

A.F.R.

Court No. - 29

Case :- SPECIAL APPEAL DEFECTIVE No. - 343 of 2021

Appellant :- Abhishek Srivastava And 14 Others

Respondent :- State Of Up And 2 Others

Counsel for Appellant :- Santosh Kumar Tripathi,Naresh Chandra Rajvanshi
(Senior Advocate)

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 349 of 2021

Appellant :- Krishna Singh And 51 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Santosh Kumar Tripathi,Naresh Chandra Rajvanshi
(Senior Advocate)

Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 350 of 2021

Appellant :- Chandra Mohan Chaubey And 14 Others

Respondent :- State Of U.P. And 80 Others

Counsel for Appellant :- Satyendra Chandra Tripathi

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 351 of 2021

Appellant :- Tushar Bhalla

Respondent :- State Of U.P. And 38 Others

Counsel for Appellant :- Chetan Chatterjee,Chetan Chatterjee,Dr. L.P.
Mishra

Counsel for Respondent :- C.S.C.,Ashutosh Mishra,Gaurav Maurya,Rahul
Jain

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 354 of 2021

Appellant :- Chandra Sekhar And 28 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Santosh Kumar Tripathi,Naresh Chandra Rajvanshi
(Senior Advocate)

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 355 of 2021

Appellant :- Rohit Shukla And 77 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Siddharth Shanker Mishra,Ashutosh Mani Tripathi,Govind Kumar Singh (Senior Adv.),Rahul Kumar Mishra

Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 356 of 2021

Appellant :- Brijesh Kumar Dubey And 17 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Aaditya Dhar Dweevedi,Vishvajeet Pandey

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 378 of 2021

Appellant :- Lal Bahadur And 6 Others

Respondent :- State Of Up And 3 Others

Counsel for Appellant :- Narendra Kumar,Doodh Nath Yadav

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 379 of 2021

Appellant :- Archana Chauhan And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Surendra Nath Chauhan,Prabha Shanker Pandey

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 401 of 2021

Appellant :- Birendra Kumar Shukla And 2 Others

Respondent :- State Of Up 3 Others

Counsel for Appellant :- Shiv Sagar Singh,Ashok Kumar Dwivedi

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 403 of 2021

Appellant :- Afreen And Another

Respondent :- State Of Up And 2 Others

Counsel for Appellant :- Jainendra Pandey,Anurag Tripathi

Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 405 of 2021

Appellant :- Manoj Kumar Yadav And 11 Others

Respondent :- State Of U.P. And 27 Others

Counsel for Appellant :- Satyendra Chandra Tripathi

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 406 of 2021

Appellant :- Chandani And 153 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Santosh Kumar Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 430 of 2021

Appellant :- Nausad Ali And Others

Respondent :- State of U.P. and Others

Counsel for Appellant :- Irshad Ali

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 529 of 2021

Appellant :- Akhileshwr Mani Tripathi And 71 Others

Respondent :- State Of U.P. Through Its Principal Secretary (Basic Educ

Counsel for Appellant :- Satyendra Chandra Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 570 of 2021

Appellant :- Meera Devi

Respondent :- State Of U P Through Principle Secretary ,Basic Education

Counsel for Appellant :- Ravindra Nath Yadav,Akhilesh Kumar Yadav

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 590 of 2021

Appellant :- Indra Mani Tripathi

Respondent :- State Of U.P. Through Principal Secretary (Basic Education)

Counsel for Appellant :- Sudhanshu Kumar Mishra

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 591 of 2021

Appellant :- Km Sudha And 56 Others

Respondent :- State Of Uttar Pradesh Through Principal Secretary (Basic

Counsel for Appellant :- Sudhanshu Kumar Mishra,Dhirendra Kumar Verma

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 408 of 2021

Appellant :- Surjeet And 140 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Vivek Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 414 of 2021

Appellant :- Gyan Chandra And 47 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Seemant Singh

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 418 of 2021

Appellant :- Rekha Kannaujiya

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Deleep Kumar Chaudhari,Akhendra Pratap Singh

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 456 of 2021

Appellant :- Manendra Singh

Respondent :- State Of U.P. And 43 Others

Counsel for Appellant :- Jitendra Singh

Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 473 of 2021

Appellant :- Indra Geet Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Surendra Nath Yadav,R.B. Singh

