



AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19277 of 2024

1. **Subham Kumar Chand**, aged about 17 years (Minor),
Represented through his father guardian Ranjan Kumar Chand,
S/o-Late Bikram Chand, At-Plot No.380/3455/6996, Sarala Nagar,
P.O.-Bhudheswary Colony, P.S.-Laxmisagar, Bhubaneswar,
Dist- Khurdha.

...Petitioner

-Versus-

1. **Union of India**, represented through its Secretary to Govt. of India, Ministry of Education, New Delhi, Delhi-110020.
2. **The Chairperson, National Testing Agency (NTA)**, First floor, NSIC-MDBP Building, Okhla Industrial Estate, New Delhi, Delhi, Pin-110020.
3. **The Secretary, National Medical Commission**, Pocket No-14 Sector-8, Dwaraka Phase New Delhi, 110077
4. **Chairman Medical Counselling committee**, Directorate General of Health Service, Ministry of Health and Family welfare, Govt. of India, F17, Karkardooma, Delhi, PIN-110032,
5. **The Chairman, OJEE, JEE Cell**, Gandamunda, Pakhariput, Bhubaneswar, Odisha-751030.

...Opposite Parties



Advocates appeared in the case:

For the Petitioner : Mr. Srinibash Satapathy, Advocate

For Opp. Parties No.1 & 2 : Mr. P. K. Parhi, DSGI with
Ms. S. Patra, CGC

For Opp. Parties No.3 & 4 : Ms. Babita Sahu, CGC

For Opp. Party No.5 : Mr. Subir Palit, Senior Advocate with
Mr. A. Mishra and associates,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

21.10.2024

Chakradhari Sharan Singh, C.J.

1. The petitioner had appeared in NEET (UG), 2024 Examination conducted by the National Testing Agency (NTA). The result of the examination was published on 04.06.2024. The petitioner's All India Rank (AIR) was 39944 with the score of 639 out of total marks of 720. In compliance of an order of the Supreme Court dated 13.06.2024 in W.P.(C) No.368 of 2024, a re-test was held for 1563 candidates on 23.06.2024 and their result was declared on 30.06.2024. Based on the outcome of the said re-test and other



circumstances, the NTA published a re-revised score card on 26.07.2024. In the re-revised All India Ranking, the petitioner's rank went up to 36776 from 39944, which was his initial ranking.

2. It is the petitioner's case that he compared the total marks awarded to him with the answer key of text booklet code-2 and found that he was wrongly awarded 137 marks in Physics because of incorrect evaluation, since he had answered 33 questions out of compulsory 35 (leaving two questions i.e. No.29 and 34) in Physics (Section A, Q. No.1 to 35), and thus entitled to $29 \times 4 = 116$ for 29 correct answers; and after with deduction of 4 marks for 4 wrong answers in respect of Questions No.10, 20, 21 and 25. He was, accordingly, entitled to 112 marks in Physics (Section A, Q. No.1-35). Further, in respect of Physics (Section B, Q. No.36-50), the petitioner was required to answer 10 questions whereas, he had answered 11 questions. In accordance with the evaluation norms, the first 10 questions answered by a candidate were to be evaluated. However, in respect of Q.No.39, the petitioner had darkened both the answers 1 and 2 out of four multiple answers suggested. It is his case that if Q.39 is not considered, then the petitioner shall be treated to have given all correct answers for rest of the 10 questions and in that situation, his

W.P.(C) No.19277 of 2024



score would be 40 in Physics (Section B) and thus total score should be 147 in Physics, enhancing his total score to 647. If, however, Q.No.39 is considered incorrect or wrong, then his mark would be 35 in Section B, Physics and his total marks would be 142 out of 180 in Physics and thus his total marks would be 642 instead of 639.

3. This is the background in which the petitioner has filed the present writ petition seeking a direction to the NTA to re-evaluate his answer sheet in respect of Physics (Section B), NEET (UG), 2024 Examination.

