

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11978 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 10651 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 11737 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

JIGAR BHARATSINGH KSHATRIYA**Versus****STATE OF GUJARAT****Appearance:****MR.JIGAR KSHATRIYA PARTY IN PERSON(5000) for the Petitioner(s) No. 1
om SCA NO.11978 OF 2022****MR.N.K.MAJMUDAR, ADVOCATE for the Petitioner(s) in SCA NO.11737 OF
2022****MR.MAULIN PANDYA, ADVOCATE for the Petitioner(s) in SCA NO.10651
OF 2022****MR.KAMAL TRIVEDI, LD. ADVOCATE GENERAL with MR PREMAL R
JOSHI(1327) for the Respondent(s) No. 2 in all petitions****MR.KAMAL TRIVEDI, LD. ADVOCATE GENERAL with MR.VINAY
BAIRAGRA, AGP for the Respondent(s) No. 1 in all petitions**

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 17/08/2022

CAV JUDGMENT

1. All these petitions have been filed by candidates who have been unsuccessful in the examinations held for the posts of Lok Rakshaks (Class-III).

2. It is the case of the petitioners in the respective petitions that the Recruitment Board wrongly cancelled Questions No.8 and 93 and answer keys to some questions were wrong which resulted in their losing marks and thereby being declared as unsuccessful.

FACTS IN BRIEF

3. An advertisement was issued for the posts of Lok Rakshaks by the Recruitment Board for a total of 1983 posts. The pattern of examinations for the purpose was a paper of 100 marks with "Multiple

Choice Questions” with four alternative answers for each question. The candidates were required to tick one of the four options to each answer. Each correct answer would earn the candidate one mark but a wrong answer would entail deduction of 0.25 marks. There was an option of “not attempted” which would not result in any deduction of marks.

4. Mr Jigar Kshatriya Party-In-Person in his Special Civil Application has made the following submissions.

4.1 He would submit that the qualification standards that the candidates were expected to have was standard 12 and therefore the candidates for the preparation of such examinations would fall back on text books meant for standard 8/10 and 12 of the GCERT

and NCERT.

4.2 Mr.Kshatriya would assail the correctness of several answer keys and submit that the correct answers as provided in the final answer keys were in fact not the correct options and therefore the petitioner lost marks which he was otherwise entitled to as the answers that he had attempted were in fact correct and the answers given in the final answer keys were wrong.

4.3 Mr.Kshatriya would demonstrate by taking the court through each question relevant for the purpose and demonstrate the fallacy of the Board and submit how flawed the final answer key was.

a) He would submit that out of 100 questions two questions namely question no.8 and 93 were wrongly cancelled and for 5 questions there were

discrepancies.

b) As far as Question No.19 is concerned, he would submit that the correct answer was option D as per Science and Technology Text Book of Std.10 and in the final answer key the options B and C were wrong. The question pertained to the unit of distance between planets and according to the petitioner the correct answer was D i.e. light years and not kilometers or miles.

c) Similarly so far as Question No.26 was concerned the final answer key suggested the correct answer as D whereas the correct answer was C. He would submit that the candidate had to opt for the correct option in context of the question addressed regarding the election procedure of the President and the Vice President Of India and the option C that the Vice

President was elected by the Members of Parliament and that their tenure was 5 years was the Option which should have been correct and that Option D which included the first answer stating that the President is elected through the Members of Parliament and State Assemblies was wrong as, as per Article 54 only the elected members of the respective Houses would elect the President and the nominated members would not form part of the Electoral College and therefore Option D was wrong.

d) So far as Question No.35 was concerned the correct answer given in the answer key was C but the correct answer according to him ought to have been D. The question pertained to options with regard to Mangrove Jungles and that per the Board the first three options were right whereas the petitioner opted for all the four

options being right and therefore had opted for option D.

e) Qua Question 75 where the correct answer as per the final answer key was Option D whereas as per party-in-person the correct answer was Option A as the Greenwich Line passed through the Greenwich City and that option that the Tropic of Cancer was passing near to the Ahmedabad City was wrong as the Line was at a distance of 99 Kms from the City.

f) Similarly with regard to Question No.93 it was the case of the petitioner that the Question was wrongly cancelled. It pertained to options in context of Jain Religion and Option D was correct as the 21st Tirthankar in Jain was Neminath and 23rd was Parshwanath and there was no justification to cancel the Question.

g) Party-In-Person would further submit that as far as Question No.94 is concerned, Option No.1 was incorrect as the Option misspelt the place “Bhimbetka” as “Bhibetka” and therefore the Question should have been cancelled.

h) As far as cancellation of Question No.8 too the candidates must not be made to suffer but the candidates should have been given marks for both the cancelled questions.

i) Mr.Kshatriya would submit that all the recruitment boards considered the GCERT and NCERT Books published by the Government and the Lok Rakshak Board by considering these as reliable materials and reliance on experts was misconceived.

j) Mr.Kshatriya would further submit that

when two questions were cancelled and the other 6 questions had flawed final answer keys the negative marking has resulted in getting less marks for the Petitioner and many candidates have suffered and could have got more than cut-off marks. He therefore requested that the petition be allowed and the name of the petitioner be included in the merit list of candidates.

