following reliefs:-

> *"a) Issue a Writ of Mandamus Or Any Other Appropriate Writ, Order or Direction Under Article 226 of the Constitution directing the Respondent National Board of Examination to award full marks for the technically incorrect/ erroneous/ blurred questions that formed a part of the question paper for the Foreign Medical Graduate Examination conducted on 04.12.2020 to all candidates who appeared in the same;*
> *b) Issue a Writ of Mandamus Or Any Other Appropriate Writ, Order or Direction Under Article 226 of the Constitution directing the Respondent National Board of Examination to make public its answer sheet for the Foreign Medical Graduate Examination conducted on 04.12.2020;*
> *c) Issue a Writ of Mandamus Or Any Other Appropriate Writ, Order or Direction Under Article 226 of the Constitution directing the Respondent National Board of Examination to permit re-evaluation of answer scripts of candidates who appeared in the Foreign Medical Graduate Examination conducted on 04.12.2020*
> *Pass such other Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

However, as recorded in the order of this Court dated 07.05.2021, the petitioner has confined the relief sought in the present petition to the grant of one additional mark to the candidates who took the FMGE (December 2020), with liberty reserved to agitate its other grievances in appropriate proceedings.

4. The petitioner's claim of one extra mark is based on the contention that one of the questions in the examination had no correct answer and was therefore a patently erroneous question. In the writ petition, the petitioner has reproduced the disputed question as follows:-

> *"Question: Sample registration system does not include:*
> *a) MMR*
> *b) IMR*
> *c) BR*
> *d) DR"*

In an additional affidavit dated 27.05.2021, the NBE has reproduced a slightly different version of the disputed question. This confusion has perhaps arisen as a result of the fact that candidates are not permitted to retain copies of the FMGE question paper. I proceed on the basis that the version in the NBE's affidavit is the correct version of the question. It reads as follows:-

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

In the aforesaid affidavit, the NBE has stated that the correct answer to the above question is option (c). Parties agree upon the fact that the Sample Registration System [hereinafter, "SRS"] mentioned in the aforesaid question, refers to a system which has been established by the Registrar General and Census Commissioner of India [hereinafter, "RGI"] under the Ministry of Home Affairs, Government of India and is administered by the Vital Statistics (SRS) Division of the RGI.

5. The results of the FMGE (December 2020) were declared on 18.12.2020. The petitioner addressed a representation dated 12.01.2021 to the NBE and to the Government of India, *inter alia* raising the contention that the disputed question was technically incorrect, as the SRS in fact, gives information about all the four parameters mentioned *viz.* Birth Rate [hereinafter, "BR"], Death Rate [hereinafter, "DR"], Maternal Mortality Rate [hereinafter, "MMR"] and Infant Mortality Rate [hereinafter, "IMR"]. However, the NBE issued a notice dated 16.01.2021, clarifying that the result declared by it was final and that it had been declared after *"necessary checks including post exam review of the question paper by subject matter experts"*.

6. It is in these circumstances that the present writ petition has been filed.

Submissions on behalf of the petitioner

7. Mr. Adit S. Pujari, learned counsel for the petitioner, drew my attention to the following materials to establish that the SRS includes information about MMR, in addition to BR, DR and IMR:

a) The RGI, in response to an enquiry, addressed a communication dated 18.01.2021[1] in which it *inter alia* stated as follows:-

> *"In this regard, it may be noted that the Sample Registration System (SRS) is a large-scale demographic survey, which brings out estimates of various fertility and mortality indicators like Birth Rate, Death Rate, Infant Mortality Rate, Under-five mortality rate, Total Fertility Rate, Neonatal Mortality Rate, Age-Specific Death Rates, Age-Specific Fertility Rates, Maternal Mortality Rate, etc. for the country."*

b) In response to a query under the Right to Information Act, 2005, the RGI through a communication dated 03.02.2021[2] reiterated the information extracted above, and further stated that the data compiled under SRS is in public domain and may be accessed through the website www.censusindia.gov.in by clicking the link "SRS Publications".

c) The Ministry of Women and Child Development, Government of India published a Press Release dated 18.09.2020, entitled "Reduction in Maternal Mortality Rate"[3], which refers to the SRS in the following terms:-

