2024:DHC:2219-DB

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.03.2024

\+ **W.P.(C) 2342/2024 and CM No. 9702/2024**

RISHABH DUGGAL ..... Petitioner

versus

REGISTRAR GENERAL, DELHI HIGH COURT ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Zoheb Hossain, Mr Vivek Gurnani and Ms Sara Jain, Advocates along with petitioner in person.

For the Respondent : Dr Amit George, Mr Arkaneil Bhaumik, Mr Rayadurgam Bharat, Mr Piyo Harold Jaimon, Mr Adhishwar Suri, Mr Rishabh Dheer and Mr Shashwat Kabi, Advocates.

AND

\+ **W.P.(C) 2462/2024**

SHASHANK DEO PANDEY AND ORS. ..... Petitioners

versus

DELHI HIGH COURT THROUGH REGISTRAR GENERAL ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Prashant Manchanda, Mr Angad Singh, Ms Nancy Shah, and Mr Vishal, Advocates.

For the Respondent : Dr Amit George, Mr Arkaneil Bhaumik, Mr Rayadurgam Bharat, Mr Piyo Harold Jaimon, Mr Adhishwar Suri, Mr Rishabh Dheer and Mr Shashwat Kabi, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioners – who aspire to join the Delhi Judicial Services – have filed the present petitions challenging the Model Answer Key dated 20.12.2023 and the Revised Answer Key dated 29.01.2024 to the Preliminary Examination of the Delhi Judicial Services Examination 2023 (hereafter *DJS Examination 2023*). The petitioners have not qualified the said examination as the marks secured by them fall short of the threshold of 160.75 marks as declared by the respondent for the candidates of General Category. The respondent is hereafter referred to as the Examining Authority or DHC.

2. On 06.11.2023, DHC issued a Notification inviting applications for filling 53 (Fifty Three) vacancies including 9 (Nine) anticipated vacancies in the Delhi Judicial Services (hereafter *DJS*). The aspirants were required to qualify the DJS Examination 2023. The said examination comprises of three successive stages. The first stage being

an objective type examination with 25% negative marking – Delhi Judicial Service Preliminary Examination (hereafter *the Preliminary Examination*). The candidates clearing the Preliminary Examination would be admitted to the second stage – the Delhi Judicial Service Mains (Written) Examination. The candidates qualifying the Delhi Judicial Service Mains (Written) Examination would be called for the third stage – *Viva-Voce*. The final list of candidates would be declared on the basis of the marks secured by candidates in the Delhi Judicial Service Mains (Written) Examination and the *Viva-Voce*.

3. The Preliminary Examination was held on 17.12.2023. It was an objective type examination to shortlist the candidates to be admitted to the Delhi Judicial Service Mains (Written) Examination. The marking scheme provided for equal marks for each question (one mark) with a negative 0.25 marks for an incorrect answer.

4. By a Notice dated 20.12.2023, the DHC released the Model Answer Key to the question paper for the Preliminary Examination (Booklet Series A to D) and invited objections regarding the same. The objections were to be submitted within a period of three days from the date of the said Notice, that is, by 05:30 p.m. on 23.12.2023.

5. It is relevant to note that whilst some of the petitioners [in W.P.(C) 2462/2024] objected to the model answers to certain questions, the other petitioners objected to answers to other questions. These included answers to some of the questions to which some of the petitioners had provided the answers in conformity with the Model

Answer Key. In one sense, the petitioners in W.P.(C) 2462/2024 espoused conflicting views. Although it was contended on behalf of the DHC that the same was impermissible, we do not consider it apposite to examine that question in view of the decision of the Coordinate Bench of this Court in ***Shruti Katiyar v. Registrar General, Delhi High Court: Neutral Citation No. 2024: DHC:1437:DB***. The Court had held that since one or the other candidates had objected to the Model Answer Key, the petitioner in that case could maintain the challenge notwithstanding that she had not raised any such objections.

THE CONTROVERSY

6. The Examining Authority had examined the representations received from the examinees and thereafter, had issued the Revised Answer Key. The Examining Authority had deleted two questions and it had modified the answers to certain questions. In addition, it had found that the alternative answers provided to five questions were also correct and therefore, had declared two options to be correct in respect of the said questions.

7. It is material to note that questions in all the booklets (Booklet Series A to D) were similar, but were numbered differently. For the purposes of the present petitions, we will refer to questions as numbered in Question Booklet A.

8. The Revised Answer Key published in respect of Question Booklet A is as under:

Modifications to the Original Answer Key dated 20/12/2023 by way of the revised answer key 29/01/2024 (published on 02/02/2024) for Question Booklet-A.		
Question No.	Original Answer Key:	Revised Answer Key:
Question 33	Option (1)	Options (1) & (2)
Question 52	Option (2)	Options (1) & (2)
Question 166	Option (4)	Option (1)
Question 168	Option (3)	Option (1)
Question 138	Option (3)	Question Deleted
Question 132	Option (2)	Option (4)
Question 9	Option (1)	Options (1) & (2)
Question 80	Option (3)	Question Deleted
Question 67	Option (3)	Option (3) & (4)
Question 36	Option (3)	Option (3) & (4)

SUBMISSIONS

9. Mr. Zoheb Hossain, learned counsel appearing for the petitioner in W.P.(C) 2342/2024 assailed the Revised Answer Key on three fronts. First, he submitted that it was not permissible for the Examining Authority to provide two answers for one question. He contended that the same was contrary to the marking scheme, which entailed only one appropriate answer with a negative mark for any other option. He submitted that if there were two equally appropriate answers for the same question, the question would necessarily have to be rejected as the marking scheme would fail. Second, he submitted that the second correct options in respect of five questions as published in the Revised Answer Key, were palpably erroneous. He submitted that there was only one appropriate answer in respect of the said five questions. The

challenge to the Revised Answer Key in respect of the five questions referred to by Mr. Hossain is discussed separately. Third, he submitted that there were two questions (Question Nos. 37 and 132), where the options provided in the Model Answer Key were erroneous.