5. Mr. Nirav Majmudar learned advocate arguing on behalf of the petitioners of Special Civil Application No.11737 of 2022 would make the following submissions.

5.1 Mr.Majmudar would adopt the submissions as far as common questions are concerned in context of the challenge that is made by the petitioner of Special Civil Application No.11978

of 2022 - Party in Person.

5.2 Mr.Majmudar would submit that as required as per the Standard Text Books, the petitioners had given correct answers but they were treated as wrong and the two cancelled questions directly resulted in prejudice to the petitioners in as much as they secured less marks though their answers were right in accordance with the standard text books.

5.3 Mr Majmudar would rely on Appendix 3 of the advertisement and submit that Rule 8(e) and Rule 8(9) provide that each question will be of one mark and every attempted question which was incorrect will carry a negative mark of 0.25. The authorities deviated from this Rule and gave 1.02 marks for each correct answer and enhanced the negative marks to 0.255 which

amounts to introducing a change in the marking system.

5.4 Mr Majmudar would invite the Court's attention to the additional questions apart from the one shown by the Party-In-Person and submit as under:

a) A Question, Question No.42 pertained to two trains traveling on the same track after a time gap at varied speeds which according to the Petitioner was lacking in any sense.

b) He would submit that as far as Question no.3 regarding pairing of Capitals the option in the answer key showing Option D as correct in fact was a wrong answer whereas based on reading material both, options B and D ought to have been correct.

c) Question No.8 pertained to Rivers Ganga and Narmada which question was cancelled whereas according to the Petitioners the correct option was Option C as per the standard NCERT and GCERT Books.

d) He would submit that Question No.18 pertained to Sardar Patel regarding his place of birth, his popular title etc where the final answer key had given Option A as correct whereas Option C too was correct.

6. He would therefore submit that there were serious flaws in the final answer keys and therefore the entire results should be quashed and the examinations ought to be conducted de novo.

7. Mr Maulin Pandya learned advocate appearing

for the Petitioners of Special Civil Application No.10651 of 2022 would also assail the correctness of the final answer keys of the questions common to the petitioners of Special Civil Application Numbers 11727 of 2022 and Special Civil Application No.11978 of 2022.

8. Mr.Pandya would submit that all materials such as books expected to be studied by a student of Standard 12 indicated that the final answer key was flawed inasmuch as the option for measuring the distance between planet “light years” as a unit was also the right option. Even with regard to the Question relating to the President and the Vice President and elections he would adopt the same reasoning as pointed out by the Party-In-Person.

9. With regard to the incongruity of Question

No.42, he would submit that the question itself was incorrect as one train cannot overtake the other on the same track.

10.He would submit that Question No.94 with regard to Bhimbetka as a result of a spelling mistake was required to be cancelled.

11.Mr Pandya would submit that due to such errors and mistakes the questions which led to wrong answers by the petitioners resulted in the petitioners in suffering and therefore appropriate orders need to be passed in these circumstances.

12. For the Lokrakshak Recruitment Board, Mr Kamal Trivedi Learned Advocate General has appeared with Mr.Premal Joshi in all the petitions. Mr Trivedi would threadbare read the affidavit-in-reply filed by the Board and argue in

support that there can be no two opinions that the board in consultation with the experts and after inviting objections from the candidates had prepared the Final Answer Key and this Court would therefore have a limited and restricted jurisdiction to sit and reassess the answers and the final answer key to suggest changes in a recruitment wherein for about 1000 posts over 9 lakh applications were received.

13. Mr Trivedi would take the Court through the advertisement and point out that the recruitment was for 10,459 posts of Lokrakshaks for which 9 lakh applications were received. The break up of 10459 posts was 8,476 for Males and 1983 for Female recruits.

14. A written examination was to be conducted where the minimum requirement was that a

candidate should be Std. 12th pass. That a written examination would be conducted of 100 marks of one hour duration which would cover subjects such as General Knowledge, Current Affairs, Computer Knowledge, Psychology, History, Geography, Sociology, Mental ability, Science and basic features of the Constitution. Each correct answer would get 1 mark and each wrong answer would attract - 0.25 marks. Each question had 5 options. A, B, C, D, E. A to D were options of answers and E was an option "Not attempted" which would not entail any negative marking. Clear instructions were issued that a candidate should mark option "E" to avoid deduction of marks and negative marking.

