

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1056 OF 2021
WITH
ORIGINAL APPLICATION NO.82 OF 2022**

[CORRECTED COPY]

DISTRICT : SOLAPUR

1) ORIGINAL APPLICATION NO 1056/2021

1. Somnath Jotiram Chavan,)
2. Suraj Sanjay Pawar,)
3. Aarti Laxman Nagargoje,)
4. Akash Babansaheb Wagh,)
5. Akshay Ambadas Ghodake,)
6. Akshay Rajendra Patil,)
7. Alim Yusuf Sayyad,)
8. Rupesh Vikas Amale,)
9. Aniket Anand Sonawane,)
10. Ashish Dayanand Liman)
11. Ashish Laxmanrao Ingole,)
12. Ashok Baban Raut,)
13. Ashok Suresh Kore,)
14. Avinash Balkrushna Mandade,)
15. Ganesh Gulabrao Borse,)
16. Nikhil Atmaram Chavhan,)
17. Datta Santuka Jadhav)
18. Vikas Vilas Deshmukh,)
19. Dnyaneshwar Jalindar Shinde)
20. Bhushan Suresh Pawar,)
21. Akshay Sanjay Padale,)
22. Manoj Rohidas Kamathe,)
23. Madhuri Gajanan Junghare,)
24. Sanjay Dhananjay Furde,)
25. Dinesh Gendeo Wakade,)
26. Ravindra Chandrabhan Dhote,)
27. Kalpesh Madhukar Pawar,)
28. Gajanan Bansilal Jadhav,)
29. Ganesh Vasant Dudhankar)
30. Hanumant Kailas Hirave)
31. Vishal Sudhakar Ubale)

32. Yogesh Bhagwan Dhumal.)
33. Ganesh Gulabrao Borse,)
34. Shridhar Shamrao Kamble.)
35. Pravin Baban Meshram)
36. Indrajeetsing M. Chavan.)
37. Jagannath Babasaheb Patil)
38. Ramchandra Tanaji Kalel)
39. Marajeena Sahebhusen Inamdar)
40. Vishal Devidas Kadam)
41. Karna Kundlik Parjane)
42. Kunal Ravindra Bhavsar)
43. Kiran Duryodhan Londhe)
44. Machindranath Ashok Take)
45. Mahesh Popat Satpute)
46. Mandar Uttam Wagh)
47. Akash Virbhadra Mogarge)
48. Mukesh Purushottam Nikode)
49. Govind Baliram Musale)
50. Namdeo Arjun Ingale)
51. Vinayak Rajaram Narake)
52. Somnath Ganesh Sarfale)
53. Rahul Trimbakrao Chavan)
54. Vishal Anandrao Kadam)
55. Nikhil Arvind Meshram)
56. Nilesh Babasaheb Bhonde)
57. Nilesh Dada Doke)
58. Swati Vishnu Ninghot)
59. Punjahari Shivaji Chaudhari)
60. Avinash Ashok Chavan)
61. Yuvraj Maruti Randave)
62. Sandeep Vaijanath Phad)
63. Sharad Ravichandra Chavhan)
64. Pravin Vasant Ekashinge)
65. Harshad Ankush Raut)
66. Pradip Yuvaraj Rokade)
67. Rupesh Rajendra Jagtap)
68. Rupesh Vikas Amale)
69. Sachin Sahebrao Lokare)
70. Sambhaji Laxman Mule)
71. Sandip Vishnu Gavali)

72. Sanjay Dayaram Chavan)
73. Abhijit Balasaheb Ambre)
74. Shailesh Suresh Lawande)
75. Shivaji Balasaheb Zakane)
76. Siddharath Ramdas More)
77. Swapnil Rohidas Wagh)
78. Uma Rajaram Devade)
79. Vikram Ashok Kokate)
80. Vilas Bhimrao Rajegore)
81. Vinod Limchand Durge)
82. Vivek Dagadu Buva)
83. Vitthal Santosh Ade)
84. Vrushali Murlidhar Karkar)
85. Vishnu Gunvant Matekar)
86. Sandip Samadhan Patil)
87. Gaisamudre Shashikant Achyut)
88. Dnyaneshwar Chavan) **...Applicants**

Versus

1. The State of Maharashtra,)
Through Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032)
2. The Secretary,)
Maharashtra Public Service Commission,)
5th, 7th & 7th floor, Cooperage Telephone)
Exchange, M.K Marg, Cooperage,)
Mumbai 400 021.) **...Respondents**