> *"As per the latest report (2016-18) of Sample Registration System (SRS) released by Registrar General of India (RGI), Maternal Mortality Ratio (MMR) of India per 100,000 live births has declined to 113 in 2016-18 from 122 in 2015-17 and 130 in 2014- 2016. The detailed comparative state-wise MMR of the year 2015-17 and 2016-18 is placed at* ***Annexure-I.***[4]
>
> ……

[1] Part of Annexure P-5 to the writ petition
[2] Part of Annexure P-9, at page 16 of the rejoinder affidavit filed by the petitioner
[3] Part of Annexure P-9, at page 24 of the rejoinder affidavit filed by the petitioner
[4] Annexure omitted here

This information was given in a written reply by the Union Minister of Women and Child Development Smt. Smriti Zubin Irani in Lok Sabha today."

d) Press Release of the Ministry of Health and Family Welfare, Government of India dated 12.02.2021[5] in which it was stated as follows:-

"As per the Sample Registration System (SRS) report by Registrar General of India (RGI) for the last three years, Maternal Mortality Ratio (MMR) of India has reduced from 130 per 100,000 live births in SRS 2014-16 to 122 in SRS 2015-17 and to 113 per 100,000 live births in SRS 2016-18.

State/UT Wise Details of Maternal Mortality Ratio (MMR) During Last Three Years Period

India & bigger States	***Maternal Mortality Ratio (MMR)***		
	SRS 2014-16	***SRS 2015-17***	***SRS 2016-18***
India	***130***	***122***	***113***
Assam	*237*	*229*	*215*
Bihar	*165*	*165*	*149*
Jharkhand		*76*	*71*
Madhya Pradesh	*173*	*188*	*173*
Chhattisgarh		*141*	*159*
Odisha	*180*	*168*	*150*
Rajasthan	*199*	*186*	*164*
Uttar Pradesh	*201*	*216*	*197*
Uttarakhand		*89*	*99*
EAG AND ASSAM SUBTOTAL	***188***	***175***	***161***

[5] Part of Annexure P-9, at pages 21-22 of the rejoinder affidavit filed by the petitioner

Andhra Pradesh	*74*	*74*	*65*
Telangana	*81*	*76*	*63*
Karnataka	*108*	*97*	*92*
Kerala	*46*	*42*	*43*
Tamil Nadu	*66*	*63*	*60*
SOUTH SUBTOTAL	*77*	***72***	***67***
Gujarat	*91*	*87*	*75*
Haryana	*101*	*98*	*91*
Maharashtra	*61*	*55*	*46*
Punjab	*122*	*122*	*129*
West Bengal	*101*	*94*	*98*
Other states	*96*	*96*	*85*
OTHER SUBTOTAL	***93***	***90***	***83***

Source-Sample Registration System (SRS) report of Registrar General of India (RGI).

The Minister of State (Health and Family Welfare), Sh. Ashwini Kumar Choubey stated this in a written reply in the Lok Sabha here today."[6]

e) Mr. Pujari emphasised the following statement in paragraph 2 of the "Special Bulletin on Maternal Mortality in India 2010-12" dated December, 2013 published by the Sample Registration System, Office of RGI[7]:-

"2. The Office of the Registrar General, India under the Ministry of Home Affairs, apart from conducting Population Census and monitoring the implementation of Registration of Births and Deaths Act in the country, has been giving estimates on fertility and mortality using the Sample Registration System (SRS). SRS is the largest demographic sample survey in the country that among

[6] Emphasis supplied
[7] Part of Annexure P-9, at pages 26-29 of the rejoinder affidavit filed by the petitioner

> *other indicators provide direct estimates of maternal mortality through a nationally representative sample. Verbal Autopsy instruments are administered for the deaths reported under the SRS on a regular basis to yield cause-specific mortality profile in the country. The First Report on maternal mortality in India (1997-2003) – Trends, Causes and Risk Factors was released in October, 2006. The present Bulletin, which provides only the levels of maternal mortality for the period 2010-12, is being brought out as a sequel to the previous Bulletin (2007-09). With this, the maternal mortality data from SRS is available for a period of 16 years."*[8]

8. Mr. Pujari submitted that, in the light of the aforesaid material, it is clear that the disputed question is in itself erroneous, inasmuch as the SRS does give information about MMR, in addition to the other three mentioned parameters. He drew my attention to a notice dated 20.01.2020 issued by the NBE with regard to the FMGE (December 2019), in which two questions were found to be technically incorrect, and the NBE decided to award marks to all candidates for those questions. According to Mr. Pujari, a similar course ought to have been adopted in the FMGE (December 2020), in respect of the aforesaid question.