10. Mr. Manchanda, learned counsel appearing for the petitioners in W.P.(C) 2462/2024 objected to the revised Answer Key in respect of four other questions (Questions Nos. 34, 54, 80 and 168). He submitted that the Revised Answer Key in respect of the said questions was palpably erroneous, which included deletion of one question (Question No.80).

11. Dr Amit George, learned counsel appearing for the DHC countered the aforesaid submissions. He submitted that the Examining Authority was not precluded to also accept more than one correct answer if the same was warranted. He referred to the decision of the Allahabad High Court in ***Rishabh Mishra & Ors. v. State of U.P. & Ors.: W.P. (C) 8056/2020 decided on 03.06.2020***, and drew the attention of this Court to paragraph 80 of the said decision. In its decision, the Court had observed that where there is more than one correct answer, the candidate would be entitled to additional marks. He also referred to the decision of the Madras High Court in ***D. Shylaja v. The Secretary to Government, Education Department & Ors.***: ***W.P (C) 14587/2004 decided on 15.06.2004*** and the decision of the Andhra Pradesh High Court in ***R. Krishan Kumar v. Convener, EAMCET 1998 JNT University, Hyderabad: 1998 SCC OnLine AP 425*** in support of

his contention. He also countered the submissions that the answers set out in the Revised Answer Key were erroneous. The same have been discussed separately in the context of each question.

ANALYSIS

12. In the aforesaid backdrop, the first question to be considered is whether it is permissible for the Examining Authority to accept two answers to be correct and award marks accordingly, given the marking scheme. In addition, it is also necessary to examine whether the answers provided in the Revised Answer Key are palpably erroneous.

13. The scope of judicial review of evaluation of answers in an examination is highly restricted. In ***Kanpur University & Ors. v. Samir Gupta & Ors.: (1983) 4 SCC 309***, the Supreme Court held as under:

> "16**.** …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…"

14. Thus, the Court will not interfere with the decision of the examining authority in respect of the correctness of an answer key unless there is no doubt that the answer key as provided is *ex facie* wrong. In ***Sumit Kumar v. High Court of Delhi & Anr.: 2016 SCC OnLine Del 2818,*** a Coordinate Bench of this Court had observed that it would be permissible to exercise the power of judicial review only in cases where the answer key is found to be demonstrably wrong in the

opinion of a reasonable body of persons well versed with the subject. In a later decision in ***Kishore Kumar v. High Court of Delhi: 2018 SCC OnLine Del 12192***, a Coordinate Bench of this Court had held as under:

> "29**.** As far as the attack to the answer keys on the merits goes, possibly, the court may on a close analysis conclude that on one or two questions, the answer keys were inapt. However, this has to be weighed in with the fact that the court exercises judicial review jurisdiction. Absent demonstrably facial arbitrariness, its approach should be circumspect and deferential (to the examining body)..."

15. In ***Vivek Kumar Yadav v. Registrar General, Delhi High Court: 2022 SCC OnLine Del 1670***, this Court had examined the scope of judicial review of evaluation of answers in an examination and observed as under:

> "18. It is thus, clear that merely because this Court is *prima facie* of the view that an answer to a question is erroneous, the same would not necessarily warrant interference in the evaluation process. The examining body may have its reasons to support the answer as correct or most appropriate. If the Court finds the decision of the examining body to be capricious, arbitrary or actuated by malice, it would be apposite for this Court to exercise judicial review on merits. The examining body must have its full play in choosing the manner in which it conducts the examination including the evaluation criteria and process. Of course, the selection of questions and answers as well as the process in which the examination and evaluation is conducted must not be arbitrary or discriminatory. It is always possible that certain questions may have the propensity to confuse the candidates. It may also be possible to have another view regarding the correct answer. However, the same is required to be considered by the examining body and cannot be the subject matter of review on merits. Doing so, in effect, places this Court as an appellate body on the

> decision of the examining body taking its normal course. This is not the scope of judicial review under Article 226 of the Constitution of India.."

16. Thus, this Court will not act as an appellate body to review the correctness of the answer key. The Court will not supplant its opinion in place of that of the Examining Authority. The decision as to which are the appropriate answers to the questions in an examination must rest with the Examining Authority. The Courts will interfere with the decision of the Examining Authority only if it is established that the decision is palpably erroneous and demonstrates facial arbitrariness. The Court will also intervene if the evaluation is not in accordance with the Rules or the Scheme framed for conducting the examination.

17. The principal question to be addressed is whether the decision of the Examining Authority to accept two answers to certain questions as correct, militates against the scheme of the Preliminary Examination.

