



RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12829/2024

Gourav Paliwal S/o Shri Meghraj Paliwal, Aged About 20 Years,
R/o Jagio Ka Bass, Hopardi, Phalodi, Jodhpur, District Jodhpur,
Rajasthan.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Health And Family Welfare, Nirman Bhavan, New Delhi - 110001.
2. The Chairman/secretary, National Testing Agency, C-20, 1/A/8, Sector 62, IIT Outreach Center, Noida- 201309.
3. The Senior Director (Exams), Neet (UG)-2024, National Testing Agency, C-20, 1/a/8, Sector 62, IIT Outreach Center, Noida- 201309.
4. The Principal And Controller, Rajasthan University Of Health And Sciences, Jaipur, District Jaipur, Rajasthan.
5. The Center Superintendent, Neet (UG) Examination-2024, Saint Annes Senior Secondary School, Sector-B, Saraswati Nagar, Jodhpur, Rajasthan.

-----Respondents

For Petitioner(s)	: Mr. Kailash Jangid Mr. Mohan Singh Shekhawat Mr. Kunal Singh Rathore
For Respondent(s)	: Mr. Rupesh Kumar, Senior Advocate through VC assisted by Mr. Anil Kumar Khatri for respondent Nos.2 & 3 Mr. Mukesh Rajpurohit, Dy.S.G. assisted by Mr. Uttam Singh Rajpurohit

JUSTICE DINESH MEHTA

Order

REPORTABLE

27/08/2024

1. The petitioner before this Court is desirous of becoming a Doctor submitted form for appearing in National Eligibility Cum



Entrance Test (UG), 2024 Examination (hereinafter referred to as 'NEET (UG)'). The petitioner was allotted Roll No.3904290073, Test Booklet/OMR Answer Sheet No.7796689 and Test Booklet Code Q6 at Examination Centre: St. Anne's Sr. Sec. School, Sector-B, Saraswati Nagar, Basni, Jodhpur.

2. The Examinations were held on 05.05.2024. According to the petitioner, when he was supplied Test Booklet, it was torn from middle and not only all the pages even the OMR sheet had two-three cuts due to use of scissors in the process of opening the packet containing the Test Booklet. The petitioner has asserted that on receipt of such booklet, he requested the invigilator to change the booklet but no heed was paid.

3. On 29.05.2024, the provisional answer key was published by the respondent Nos.2 and 3 and objections were invited. The petitioner raised grievance on the grievance portal of the respondents through e-mail dated 31.05.2024 and highlighted that his question paper and OMR sheet got cut by the scissor, which was used for opening the packet containing the question paper booklets. The grievance as raised by the petitioner (through e-mail dated 31.05.2024) is reproduced hereunder:-

"I wish to bring out in your notice that on the day of my NEET-UG examination at my examination centre due to the mistake of invigilators my question paper as well as OMR sheet was cut by them from scissors and these marks are still present on my question paper and I am also sharing the photos of the same in attached file.

I objected there and also requested to change the question paper as well as



OMR sheet but they denied to do so, now when the OMR sheet is uploaded by you than I came to know that OMR READER is considering 1 wrong answers in my sheet for the question number 38 which was even not attempted by me. That is due to mark present on OMR sheet during the cutting of papers from scissors.

I humbly request you to check my question number 38 manually so that it will clear for you that it wasn't attempt by me and kindly do not deduct negative mark for that question as it wasn't attempt by me.

Waiting for kind and prompt response."

4. The petitioner's grievance was not considered by the respondent No.2 for which the petitioner has preferred the present writ petition. The petitioner has placed on record his original question booklet so also a photocopy of his OMR sheet in order to substantiate his stand that both of them were torn.

5. On perusal of the test paper booklet, this Court noticed mark of scissor or some other sharp tool, due to which a hole or mark can be seen right through the question booklet.

6. On 16.08.2024, the respondents were directed to produce original OMR sheet of the petitioner with a view to ascertain as to whether the assertion of impression/cutting as made by the petitioner is correct or not.

7. Today, the original OMR sheet of the petitioner has been produced for perusal of the Court. On perusal thereof, this Court finds that OMR sheet is torn in the middle and there is a small



hole/cutting/defacing in front of option No.3 of question No.38, as claimed by the petitioner.

8. The first page of answer booklet of the petitioner has another tiny hole just beneath the term 'लगाने' of point No.4 of 'महत्वपूर्ण निर्देश', which has traversed down towards option Nos.3 and 4 of the question No.38 of the OMR sheet.