15. Mr Trivedi would submit that the examination was held on 10.4.2022. The Provisional answer Key was published on 12.4.2022 and the

candidates were given an opportunity to raise objections against the provisional answer key upto 9.00 AM on 14.4.2022. In all 1269 objections were received against 58 questions.

16. Mr Trivedi would further submit that the objections of the candidates were scrutinized and the Board Meeting was held on 19.4.2022. In the meeting decision on some questions were taken and the answers were finalised with regard to question nos. 3, 8, 19, 25, 26, 35, 45, 74, 83 and 93. It was then decided to meet again after studying these questions and accordingly a meeting was held on 27.4.2022. The Board Members studied the objections and the necessary material with regard to these questions was considered and the final answer key was published. In the above process, some experts from different fields were consulted and

their opinion was taken and the material relied upon by them forming these opinions were further studied and therefore the Board Members found no reason to differ and therefore the final answer key was published after due consideration.

17. Reading the affidavit, Mr Trivedi, learned Advocate General would also submit that in the meeting it was decided to cancel Question Nos. 8 and 93 as it was found that there was no correct answer in the options given in the question paper to these two questions.

18. It was also decided to change answers to Question no.19 and 25 provided in the provisional answer key. In the provisional answer key, the answer to question no.19 was "D" which was changed to option "B" or "C". In the

provisional answer key to question no.25 the option was "B" and was then changed to option either "B" or "C". These changes were made after considering the objections raised by the candidates and the opinion given by the experts, studying the material provided by the candidates and as suggested by the experts and collected by different Board Members. The relevant literature and material available in the academic and public domain relating to these questions were considered.

19. Mr Trivedi would further submit that in the meeting held on 7.5.2022, all the questions were examined and the Board came to the conclusion that there was no substantial ground for changing the answers given in the final answer key published by the Board on 27.4.2022.

20. The Learned counsel would then in detail explain the procedure of decision making process undergone for each question and read the relevant paragraphs of the reply filed by the board for the purpose of supporting the stand of the Board.

21. The relevant questions read as under:

003. મહાજનપદ અને તેની રાજધાની વિશે નીચેનાં જોડકાં ધ્યાને લો.

ANSWER-D

- (1) મગધ – રાજગૃહ
- (2) મલ્લ – કુશીનારા
- (3) મલ્લ – પાવા
- (4) અવંતિ – ઉજ્જયિની
- (5) ગંધાર – તક્ષશિલા

નીચેનામાંથી કયો જવાબ સાચો છે ?

- (A) ફક્ત 1, 2 અને 3 (B) ફક્ત 1, 2, 4 અને 5
(C) ફક્ત 1, 3, 4 અને 5 (D) 1, 2, 3, 4 અને 5

008. ભારતની નદીઓ વિશે નીચેના વિધાનો ધ્યાને લો : **QUESTION CANCELLED**

- (1) ગંગા નદી ગંગોત્રી હિમપ્રવાહ (ગ્લેશિયર) થી નીકળે છે.
- (2) નર્મદા નદી અમરકંટકથી નીકળે છે.
- (3) ગંગા નદી હિન્દ મહાસાગરને મળે છે.
- (4) નર્મદા નદી અરબી સમુદ્રમાં મળે છે.

ઉપરનાં પૈકી કયાં વિધાનો સાચાં છે ?

- (A) ફક્ત 1, 2 અને 3 (B) ફક્ત 2, 3 અને 4
(C) ફક્ત 1, 2 અને 4 (D) 1, 2, 3, અને 4

019. ગ્રહો વચ્ચેનું અંતર માપવા કયા એકમનો ઉપયોગ થાય છે ? **ANSWER B OR C**

નીચેનામાંથી કયો જવાબ સાચો છે ?

- (A) મીટર (B) કિલોમીટર
(C) માઈલ (D) પ્રકાશ વર્ષ

025. પાછા ફરતા મોસમી પવનો કયા રાજ્ય / રાજ્યોમાં વરસાદ લાવે છે ?

ANSWER - B OR C

- (1) પંજાબ (2) તમિલનાડુ
(3) આંધ્રપ્રદેશ (4) કર્ણાટક

નીચેના જવાબોમાંથી સાચો જવાબ પસંદ કરો.

- (A) ફક્ત 1 અને 2 (B) ફક્ત 2 અને 3
(C) ફક્ત 2 અને 4 (D) 1, 2, 3 અને 4

026. ભારતમાં રાષ્ટ્રપતિ તથા ઉપરાષ્ટ્રપતિની ચૂંટણી અંગે નીચેનાં વિધાનો ધ્યાને લો :

ANSWER - D

- (1) સંસદ સભ્યો તથા વિધાન સભ્યો દ્વારા રાષ્ટ્રપતિની ચૂંટણી કરવામાં આવે છે.
(2) સંસદ સભ્યો દ્વારા ઉપરાષ્ટ્રપતિની ચૂંટણી કરવામાં આવે છે.
(3) રાષ્ટ્રપતિ તથા ઉપરાષ્ટ્રપતિની ચૂંટણી દર પાંચ વર્ષે કરવામાં આવે છે.