18. In terms of Rule 15 of the Delhi Judicial Service Rules, 1970 the syllabus for the DJS Examination and the scheme governing the conduct of the examination are detailed in the Appendix to the said Rules. The Appendix to the said Rules expressly provides that "*the Preliminary Examination will be a screening test of qualifying nature and will consist of one paper of multiple choice questions carrying maximum of 200 marks*".

19. The Preliminary Examination was held in terms of the said Scheme. The admit card issued to all the candidates included

instructions, which were required to be followed by the candidates. Paragraph 13 of the said Instructions expressly provided as under:

> "13. The question paper will have 200 Objective Type Questions of 1 mark each. Duration of the Paper will be 150 minutes in addition to the reading time of 15 minutes. There will be 25% Negative Marking for every wrong/incorrectly marked answer, i.e., 0.25 marks will be deducted for every wrong answer."

20. Additionally, there were separate instructions for filling the OMR Answer Sheets. The said instructions also expressly provided that certain markings would be treated as wrong answers and 0.25 marks would be deducted while preparing the final result. This was also reiterated in paragraph 6 of the said instructions, which expressly stated "*6. There will be 25% negative marking for every wrong answer, i.e., 0.25 Marks*".

21. The question paper also included instructions to the candidates. The same also expressly provided that each question would carry equal marks and that "*there is 25% Negative Marking for every wrong answer*".

22. In view of the above, there can be no cavil that the scheme of the examination is founded on each question having one appropriate answer/option and selecting any other option would carry negative marks. The said scheme cannot accommodate two appropriate answers to a single question. In terms of the instructions, the candidates were required to "*choose the most appropriate answer out of the options*"

provided. Thus, clearly the scheme did not permit a question having two equally appropriate or correct answers.

23. Indisputably, accepting two correct answers for one question militates against the said scheme of evaluation. A candidate who is presumably aware of both the correct answers would be unable to respond to either of the two correct answers. It would be necessary for him to now elect whether to choose one of the two appropriate answers and risk being awarded negative marks or to skip answering the question altogether. In one sense, an examinee, whose knowledge does not extend to knowing that there are two appropriate answers, would be better than the candidate who is aware of the same. This is because such a candidate would only choose one of the options which he thinks is correct.

24. In ***Kanpur University & Ors. v. Samir Gupta & Ors***. (*supra*), the Supreme Court had observed that a question in a multiple-choice objective type test must be clear and unequivocal, if any ambiguity is found in the question set in the examination, prompt action must be taken by the authority "*to declare that the suspect question will be excluded from the paper and no marks will be assigned to it*".

25. In ***Sumit Kumar v. High Court of Delhi & Anr.*** (*supra*), a Coordinate Bench of this Court had observed as under:

> "**36.** …As two or more of the suggested answers are correct, the model answer key and the question would falter as only one suggestion was to be marked. We accordingly hold and observe

> that this question and suggested answers fall foul of the test stipulated in Kanpur University (Supra) and should be deleted. [emphasis added]".

26. The contention that granting marks to the candidates, who opted for one of the appropriate answers would not be prejudicial to any person, is erroneous. In a multiple-choice objective type examination carrying negative marks, the evaluation of candidates is by a two-pronged approach. First, the candidate is awarded full marks for the correct answer. Second, the candidate is penalized for a wrong answer. Thus, to provide an additional mark to an examinee who has given one of the correct answers, would definitely prejudice the examinee who had preferred not to answer the question at all in view of the dilemma to choose one correct option. It would also provide a premium to a candidate who had hazarded to select one answer, perhaps, without being aware that another option was equally appropriate as well.

27. The reliance placed by Dr George on the decision of the Andhra Pradesh High Court in ***R. Krishan Kumar v. Convener, EAMCET 1998 JNT University, Hyderabad*** (*supra*)**,** is misplaced. The scheme of examination, which fell for consideration in the said decision did not provide for any negative marking. In case the examination scheme does not provide for negative marking, there would be no impediment in the examinees preferring an answer notwithstanding the dilemma of two appropriate answers. Thus, if an examinee had chosen either of the correct answers, the examinee ought not to be denied the marks for the same. The same principle does not hold good in a case where the

scheme of marking entails awarding of negative marks for an incorrect answer.

28. In ***Madhumohan & Ors. v. State of Kerala & Ors.: 2000 SCC OnLine Ker 318***, the Division Bench of Kerala High Court had in the context of a multiple choice objective test carrying negative marking observed as under:

> 23. In a multiple choice objective test, it is imperative that the answers to the questions indicated must not carry two correct answers. Supreme Court in *Samir Gupta's case* (supra) observed that in a system of multiple choice objective type test care must be taken to see that questions having an ambiguous import are not set in the papers and the questions have to be clear. If there, are more than one correct answer, the candidates would be confused as to which would be the most appropriate answer lest he may get negative mark as per the Prospectus if attempted. The examinee therefore, may leave the question unattended because prospectus specifically says that a question will have only one most appropriate response (correct answer). In the instant case, even the question setters themselves have admitted that certain questions carry more than one correct answer, so found by the panel appointed by this court as well. Objective type examination involving combination of multiple choices, call for only one acceptable response. In this case, going by the prospectus also there shall not be more than one most appropriate response to a question in accordance with clause 9.4.1 read with clause 9.4.5. In the above circumstance, we accept the contention that if a question carries more than one most appropriate response (correct answer) the same would go against clause 9.4.1 read with clause 9.4.5. Therefore those type of questions which would carry more than one correct answer as pointed out by the panel appointed by this court have to be deleted from the answer key."