9. Mr. Pujari's final submission was that the nature of the FMGE is such that no settled rights or interests of third parties would be affected by the grant of the relief sought, as the grant of relief would only render some unsuccessful candidates eligible to proceed further with their applications for registration. Mr. Pujari therefore submitted that, even upon equitable considerations, in the present public health

[8] Emphasis supplied for all quotations

crisis occasioned by the COVID-19 pandemic, the induction of a group of qualified doctors to the healthcare workforce would be in the interest of not just the doctors themselves, but of the public at large.

10. In support of his contention that the aforesaid relief can be granted in a petition under Article 226 of the Constitution of India, Mr. Pujari referred to the judgment of the Supreme Court in *Kanpur University, through Vice-Chancellor & Ors. vs. Samir Gupta & Ors.*[9] and Division Bench judgments of this Court in *Salil Maheshwari vs. The High Court of Delhi & Anr.*[10] and *Anjali Goswami & Ors. vs. Registrar General, Delhi High Court*[11]. Mr. Pujari also cited a decision of the Patna High Court in *Ramesh Kumar & Ors. vs. State of Bihar & Ors.*[12].

Submissions on behalf of the NBE

11. Ms. Ruchira Gupta, learned counsel for the NBE, on the other hand, submitted that the Information Bulletin for the FMGE (December 2020), published on 08.10.2020, itself stipulated that there would be no re-evaluation, re-checking or re-totalling of marks. She drew my attention to the counter affidavit dated 05.03.2021 filed by the NBE, and its additional affidavit dated 27.05.2021, to submit that the NBE maintains a "question bank" of questions for inclusion in the FMGE, which has been compiled with inputs from senior faculty members in various medical disciplines. She submitted that the questions undergo both pre-examination verification and post-

[9] (1983) 4 SCC 309
[10] (2014) 145 DRJ 225 (DB)
[11] (2019) 173 DRJ 574 (DB)
[12] 2018 SCC OnLine Pat 6171 [Civil Writ Jurisdiction Case No. 17302 of 2018, decided on 31.10.2018]

examination validation. Ms. Gupta contended that after such verification at various levels, the writ court ought not to interfere with the academic judgment of experts. In respect of the disputed question, for example, Ms. Gupta stated that it has been reviewed by eight experts in the field of Community Medicine at various stages – in the course of setting the paper, validation, pre-examination and post-examination review, and by a specific committee set up in response to the representations received.

12. Ms. Gupta further submitted that the judgment in *Kanpur University*[13] relied upon by Mr. Pujari, was limited to a situation where a question is wrong on the face of it and no inferential reasoning or rationalisation was required to be undertaken by the Court. She also cited the judgments of the Supreme Court in *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.*[14] and *Uttar Pradesh Public Service Commission & Anr. vs. Rahul Singh & Anr.*[15], as well as the judgments of this Court in *Surjeet & Ors. vs. Central Board of Secondary Education & Anr.*[16] and *Atul Kumar Verma vs. Union of India & Anr.*[17], to submit that the writ court should not re-appraise the correctness of the question paper set by domain experts.

13. Without prejudice to the aforesaid argument, Ms. Gupta submitted that the disputed question is in fact technically correct and MMR is not included in the data gathered by the SRS. She referred to the SRS Bulletin of May, 2020, which describes only the parameters

[13] Supra (note 9)
[14] (2018) 2 SCC 357
[15] (2018) 7 SCC 254
[16] 2019 SCC OnLine Del 6936 [W.P. (C) 1068/2019, decided on 01.02.2019]
[17] (2015) 221 DLT 669 [W.P. (C) 5719/2015, decided on 13.07.2015]

of BR, DR, IMR, and natural growth rate. According to Ms. Gupta, the data regarding MMR is included only in Special Bulletins published by the SRS every three years, which cannot be directly derived from the data collected by the SRS but is computed by various assumptions of lifetime risk and other indirectly derived data. She drew my attention to the following statement in the Special Bulletin on Maternal Mortality in India, 2016-18 published by the Office of the RGI in July, 2020 (Annexure R-3 to the additional affidavit):-