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 477 of 2021

Appellant :- Km Preeti And 29 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 478 of 2021

Appellant :- Astha And 23 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Javed Raza

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 481 of 2021

Appellant :- Vinay Kumar Pandey 10 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 486 of 2021

Appellant :- Pooja Singh And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Aaditya Dhar Dweevedi,Vishvajeet Pandey

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 492 of 2021

Appellant :- Soniya Pandey And 81 Others

Respondent :- State Of U.P. And 630 Others

Counsel for Appellant :- Chetan Chatterjee

Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 493 of 2021

Appellant :- Sangram Singh Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Udai Shankar Chauhan

Counsel for Respondent :- C.S.C.,Ras Bihari Pradhan

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 494 of 2021

Appellant :- Sunil Kumar And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rishi Kant Singh Chauhan, Manoj Kumar Singh

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 506 of 2021

Appellant :- Ranjeet Kumar Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Sunil Kumar Yadav, Kranti Kumar Yadav

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 507 of 2021

Appellant :- Rama Raman

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rishi Kant Singh Chauhan

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 539 of 2021

Appellant :- Ajay Kuma And 94 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Santosh Kumar Tripathi, Sr. Advocate Amarendra Nath Singh

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 549 of 2021

Appellant :- Kushum And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Arun Kumar Dubey, Bhaiya Lal Yadav

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 552 of 2021

Appellant :- Arti And 6 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ritesh Srivastava, Anurag Agrahari

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 555 of 2021

Appellant :- Annu Tiwari And 38 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Appellant :- Satyendra Chandra Tripathi
Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 558 of 2021

Appellant :- Dharmendra Singh And 15 Others
Respondent :- State Of U.P. And 52 Others
Counsel for Appellant :- Chetan Chatterjee
Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 559 of 2021

Appellant :- Km. Saroj And 16 Others
Respondent :- State Of U.P. And 116 Others
Counsel for Appellant :- Chetan Chatterjee
Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 560 of 2021

Appellant :- Anupama Shukla And 5 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Appellant :- Agnihotri Kumar Tripathi,Anil Kumar Singh
Bishen
Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 567 of 2021

Appellant :- Yogendra Kumar And 14 Others
Respondent :- State Of U.P. And 74 Others
Counsel for Appellant :- Chetan Chatterjee
Counsel for Respondent :- C.S.C.,Archana Singh

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 568 of 2021

Appellant :- Vikas Singh
Respondent :- State Of U.P. And 2 Others
Counsel for Appellant :- Ravindra Prakash Srivastava
Counsel for Respondent :- C.S.C.,Awadhesh Kumar

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 581 of 2021

Appellant :- Rajesh Kumar Tripathi And 64 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Satya Prakash Singh,Ram Chandra Solanki,Satya Prakash Singh

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 606 of 2021

Appellant :- Satyendra Vishvkarma And 63 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Siddharth Shanker Mishra,Anurag Tripathi,Ashutosh Mani Tripathi,Rahul Kumar Mishra

Counsel for Respondent :- C.S.C.,Archana Singh

Hon'ble Munishwar Nath Bhandari,Acting Chief Justice

Hon'ble Anil Kumar Ojha,J.

Exemption application is allowed in all the appeals.

The appellants are exempted from filing certified copy of the impugned judgment and order dated 07.05.2021 passed by the learned Single Judge.

Heard Sri Vishesh Rajvanshi, Sri Satyendra Chandra Tripathi, Amit Kumar Singh Bhadauriya, Sri Arun Kumar Dubey, Sri Ritesh Srivastava, Sri Navin Kumar Sharma, Sri Anurag Agrahari, Sri Rahul Kumar Mishra, Sri Seemant Singh, Sri Sidharth Mishra, Sri Ram Chandra Solanki, Sri Javed Raza, Sri Anurag Tripathi, Sri Surendra Nath Chauhan, Sri Satya Prakash Singh, Sri Ashok Kumar Dwiwedi, Sri Shiv Sagar Singh and Sri Chetan Chatterjee, learned counsels for the appellants and Sri M.C. Chaturvedi, learned Additional Advocate General, Sri Suresh Singh, learned Additional Chief Standing Counsel, Sri Pankaj Rai, learned learned Additional Chief Standing Counsel, Sri Rajiv Singh, learned learned Standing Counsel for the respondent-State.