9. The photocopy of petitioner's copy of the OMR sheet (page No.126 of the paper book) contains a small stain/impression in the circle or bubble meant for option No.3 of question No.38.

10. According to the petitioner, he did not attempt question No.38 and had attempted other 10 questions being question Nos. 36, 37, 39, 41, 43, 44, 45, 47, 49 and 50.

11. The petitioner has taken a plea that since he had not at all attempted question No.38, negative marks could not have been awarded qua such question, treating option No.3 to be the answer filled in by him and treating the same to be an incorrect answer, because correct answer was option No.2.

12. Mr. Kailash Jangid, learned counsel for the petitioner argued that the respondents have wrongly considered question No.38 to have been attempted by the petitioner. He added that having done so, they have not even checked question No.50 regardless of the fact that the answer (option No.2) given thereagainst was the correct answer as per the model answer key.

13. The petitioner's case is that the respondents have erred not only by treating question No.38 to have been attempted but also by ignoring the answer given qua question No.50.



14. Mr. Jangid, learned counsel for the petitioner invited Court's attention towards the instruction No.2 (b) of the important instructions given on the question booklet and pointed out that each candidate was supposed to attempt 10 questions out of 15 questions given in section B and highlighted that as per the instruction manual first 10 questions attempted by a candidate were to be taken into consideration.

15. Mr. Rupesh Kumar, learned Senior Counsel appearing for the respondent Nos. 2 and 3 though accepted the fact that the OMR sheet was found torn as claimed by the petitioner but has denied the same to have been caused due to fault or lapse on the part of the examiner or by any of the respondents' agents.

16. While pointing out that the petitioner's grievance raised vide e-mail dated 31.05.2024 was in relation to question No.38 only and nothing was stated about question No.50, learned Senior Counsel argued that the petitioner cannot improve upon his case and take a plea which was not raised at the first instance.

17. Having said so, learned Senior Counsel argued that at the best petitioner's contention could be that negative marks given qua question No.38 be deleted, but his argument qua question No.50 cannot be considered, as no grievance was raised by the petitioner in this regard.

18. During the course of submissions, a duly packed box of the unused OMR sheets was produced by the respondents in order to contend that 24 question booklets were packed in a corrugated box of sufficient thickness and as such cutting or impression as claimed by the petitioner is not possible.





19. It was also submitted that if any indulgence is granted at this stage or the petitioner's marks are ordered to be corrected, it will adversely affect fate of thousands of students, who are not party before this Court.

20. A counter affidavit has been filed by respondent Nos.2 and 3 through Mr. Anil Kumar Khatri. Looking to the urgency, the same is taken on record, though it does not contain signatures of the officer of the respondents.

21. Though in the counter affidavit, the respondents have stated that scissor or cutter, etc. were not allowed to be used by the examiner. But, this Court is unable to accept such stand. Having regard to the kind and nature of the box, which is packed with thick/strong adhesive tape, the possibility of use of some hard thing such as cutter, scissor or even a key to open the same is eminent.

22. Learned Senior Counsel argued that the petitioner's stand that he had immediately requested the invigilator to change the question booklet and such request was not acceded to, is factually incorrect. He added that the petitioner ought to have raised such grievance before the National Testing Agency (hereinafter referred to as 'NTA'), immediately after appearing in the examination.

23. Heard learned counsel for the parties and perused the material, including the original record.

24. It is to be noted that in para No.7 of the memo of the writ petition, the petitioner has made a specific assertion that he was the first candidate in the examination hall and he was provided the first question booklet from the packet containing question





booklets so also the fact that while opening the packet his question booklet got a cut. Learned Senior Counsel for the respondent Nos. 2 and 3 fairly admitted the fact that petitioner's question booklet was the first in the packet meant for the room.

25. Such being the position, the possibility that while opening the packet, due to inadvertence or lapse on the part of the examiner, the question booklet got torn or cut cannot be ruled out if the nature of packaging of the test booklets is taken into account.

26. The respondents' stand that the invigilator were instructed to open the packet from left or right side of the packet that too without use of scissors/cutters is inconceivable, given to the type and shape of the packet. According to this Court, the packet of the test booklets could be opened only from the top-front side.

27. On appraisal of the pleadings, the arguments and the record more particularly original test booklet, OMR sheet and packet containing the test booklets, this Court is persuaded to accept the petitioner's stand that the test booklet and the OMR sheet got torn before it was delivered to the petitioner.