WITH

2) ORIGINAL APPLICATION NO 82/2022

1. Ravindra S More)
2. Umesh Bhagwan Chavan)
3. Abhay B. Ainapure)
4. Abhijeet R. Kummbhar)
5. Balaji M. Waghmare)
6. Shubham S. Pawar)

7. Krushna V. Shinde)
8. Pratik R. Raut)
9. Komal R. Chavan)
10. Chetan P Gharegaonkar)
11. Chetan S. More)
12. Laxmanbabu P. Peddapelli)
13. Gajanan P. Pamate)
14. Mahesh E. Rasal)
15. Ketan G. Patil)
16. Sachin M. Godase)
17. Sudhir B. Patil)
18. Atmaram U. Katare)
19. Hemant B. Katkar)
20. Rutuja R. Jadhav)
21. Chhatru G. Rathod)
22. Ravindra K. Avhad)
23. Ramchandra A. Moghe)
24. Pratiksha A. Phatangade)
25. Lahu L. Deokar)
26. Balaso P. Jarande)
27. Sagar P. More)
28. Manjunath G. Basaragi)
29. Pradip Anadrao Pawar)
30. Vishal A. Belgundkar)
31. Amol P. Shelke)
32. Swagat B. Adekar)
33. Sandeep S. Patil)
34. Somnath T. Bhosale)
35. Rohit V. Jadhav)
36. Varsha G. Kadam)
37. Akshay V. Gorade)
38. Ganesh S. Mahajan)
39. Snehal B. Waghmode)
40. Lahu Dinesh Musale)
41. Abhijeet S. Chande)
42. Shubham R. Jagadale)
43. Pravin B. Thombare)
44. Haidar S. Shaikh)
45. Pallavi D. Dalvi)
46. Amarjeet S. Lakade)
47. Chhatrapati A. Jangilwad)
48. Ashwini P. Rajpure)
49. Sandeep B. Koli)
50. Omkar S. Vidhate)
51. Chaitanya V. Kadam)
52. Mahesh C. Patil)
53. Swati V. Kakade)
54. Rajkumar B. Narute)

55. Bharatkumar J. Dhurat)
56. Pawar A. Giri)
57. Prashant B. Chaudhari)
58. Rajdeep J. Suryawanshi)
59. Samadhan K Tathe)
60. Sangram A Patil)
61. Shravaji J. Shirsath)
62. Govind Dharma Bhandwalkar)
63. Suraj Babasaheb Bhopale)
64. Satyam Anil Patil,)
65. Ajit Sopan Thombare)
66. Shrikant Pandurang Chulbulkar)
67. Siddhi Sanjay Borkar)
68. Sneha Rajaram Gaikwad)
69. Sonali Ramdas Nimbalkar)
70. Vicky Arunrao Jadhao)
71. Bajirao Subhash Sanap)
72. Sunil Balasaheb Rathod)
73. Ashwini Sakharam Kokane)
74. Ashwini Dnyandeo Redake)
75. Sagar Suryakant Yelurkar)
76. Manisha Bharat Jadhav)
77. Ravi Kiransing Jarwal)
78. Nilesh Nandkishor Tayade)
79. Anil Ramesh Rathod)
80. Dattatray Suresh Awate)
81. Manojkumar Ambajirao Pole)
82. Santosh Maruti Shinde)
83. Nagesh Mohan Shinde)
84. Prakash Yamunaji Suryawanshi)
85. Pankaj Sharad Jadhav)
86. Viput Subhash Chavan)
87. Ramesh Subhash Bhosale)
88. Ashwin Abasaheb Deore)
89. Pranay Mahendra Ban)
90. Suraj Dhanaji Ubale)
91. Vinod Appasaheb Kate)
92. Vishnudas Balaji Bajgire)
93. Ajit Anil Ulmale)
94. Swapnil Keshavrao Dolas)
95. Mahesh Shankar Kale.)
96. Hrishikesh Hanmant Sep)
97. Kiran Rajaram Ukirde)
98. Krushna Ramdas Sable)
99. Manoj Sanjiv Pawar)
100. Nilesh Balaso Bharade)
101. Swapnil Suresh Bisen)
102. Ashok Krishna Jadhav)