By this batch of appeals, challenge is made to the judgment dated 07.05.2021 by which the batch of writ petitioners was dismissed.

The writ petitions were filed to challenge the answer key published on 05.08.2020 in reference to the examination conducted on 06.01.2019. It was

for the selection on the post of Assistant Teacher. It was pursuant to the notification dated 01.12.2018 to invite applications for the selection. The batch of writ petitions in these appeals was in second round of litigation to challenge the answers selected by the respondents. The first bunch of writ petitions was decided by a detailed order. The learned Single Judge, however, considered the arguments again in reference to challenge to the correctness of the answers selected by the respondents.

Taking into consideration the limited jurisdiction of the High Court, the learned Single Judge did not find a case for acceptance of the arguments for challenge to the answer key. These appeals have been preferred to challenge the judgment and has been pressed by the appellants in reference to correctness of the answer of six questions leaving others. In one appeal, argument has been raised in reference to two questions alleging them to be out of syllabus.

The first issue for our consideration would be about jurisdiction of this Court to examine the correctness of the answer. The legal position in that regard is elaborately dealt with by the Apex Court in catena of judgments and for that recent judgment is the case of '**Ran Vijay Singh and others vs. State of U.P and others**' (2018) 2 SCC 357. The Apex Court has referred the earlier judgments and summarized the legal proposition in the following terms:

*"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) 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; (ii) **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; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate - it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.***

31. On our part we may add that sympathy or compassion does not play any

role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question.

32. *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination - whether they have passed or not; whether their result will be approved or disapproved by 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".*

The judgment in the case of **Ran Vijay Singh** (supra) was given after referring to the earlier judgments wherein it was held that the answer key should be assumed to be correct unless it is proved to be wrong with strong reasoning based on material. It should be demonstrated very clearly to be wrong that is to say, it must be such that no reasonable person would accept the answers selected by the examining body. The learned Single Judge has considered the judgment aforesaid in detail and otherwise we find that after the judgment in the case of **Ran Vijay Singh** (supra), the jurisdiction of this Court is very limited in the case.

With the aforesaid, we would like to examine the questions against which objections have been raised but keeping in mind the ratio propounded by the Apex Court in the case of **Ran Vijay Singh** (supra) and more

specifically para 30 of the said judgment quoted above. As per the judgment of the Apex Court in the case of **Ran Vijay Singh** (supra), Court is to presume the correctness of answer key and proceed on that assumption. In the event of any doubt, benefit should go to the examination authority rather than to the candidate. It is with a rider that the Court should not re-evaluate or scrutinize the answer-sheet of the candidate as it has no expertise in the matter. The academic matters are best left to the academics.

The first question on which doubts has been raised is Question No. 47. Learned counsel for the appellants submit that option No.1 was wrongly taken to be the correct answer to Question no. 47. According to the appellants, option No.3 or option No.4 was the correct answer. To examine the issue aforesaid, question No. 47 with four options is quoted as under:

*“47. In India, poverty is estimated on the basis of;
(1) household consumption expenditure
(2) per capita income
(3) per capita expenditure
(4) None of the above”*

According to the appellants, option No.3 is the correct answer and few appellants have preferred option No. 4 to be correct. They have produced material to reflect that correct answer is option No.3 i.e. *“per capita expenditure”* or *“none of the above”*. We would be referring to the material relied by the appellants. The material relied by the appellant does not clearly show option No.3 or 4 to be correct. The expert has also given its opinion about the correctness of option No.1. As far as the appellants are concerned, they have relied on extracts of certain books which is Class 9th Secondary Education Textbook and N.C.E.R.T. Textbook-2017. The extract of both the books is quoted hereunder:-

"निर्धनता रेखा

निर्धनता पर चर्चा केंद्र में सामान्यतया 'निर्धनता रेखा' की अवधारणा होती है। निर्धनता के आकलन की एक सर्वमान्य सामान्य विधि आय अथवा उपभोग स्तरों पर आधारित है। किसी व्यक्ति को निर्धन माना जाता है यदि उसकी आय या उपभोग स्तर किसी ऐसे 'न्यूनतम स्तर' से नीचे गिर जाए जो मूल आवश्यकताओं के एक दिन हुए समूह को पूर्ण करने के लिए आवश्यक है। मूल आवश्यकताओं को पूर्ण करने के लिए आवश्यक वस्तुएँ विभिन्न कालों एवं विभिन्न देशों में भिन्न हैं।