> *"* *xxxx* *xxxx* *xxxx*
>
> *6. The maternal deaths being a rare event require prohibitively large sample size to provide robust estimates. In order to enhance the SRS sample size, the results have been derived by following the practice of pooling the three years data to yield reliable estimates of maternal mortality."*[18]

14. Ms. Gupta thereafter referred to the introduction to the SRS as described on the official website of the RGI in the following terms:-

> *"The main objective of SRS is to provide reliable estimates of birth rate, death rate and infant mortality rate at the natural division level for the rural areas and at the state level for the urban areas. Natural divisions are National Sample Survey (NSS) classified group of contiguous administrative districts with distinct geographical and other natural characteristics. It also provides data for other measures of fertility and mortality including total fertility, infant and child mortality rate at higher geographical levels.*
>
> *To give more impetus covering both rural and urban areas and wider representation of sample villages and urban blocks for Causes of Death; the Survey of Causes of Deaths (Rural) has been merged with Sample*

[18] Emphasis supplied.

Registration System from 1st January 1999. The primary objective of the survey is to build up statistics on "Most Probable Causes of Death" for rural and urban areas using "lay diagnosis reporting (Post Death Verbal Autopsy)" method through post death enquiry based on symptoms, conditions, duration and anatomical site of the disease as observed by family members of the deceased at the time of death. ....."

15. On the basis of the aforesaid materials, Ms. Gupta submitted that the actual data collected by the field agents of the SRS is confined to the basic indicators of BR, DR and IMR, which are then used to calculate other derived indicators, including MMR.

16. In the additional affidavit, the NBE has also included the following data regarding the response to the disputed question, in an attempt to demonstrate that a large number of candidates understood the question properly and knew the correct answer:-

"Overall response to the question:
A- 3328
B- 4835
C- 6614
D- 3720
Response amongst the qualified candidates:
A- 606
B- 882
C- 1621
D- 818"

Submissions in rejoinder

17. In his submissions in rejoinder, Mr. Pujari emphasised that the judgments cited by Ms. Gupta do not altogether interdict the writ court from considering the correctness of the question paper, but limit the exercise of jurisdiction to situations of patent error. He also distinguished the present case from the cases cited by Ms. Gupta on

the ground that the NBE does not release an answer key at all, which was the situation involved in the cases cited. He reiterated that the present case does not involve any third party rights under a merit list or selection process, but only the eligibility of the candidates who would be rendered successful in the event the petition succeeds.

18. With regard to the relief which may be granted in the event of the petitioner succeeding in the present writ petition, Mr. Pujari also cited the judgment of this Court in *Prabha Devi & Ors. vs. Govt. of NCT of Delhi & Ors.*[19], wherein various options for the grant of relief have been discussed.

Affidavit filed by the RGI

19. Having regard to the nature of the controversy and the limited circumstances in which the writ court may interfere, in order to satisfy myself as to the factual position, I have also taken the assistance of the RGI. By an order dated 07.05.2021, the learned Standing Counsel for the Union of India was requested to file a short affidavit or written note on behalf of the RGI on the question as to *"whether the Sample Registration System includes or does not include Maternal Mortality Ratio"*. Pursuant to the aforesaid order, the RGI has filed an affidavit dated 21.05.2021 which *inter alia* states as follows:-

> *"4. That in this regard it is most respectfully submitted that the Sample Registration System (SRS) is the largest demographic survey, conducted by office of 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*

[19] 2016 SCC OnLine Del 3253 [W.P. (C) 8055/2015, decided on 12.05.2016] (paragraph 27)

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."[20]

20. The NBE, in its additional affidavit dated 27.05.2021, has dealt with the RGI's affidavit in the following terms:-

> *"13. That in so far as the response by the Office of Registrar General of India is concerned, the said body is neither an expert in the subject of Community Medicine nor in conduct of specialized examination such as FMGE. The information supplied by them is very generic with wide amplitude and cannot be taken into consideration over the views of experts in the subject matter as stated hereinabove.*
>
> *14. That in fact, a careful reading of the affidavit filed by the Registrar General & Census Commissioner of India makes it clear that in so far as 'maternal mortality ratio' is concerned "Verbal Autopsy (VA) are administered* ***for the deaths reported under SRS*** *on a regular basis to yield cause specific mortality profile in the country." Therefore, it is this aspect of "reporting" which sets apart 'maternal mortality rate' from the basic indicators of SRS."*[21]

21. During the course of hearing, with the assistance of learned counsel for the parties, I have also accessed the SRS website www.censusindia.gov.in in order to verify the materials placed before the Court.