103. Ankush Santosh Lad)
104. Rohit Shrikant Patil)
105. Nikhil Sunil Bhore)
106. Ashwini Balaji Londhe)
107. Somanath Bhagwan Shende)
108. Girish Rajendra Raut)
109. Darshan Kishor Patil)
110. Vishwajit Namdev Awate)
111. Abhijeet Bharat Chandankar)
112. Viraj Tatyasaheb Gadhave)
113. Kaushalya Dada Garad)
114. Sushant Suresh Bagal)
115. Vishnu Mukarya Patekar)
116. Vishwajit Madhukar Sarambalakar)
117. Shital Vitthal Sanap)
118. Abhijeet Vishnudas Chougule)
119. Akash Manjabhau Satpute)
120. Neetabai Sahebrao Sonawane)
121. Punam Chensing Rathod)
122. Akash Vasant Rathod)
123. Nitesh Lahu Rathod)
124. Shashikant Gajanan Tekale)
125. Sachin Tukaram Gunjal)
126. Ankit Gajanan Warate)
127. Raturaj Karbhari Ahire)
128. Prasanna Sunil Akant)
129. Akash Gautam Pawar)
130. Aishwarya Khanolkar)
131. Shivdas Maroti Indrawad)
132. Sachin Dhondiram Palve)
133. Manoj Lalu Sonkamble)
134. Satish Ashok Thatkar)
135. Aparna Bhimrao Deshmukh)
136. Shriram Balasaheb Bhor)
137. Onkar Shirish Rasal)
138. Ashroba Baliram Chaudhari)
139. Dipesh Nagaraj Mahajan)
140. Akshya Satyawant Nichit)
141. Chitanya Milind Vanjari)
142. Vikesh Khandu Bhandane)
143. Vikram Sukhadev Patil)
144. Pravin Ashokrao Paul)
145. Pratap Govindrao Wartale)
146. Pawar Prakash Ade)
147. Rohit Nandkumar Kaldhone)
148. Mayuresh Dayanand Jadhav)
149. Vaibhav Prakash Mane)
150. Somling Vishvanath Sontakke) **...Applicants**

Versus

- | | | | |
|----|--|---|-----------------------|
| 1. | The State of Maharashtra, |) | |
| | Through Secretary, |) | |
| | Home Department, |) | |
| | Mantralaya, Mumbai 400 032 |) | |
| 2. | The Secretary, |) | |
| | Maharashtra Public Service Commission, |) | |
| | 5 th , 7 th & 7 th floor, Cooperage Telephone |) | |
| | Exchange, M.K Marg, Cooperage, |) | |
| | Mumbai 400 021. |) | ...Respondents |

Mr. S.S Dere, learned Advocate for Applicants in O.A 1056/2021.

Mr. L.S Deshmukh, learned advocate for the applicants in O.A 82/2022.

Ms. Swati Manchekar, learned C.P.O for the Respondents.

CORAM : **Justice Ms. Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member(A)

RESERVED ON : **03.01.2022**

PRONOUNCED ON : **08.02.2022**

PER : **Justice Ms. Mridula Bhatkar, Chairperson**

J U D G M E N T

1. Both the Original Applications are heard together and decided by this common order as the facts involved therein are same.

2. The applicants have appeared for the examination conducted by the Maharashtra Public Service Commission and challenge the decision of M.P.S.C of deleting Question Nos.17, 27 & 90 and pray

that M.P.S.C. be directed not to delete these questions, but to allocate the marks to the applicants on the basis of the correct answers of those questions.

3. The facts of the case in nutshell are as follows:-

The Maharashtra Public Service Commission issued advertisement on 28.2.2020 for the Group-B Combined Examination for the post of Police Sub Inspector (P.S.I), Sales Tax Inspector and Assistants in Mantralaya. The Preliminary Examination was conducted on 4.9.2021 for which nearly 3 lakhs candidates appeared. In the examination of 100 marks, one mark is given to one correct answer and if answer is wrong then by applying the method of negative marking 0.25 mark is deducted. M.P.S.C published the first answer key on 7.9.2021 and solicited the objections to the answer key. In all 4686 objections were received by M.P.S.C on 60 questions. As per the case of M.P.S.C, the objections were forwarded to the Experts and out of 100 questions of 'A' Paper Set, Question Nos.23 & 48 were cancelled as correct answers were not provided. The same questions in other 'B', 'C' and 'D' Paper Sets were also cancelled. M.P.S.C changed the answer key of Question Nos.87 & 90. M.P.S.C thereafter issued the revised answer key on 17.11.2021. However, the students and the media criticized this answer key as it was found incorrect. Taking note of it MPSC referred the disputed Question Nos.17, 27 & 90 to the Experts. According to M.P.S.C, on receiving conflicting answers from the Experts, the Commission decided to delete question Nos 17, 27 & 90 and accordingly published the second revised answer key on 25.11.2021. Thus, M.P.S.C considered total 95 questions and 95 marks instead of 100 marks. The applicants are the candidates who appeared for the examination and who could not reach the cut-off marks in different categories. They claim had M.P.S.C. not cancelled these three questions the