अतः काल एवं स्थान के अनुसार निर्धनता रेखा भिन्न हो सकती है प्रत्येक देश एक काल्पनिक रेखा का प्रयोग करता है, जिसे विकास एवं उसके स्वीकृत न्यूनतम सामाजिक मानदंडों के वर्तमान स्तर के अनुरूप माना जाता है। उदाहरण के लिए, अमेरिका में उस आदमी को निर्धन माना जाता है जिसके पास कार नहीं है, जबकि भारत में अब भी कार रखना विलासिता मानी जाती है।

भारत में निर्धनता रेखा का निर्धारण करते समय जीवन निर्वाह के लिए खाद्य आवश्यकता, कपड़ों, जूतों, ईंधन और प्रकाश, शैक्षिक एवं चिकित्सा संबंधी आवश्यकताओं आदि पर विचार किया जाता है। इन भौतिक मात्राओं को रूपयों में उनकी कीमतों से गुणा कर दिया जाता है। निर्धनता रेखा का आकलन करते समय खाद्य आवश्यकता के लिए वर्तमान सूत्र वांछित कैलोरी आवश्यकताओं पर आधारित है। खाद्य वस्तुएँ जैसे- अनाज, दालें, सब्जियाँ, दूध, तेल, चीनी आदि मिलकर इस आवश्यक कैलोरी की पूर्ति करती हैं। आयु, लिंग, काम करने की प्रकृति आदि के आधार पर कैलोरी आवश्यकताएँ बदलती रहती हैं। भारत में स्वीकृत कैलोरी आवश्यकता ग्रामीण क्षेत्रों में 2400 कैलोरी प्रतिव्यक्ति प्रतिदिन एवं नगरीय क्षेत्रों में 2100 कैलोरी प्रति व्यक्ति प्रतिदिन है। चूँकि ग्रामीण क्षेत्रों में रहने वाले लोग अधिक शारीरिक कार्य करते हैं, अतः ग्रामीण क्षेत्रों में कैलोरी आवश्यकता शहरी क्षेत्रों की तुलना में अधिक मानी गई है। अनाज आदि के रूप में इन कैलोरी आवश्यकताओं को खरीदने के लिए प्रतिव्यक्ति मौद्रिक व्यय को, कीमतों में वृद्धि को ध्यान में रखते हुए, समय-समय पर संशोधित किया जाता है। इन परिकल्पनाओं के आधार पर वर्ष 2011-12 में किसी व्यक्ति के लिए निर्धनता रेखा का निर्धारण ग्रामीण क्षेत्रों में 816 रुपये प्रतिमाह और शहरी क्षेत्रों में 1000 रुपये प्रतिमाह किया गया था। कम कैलोरी की आवश्यकता के बावजूद शहरी क्षेत्रों के लिए उच्च राशि निश्चित की गई, क्योंकि शहरी क्षेत्रों में अनेक आवश्यक वस्तुओं की कीमतें अधिक होती हैं। इस प्रकार, वर्ष 2011-12 में ग्रामीण क्षेत्रों में रहने वाला पाँच सदस्यों का परिवार निर्धनता रेखा के नीचे होगा, यदि उसकी आयु लगभग 4,080 रुपये प्रतिमाह से कम है इसी तरह के परिवार को शहरी क्षेत्रों में अपनी मूल आवश्यकताएँ पूरा करने के लिए कम से कम 5,000 रुपये प्रतिमाह की आवश्यकता होगी। निर्धनता रेखा का आकलन समय-समय पर (सामान्यतः हर पाँच वर्ष पर) प्रतिदर्श सर्वेक्षण के माध्यम से किया जाता है। **यह सर्वेक्षण राष्ट्रीय प्रतिदर्श सर्वेक्षण संगठन** अर्थात् नेशनल सैंपल सर्वे ऑर्गनाइजेशन (एन.एच.एस.ओ.) द्वारा कराए जाते हैं, तथापि विकासशील देशों के बीच तुलना करने के लिए विश्व बैंक जैसे अनेक अंतर्राष्ट्रीय संगठन निर्धनता रेखा के लिए एक समान मानक का प्रयोग करते हैं, जैसे SI.9 (2011 पी.पी.पी.) प्रतिव्यक्ति प्रतिदिन के समतुल्य न्यूनतम उपलब्धता के आधार पर। "

As against it, the respondents have relied on a book written by P.K.