ઉપરના પૈકી કયા વિધાનો સાચા છે ?

- (A) ફક્ત 1 અને 2 (B) ફક્ત 1 અને 3
(C) ફક્ત 2 અને 3 (D) 1, 2 અને 3

025. મેનગરુવ જંગલો વિશે નીચેનાં વિધાનો ધ્યાને લો : **ANSWER - C**

- (1) આ પ્રકારના જંગલો સમુદ્રની ભરતીનાં ખારા પાણીમાં વિકસે છે.
(2) આ પ્રકારના જંગલો ગુજરાત અને પશ્ચિમ બંગાળ તથા આંધ્રપ્રદેશ અને નિકોબારનાં સમુદ્ર કિનારે જોવા મળે છે.
(3) ગુજરાતના આ પ્રકારના જંગલોમાં ચેરનાં વૃક્ષો જોવા મળે છે.
(4) આ પ્રકારનાં જંગલોનાં વૃક્ષો ખુબ જ ઊંચા હોય છે.

ઉપરના વિધાનો પૈકી કયા વિધાનો સાચા છે ?

- (A) ફક્ત 1 અને 2 (B) ફક્ત 2 અને 3
(C) ફક્ત 1, 2 અને 3 (D) 1, 2, 3 અને 4

045. ખનિજો અને તે જે રાજ્યમાંથી મળી આવે છે તે અંગે નીચેનાં જોડકાં ધ્યાને લો :

ANSWER – D

- (1) બોકસાઈટ - ગુજરાત.
- (2) થોરિયમ – કેરળ
- (3) તાંબુ – રાજસ્થાન
- (4) સોનું – કર્ણાટક

ઉપરના જોડકાં પૈકી કયા સાચા છે ?

- | | |
|---------------------|--------------------|
| (A) ફક્ત 1, 2 અને 3 | (B) ફક્ત 1,3 અને 4 |
| (C) ફક્ત 2, 3 અને 4 | (D) 1, 2, 3 અને 4 |

074. ભારતીય ઇતિહાસ વિશે નીચેનાં વિધાનો ધ્યાને લો : **ANSWER – D**

- (1) મૌર્ય વંશની રાજધાની પાટલીપુત્ર હતી.
- (2) ગુપ્ત વંશની રાજધાની પાટલીપુત્ર હતી.
- (3) આર્ય ભટ્ટ અને વરાહમિહિર ગુપ્ત કાળમાં થયાં.

ઉપરના વિધાનો પૈકી કયું / કયાં વિધાન / વિધાનો સાચું / સાચાં છે ?

- | | |
|------------------|-------------------|
| (A) ફક્ત 1 | (B) ફક્ત 1, અને 2 |
| (C) ફક્ત 1 અને 3 | (D) 1, 2 અને 3 |

083. S400 શું છે ? **ANSWER – C**

- (A) અમેરિકા દ્વારા ભારતને આપવામાં આવેલ લોંગ રેન્જ સરફેસ ટુ એર મિસાઈલ સિસ્ટમ
- (B) અમેરિકા દ્વારા ભારતને આપવામાં આવેલ શોર્ટ રેન્જ સરફેસ ટુ એર મિસાઈલ સિસ્ટમ
- (C) રશિયા દ્વારા ભારતને આપવામાં આવેલ લોંગ રેન્જ સરફેસ ટુ એર મિસાઈલ સિસ્ટમ
- (D) રશિયા દ્વારા ભારતને આપવામાં આવેલ શોર્ટ રેન્જ સરફેસ ટુ એર મિસાઈલ સિસ્ટમ

093. જૈન ધર્મ વિશે નીચેનાં વિધાનો ધ્યાને લો : **QUESTION CANCELLED**

- (1) જૈન ધર્મના પ્રથમ તિર્થંકર મહાવીર સ્વામી હતા.
- (2) જૈન ધર્મના પ્રથમ તિર્થંકર વૃષભદેવ હતા.
- (3) જૈન ધર્મના 21મા તિર્થંકર નેમીનાથ હતા.
- (4) જૈન ધર્મના 23મા તિર્થંકર પાર્શ્વનાથ હતા.

ઉપરોક્ત પૈકી કયું / કયાં વિધાન / વિધાનો સાચું / સાચાં છે ?