---

[20] Emphasis supplied
[21] Emphasis supplied

Analysis

A. Applicable principles

22. In view of the submissions made on behalf of the NBE, it is necessary first to appreciate the scope of jurisdiction exercised by the writ court in a matter of challenge to a question set in an examination. This issue has received considerable judicial attention, and the judgments cited by both learned counsel require somewhat detailed consideration.

23. In *Kanpur University*[22], a three Judge Bench of the Supreme Court formulated the question before it in the following terms:-

> *"These appeals raise a somewhat awkward question: If a paper-setter commits an error while indicating the correct answer to a question set by him, can the students who answer that question correctly be failed for the reason that though their answer is correct, it does not accord with the answer supplied by the paper-setter to the University as the correct answer? The answer which the paper-setter supplies to the University as the correct answer is called the 'key answer'. No one can accuse the teacher of not knowing the correct answer to the question set by him. But it seems that, occasionally, not enough care is taken by the teachers to set questions which are free from ambiguity and to supply key answers which are correct beyond reasonable controversy. The keys supplied by the paper-setters in these cases raised more questions than they solved."*

The Court examined three disputed questions included in the "Combined Pre-Medical Test" in the State of Uttar Pradesh. Upon consideration of the materials placed before it, the Court upheld the

[22] Supra (note 9)

decision of the Allahabad High Court in favour of the examinees, with the following reasoning:-

> *"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 text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.*
>
> *17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."*[23]

24. In *Salil Maheshwari*[24], a Division Bench of this Court, faced with a challenge to a question paper for the Delhi Judicial Service

[23] Emphasis supplied.
[24] Supra (note 10)

Preliminary Examination, 2014, relied upon *Kanpur University* to hold as follows:-

> *"12. Three propositions of law emerge from Kanpur University (supra), on the permissible extent of judicial review of an answer key. First, the answer key must be presumed to be correct and must be followed, even in the face of a mere doubt, second, only if a key answer is demonstrably wrong, in the opinion of a reasonable body of persons well-versed in the subject, it may be subject to judicial review, and third, if the answer key is incorrect beyond doubt, then a candidate cannot be penalised for answers at variance with the key. This position was reiterated in Manish Ujwal v. Maharishi Dayanand Saraswati University, (2005) 13 SCC 744 and DPS Chawla v. Union of India, 184 (2011) DLT 96."*

The Division Bench went on to summarize the legal position in the following terms:-

> *"20. In matters of judicial review which involve examination of academic content and award of marks, the previous rulings of the Supreme Court and other authorities have cautioned a circumspect approach, leaving evaluation of merits to the expertise of academics. However, if the approach complained of falls within the traditional parameters of judicial review - i.e illegality, irregularity; non-consideration of material facts or consideration of extraneous considerations; or lack of bona fides in the decision making process as contrasted with the decision itself[25], the action or decision can be corrected in judicial review. The last category is where the decision is so manifestly and patently erroneous that no reasonable person, similarly circumstanced, could have taken it, the court would intervene. ...*

[25] Emphasis in original

21. In this the Court is compelled to conclude that the question of re-evaluation does not arise for consideration in the matter at hand, since the examination in question comprised only Multiple Choice Question ("MCQ"). What this writ petition seeks is a declaration that the answer options provided in the MCQs admit of two possible answers, and are thus ambiguous. If a Court were to find that the key answers are indeed incorrect, or that more than one key answer could be correct then there arises no question of "re-evaluation".[26] *This is because such an examination with MCQs is premised on the basis that there is only one, objective, correct answer to every question. As recognised in Kanpur University (supra):*

> *"18. ... Fourthly, 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. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'.*[27] *That is why the questions have to be clear and unequivocal."*

22. The very finding that a key answer is not the objective, single, correct answer of the four options provided, and that another answer is "correct" according to those well -versed in the subject, itself would merit the awarding of additional marks to candidates who had chosen the latter answer. There arises no need to "evaluate" or examine a response of a candidate for a second time, since all candidates who have answered in accordance with the answer key that the experts in the field affirm, are automatically entitled to the award of additional marks. The precedents on re-evaluation are only applicable in the context of examinations which permit subjective written answers,