applicants who have given correct answers would have been selected.

4. Learned counsel for the applicants Mr. S.S Dere and Mr. L.S Deshmukh have submitted that the candidates have lost the marks because of the wrong answer key and have suffered further loss due to negative marking for the correct answer. The candidates have challenged the answer key of these three questions. The answer key provided by M.P.S.C for these three questions is incorrect and the answers given to the questions by the candidates are correct. Learned counsel for the applicants referred the question Nos 17, 27 & 90 in Paper Set 'A' and on the basis of the text books, pointed out the correct answers. Learned counsel for the applicants argued that the Court has power of judicial review and Court can definitely look into the assessment of the answer key supplied by the M.P.S.C. Under Article 16(1) of the Constitution the applicants have legal right to have fair opportunity in the public employment and they cannot be deprived of due to the arbitrary action taken by the M.P.S.C. Learned counsel for the applicants have further submitted that the applicants are not objecting the deletion of question Nos 23 & 48, because the correct answers were not available. Learned counsel for the applicants submitted that in all these three questions the correct answers were available, however incorrect answers were given as correct. Therefore, the applicants have approached the Tribunal as their legal rights are violated.

5. Learned counsel for the applicants has relied on two judgments on the point of Judicial review and the powers of the Court to look into such matters :

(i) Kanpur University, through Vice-Chancellor and others Versus Samir Gupta and others, (1983) 4 SCC 309.

(ii) Anurag Tripathi Versus U.P.S.C. & 2 Ors, Writ - A No.58554/2015, dated 26.04.2016.

6. The learned C.P.O. has relied on the affidavit-in-reply dated 27.01.2022 filed by Respondent No.2, Mr. Bhalchandra P. Mali, Under Secretary, M.P.S.C., Mumbai and submitted that the M.P.S.C. is the Constitutional Authority working under Article 315 of the Constitution of India and is exercising the functions as stipulated in Article 320 of the Constitution of India has framed the rules and procedure for regulating its procedure of work. The learned C.P.O. drew our attention to the Rules which were published in the Official Gazette of the Government of Maharashtra and especially Sub Rule B of Rule 7 and Rule 18 of the Maharashtra Public Service Commission Rules of Procedure, 2014. The learned C.P.O. has further submitted that the M.P.S.C. has corrected the answer key and deleted the questions using its power under the said Rules. She further submitted that though the work of M.P.S.C. is very voluminous, it is transparent and methodical. There is neither manipulation nor vested interest involved. She has submitted that till today more than 400 such Petitioners have approached before this Tribunal at Mumbai, Nagpur and Aurangabad Benches and now it will be a lengthy process to revise the results and the large number of candidates are going to be affected by this process. She further submitted that the merit is not compromised in this process because the doubtful answers and questions are deleted. She relied on the judgments of :

- (i) U.P.S.C., through its Chairman and Anr. Versus Rahul Singh and Anr, Civil Appeal No.5838 of 2018 is of 14.06.2018.**
- (ii) Ran Vijay Singh and others Versus State of Uttar Pradesh and Others, (2018) 2 SCC 357.**

- (iii) **Maharashtra Public Service Commission Versus Tejrao Bhagaji Gadekar in Writ Petition No.7883/2012, dated 03.12.2012.**
- (iv) **Ankita Abhang Indrale through mother Indrale Manorama Abhang and Anr. Versus Union of India and Ors., Writ Petition No.6740/2019 & Ors., dated 11.10.2019.**

7. Considered the submissions.

8. To conduct the examination of 3 lakhs students with 100 objective questions is a herculean task. Ideally all the questions and answer key provided should be correct without any ambiguity. The papers are assessed by Optical Mark Recognition (O.M.R) system with the help of machines and the questions & answers are prepared by the Professors or Teachers who are the experts in their respective fields. However, the possibility of mistake in setting the papers cannot be overruled. Admittedly, mistakes are not deliberate, but a human error. In the matter of **Kanpur University (supra)**, one each i.e. three answers in the paper of Chemistry, Botany and Zoology were found incorrect, though the correct answer was available in the option, so were rectified by the Court. The Hon'ble Supreme Court, on the point as to when the Court can interfere and when the Court cannot, has held as follows :-

“We agree that the 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 rationalization. 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 larger 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.”