29. The Supreme Court in ***Kanpur University & Ors. v. Samir Gupta & Ors***. (*supra*) and ***Manish Ujwal & Ors. v. Maharishi Dayanand Saraswati University & Ors.: (2005) 13 SCC 744*** has underscored the need for ensuring that the questions in a multiple choice objective type test are unambiguous and capable of only one clear answer. The Court had highlighted that in such examinations, there is no scope for reasoning or argument; the answer is required to be in the affirmative or the negative. Thus, it is also essential that there is only a single appropriate answer for each question.

30. It is possible that a question may have two or more answers. One, which is distinctly the most appropriate and the other(s), which may also be correct, albeit in certain special circumstances. Since the instructions to the examinees is to choose the most appropriate answers, such questions would be valid. It is essential that only one answer fits the said criteria of being the most appropriate. If this condition is met, the answer key cannot be challenged. As discussed earlier, the decision of the Examining Authority in this regard is not open for a merits review and the scope of judicial review in such matters is restricted. The decision of the Examining Authorities is required to be deferred to and the Courts must be circumspect in extending the powers of judicial review in regard to such decision.

31. The decision of the Examining Authority to accept two correct answers in respect of certain questions militates against the scheme of evaluation and therefore, cannot be sustained. The Examining Authority

is required to determine whether there is a single answer that fits in to the criteria of being the most appropriate. If the same is not possible, the said question must necessarily be deleted.

32. The second aspect to be examined is whether the Revised Answer Key in respect of certain questions is palpably erroneous and warrants intervention by this Court. In this regard, the learned counsel for the parties had flagged eleven separate questions, which are discussed hereafter. However, before proceeding to examine the rival contentions in respect of the answer to the said questions, it is relevant to note that according to Mr. Manchanda, the learned counsel for the petitioners in W.P.(C) 2462/2024, all five questions in respect of which the Examining Authority had accepted two appropriate answers were required to be deleted. Whilst, Mr. Hossain, contended that a question that has two equally appropriate answers is required to be rejected, he earnestly contended that four questions in issue, had only one appropriate answer. Thus, according to the learned counsels for the petitioners, the decision of the Examining Authority to accept two answers as appropriate in respect of the given five questions, was palpably erroneous.

33. Mr. Hossain had assailed the Revised Answer Key in respect of Question nos. 9, 36, 67 and 52 in so far as the Examining Authority had accepted two options as the most appropriate. He had initially also flagged Question no. 33, however, he did not press the challenge to this question. Dr George had contended the issue involved in Question no.

33 was covered by the decision in ***Smt. Shakunthalamma & Ors. v. Smt. Kanthamma & Ors.: 2014 SCC OnLine Kar 12022***. Since Mr. Hossain did not press the challenge to Question No. 33 it is not necessary to consider the same.

Question no.9 (Qno.98 of Test Booklet D)

> "A party filed an application for interim measures of protection before a Court, which was disposed of. The other party also wishes to file an application for interim measures of protection. He may do so –
> (1) Before the same court where the party had first filed an application for interim measures of protection.
> (2) Before the court within whose jurisdiction the seat of arbitration is situated.
> (3) Only before the High Court.
> (4) Any Court of Original Jurisdiction"

34. The Examining Authority had accepted both Options (1) and (2) as correct options. However, according to Mr. Hossain, Option (2) is not the most appropriate option. He contended that an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter *A&C Act*) was made before a Court, it was essential that subsequent applications be also made before the same Court.

35. We are inclined to accept the aforesaid contention. It is apparent that the question was based on Section 42 of the A&C Act. Thus, where an application for interim measures of protection under Section 9 of the A&C Act, is made before a Court and is disposed of, subsequent applications are also necessarily required to be made before that Court.

There is nothing in the question which indicates that the Court entertaining the first application was not competent to entertain the same. It is only in cases where the first Court did not have the jurisdiction to entertain the application for interim measures, the question of whether the subsequent application for interim measure ought to be made before another Court would arise. It could also arise in cases where an application for interim measures is made in a Court in aid of an arbitration which is seated overseas. However, it would not be apposite to read such special circumstances as embedded in the question. Clearly, if the first Court had the jurisdiction to entertain the application for interim measures – which apparently it did as the question indicates that the application was disposed of – the subsequent applications are required to be filed in the same Court.

36. In case two or more Courts have jurisdiction in respect of a dispute, it is open for the parties to agree that one Court would have the exclusive jurisdiction. In ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. & Ors.: (2017) 7 SCC 678***, the Supreme Court had held that selecting the seat of arbitration is akin such an agreement, whereby the parties agree that the Court exercising jurisdiction in respect of the place of arbitration shall have exclusive jurisdiction. The Supreme Court reiterated this view in a subsequent decision of ***BGS SGS Soma JV v. NHPC Limited: (2020) 4 SCC 234***.

37. If the Examining authority is of the view that Option (2) would present a sufficient dilemma to the candidates, it would be open for the

Examining Authority to delete the question notwithstanding that Option (1) is the appropriate answer. Thus, the Examining Authority can either accept Option (1) as the most appropriate or delete the question. But it is not open for the Examining Authority to accept two options as the correct ones.