[26] Emphasis supplied
[27] Emphasis in original

> *and not objective, multiple-choice questions that permit the selection of just one "correct" answer. There would be no infirmity in the approach of a Court that directs reassessment, such as in Kanpur University (supra) itself, on the ground that the answer key is incorrect.*[28] *In the present case, this court has recorded findings on each of the three questions, to say that the answer keys used for correcting the question papers used one single correct answer; the alternative options cannot be said to be unambiguously clear answers, so as to result in confusion on the part of the examinee, who attempted the preliminary test."*

25. In *Anjali Goswami*[29], another Division Bench (of which I was a member), was concerned with a challenge to certain questions in the Delhi Judicial Service Examination, 2018. The Court, relying upon *Salil Maheshwari,* reiterated[30] that where the answer key is incorrect or more than one key to the answer could be correct, the candidate should not be penalized for answers at variance with the key. It was reiterated that, in a system of multiple choice questions, care must be taken to see that questions having an ambiguous import are not included in the paper. The Division Bench further held[31] that the matter must be viewed from the perspective of the examinee/ candidate and not merely that of the examiner, as the examinee is unaware of the context in which the question was framed.

26. Although Mr. Pujari also cited the judgment of a learned Single Judge of the Patna High Court in *Ramesh Kumar*[32], the said judgment

[28] Emphasis supplied
[29] Supra (note 11)
[30] Supra (note 11), paragraph 17
[31] Supra (note 11), paragraph 23
[32] Supra (note 12)

is relevant to the petitioner's prayer for publication of the key answers by NBE [prayer (b) in the writ petition], which is not being pressed in the present proceedings.

27. Ms. Gupta cited the judgments of the Supreme Court in *Ran Vijay Singh*[33] and *U.P. Public Service Commission*[34]. In *Ran Vijay Singh*, the Court considered its earlier pronouncements, including *Kanpur University*, and observed that the jurisprudence with regard to interference with examinations does not mandate a *"complete hands-off or no-interference approach"* but admits of interference in *"rare and exceptional situations and to a very limited extent"*[35]. While dealing with the judgment in *Kanpur University*[36], the Court held as follows:-

> *"19. ……In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) establishing a system of moderation; (ii) avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) prompt decision be taken to exclude the suspect question and no marks be assigned to it."*[37]

[33] Supra (note 14)
[34] Supra (note 15)
[35] Supra (note 14), paragraph 18
[36] Supra (note 9)
[37] Emphasis supplied

Ms. Gupta laid considerable emphasis upon the observations of the Court in paragraphs 31 and 32 of *Ran Vijay Singh*[38], which read as follows:-

> *"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*

[38] Supra (note 14)

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."[39]

28. The judgments in *Kanpur University*[40] and *Ran Vijay Singh*[41] were both considered in the *U.P. Public Service Commission*[42] judgment. The Court thereafter summarized the legal position in the following terms:-

> *"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;*

[39] Emphasis supplied
[40] Supra (note 9)
[41] Supra (note 14)
[42] Supra (note 15)

(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."[43]

29. Two judgments of coordinate benches of this Court were also cited by Ms. Gupta. In *Atul Kumar Verma*[44], the Court concluded that judicial review of an answer key would not be contemplated by proceedings under Article 226 of the Constitution. In *Surjeet*[45], this Court reiterated that interference with an answer key can be permitted only if the error is self-evident and does not require detailed analysis and reasoning.

30. The aforesaid authorities clearly stipulate that the jurisdiction of the Court in academic matters, where the answer provided by an examining authority is challenged by a candidate, is extremely limited.

[43] Emphasis supplied
[44] Supra (note 17)
[45] Supra (note 16)

The Court is not an expert in the universe of subjects examined at various levels, and must unhesitatingly defer to the view taken by expert examiners. However, none of the judgments cited prohibit judicial review altogether. They do leave open a window for challenge, albeit a very small one, in the event that the candidate discharges the onus of showing that a question is *patently erroneous*. The error must be apparent on the face of the question, or as in the case of *Kanpur University*[46], shown to be so on the basis of accepted and acknowledged materials (in that case, text books). Although *Ran Vijay Singh*[47] strikes a note of great caution and circumspection, it too leaves open the possibility of interference in an exceptional case. In *U.P. Public Service Commission*[48], the Court considered paragraphs 31 and 32 of *Ran Vijay Singh*[49], upon which Ms. Gupta has laid great emphasis, and yet left open that possibility in the case of a glaring mistake.