Dhar. The relevant portion of that book is also quoted hereunder:-

“While fixing the poverty line, consumption of food is considered as the most important criteria but along with it some non food items such as clothing and shelter are also included.

However, in India we determine our poverty line on the basis of private consumption expenditure for buying both food and non-food items. Thus it is observed that in India, poverty line is the level of private consumption expenditure which normally ensures a food basket that would ensure the required amount of calories.”

Perusal of the material relied by the appellants does not show an error on the face of it. The opinion of the expert is in favour of the examination authority. We have referred the judgment of the Apex Court defining the jurisdiction of the High Court for causing interference in the answers set by the examining body followed by an expert opinion. The Courts are having very limited jurisdiction. The interference in the answer can be made when it is palpably wrong. We do not find answer to Question No. 47 selected by the examining body to be wrong on the face of it. The opinion of expert can not otherwise be ignored by the High Court unless material brought by party shows opinion to be wrong. The material relied by the expert shows basis to select answer No.1 to be correct. It shows per capita expenditure to be basis to estimate the poverty. Thus, we are unable to accept the argument of learned counsel for the appellants in regard to correctness of answer of Question No. 47.

The next question is Question No. 48 and the same is quoted hereunder:

“48. Who among the following was the first President of the Constituent Assembly of India?

- (1) Dr. Sachchidananda Sinha*
- (2) Dr. Rajendra Prasad*
- (3) Dr. B.R. Ambedkar*
- (4) Prof. H.C. Mookerjee”*

The answer selected by the examining body is option No.1. According to the appellants, option No.2 is the correct answer. It is submitted that Dr. Rajendra Prasad was the first President of the Constituent Assembly of India. The appellants had rightly opted for option No.2 as the correct answer. The respondents have wrongly taken option No. 1 to the aforesaid question to be the correct answer.

Both the parties have produced materials to press their argument. The issue aforesaid has otherwise been considered by the learned Single Judge and found Dr. Sachhidanand Sinha to be the first President of Constituent Assembly of India. It was only for some time and the first permanent President of Constituent Assembly of India was Dr. Rajendra Prasad. It is not

in dispute that the charge of the post of the President of Constituent Assembly of India was first held by Dr. Sachhidanand Sinha. In view of the above, the option selected by the respondents cannot be said to be erroneous on the face of record. At this stage, learned counsel for the appellant made reference of the material to show that State Government itself selected option No. 2 to be the correct answer in subsequent examination. The answer to one and the same question could not have been two different answers in different selections. A reference of the information collected under Right to Information Act, 2005 from the Parliament has also been given. The first President of Constituent Assembly of India is shown to be Dr. Rajendra Prasad.

We have considered the submissions of the respective parties and find that the post of the President of Constituent Assembly of India was held by Dr. Sachhidanand Sinha and it was thereafter taken by Dr. Rajendra Prasad. The difference pointed out by the respective parties is that Dr. Sachhidanand Sinha was the first President of Constituent Assembly of India only for a small period while the first President of Constituent Assembly of India for five years was Dr. Rajendra Prasad. The perusal of the question does not refer to as to who was the first permanent President of Constituent Assembly of India. Accordingly, the answer selected by the respondents cannot be said to be palpably wrong.

The information received by the appellants from the Parliament in reference to the first President of Constituent Assembly of India. It may be ignoring the period of presidentship of Dr. Sachhidanand Sinha. In any case, the question was not as to who was the first President of Constituent Assembly of India for five years. It may be a case of doubt about the answer selected by the examination authority.

In view of the judgment of the Apex Court in the case of **Ran Vijay Singh** (supra), benefit of doubt is to be given to the examination authority. Thus, we are unable to accept the argument of learned counsel for the appellant to interfere in the finding of the learned Single Judge.