Question no.36 (Qno.198 of Test Booklet D)

> "A executed an agreement with B at Delhi promising delivery of goods at Chandigarh. The goods were duly delivered by A at Chandigarh and accepted by B. The invoice recorded that Courts at Gurugram will have exclusive jurisdiction, as the registered office of A was located at Gurugram. Upon non-payment of money, A sued B at civil Court Gurugram. B objected to the territorial jurisdiction of the court at Gurugram. This suit at Gurugram –
> (1) Is maintainable, in view of the exclusive jurisdiction clause in the invoice.
> (2) Is maintainable. as A has its registered office at Gurugram.
> (3) Is not maintainable as no part of cause of action arose in Gurugram.
> (4) Is not maintainable, as B is not a resident of Gurugram."

38. The Examining Authority had accepted both Options (3) and (4) as correct options. Plainly, Option (4) is a palpably erroneous answer. There is nothing in the question, which indicates that 'B', one of the contracting parties, is not a resident of Gurugram. Therefore, the question that the suit filed at Gurugram being not maintainable on that ground does not arise. The registered office of the plaintiff 'A' was located in Gurugram. The agreement to supply the goods was executed

in Delhi and the delivery of the goods was in Chandigarh. Thus, no part of the cause of action had arisen in Gurugram. Notwithstanding that the plaintiff had its office in Gurugram, it could not maintain a suit at Gurugram. There is no ambiguity in this question that warranted the Examining Authority to consider any option other than Option (3) as an appropriate one.

Question no.67 (Qno.134 of Test Booklet D)

> "Against an Award passed in a domestic arbitration at Delhi, a petition under Section 34 of the Arbitration and Conciliation Act, 1996, can be filed before –
> (1) Only the High Court
> (2) Any District Court.
> (3) before the Commercial Division of the High Court or the Commercial Court having territorial jurisdiction over such arbitration and depending on the specified value of the dispute
> (4) Before any Civil Court having territorial and the pecuniary jurisdiction over the arbitration."

39. The Examining Authority had accepted both Options (3) and (4) as correct options.

40. We find merit in the contention that Option (4) is in no circumstance an appropriate answer to the given question. The question indicates that the award was passed in a domestic arbitration at Delhi and therefore, if the dispute was a commercial dispute, an application to set aside the award under Section 34 of the A&C Act would have to be filed before the Commercial Division of the High Court or the Commercial Court having territorial jurisdiction over the subject

matter. This would depend on the specified value of the commercial dispute. No other Court, other than the Commercial Division of the High Court or the Commercial Court would have the jurisdiction to entertain the application under Section 34 of the A&C Act to set aside the award. However, if the arbitral award was in respect of a dispute, which was not a commercial dispute or was below the specified value then, the application for setting aside the award would lie to the court as defined under Section 2(1)(e)(i) of the A&C Act – that is, the Principal Civil Court of original jurisdiction in a district, and it includes a High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of arbitration, if the same had been the subject matter of a suit. However, the said Clause also specifies that the such Court would not include a Civil Court of a grade inferior to the Principal Civil Court, or any Court of small causes. Therefore, depending on the value of a dispute, which is non commercial, the application would either be filed in the District Court or the High Court.

41. The answer that an application could be filed before "any Civil Court having territorial and pecuniary jurisdiction over the arbitration" is clearly an incorrect answer. While Option (3) would be correct if the dispute was a commercial dispute above a specified value. None of the other options are correct. It would, thus, follow that Option (3) would be the most appropriate. In any view of the matter, the decision of the Examining Authority to accept Option (4) as an appropriate option as well, is erroneous.

QUESTION NO.52 (QNO.38 OF TEST BOOKLET D)

> "38. If a suit, which does not seek any urgent relief is filed against a public officer without issuance of prior notice. the court shall–
> (1) Reject the plaint
> (2) Return the plaint
> (3) Accept the plaint
> (4) None of above"

42. The Examining Authority had accepted both Options (1) and (2) to be correct options. However, according to the petitioner (in W.P.(C) 2342/2024), only Option (2) is the correct option. The learned counsel for the petitioner relied heavily on the decision of the Coordinate Bench of this Court in ***Anjali Goswami & Ors. v. Registrar General, Delhi High Court: 2019 SCC OnLine Del 6829***.

43. A similar question was also included in the question paper of the Preliminary Examination of Delhi Judicial Services Examination 2018. The answer key in respect of the said examination also provided the most appropriate answer to be that the plaint is to be returned for non-compliance of Section 80 of the Code of Civil Procedure, 1908 (hereafter *CPC)*. The said answer was the subject matter of challenge before the Coordinate Bench of this Court in ***Anjali Goswami & Ors. v. Registrar General, Delhi High Court*** (*supra*). The petitioner in the said case had earnestly contended that Option 1 – that the plaint was liable to be dismissed on the very first date – was to be most appropriate answer. The said contention was rejected and the Court held that "*In*

fact, it is clear to us that the only correct answer is the 3rd option i.e. "the plaint is to be returned"" .

44. Dr George submitted that in in ***Anjali Goswami & Ors. v. Registrar General, Delhi High Court*** (*supra*), the Coordinate Bench of this Court had not considered the decision of the Supreme Court in ***Prem Lala Nahata & Anr. v. Chandi Prasad Sikaria: (2007) 2 SCC 551*** and submitted that the Supreme Court had clarified that in case the procedure under Section 80 of the CPC was not followed, the suit was liable to be dismissed on the first date.