31. The Supreme Court in *Kanpur University*[50], and the Division Bench of this Court in *Salil Maheshwari*[51], both underscore the particular difficulties which arise in the context of multiple choice questions, as opposed to subjective type questions. As far as multiple choice examinations like the FMGE are concerned, the aforementioned precedents also speak of the duty of the examining authority to ensure that the questions set are unambiguous and admit

[46] Supra (note 9)
[47] Supra (note 14)
[48] Supra (note 15)
[49] Supra (note 14)
[50] Supra (note 9)
[51] Supra (note 10)

of one, and only one, clear answer. This is clear from the judgment of the Supreme Court in *Kanpur University*[52], wherein the Court also emphasised that the examining authority should respond to any defect in the answers or any ambiguity in the questions with a prompt and timely decision to exclude the suspect question from the paper. These principles have been reiterated by the Supreme Court in *Ran Vijay Singh*[53] and *U.P. Public Service Commission*[54]. Even while reiterating the narrow scope of interference, the Court in *Ran Vijay Singh* observed that such a course has been shown by the Court as *"one way out of an impasse*"[55].

B. Application to the facts of the present case

32. Having thus understood the applicable principles, the question to be determined is whether the petitioner has succeeded in showing that the NBE has committed such a glaring mistake in setting the disputed question, as to justify the intervention of the Court. Following the approach of the Supreme Court in *Kanpur University*[56], the Court is obliged to look at reliable and authoritative material to consider the correctness of the question, although without any process of inferential reasoning or rationalisation.

33. The NBE's position with respect to the disputed question would be accepted by the Court if it can possibly be argued that the SRS does not include information about the MMR. However, the materials

[52] Supra (note 9), paragraph 18
[53] Supra (note 14), paragraph 19
[54] Supra (note 15), paragraph 12
[55] Supra (note 14), paragraph 31
[56] Supra (note 9)

placed by the parties, in my view, leave no room for doubt that this is a patently erroneous view.

34. The RGI, in its communications dated 18.01.2021 and 03.02.2021, clearly asserted that the SRS includes estimates of various fertility and mortality indicators, including MMR. Further, even in answering questions raised in Parliament, the Government of India has relied upon the SRS data relating to MMR. This is evident from the press releases of the Ministry of Women and Child Development dated 18.09.2020, and of the Ministry of Health and Family Welfare dated 12.02.2021. It is impossible to accept the NBE's contention that the SRS does not give information about MMR, when that very information has been used in the discharge of the Government's solemn responsibility to Parliament, which is central to the functioning of our democracy.

35. There is also no dispute that the SRS in fact publishes a "Special Bulletin on Maternal Mortality". Mr. Pujari submitted that this itself demonstrates that the SRS does not exclude information about MMR, whereas Ms. Gupta contended that MMR was only part of a "special bulletin" and not part of the primary data collected as part of the SRS. Ms. Gupta's submission in this regard is misconceived. The disputed question, on a plain reading, asks which of the four mentioned parameters is excluded from the information given by the SRS. It does not require any process of inferential reasoning or rationalisation to see that all the four parameters are included in the information supplied by the SRS. It is the justification

asserted by the NBE which requires much to be read into the question and, even then, calls for a rather strained process of rationalisation.

36. Having regard to the mandate of the Supreme Court in the judgments discussed above that a multiple choice question must admit of only one unambiguous answer, the disputed question does not meet the required standard. It has no unambiguously correct answer. In such a situation, the NBE was required to correct its course immediately, if necessary by deleting the question.

37. As mentioned above, before recording a finding against the NBE on this aspect, having regard to the extreme circumspection that must be shown by the writ court in such matters, I had also sought the views of the RGI on the question raised. The express and unequivocal position taken by the RGI, whose office is the source of the SRS itself, is that the SRS includes MMR.