4. A reply affidavit has been filed on behalf of the NTA wherein, the norms of examination for evaluation as declared in Information Bulletin of the NEET (UG), 2024 uploaded/published on the official website for information to all candidates have been stated. In the said reply affidavit, Clause-14.4 of the Information Bulletin has been quoted, which reads as under:

“14.4 Re-checking/re-evaluation o f answer sheets

- *The machine-gradable Answer Sheets are evaluated with extreme care and are repeatedly scrutinized.*



- There is no provision for re-checking/re-evaluation of the answer sheets. This is because of the following reasons:
 - i. The OMRs are machine gradable and are being evaluated through specific software impartial to all.
 - ii. The candidates are given an opportunity to make the representation on the OMR gradation of their OMR sheets and also given an opportunity to challenge the answer key in case of any doubt.
- *No correspondence in this regard will be entertained.”*

(Underscored for emphasis)

5. It is the case of the NTA that in view of clause-14.4 of the Information Bulletin the petitioner's claim for re-evaluation cannot be entertained keeping in mind the well settled legal position, particularly, the law laid down by the Supreme Court in case of ***Ran Vijay Singh v. State of Uttar Pradesh: (2018) 2 SCC 357***. As regards the petitioner's case, it has been stated that the petitioner had attempted 163 questions correctly and 13 questions incorrectly and, accordingly, he has been awarded $[(163 \times 4) - (13 \times 1)] = 639$ out of 720.

6. Dealing specifically with the petitioner's case in respect of Section B of Physics (Q.36 to 50), the NTA, in its affidavit, has given in detail question-wise evaluation based on the petitioner's response/no response to the respective questions in total, which is as under:



Q. No.	Candidate's response	Final Answer Key	Marks as per Calculation Sheet
36	02	01	-5
37	02	02	+4
38	No response	02	No response
39	01, 02	02	-5
40	02	02	+4
41	04	04	+4
42	04	04	+4
43	02	02	+4
44	03	03	+4
45	02	02	+4
46	No response	01	No response
47	No response	02	No response
48	02	02	+4
49	02	02	00 (Ignored)
50	No response	02	00 (Ignored)

7. It is also the case of the NTA that the OMR answer sheets which are specifically designed machine-gradable sheets are used for the candidates to record their responses by darkening the one circle for each question/entry. The final answer keys are decided by the experts after challenges received from the candidates are settled by the respective subject experts, and the result is declared on the basis of final/revised answer key recommended by the subject experts only. No answer sheet is checked manually as the OMR sheets are machine gradable and are being evaluated through specific software, impartial to all. It is accordingly the case of the NTA that since the OMR sheets



are machine-gradable and without any human interference, the allegation of incorrect evaluation cannot be entertained, more so when the candidates are given an opportunity to make representation on the OMR gradation of their OMR sheets and also given an opportunity to challenge the answer key in case of any doubt. It is accordingly the case of the NTA that it is impermissible for the petitioner to question the marks awarded in Physics in the present proceeding under Article 226 of the Constitution of India.

8. We have heard Mr. Srinibash Satapathy, learned counsel appearing on behalf of the petitioner. We have also heard Mr. P.K. Parhi, learned DSGI for opposite parties No.1 & 2, Ms. Babita Sahu, learned CGC for opposite parties No.3 & 4 and Mr. Subit Palit, learned Senior Counsel appearing on behalf of opposite party No.5.

9. Mr. Satapathy, learned counsel for the petitioner has submitted that it is evident from the calculation sheet filed by the NTA that it has counted Q.No.148 as attempted whereas, the petitioner had not attempted the said question. He has however not disputed that there is one stray mark in the OMR sheet against Q. No.148 which might have been caused while taking thumb impression of the petitioner by



the Invigilator. He has submitted that in fact Q. No.148 was not attempted by the petitioner but he has been awarded negative mark for the said question. Consequently, Q. No.149, which was in fact attempted by the petitioner, has not been taken into account by applying the norm that a candidate could attempt only 10 questions out of 15 in Section B (MCQ).

10. Mr. Subir Palit, learned Senior Counsel appearing on behalf of the NTA has argued that there being stipulation in the Information Bulletin that re-checking/re-evaluation of answer sheets is impermissible, the petitioner cannot claim re-evaluation by invoking the writ jurisdiction of this Court. He has relied on the Supreme Court's decision in case of **Ran Vijay Singh** (*supra*) to contend that this writ petition has no merit and deserves to be dismissed.

11. We have carefully perused the pleadings on record and the rival submissions advanced on behalf of the parties. It is apparent that the entire controversy now rests on, whether to treat Q. No.148 of Physics as attempted by the petitioner or not. If the said question is treated as attempted, then in terms of Clause 3.2.b of the Information



Bulletin, the petitioner's attempt to Q. No.149 cannot be considered.