The other question is Question No. 54 and is quoted hereunder for ready reference:

*“54. Disability to read and write is;
(1) autism
(2) dyslexia
(3) dyspraxia
(4) apraxia”*

The material has been produced by the appellant to show that option No.3 selected by the respondents was not correct rather none of the answers were correct. Learned counsel for the appellant have made reference of C.B.S.E. handbook of Inclusive Education, 2020 apart from Diploma Hand Book and Physical Education Class 11 Handbook. The reference of question papers of different courses have also been given.

The word “dyslexia” means reading disorder and not writing whereas the answer selected by the examination authority is disability to read and write. As against the material referred by the appellants, respondents have referred to a book published by ‘White Swan Foundation’. There, “dyslexia” is reflected to be disability to read and write. The expert opinion also shows “dyslexia” to be disability of reading and writing.

In view of the above, we would go with the expert opinion in the light of the judgment of the Apex Court in the case of '**Ran Vijay Singh and others vs. State of U.P and others**' 2018 (2) SCC 357. It lays down the parameters for the Courts for exercise of the jurisdiction. Para 30 of the judgment (supra) has been quoted earlier and cover the issue. In case of doubt, benefit has to be given to the examiner and accordingly we do not find any reason to cause interference in the finding of the learned Single Judge in reference to answer to Question No. 54.

Now comes Question No. 60 and is quoted hereunder:

*“60. Educational administration provides appropriate education to appropriate student by appropriate teacher by which they can able to become the best by using available maximum resources” This definition is given by;
(1) S.N. Mukherjee*

- (2) Carnbell
- (3) Welfare Grahya
- (4) Dr. Atmanand Mishra"

The answer selected by the respondents is option no.3 whereas none of the answer is correct, according to the appellants. The material used by the expert and produced even by the respondents shows that name of the author is not correctly mentioned. The name of the author is "Graham Balfour" whereas it is mentioned as "Welfare Grahya". In view of the aforesaid, learned counsel for the appellants submit that option No.3 was wrongly selected by the respondents to be the correct answer. The material relied by the appellants is the Educational Administration and Health Education. Relevant part of the document is quoted hereunder:

"Educational administration is to enable the right pupils to receive the right education from the right teachers, at a cost within the means of the state under conditions which will enable the pupils best to profit by their training-Graham Belfour"

It is also Educational Administration handbook by Graham Balfour and the same is also quoted hereunder:

*"Graham Balfour
Educational Administration
Two Lectures Delivered Before the University of Birmingham in February, 1921"*

Learned counsel for the non-appellant could not contest the issue. It is submitted that the correct answer to Question No. 60 is 'Graham Balfour' and answer No. 3 is close to the aforesaid, thus, taken it to be the correct answer. We find that correct name of the author has not been given in any of the option. In those circumstances, respondents could not have taken option No.3 to be the correct answer when the name of the author is "Graham Balfour" and not "Welfare Grahya".

In view of the aforesaid, we find substance in the argument of learned counsel for the appellants as otherwise it could not be contested by the non-appellant looking to the name given in option No.3, different than the name exist in the books even referred by the expert. During the course of argument

also, the material relied by the respondents shows the correct name to be “Graham Balfour” whereas the option taken by the respondents is “Welfare Grahya”. The selection of option No.3 suffers from the error on the fact of it thus, could not be contested by the non-appellant and, therefore, we cause interference in the judgment of the learned Single Judge in regard to answer to Question No.60. The appropriate direction would be given at the end of the judgment in reference to Question No.60.

The dispute on the answer to Question No.106 has also been raised and for ready reference, it is quoted hereunder:

“106. Who was the originator of a cult named 'Nath Panth'?
(1) Matsyendranath
(2) Gorakhnath
(3) Shri Nath
(4) Vasav”

The correct answer selected by the respondents was option No.1 whereas according to the appellants, option No.2 is the correct answer. Learned counsel for the appellants has made reference to the Lecturer Screening Exam-2018 to show “Gorakhnath” to be the originator of Nath Panth. The other material referred by them also shows “Gorakhnath” to be the originator as against the aforesaid, the respondents have also referred a book where the originator of Nath Panth is shown to be “Matsyendranath”.