Thus, we understand that this examination was conducted by M.P.S.C by adopting the method of objective question answers, where correct answers are to be marked and the papers are corrected by programme of O.M.R., there is no scope for subjective thinking, but the answer to a particular question should be only one and no other.

9. Relying on the judgment in the case of **Kanpur University (supra)**, we have gone through all the three questions and the answer key provided to them and so also the text book, as under:-

“17. Which of the following is the best quality iron ore?
 (1) Hematite (2) Limonite
 (3) Magnetite (4) None of the above.”

Answer key : (1) Hematite

“27. Observe the following statements:
 a. Verul caves is in Aurangabad district.
 b. Chambhar caves is in Pune district.
 c. Chikhaldars hill station is in Raigad district.
 d. Gautala National Park is in Jalgaon district.

Which of the above statement is/are correct?
 (1) Only a statement is correct. (2) Only b and c statements are correct.
 (3) Only a and d Statements are correct.” (4) All the above statements are correct.

Answer key : (3) Only a and d Statements are correct.

“90. The Indian Space Organization (ISRO) will launch an unmanned campaign in December, 2020.

(1) Gangayaan
 (2) Vyom Mitra
 (3) Robonaut
 (4) Fedor”

Answer key : (1) Gangayaan

Out of these three questions, we found, in question No.90 Gangayan was flagged off in November, 2020 and in the question it is mentioned December, 2020. Moreover, due to Pandemic COVID-

19 no other Indian Space Craft was launched. Thus, the question itself was wrong and therefore, the decision of deleting question No. 90 cannot be faulted with.

10. Question No.17 is about the best quality iron ore. We have gone through the 12th standard Geography Text book, wherein in Marathi it is said,

“उच्च प्रतिचे लोहखनिज हे त्यातील जास्त प्रमाणात असलेल्या लोहखनिज उपयुक्त ठरते”.

However, in Geography text book of 12th standard in english it is mentioned that,

“Magnetite the finest iron ore with a very high content of iron up to 70 per cent. It has excellent magnetic qualities, especially valuable in the electrical industry. Hematite ore is the most important industrial iron ore in terms of quantity used, but has a slightly lower iron content than Magnetite, 50-60 per cent)

In Marathi, it is mentioned that having more percentage of Magnetite the is best quality iron ore and in English the word used is ‘iron ore with Magnetite is finest’. There is a difference in the word ‘best’ and ‘finest’. Therefore, we referred to the Experts opinions and we found it is conflicting. Hence, M.P.S.C. has deleted the said question.

11. So far as Question No.27 is concerned, we looked into the Government Gazette dated 12.06.2015 where “Gautala” is a park declared as a Wild Life and not a National Park. We have gone through the opinion of the Experts.

In the first opinion it is mentioned that the answer key is correct and not to be changed.

In the second opinion it is mentioned that the answer is incorrect so the options given in the answer key is incorrect.

Thus, there was a conflict in the opinion of two experts and therefore the M.P.S.C has decided to cancel Question No.27.

12. The learned counsel for the applicants have rightly pointed out the error in the Statement No.(d) in Question No.90.

Only (a) is the correct answer and that is “Verul caves is in Aurangabad District”.

Answers (b) and (c) are admittedly incorrect.

However, answer (d), that “Gautala National Park is in Jalgaon” district is an incorrect statement, because basically Gautala is not a National Park, but is a Wild Life Sanctuary declared by Union of India Government Gazette of 2015. The National Park and Wild Life Sanctuary are two types of different parks. Moreover, Gautala is a Wild Life sprawling over Jalgaon and Aurangabad Districts and not only Jalgaon. Anyhow, answer (d) is ex-facie wrong. Therefore, the correct answer is No.(1) Only (a) statement is correct. The key provided by MPSC, option (3) states “only (a) & (d) statements are correct”. We are in agreement with the learned Counsel for the Applicants that Option No.3 is factually and geographically wrong. So also we hold that the answer is demonstrated to be wrong and no reasonable body well versed with that subject would record as correct.