- (A) ફક્ત 1 (B) ફક્ત 1, અને 3
(C) ફક્ત 3 અને 4 (D) ફક્ત 2, 3 અને 4

094. ભારતની ચિત્રકલા વિશે નીચેનાં જોડકાં ધ્યાને લો : **ANSWER – B**

- (1) ભીબેટકાનાં ગુફાચિત્રો - મધ્યપ્રદેશ
(2) અજંતાના ગુફાચિત્રો - મહારાષ્ટ્ર
(3) બાદામીનાં ગુફાચિત્રો - કર્ણાટક
(4) કાંચીપુરમના ગુફામંદિરના ચિત્રો - આંધ્રપ્રદેશ

ઉપરનાં પૈકી કયાં જોડકાં સાચાં છે ?

- (A) ફક્ત 1,2 અને 4 (B) ફક્ત 1, 2 અને 3
(C) ફક્ત 1, 3 અને 4 (D) 1, 2, 3 અને 4

22. The relevant explanations tendered by the board with regard to Questions 19, 26, 35, 75, 93, 94, read as under which have been read by the Learned Senior Advocate Mr.Trivedi appearing for the Board.

“17) QUESTION NO. 19 :

As far as question no. 19 is concerned I humbly state and submit that the provisional answer key gave answer “D” as the correct answer of this question. I also state that for this question total 3 objections were received from the candidates against the answer published in the provisional Answer Key. In support of their contentions, the candidates submitted extracts from the Geography and Science text books of

Gujarat Text Book Board in support of their contention. A copy of the materials from the text books of standard 8th, 10th and 11th of Gujarat State Textbook Board is attached herewith and marked as Annexure-R4.

18) I further respectfully state and submit that the material given by the candidates of standard 8th text book states that it is convenient to show the distance between stars in light years and the standard 10th text book of Science & Technology of Gujarat State Text Book Board does not mention light year as the unit to measure distance between planets. The standard 11th Geography text book of Gujarat State Text Book Board shows the distance of different planets from Sun in lakh kilometers.

19) I further respectfully state and submit that in addition to the material provided by the candidates, the Board further studied the material available through different sources and decided to change the answer from "D" to "B" and "C".

20) I respectfully state and submit that after the final answer key was published on 27.4.2022, the Board received 80 objections to the answer to question No. 19, as provided in the final answer key. The material presented by the candidates on this occasion is also from the text book of standard 10th of Gujarat State Textbook Board. This material does not mention that the light year is the unit of measurement for measuring distance between planets.

21) *I further respectfully state and submit that the Board has comprehensively gone into the objections of these applicants that the correct answer is option "D". After in-depth study and detailed deliberations, the Board members arrived at the following conclusions:*

(1) *Contrary to the popular perception, the unit of light years is not used to measure the inter-planetary distances, but inter-stellar distances which are distances between stars or between different solar systems.*

(2) *The distance between the planets within the solar system is measured either in Kilometers or Miles or Astronomical units (AU). One astronomical unit is the distance between the sun and the earth which is equal to 149.6 million kilometers. To give a sense of scale, the distance from the sun to the closest planet Mercury is 0.39 AU or 59.9 million kilometers and to the planet Neptune is 30.06 AU or 4495.1 million kilometers. The closest planets in the solar system are Earth and Venus which inter-distance is 0.28 AU or 41.4 million kilometers. As is evident, the Astronomical Unit provides a broad scale for measurement of inter-planetary distances in the solar system. However, when more precise units of measure is required, kilometers and miles are the preferred units and the most accurate and convenient.*

22) *I further respectfully state and submit that many candidates presented extracts from the standard 8th NCERT Publication*

which mentions that the Sun is 150 million kilometers from earth and the next nearest star Proxima Centauris is 40,000,000,000,000 kms (40 trillion kilometers). It also mentions that another unit for measuring distances between “celestial objects “(Avkashi padarth), is “light years” (Prakash varsh) .Purely for the sake of argument, if we measure the distance between the sun and the earth in light years, the distance would be or 0.0000158 light-years, which is very difficult to understand, inaccurate due to the rounding off of trailing figures and do not provide a convenient system for comparison of distances between planets of the solar system. Therefore, light years is not a unit for measurement of planetary distances.

Some candidates have also made representations in regard to measurement of distances to planets observed in other galaxies/solar systems using the unit of light-years by providing articles published in the newspapers. In science literature, the planets of the other solar system are not described as planets but they are known as “Exo-planets”, for which the Gujarati word is “BAHIR GRAH”. It is hereby submitted that our question paper specifically requires the candidates to give the unit which is used to measure distances between planets and not between planets and “Exo-planets”.

The information which is available in public domain such as the NASA website also gives inter-planetary distances within the solar system in both the astronomical

units and in kilometers, but it does not provide any inter-planetary distances in light-years. Annexed hereto and marked as Annexure-R5 is a copy of the material from NASA website.