In view of the above, both the parties could refer to the material to show their answers to be correct. The material produced by the respondents shows option No.1 of the answer key to be correct while the material produced by the appellants shows option No. 2 to be the correct answer. According to the expert, the correct answer is “Matsyendranath” in reference to the book relied by him. In view of the materials produced by both the parties, issue remains under doubt but in view of the judgment of the Apex Court in the case of **Ran Vijay Singh** (supra), we would accept the opinion given by the expert by extending benefit of doubt to the examiner. Accordingly, we do not find reason to cause interference in the finding recorded by the learned Single Judge.

The answer to Question No. 111 is also required to be examined and accordingly the said question is also quoted hereunder:

“111. Central Glass and Ceramic Research Institute is located at:-
(1) Agra
(2) Khurja
(3) Kanpur
(4) Ferozabad”

The question quoted above refers to Central Glass and Ceramic Research Institute (hereinafter referred to as “Institute”). The correct answer taken by the respondents is option No.2 as a unit of the Institute exist at Khurja, Bulandshahar while the headquarter of the Institute is at Kolkata. According to the opinion given by the expert, Central Glass and Ceramic Research Institute exist even at Khurja and thus they have rightly selected option No.2 to be the correct answer. It is doubted by the appellants. The Institute is located at Kolkata with its unit at Khurja. According to the expert, when part of the Institute or a branch of the Institute exist at Khurja, the respondents have rightly selected it to be the correct answer.

To support the argument aforesaid, reference of a book titled as “*Uttar Pradesh: Ek Samagra Adhyayan*” is given. In the said book, location of the Institute is shown at Khurja. In view of the above, we do not find any reason to cause interference in the finding of the learned Single Judge, it is when there is again doubt about the answer and benefit is to go to examination authority.

The finding aforesaid has been recorded in reference to the objection raise by the appellants to six questions and according to us, out of six questions, only Question No.60 deserves consideration and a *prima facie* a case is made out by the appellants but for the remaining questions, we govern these appeals by the judgment of the Apex Court in the case of **Ran Vijay Singh** (supra).

The further issue for consideration is in reference to Question Nos. 71 and 79. In some appeals, challenge to those questions have been made showing it to be out of syllabus. Learned Single Judge has dealt with the issue

in reference to the syllabus and found that both the questions were not out of syllabus. The learned Single Judge found both the questions are covered by the topic “General Science/Science in Daily Life”. We do not find any error in the finding recorded by the learned Single Judge as both the questions fall under the subject referred to above. According to the appellants, both the questions were not falling in the subject of Chemistry and, therefore, they were out of syllabus. The argument aforesaid was raised in ignorance of the fact that syllabus was not only having subject of Chemistry but General Science and Science in Daily Life. Thus, we do not find that Question Nos. 71 and 79 were out of syllabus so as to direct the respondents to ignore both the questions.

As an outcome of the discussion aforesaid, we find reason to cause interference in the judgement of the learned Single Judge limited to Question No. 60 and not for in any other questions for which objections have been raised by the appellants.

It is stated that selections have already been finalized followed by appointments but merely for that reason, the candidates having a case in their favour cannot be deprived to get benefit. Keeping in mind that selections have already been completed followed by appointments, direction in these appeals would apply only to those candidates who have raised the issue by maintaining a writ by now and not to any other candidate. The benefit to the candidates therein also would be if they are short of one mark because the value of each question is of one mark.

The matter is not referred to the expert for its examination finding that answer to Question No.60 was not correctly selected. The issue could not even be contested by the respondents thus to avoid further delay in the matter, we direct the respondents to take a decision appropriately to award one mark to the litigants till date.

To avoid any complication, the non-appellants can give value of one mark to the litigants for Question No.60 which otherwise can be with deletion

to increase the value of all the questions proportionately but then it may open a Pandora and this Court do not intend to disturb the appointments already made thus direction is kept limited to the writ petitioners. If with award of one mark to any of the litigants till date before Allahabad High Court, they find place in the merit, then the respondents would give them appointment, subject to satisfaction of other conditions, if any.

The exercise aforesaid would not effect in any manner the selection or appointments already made. The benefit would be given to the appellants and the writ petitioners, if they are short of one mark and not otherwise. If any of the litigant till date are short by two marks in the merit, they would not be entitled to any benefit of this judgment.

With the aforesaid direction, all the appeals are disposed of after causing interference in the impugned judgment limited to Question No. 60.

Order Date :- 25.8.2021
Madhurima

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