45. The reliance placed by Mr. Hossain on the decision in the case of ***Anjali Goswami & Ors. v. Registrar General, Delhi High Court*** (*supra*), is misplaced. In the said case, the question did not specify whether the case was covered under Sub-section (1) or Sub-section (2) of Section 80 of the CPC. The question merely referred to options in case of non-compliance of Section 80 of the CPC. It is in the aforesaid context that the Court referred to the proviso to Section 80(2) of the CPC, which expressly provides for return of the plaint.

46. It is material to refer to Section 80 of the CPC, which is set out below:

> "(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next

after notice in writing has been delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, except where it relates to a railway a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by

reason of any error or defect in the notice referred to in sub-section (1), if in such notice

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

47. Sub-section (2) of Section 80 of the CPC is not applicable in the given facts as the question expressly indicates that no urgent relief is sought in the suit. Thus, the proviso to Sub-section (2) of Section 80 of the CPC is wholly inapplicable. Sub-section (3) of Section 80 of the CPC expressly provides that no suit would be dismissed on account of any error or defect in the notice if the notice contains the particulars as referred to in Clause (a) and (b) of Sub-section (3) of Section 80 of the CPC. It does indicate that if the notice was defective and did not mention the particulars as referred to in Clause (a) and (b) of Section 80(3) of the CPC or if no notice was issued, the consequence would be a dismissal of the suit.

48. Sub-section (1) of Section 80 of the CPC – which is the subject matter of the question – expressly proscribes institution of a suit without issuance of a notice. It follows that in such circumstances, the suit is required to be dismissed.

49. In ***Prem Lala Nahata & Anr. v. Chandi Prasad Sikaria*** (*supra*), the Supreme Court had held as under:

> "16. …In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code."

50. Thus, in the present case, the most appropriate option was Option (1). Option (2) is not an appropriate answer, given that the suit referred to is one that does not seek any urgent relief. The revised answer key to the extent it accepts Option (2) as the correct answer, is erroneous.

51. In addition to the above, Mr. Hossain had also assailed the Model Answer Key in respect of two other questions, which according to him, had been marked incorrectly. The controversy in regard to the said questions (Question nos. 132 and 37) are examined hereafter.

QUESTION NO.132 (QNO.89 OF TEST BOOKLET D)

> "If a person entrusted with money diverts it for personal gain without intending to deceive, which Section would likely be invoked?
> (1) Section 420
> (2) Section 406
> (3) Section 420 & Section 406
> (4) None of the above"

52. According to the petitioner [in W.P.(C) 2342/2022], Option (2) is the correct option. The Examining Authority had indicated Option (4) as the most appropriate answer in respect of the said question. Concededly, this issue is covered by a Coordinate Bench of this Court

in favour of the DHC in ***Kritika Narayan v. High Court of Delhi through Registrar: Neutral Citation No.: 2024: DHC:1015-DB***. Thus, the petitioner's challenge to the revised answer key in this regard is required to be rejected.

QUESTION NO.37 (QNO.199 OF TEST BOOKLET D)

> "'L' sues 'T' for the decree of possession of suit property and mesne profits. 'T' fails to file its written statement. The possession is handed over during pendency of the suit. The prayer for damages is decreed with the consent of the parties to be paid at Rs. 15,00,000 in four instalments. T is unable to pay the said damages and therefore T challenges the said decree on the ground that the said amount has been decreed by the civil court without any evidence being led by the plaintiff. Against the said decree-
> (1) an appeal lies under Section 96 CPC
> (2) no appeal lies under Section 96 CPC
> (3) A revision can be maintained before the High Court
> (4) An application under Section 151 CPC to the same Court for setting aside the decree."

53. The Revised Answer Key indicates Option (2) to be the correct option. However, it is contended on behalf of the petitioner [in W.P.(C) 2342/2022] that Option (4) would be the correct option. Thus, according to the petitioner, a consent decree can be challenged in an application under Section 151 of the CPC. The petitioner also relies upon the decision in the case of ***Banwari Lal v. Chando Devi & Anr.: (1993) 1 SCC 581***, in support of his challenge.

54. Clearly, the contention is insubstantial. No appeal lies against the consent decree in terms of Section 96 of the CPC. Thus, indisputably,

the correct option is Option (2). The decision in the case of ***Banwari Lal v. Chando Devi & Anr.*** (*supra*) referred to the case where a decree was sought to be challenged on the ground of fraud. The language of the question does not indicate that there was any ground of fraud or deceit in securing the consent decree. The question merely indicates that the parties had consented to the prayer of damages in respect of the suit property, possession of which was handed over to the plaintiff during the pendency of the suit. Thus, the petitioner's challenge in this regard is rejected.

55. Mr. Manchanda, learned counsel appearing for the petitioners in W.P.(C) 2462/2024 had in addition to the questions assailed by Mr. Hossain also challenged the Revised Answer Key in respect of four questions, which are discussed hereafter.

QUESTION NO. 168 (QNO.61 OF TEST BOOKLET D)

> "Specific performance of a contract for payment of money cannot be enforced in favour of a person –
> (1) who fails to aver that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.
> (2) where the plaintiff has not tendered the money to the defendant or deposited the same in court while filing the suit.
> (3) Both (1) and (2) are incorrect.
> (4) Both (1) and (2) are correct."