23) It is respectfully submitted that the above mentioned materials unequivocally supports the decision of the Board that inter-planetary distances are measured by the units kilometers, miles and astronomical units, depending on the requirement of the situation. In question no. 19, since the AU i.e Astronomical Unit is not given as a choice, therefore, the choice given in option "B" and "C", which is kilometers and miles will be the correct answer. Hence, the contention in the present petition does not have any merit. Thus, the text book as well as the material collected from NASA website and textbook of Gujarat Board clearly shows that there is no ground to change the answer, as suggested in the petition.

24) I respectfully state and submit that in the documents submitted by the petitioner to support the claim, there is no evidence that the planetary distances are measured through the unit of light years. However, the same material provided in the present petition which is the extract from Science & Technology Text Book of standard 10th of Gujarat State Text Book Board (Annexure "C"), at page no. 57 of the memorandum of SCA categorically mentions that the approximate distance between the Sun and the earth is 150000000 kms, which is

completely contrary to the claim of the petitioner. In fact, the material provided by the candidate clearly mentions that light years is used to measure the distance between the stars.

25) QUESTION NO. 26 :

I respectfully state and submit that for question no. 26 in the present petition, copy of "BHARAT NU BANDHARAN" by Madhavi Upadhyay and copy of GCERT Text book of standard 9 has been attached.

26) I further respectfully state and submit that prior to this petition and before the publication of the final answer key, the Board has received a representation of a similar nature to the one made in the present petition. The Board has studied the material in-depth and after careful consideration, it has come to a conclusion that the representation does not have any merit. The Board has taken this decision based on the following considerations:

(1) The question number 26 which pertains to election of President and Vice-President must be seen in a holistic fashion, specifically with respect to co-relation between the different statements which are given in the question. While statement no. 1 pertains generally to the category of peoples' representatives that elect the President, statement no. 2 deals with the category of peoples' representatives that elect the Vice President. It is obvious from

the statement no. 1 and 2 that while the President is elected by the MPs and the MLAs, whereas the Vice President is elected only by the MPs.

The petitioner has presented the details about the exact Electoral College that elects the President and contended that the statement 1 of the question is wrong. The details produced by the petitioner is a statement of fact and not a matter of dispute. However, the Board is of the view that the Electoral College forms a subset of a larger group which is the Parliament and legislative assemblies. Therefore, while the facts presented by the petitioner is correct, it does not render the statement 1 to be incorrect, since the answer given by the petitioner is subsumed within the larger category that is indicated in statement 1 of the question.

The question pertains to the election of the President and the Vice President and the purpose of the question is to know whether the candidates is able to discern the difference between the election of the President and the Vice President and the statement 1 and statement 2 needs to be seen in that context. It is expected of the candidate to understand the demand of the question and decide the choice on the basis of demand of the question and the information given. Out of 2,87,465 candidates, 1,04,765 candidates replied this question correctly.

27) QUESTION NO. 35 :

I respectfully submit that in respect of question no. 35, the petitioner has contended that statement no. 4 which mentions that mangrove trees are extremely tall in height is correct. In support of this plea, he has submitted extracts from Geography text book of Gujarat State as well as certain other material which is available from internet sources. On closer examination of the material submitted by the petitioner, there is no material that support his contention because (a) "BHARAT NI BHUGOL by Y.P. Pathak and Dr. J.G. Rangiya extract on page no. 68 of the memorandum of petition indicates that mangrove vegetations are tall and always green, but it does not mention that mangroves are extremely tall, which is indicated in statement 4 of the question and (b) the material which is obtained through the internet provides some instance of West African mangroves which can grow upto 200 feet. These are exceptions to the common mangroves and cannot be taken as the representative of the general class of mangrove forest.

It is respectfully further elaborated that similar representations were received on earlier occasions in response to the provisional as well as final answer key. The Board has perused and referred authentic and scientific literature and satisfied itself that the common mangroves are of moderate height of about 9 meters. The Encyclopedia Britannica also provides information which supports this view point. Annexed hereto and marked as Annexure-R6

is a copy of such extract. The Board is also mindful of the fact that there may be instances in which mangroves may grow high and which are taller than the normal common mangroves, but the question is to be understood in the context of the definition of common mangroves.

In addition, the question clearly mentions "extremely tall" mangroves trees and not ordinarily tall mangrove tree. Therefore, the contention of the petitioner is not supported by proper scientific literature.