13. The issue of correctness of answer key and questions asked in the examination conducted by the Service Commissions were addressed even after the **Kanpur University (supra)** by the Hon’ble Supreme Court and Hon’ble High Courts on many occasions.

14. We rely on the judgment of the Hon’ble Supreme Court in the case of **Ran Vijay Singh (supra)**. After eight long years of uncertainty, the matter reached to the Hon’ble Supreme Court, where the future of 36 candidates who appeared for the recruitment as Trained Graduate Teachers was involved. The

correctness of answer key was challenged. In the present case the applicants are not asking for re-evaluation of the marks, but they are challenging the correctness of the answer key which necessarily follows change in the marks. The Hon'ble Supreme Court in the case of **Ran Vijay Singh (supra)**, laid down the guidelines as follows:-

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

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 scrutinize 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.”

15. In the case of **Anurag Tripathi (supra)**, the Division Bench of Allahabad High Court had dealt with the similar issue of the wrong Answer key to one Question of General Knowledge and two Questions in the Law Paper. By way of power of judicial review the Allahabad High Court has gone in the depth the correctness of the answers on the basis of the ratio laid down in the judgment of Hon'ble Supreme Court in the case of **Kanpur University (supra)**. The Hon'ble Supreme Court in the said judgment also relied on the ratio laid down in the case of **Rajesh Kumar and other Vs. State of Bihar and others reported in (2013) 4 SCC 690**, where the Hon'ble Supreme Court has observed that if the result of the

examination was vitiated by the application of wrong key answer any appointment made on the basis of such a key answer would be unsustainable. In the case of **Anurag Tripathi (supra)** the appointments were not made, but the main examination was conducted and the interviews were held. The Hon'ble Allahabad High Court has also dealt with the issue whether the relief should be granted to the Petitioner alone or to all the candidates who have appeared for the preliminary examination, but have not been permitted to appear for the main examination, even though they had secured cut-off marks, if the Commission has determined the correct key answer to a disputed question. The Hon'ble Division Bench directed the Commission to determine the marks of all the candidates who had appeared for the examination on the basis of the correct answers to the disputed question.

16. This judgment of Hon'ble Allahabad High Court was given on 26.04.2016 and thereafter we have judgment of the Hon'ble Supreme Court in case of **Ran Vijay Singh (supra)**. The judgment of **Rahul Singh (supra)**, wherein the judgment of **Kanpur University (supra)** is considered.

17. We also came across two judgments of the Hon'ble Bombay High Court Bench at Aurangabad in the case of the **Tejrao Bhagaji Gadekar (supra)**. The objection was raised on the revised answer key provided by the Commission in view of 3 questions. The matter was taken before the Tribunal, it took view that the revised answer key to two questions was incorrect and the answered provided in the first key was correct and the Respondent was given more marks. The Tribunal has examined the correctness of the opinion of the expert in the said case. Hon'ble Bombay High Court Bench at Aurangabad held that the Tribunal has exceeded its jurisdiction while recording the finding that the answers provided

by the Commission in the revised answer key, relating to two questions is erroneous. It is further held that whatever deficiencies, if any, are uniform to all those candidates who appeared in the examination. The Hon'ble Division Bench held that,

“14. the Tribunal, in the instant matter, has assumed the role of an expert who entertaining the questions of facts and has even overruled opinion of the experts. The Tribunal cannot be said to be possessed of the expertise in the specialized field. “

18. In the case of **Ankita Abhang Indrale (supra)**, the Petitioners have challenged Clause No.6 of NEET-2019. The Hon'ble Division Bench of the Hon'ble Bombay High Court at Aurangabad in this matter has also relied on the judgment of **Kanpur University (supra)** and also considered **Rahul Singh (supra)**. It held that,

*“20. When there are conflicting views, the Court must bow down to the opinion of the experts. Judges are not experts in those filed and as such restraint is required to be exercised. In case of doubt, the benefit goes in favour of the examination body and not in favour of the students as observed by the Apex Court in a case of **Manish Ujwal Vs. Maharshi Dayanand Saraswati University** reported in **(2005) 13 SCC 744.**”*

19. In the present case, we did not turn nelson's eye to the contentions raised by the Applicants. We also have gone through the textbooks as mentioned above and we found that the contentions of the Applicants in respect of Question No.17 and Question No.90 cannot be accepted. So far as Question No.27 is concerned after going through the material provided to us with all humility we express that the answer key is ex-facie wrong, though the correct answer was available in the options given in the Question. However, the M.P.S.C. deleted the very question because of the conflicting views expressed by two experts when the

answer key of the said Question was referred to them. Hence, the M.P.S.C. took decision of deleting the question itself.