28. The Court therefore, proceeded to see the effect of such defacing and to what relief the petitioner is entitled. According to this Court, the contention of respondent Nos. 2 and 3 that at the best, negative marks given qua question No.38 can be ordered to be obliterated/over-ruled, but in any case his question No.50 cannot be checked, is untenable in the eye of law.

29. True it is, that by the e-mail sent on 31.05.2024, the petitioner had raised grievance only qua question No.38 and he





did not raise grievance qua question No.50. But if the facts of the case are considered in correct perspective, one has to bear in mind that by 31.05.2024 the petitioner was not aware of his marks, as the result came to be declared on 04.06.2024. Until, the result was declared and marks were informed, the petitioner could not imagine that his question No.50 would not be checked by the respondents.

30. It was only when the petitioner's marks were declared and he was allowed to view his OMR sheet, he realized that he has not been awarded marks qua question No.50.

31. It is to be noted that the final result was declared on 04.06.2024 and the revised result was declared on 26.07.2024, and immediately thereafter, the petitioner has preferred the present writ petition (on 30.07.2024). Hence, the petition can neither be treated to be suffering from delay and laches nor can petitioner's right to contend that his question No.50 requires to be checked be taken away.

32. The provision contained in para No.2(b) and sub-para appended thereto of the important instructions clearly suggests that the respondents were to examine answers of only first 10 questions attempted.

33. This Court is of the firm opinion that the cutting/defacing of the petitioner's OMR sheet qua question No.38 is attributable to the invigilator or the respondents' agents. The respondents have therefore erred in considering the cutting near option Nos.3 and 4 of the OMR sheet to be an option filled by the petitioner.





34. More importantly, the original OMR sheet does not contain any darkened bubble (with blue or black ink) qua question No.38, whereas a candidate was required to darken the bubble with Blue or Black Ball Point Pen (Re: instruction No.4).

35. There is no blue/black mark on original OMR sheet, so far as question No.38 is concerned. The scanner or computer has read the hole near question No.38 as a darkened circle, whereas there was not even a mark of ink. The hole or cutting on the OMR sheet cannot be taken as black/blue mark. The respondents' action of treating the cutting as an option filled by the petitioner is therefore, illegal and arbitrary.

36. The respondents have wrongly considered question No. 38 to have been attempted, which was indisputably left unattended by the petitioner (as is evident from original OMR sheet) and hence, his answer qua question No.50 cannot be ignored. The argument of Mr. Rupesh Kumar, learned Senior Counsel is liable to be rejected and is hereby rejected.

37. It is a matter of grave concern that the petitioner has been penalized on two counts that too for none of his fault or folly. He has been awarded negative marks for question No.38 which he did not attend and then he has not been awarded marks for his right answer qua question No.50.

38. This Court finds no substance in the argument of the respondents that the petitioner cannot be awarded marks for question No.50, as he had not raised any such grievance in his e-mail dated 31.05.2024. The reasons are not far to seek – as a matter of fact, petitioner's contention qua question No.50 gets





significance or attention, if his plea regarding question No.38 is accepted. Until petitioner's contention regarding question No.38 is accepted, the question No.50 cannot be checked given the stipulation contained in para No.2(b) and sub-para appended thereto of the important instructions, because the respondents were supposed to check first 10 questions attempted by a candidate. Therefore, checking of question No.50 is not an independent prayer – it is a consequence of accepting petitioner's first contention qua question No.38.

39. It does not lie in the mouth of the respondents to take such plea, when they did not even attend to petitioner's genuine grievance. Had they proceeded fairly, the petitioner would not have to knock at the doors of this Court.

40. Mr. Rupesh Kumar's argument that any indulgence granted to the petitioner may affect position of thousands of candidates does not deter this Court from passing a just order and undoing a wrong that has been done to the petitioner. The petitioner has been made to suffer for the fault of others. Such suffering cannot be perpetuated by not giving what is legitimately due to him.

41. For the reasons given and as a consequence of the observations made hereinabove, the present writ petition is allowed. The respondent Nos.2 and 3 are directed to forthwith revise petitioner's result as under:-

(i) the question No.38 be treated as unattended - the option No. (3), which the respondent Nos. 2 and 3 have considered qua such question be ignored and negative marks given to him be obliterated.





(ii) his answer qua question No.50 be checked and if option given by him is correct, he be awarded requisite marks.

42. The petitioner's result be declared on or before 30.08.2024 and he be issued revised mark sheet. It is further ordered that during second round of counseling, his revised marks shall be considered and if he gets an Institution of his choice as per his revised marks, the same be provided to him.

43. The stay application also stands disposed of, accordingly.

(DINESH MEHTA),J

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