28) QUESTION NO. 75 :

I respectfully state and submit that so far as question no. 75 is concerned, the petitioner states that option no. 1 should be corrected and the answer "D" is not correct. In this question, the petitioner does not mention which is the correct answer and therefore it seems the petitioner is not sure about the answer. As far as the question is concerned, statement 1 which mentions that the Greenwich Line passes through the Greenwich city is correct. Statement 2 which mentions that The Tropic of Cancer passes near Ahmedabad is also correct and statement 3 which mentions that the International Date Line is zigzag, is also correct. In earlier objections given in response to provisional as well as final answer key, the candidates have contended that the Tropic of Cancer does not pass-through Ahmedabad, but it is to be highlighted here that statement does not say that it passes through Ahmedabad. The

statement states that it “passes near Ahmedabad”.To provide some perspective, in statement No. 1, it is clearly mentioned that Greenwich line passes through Greenwich city. It does not mention that it passes near Greenwich city. Therefore, the construction of the question has kept these fine nuances of meaning in consideration. Thus, the objection raised by the petitioner does not have merit.

I respectfully state and submit that even the petitioner is not clear about the correct answer. In the present petition, one page of map is attached which does not show Tropic of Cancer or Greenwich line. Thus, the petitioner has not given any evidence in support of this question and also, he has not even mentioned what should be the correct answer. Therefore, it seems the petitioner does not know the correct answer and does not have the sufficient ground to support his contention. Hence, the objection raised by the petitioner does not deserve to be considered.

29) QUESTION NO. 93:

I respectfully state and submit that in the petition, it is contended in question no. 93 that option "D" should be the correct answer. In the provisional answer key, answer "D" was indicated as the correct answer. After the provisional answer key was published, the Board received 73 objections to this question.

I respectfully submit that the objection to

the answer was that statement 3 was incorrect, as 21st tirthankar of the Jain religion was not "नेमिनाथ" but was "नमिनाथ". On the basis of the objections raised by the candidates about the statement no. 3, the Board, after consultation with expert and after perusal of the material suggested by the expert, found out that 21st tirthankar of the Jain religion was not "नेमिनाथ" but was "नमिनाथ" and actually the 22nd tirthankar was "नेमिनाथ" and therefore, the statement no. 3 is incorrect. The material shows that "नेमिनाथ" was the 22nd Tirthankar and the 21st Tirthankar was "नमिनाथ". Annexed hereto and marked as Annexure-R7 is a copy of such literature.

As the statement no. 3 is incorrect, there is no option that shows the correct answer and therefore, the question was cancelled.

In the present petition, the petitioner has given a copy of standard 11th textbook of Gujarat State Text Book Board which shows "नेमिनाथ" as the 21st tirthnakar of the Jain religion. I humbly state that this question was set while keeping this material (standard 11 History text book of Gujarat text book Board) in mind, but after the provisional key was published, total 73 objections were received and after considering those objections and material from other sources, it was found out that the information given in the above textbook was not correct and therefore, in the final answer key the question was cancelled, due to the reason described in the previous

paragraphs. It is further stated that after the question was cancelled in the final answer key, the Board received 20 objections, stating that answer "D" was the correct answer, but as discussed above, the Board did not think it proper to reverse its earlier decision of cancelling the question. Thus, the contention raised by the petitioner in the present petition is not acceptable.

30) QUESTION NO. 94 :

I humbly submit that in response to the contention of the petitioner in question no. 94 wherein the petitioner has pointed out the spelling mistake in the question and appealed that the question ought to be cancelled, the Board is of the view that the typographical error is not to the extent that it would change the meaning of the question or to inject ambiguities or contradictions in meaning. It is a simple though regrettable spelling mistake and had the candidate known the information, it would not have been difficult for the candidate to find the correct answer and in this question, out of 2,87,465 candidates, 55,770 candidates have marked this question correctly.

I further submit that 3 similar representations were received in response to the provisional answer key and the Board has decided that the answer given in the provisional answer key was correct on the following grounds:

(1) The question should be understood in the larger context of cave paintings in the

country.

(2) *There is no place in India by the name BHIBETKA, which is known for cave paintings. Therefore, a candidate with reasonable awareness of Indian art tradition, will be able to comprehend this typographical error.*

(3) *Out of total candidates who attempted this question, 55,770 candidates gave the correct response. Cancellation of this question would be a grave injustice to the candidates who have correctly attempted this question and used their good judgment and knowledge to overcome the typographical error.”*

23. On the contention raised by Shri Majmudar that the marking was changed the explanation in the affidavit is that of the 100 questions since 2 questions were cancelled and the total marks got reduced to 98, in order to normalise the new question paper of 98 questions proportionate changes were made in the scores of answers as well as penalties. Therefore instead of giving one mark for each correct answer the correct question was given 1.02 marks and instead of

giving -0.250 marks for the wrong answer the negative marking was made -0.255. The same process as is adopted by the Gujarat Public Services Commission and the Gujarat Subordinate Services Selection Board was adopted.

24. Mr.Trivedi would further submit that if 2 marks are added to each and every candidate for the 2 cancelled questions it would create a situation wherein candidates having less marks will have proportionately more advantage vis-a-vis candidates having more marks and will unduly favour those having less merit.