Clause 3.2.b reads thus:

“3.2.b. For Section B (MCQs): Candidates need to attempt any 10 Questions out of 15 Questions given. In the event of a candidate has attempted more than 10 questions, only the first 10 attempted questions will be considered for evaluation. There will also be a negative marking for Section B. However, if any anomaly or discrepancy is found after the process of challenges of the key verification, it shall be addressed in the following manner:

- i. Correct Answer: Four marks (+4)*
- ii. Incorrect Answer: Minus one mark (-1)*
- iii. Unanswered: No mark (0)*
- iv. If more than one option is found to be correct then Four marks (+4) will be awarded to only those who have marked any of the correct options.*
- v. If all options are found to be correct then Four marks (+4) will be awarded to all those who have attempted the question.*
- vi. If a question is found to be incorrect or the Question is dropped then Four marks (+4) will be awarded to all those who have attempted the question. The reason could be due to human error or technical error.*

Candidates are advised to do the calculations with the constants given (if any) in the questions.”

12. Whereas, it is the petitioner's case that there is stray mark against Q. No.148 which ought not to have been treated as attempted,



the computer system has read that mark to be an attempted against Q. No.148 (Physics, Section B). The petitioner attributes the said mark to be a result of mistake caused by him when his thumb impression was being obtained on the OMR sheet by the Invigilator.

13. Exercising writ jurisdiction under Article 226 of the Constitution of India, the Court cannot substitute its own opinion in place of an opinion of the experts' body holding the examination at national level. No case of patent illegality/irregularity is made out for this Court to interfere.

14. Times without number, the Supreme Court has disapproved re-evaluation of answer sheets in the absence of any provision for re-evaluation, unless a clear case of manifest error without any inferential process is made out. In case of ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna: (2004) 6 SCC 714***, a three-Judge Bench of the Supreme Court has laid down the law as under:

“7. xxx xxx xxx xxx

There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules,



no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27 : AIR 1984 SC 1543] . In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a



candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.”

(Underscored for emphasis)

15. The scope of judicial review in the matters of re-evaluation of answer sheets has been propounded by the Supreme Court through various judicial decisions. In ***Himachal Pradesh Public Service Commission v. Mukesh Thakur: (2010) 6 SCC 759***, the Supreme Court has reiterated in no uncertain terms that even the policy decision incorporated in the rules/regulations not providing for re-checking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. In the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct re-evaluation, the Supreme Court ruled.

16. In the case of ***Central Board of Secondary Education v. Khushboo Shrivastava: (2014) 14 SCC 523***, and ***Pramod Kumar Srivastava (supra)***, the Supreme Court has held that in the absence of any provision for re-evaluation of answer books in the relevant rules,



no candidate in an examination has any right to claim or ask for re-evaluation of his marks. In ***Ran Vijay Singh*** (*supra*), the Supreme Court, after having noticed the decisions in case of ***Pramod Kumar Srivastava*** (*supra*) and ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth***: (1984) 4 SCC 27, highlighted significant conclusions in the matter of re-evaluation or scrutiny of answer sheets in the following terms:

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

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

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

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



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

(Emphasis supplied)

17. Following the law laid down in case of **Pramod Kumar Srivastava** (*supra*), **Mukesh Thakur** (*supra*) and **Khushboo Shrivastava** (*supra*), the Supreme Court in case of **High Court of Tripura v. Tirtha Sarathi Mukherjee: (2019) 16 SCC 663**, has stated in paragraphs 19, 20 and 21 as under:

“19. We have noticed the decisions of this Court. Undoubtedly, a three-Judge Bench has laid down that there is no legal right to claim or ask for re-valuation in the absence of any provision for re-valuation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment [Tirtha Sarathi Mukherjee v. High Court of Gauhati, 2018 SCC OnLine Gau 2060] has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct re-valuation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of re-valuation.

20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a



writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.”

(Underscored for emphasis)

18. In the given facts and circumstances as narrated above, no case of rare and exceptional circumstance is made out warranting this Court's interference. It is true that the High Court is not denuded of its power to direct for re-evaluation of answer books in rare and exceptional circumstances, under Article 226 of the Constitution of



India, even in absence of such provision for re-evaluation. The said power, however, can be exercised in a situation, that is, rare and exceptional. The petitioner, in our opinion, cannot claim the right of re-evaluation as a matter of right in the present facts and circumstances discussed above.

19. After having surveyed the case laws as noted above, we are of the opinion that in view of clear stipulation in the Information Bulletin itself, in the given facts and circumstances, no case is made out for directing re-evaluation of the petitioner's answer sheet.

20. We do not find any merit in this writ petition, which is accordingly dismissed.

(Chakradhari Sharan Singh)
Chief Justice

Savitri Ratho, J. *I agree.*

(Savitri Ratho)
Judge

S. Behera