56. In terms of the Revised Answer Key, Option (1) is the correct answer. It is apparent from a plain reading of the question that the same relates to an amendment introduced in Clause (c) of Section 16 of the

Specific Relief Act, 1963 by virtue of the Specific Relief (Amendment) Act, 2018. Clause (c) of Section 16 of the Specific Relief Act, 1963 prior to the amendment read as under:

> "(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> Explanation.—For the purposes of clause (c),—
>
> (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
> (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

57. However, the said Clause was amended and the words "aver and" were deleted from the said Clause. The Clause after amendment reads as under:

> "(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> *Explanation*.—For the purposes of clause (c),—
>
> (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction"

58. The import of deletion of the word 'aver' in Clause (c) of Section 16 of the Specific Relief Act, 1963 as well as the explanation to the said clause is that failure to make an averment that the plaintiff is ready and willing to perform the essential terms of the contract, does not *per se* disentitle a person from seeking the specific performance of the contract. Notwithstanding the same, the plaintiff is required to prove that he has performed or has always been ready to perform the essential terms of the contract. Thus, in the given circumstances, the specific performance of the contract may be enforced in favour of a person who fails to aver that he has performed and is ready and willing to perform the essential terms of the contract. In view of the above, there can be no cavil that Option (1) is not an appropriate answer.

59. Dr George, had contended that since the law does not permit a party to lead evidence in support of a fact which is not pleaded, Option (1) would be an appropriate answer. He also referred to the opinion of B. V. Nagarathna, J. in ***C. Haridasan v. Anappath Parakkattu Vasudeva Kurup & Ors.: 2023 SCC OnLine SC 36*** in support of his contention.

60. The contention advanced on behalf of the DHC is not persuasive. Whilst it is correct that evidence can be led only in support of a fact pleaded, there is no requirement of a specific averment in a suit for

specific performance that the plaintiff is and was always ready and willing to perform the contract. Paragraph 70 of the opinion of B. V. Nagarathna, J. in ***C. Haridasan v. Anappath Parakkattu Vasudeva Kurup & Ors.*** (*supra*) is relevant and set out below:

> "70. In fact, even in relation to the earlier scheme of Section 16 of the Act which required a plaintiff seeking the remedy of specific performance to 'aver and prove' that he was ready and willing to perform his obligations under an agreement, this Court had observed that it was sufficient if the averments in substance indicate continuous readiness and willingness on the part of the person suing, to perform his part of the contract vide *Motilal Jain v. Ramdasi Devi*, (2000) 6 SCC 420 : AIR 2000 SC 2408. Further, it had been declared that language in Section 16(c), as it stood prior to the Amendment Act of 2018, did not require any specific phraseology to be followed in relation to the averments as to readiness and willingness. That the compliance of requirements of readiness and willingness have to be in spirt and substance and not in letter and form vide *Syed Dastagir v. T.R. Gopalakrishna Shetty*, (1999) 6 SCC 337."

61. A clear reading of the said decision indicates that it is not necessary for a plaintiff to specifically aver that a person is ready and willing to perform the contract. Thus, the said opinion is not an authority for the proposition that the specific performance of a contract cannot be granted in favour of a person, *who fails to aver that he has performed or is ready and willing to perform the essential terms of the contract*. Whilst the circumstances pleaded in the plaint must indicate such circumstances and the plaintiff must prove that he has performed or is ready and willing to perform the essential terms of the contract in order to secure a specific performance of the contract; it is not necessary for him to include any specific words/averments that he has performed

or is ready and willing to perform the essential terms of the contract. Plainly, Option (1) is, thus, not correct.

QUESTION NO.34 (QNO.196 OF TEST BOOKLET D)

> "A civil suit for infringement of trademark with applications under Order 39 of CPC and Order 26 Rule 9 CPC was filed by the plaintiff, during the subsistence of a Caveat filed by the defendant under Section 148A of CPC. The Court, however, without issuing notice to the defendant granted *ex-parte ad-interim* orders in favour of the plaintiff. Whether the Court was correct in doing so?
>
> (1) Yes, the Court was correct since the reliefs sought are urgent and any prior intimation to the defendant would have led to mischief.
>
> (2) No, since purpose of lodging a caveat is to grant an opportunity to defendant to show cause why any order(s) adverse to the defendant should not be passed.
>
> (3) No, as the Court has no power to grant an interim order without hearing the defendant.
>
> (4) Yes, as the Court has discretion to grant interim order *ex- parte* without hearing the defendant, where delay would defeat the interests of the plaintiff."

62. According to the DHC, Option (2) is the correct option. However, the petitioners claim that Option (4) ought to be the correct option. The petitioners referred to the decision of the Andhra Pradesh High Court in ***Reserve Bank of India, Employees Association v. The Reserve Bank of India & Ors.: AIR 1981 AP 246.*** He also referred to the decision of the Bombay High Court in ***Kishore H. Desai v. Lilawati Virji Chheda & Ors.: 1989 SCC OnLine Bom 286.***

63. Dr George countered the aforesaid submissions and referred to the decision of the Karnataka High Court in ***G.C. Siddalingappa v. G.C. Veeranna: 1981 SCC OnLine Kar 159*** to counter the aforesaid submissions.