20. This decision of M.P.S.C. was challenged by the learned Advocates by pointing out the treatment given to Question No.87. The learned Counsel has argued that the objection was raised about the Answer Key of Question No.87, when first time objections were invited. However, in the first revised Answer Key the M.P.S.C. had corrected the answer key by selecting the right answer and maintained the Question No.87. It was argued that the same treatment should have been given by the M.P.S.C. to Question No.27 as the correct answer was provided by the M.P.S.C. to the Question. It was further submitted that the Applicants have legal right to get the marks for correct answers given by him/her.

21. Prima facie, the submissions made by learned Advocate though we appreciate, however, in the set of some guidelines laid down in paragraph 30 of **Ran Vijay Singh (supra)** and the power of M.P.S.C., the argument is not sustainable. We reproduce the relevant portion in **Ran Vijay Singh (supra)** :-

*“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.”*

22. It is to be noted that unequal treatment given to the candidates appearing for the examination and unequal treatment given to the Questions are two different things. The M.P.S.C. has corrected the answer key of Question No.87 after considering experts opinion that the correct answer was available. This decision was taken by the M.P.S.C. because there was no dispute in the opinion expressed in respect of Question No.87. However, in

respect of Question No.27 the opinions given by the experts were conflicting. Therefore, the treatment given to Question No.87 and Question No.27 and their Answer Keys is different. But this will not in any case lead to discrimination or violation of Article 14 or Article 16 of the Constitution so far as Applicants are concerned. The Applicants cannot claim legal right against the decision of the M.P.S.C. because the decision taken is applicable uniformly to all the candidates who appeared for the examination. We understand the plight of the Applicants that they have lost the marks, however, in examinations chance is often a determinant !

23. Now we advert to the power of the Commission to change the answer key of the Question or to take decision in respect of the examination. We reproduce Sub Rule B of Rule 7 and Rule 18 of the Maharashtra Public Service Commission Rules of Procedure, 2014 as follows :-

“Sub Rule B of Rule 7 : *If it is required to delete a question from any Preliminary/ Main/ Screening / Departmental examination, for any reason whatsoever marks allocated for the question shall be reduced from the total maximum marks for that paper and the percentages for that particular paper, subject or examination, as the case may be, shall be deduced on the basis of such reduced maximum marks.”*

“Rule 18 – Matters not regulated : *In dealing with the matters for which no provision is made in these Rules, the Commission may regulate the proceeding in such a manner as they deem fit.”*

24. Thus, we are of the view that the Commission derives the power from these Rules to meet the challenge or issues arise in the process of examination. In the present case the Commission has deleted three questions and therefore the merit of the candidates in respect of all these three questions is not compromised. When it is demonstrated by M.P.S.C. that they have power to take decisions in respect of correcting the Answer key or deleting the Question then we have to examine whether the power given to M.P.S.C. is

abused. Undoubtedly to correct the answer key or to delete a question is an administrative discretion that vests with the M.P.S.C. If we come across either the arbitrariness or discrimination in decision taking then discretion is not immune from judicial review. In the present case, the decision is not discriminatory because it is applicable to all the candidates who have appeared for the examination. Similarly, the examination is not made of 100 marks but it is of 95 marks. This decision of M.P.S.C. though has gone against the applicants, however it cannot be said arbitrary because the M.P.S.C. has considered the views of two Experts and when found conflicting, in order to avoid the ambiguous situation a decision to delete is taken. Thus, all the candidates are brought on the same level of answering 95 Questions. The reply filed by the M.P.S.C. and the record produced enabled us to arrive at a conclusion that this decision is a matter of administrative discretion by the Respondent, M.P.S.C. hence, does not invite judicial interference. Thus, as we are not inclined to grant interim relief, nothing remains in the Original Applications. The cause of action does not survive further.

25. Hence, we dismiss both the Original Applications at interim stage finally. Both the Original Applications are dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

prk/nair