38. The response of the NBE to the affidavit filed by the RGI is set out in paragraph 20 hereinabove. The NBE contends that the views of the RGI cannot be taken into consideration over the views of experts in the subject of Community Medicine, as the RGI is not an expert in Community Medicine, nor in the conduct of a specialized examination such as the FMGE. I am constrained to observe that this contention can only be characterised as perverse. The disputed question is about the SRS, not about any other aspect of Community Medicine. The SRS is established and published by the RGI. To say that the RGI is not an expert in Community Medicine is therefore, neither here nor there. The RGI is certainly an expert on the question of what is and what is not part of the SRS. It is indeed surprising that an academic

body like the NBE should take such an extreme position. This attitude displays an unfortunate determination to persist in an error, rather than an open minded approach, which should inform all academic enterprise.

39. For the reasons aforesaid, I am of the view that the petitioner has discharged the onerous burden of showing that the answer stipulated by the NBE was patently incorrect. The error requires no detailed analysis or inferential reasoning to discern; it becomes clear upon a mere reference to the undisputed and authoritative materials placed on record. The present case, therefore, falls within the very small class of such cases in which interference of the writ court is justified.

C. Relief

40. The next question relates to the nature of the relief to be granted. As mentioned above, the FMGE does not result in a merit list or recruitment which would interfere with settled third party rights, or overturn the result of the disputed examination altogether. The only consequence of the petitioner's success is some additional candidates would potentially secure the passing mark of 150, and would then be eligible to proceed further towards registration.

41. The judgment of the Division Bench of this Court in *Prabha Devi*[57] enumerates four possible resolutions to a question of this nature:-

> *"27. A reading of the aforesaid judgments would reflect that there are four possible options available to the*

[57] Supra (note 19)

authorities, when they are confronted with the situation where the question(s) included in the multiple choice objective type tests is found to be incorrect, ambiguous or the answers themselves are found to be incorrect, ambiguous or capable of dual answers. The options are; (i) the question can be deleted and treated as a zero mark question; (ii) the question though deleted, each candidate is awarded marks as if the answer was correct and without negative marking; (iii) the question is not deleted and the candidates who have given the right answer are awarded marks, but there is no negative marking; and (iv) if there are two correct suggested answers, candidates who have given any of the two answers are awarded full marks. In the latter case, possibly negative marking may not be mandated. The aforesaid options can be divided into two categories, where the question is deleted, and the question is not deleted but option Nos. (iii) or (iv) are exercised. Which of the two categories would be applicable would depend upon the question and the suggested answers. The option to be selected has to be question-wise, i.e., with reference to each question. Lastly, while selecting the option, the authorities must take into consideration two factors, first, the sanctity of the selection process should be maintained and second, the students/candidates who have appeared should not suffer objectionable prejudice and disadvantage. ..."[58]

42. In the present case, as discussed above, the disputed question had no correct answer. Options (iii) and (iv) quoted above are, therefore, not applicable.

43. The issue must then be resolved as between options (i) and (ii).

44. If option (i) is adopted, i.e. the question is deleted and treated as a zero mark question, it would potentially unsettle the position of candidates who chose option (c) for the disputed question, and secured

[58] Emphasis supplied

qualifying marks. As identified in the affidavit of the NBE, several candidates had in fact chosen option (c) which, according to the NBE also, was the correct answer. They have been marked and assessed on this basis. It would be inappropriate, while moulding the relief in favour of the petitioner, to prejudice them in this manner for no fault of theirs.

45. I am, therefore, of the view that option (ii) stipulated by the Division Bench in *Prabha Devi*[59] provides the most appropriate answer in the present case. All candidates must be awarded one mark in lieu of the disputed question. Candidates who had marked option (c) for the disputed question have already been given the required mark and no change is required in their marks. To give them an additional grace mark would in fact reward them doubly for one incorrect question in the question paper. The candidates whose answer to the disputed question was marked incorrect, however, must be re-assessed with one extra mark. Such of those candidates who thus achieve the passing score of 150 must then be accordingly treated as eligible to proceed further in the process of registration.

Conclusion

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

[59] Supra (note 19)

treated as having passed the FMGE (December 2020). The aforesaid directions be complied with within four weeks from today.

47. As recorded in the order dated 07.05.2021, it is made clear that the petitioner is free to agitate the other reliefs sought in the writ petition in appropriate proceedings.

48. The writ petition, and pending application, stand disposed of in the terms aforesaid. No order as to costs.

PRATEEK JALAN, J.

JULY 05, 2021
'HJ/pv'