64. It is relevant to note that in ***Reserve Bank of India, Employees Association v. The Reserve Bank of India & Ors.*** (*supra*), the Hon'ble Andhra Pradesh High Court had noted that in terms of Section 148-A (2) of the CPC, once a party is admitted to the status of a caveator, he is clothed with certain rights and duties. The applicants in the interlocutory application are, thus, required to furnish the caveator a copy of the application and also copies of the documents, which they seek to rely on. In the said case, the plaintiff had served a copy of the application to the caveator but the Court had not issued any notice to the caveator. In this context, the Court held that it was "*the duty of the Court under Section 148-A to give sufficiently reasonable and definite time to the caveators to appear and also to oppose the interlocutory application intended to be moved by the plaintiffs/applicants and the Court should give a specified date for hearing of the interlocutory application*". In the said case, one of the contentions advanced was that such failure related to the Court's jurisdiction and therefore, the order passed by the Court without giving notice was a void order. The Court repelled that contention and held that an order passed by a Court without giving notice to the caveator was not a nullity. It was a failure relating to the procedure and not the jurisdiction.

65. It is relevant to note that the question in the present case was whether the Court would be correct in passing an *ex-parte ad interim* order under Order XXXIX of the CPC without issuing a notice to the caveators. The decision of the Andhra Pradesh High Court in ***Reserve Bank of India, Employees Association v. The Reserve Bank of India & Ors*** (*supra*) is an authority for the proposition that the failure of a Court to issue notice to a caveator is not an error. On the contrary, the Court had accepted that it is an error in the procedure, which did not affect the validity of the order passed by the Court.

66. In ***G.C. Siddalingappa v. G.C. Veeranna****(supra),* the Karnataka High Court had held as under:

> "9. The fact that the respondent who was an applicant before the lower appellate Court tried to serve a copy of the application on the counsel for the caveator and the counsel refused to receive the same (which fact is disputed) did not absolve the lower appellate Court from serving a notice of the application on the caveator. Even if it were to be accepted that the application was served on the counsel of the caveator, unless the date and the time of hearing of the application was made known to the caveator or his counsel, the requirement of serving a notice of the application on the caveator could not have been dispensed with. It was not the case of the respondent that the caveator or his counsel was made known that the application for interim order would be taken up for hearing by the Court on a particular date and time. Therefore, the lower appellate Court, not only acted illegally and in contravention of the provisions contained in sub-section (3) of Section 148A of the Code, in passing an interim order without serving a notice of the application on the petitioner-caveator, but it also acted in excess of its jurisdiction. When once a caveat is filed, it is a condition precedent for passing an interim order, to serve a notice of the application on the caveator who is going to be

> affected by the interim order. Unless that condition precedent is satisfied, it is not permissible for the Court to pass an interim order affecting, the caveator, as otherwise it will defeat the very object of Section 148A of the Code of Civil Procedure. Therefore, the interim order passed by the lower appellate Court on 28th February, 1981 without serving a notice of the application on the petitioner-caveator, is liable to be set aside, as the learned Civil Judge could not have passed an ex parte order in a case where the caveat had been filed."

67. As stated at the outset, in case of a debatable issue, the approach of the Court must be deferential to the decision of the Examining Authority. Clearly, the answer reflected in the Answer Key is not palpably erroneous or one that warrants any interference by this Court.

QUESTION NO.54 (QNO.7 OF TEST BOOKLET D)

> "'A' filed a suit for recovery of Rs.10 lakhs against 'B'. It was B's case that 'A' owed him Rs.20 lakhs but 'B' had not filed a suit to claim the said amount as the limitation period had expired. Which of the following is true?
>
> (1) B cannot raise his claim as it is barred by limitation
>
> (2) B can raise his claim by way of a separate counter claim.
>
> (3) B can claim set off in the written statement.
>
> (4) B gets a new cause of action for filing a fresh suit after filing of A's suit."

68. According to the Examining Authority, Option (3) is the most appropriate answer. However, according to the petitioners, Option (1) is the correct answer. The said issue is covered in favour of the petitioners in a decision of a Coordinate Bench of this Court in ***Shruti Katiyar v. Registrar General, Delhi High Court*** *(supra).*

69. In addition to the above, Mr. Manchanda, learned counsel appearing for the petitioners in W.P.(C) 2462/2024 also challenged the decision of the Examining Authority to delete Question 80. He submitted that the said question is as under:

QUESTION NO.80 (QNO.112 OF TEST BOOKLET D)

> "Derrick has the Midas touch and is doing well in his business. The underlined phrase means –
> (1) To be able to predict
> (2) To behave in a humble manner
> (3) To have the ability to make money
> (4) To not lose faith or courage"

70. The learned counsel for the petitioners submits that it is apparent that Option (3) was a correct answer and therefore, deletion of the said question would prejudicially affect the petitioners. Dr George pointed out that there is a flaw in the said question as it referred to an underlined phrase but no phrase was underlined.

71. In the given circumstances, we find no infirmity with the decision of the Examining Authority to delete the said question.

CONCLUSION

72. In view of the above, the Revised Answer Key, insofar as it provides for two apposite answers in respect of the same question, is set aside. The Examining Authority is directed to rectify the Revised

Answer Key in view of the above and re-evaluate the examinees. We clarify that the admission of those examinees that have been declared successful in the preliminary examination, to Delhi Judicial Service Mains (Written) Examination, shall not be disturbed. However, additional candidates that qualify in view of the re-evaluation as per the amended answer key, would also be included in the list of successful candidates for being admitted to Delhi Judicial Service Mains (Written) Examination.

73. The petitions are disposed of with the aforesaid directions. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 20, 2024
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