25. The Board has considered the information provided in the GCERT and NCERT books while preparing the question papers. Question Number 93 was set on the basis of the information

provided in the Standard 11 text book of Gujarat State Text Book in the History Subject against this question 73 objections were received citing different sources including the text books.

26. Mr Trivedi learned Advocate General in support of his submissions would rely on the following decisions of the Supreme Court as well this Court to submit that the Court in exercise of its powers under Article 226 of the Constitution Of India cannot sit in appeal and reassess the answer keys and come to a different conclusion.

27. He would rely on the following decisions:

(I) In case of ***Ran Vijay Singh and Others v. State of Uttar Pradesh*** reported in **(2018) 2 SCC 357**

(II) In case of ***Vikesh Kumar Gupta v. State***

of Rajasthan reported in **(2021) 2 SCC 309**

(III) In case of **Priteshkumar Jasubhai Barevadia v. State of Gujarat** reported in **2018 SCC OnLine Guj 2596**

(IV) In case of **Dilsukhbhai Govindbhai Rathos v. State of Gujarat** reported in **2019 SCC OnLine Guj 3985**

(V) In case of **Rohit Prabhudas Lalwani v. State of Gujarat** passed in Special Civil Application No.21908 of 2019 vide order dated 10.08.2021.

28. Considering the submissions made by the party-in-person, learned advocates for the petitioners, Shri Kamal Trivedi, learned Advocate General with Mr.Premal Joshi for the recruitment board

and Mr. Soham Joshi learned AGP for the State, what is apparent is that an advertisement was issued by the Board for recruitment of Lokrakshaks. 10,459 posts were to be filled in, of which, 8476 were for male candidates and 1983 were for female candidates. Over 9,46,528 applications were received. It was therefore necessary for the Board to conduct a written test for elimination. For the purposes of recruitment, the qualification required was that of Standard 12. As evident from the advertisement, the written test was of 100 marks and had multiple choice questions. The duration was one hour. The subjects covered were General Knowledge, Current Affairs, Computer Knowledge, Psychology, History, Geography, Sociology, Mental Ability, Science and Basic Features of the Constitution of India, Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act.

Every question was to have one mark. The candidates had to attempt all the questions. Every attempted question with an incorrect answer was to carry a negative mark of 0.25. In every question there was one option of “not attempted”. If the candidate did not intend to answer the question, he was to select that option, for which, no negative mark was to be given.

28.1 Primarily, in all these petitions the main focus has been on the two cancelled questions, question No.8 and 93 and questions, which according to the petitioners had an incorrect final answer viz. question nos.19, 26, 35, 75 and 94 respectively. Taking up each question and the plausible explanation given by the Board indicates thus:

(I) Question No.19: The case of the petitioners as far as this question which related to the Unit of measuring distance between the planet, it appears that the provisional answer key 'D' as the correct answer which the petitioners perceived to be the right choice. Three objections were received. The Board analyzed the material viz. the standard 10 textbook of Science and Technology of the Gujarat Board, Standard 11th Geography Textbook and based on this material and on material available through different sources, decided to change the answer from 'D' to 'B' and 'C'. After the publication of the final answer key on 27.04.2022, the Board received 80 objections where material was presented by the candidates that the Standard 10th Textbook did not mention light years as a unit of measuring distance between the planets and in depth study

and detailed deliberations were gone into by the Board and the following conclusions were arrived at:

(A) The unit of Light year is not used to measure the interplanetary distances but inter-stellar distances which are distances between stars or between different solar systems.

(B) The distance between the planets within the solar system is measured either in Kilometers or miles or astronomical units. What was found on study that when more precise unit of measure is required, kilometers and miles are preferred units.

(C) Reading the affidavit would indicate that extracts from Std.8 NCERT publication was considered and it was found that the distance

between Sun and Earth if measured in light years, it would be 0.0000158 light years which is very difficult to understand, inaccurate and does not provide a convenient system for comparison of distances between the planets of the solar system.

29. The information available from the public domain, indicates that interplanetary distances within the solar system in both astronomical units and in kilometers does not provide for interplanetary distances in light years. In question No.19 since the astronomical unit was not given as a choice, the choice in option 'B' and 'C' was the correct option.

30. Question No.26: The question pertained to the election of the President and the Vice President. Similar representations were received by the

Board. What is evident from reading the advertisement is that the candidate was expected to know the basic feature of the Constitution and what therefore was expected of a candidate is to differentiate between the statement pertaining to election of the President as compared to that of the Vice President. What is therefore evident is that while the President is elected by the MPs and the MLAs the Vice President is elected only by MPs. With regard to the contention of the petitioners that the exact electoral college in consonance with Article 54 of the Constitution of India was not satisfied. The Board was of the view that the Electoral College form a subset of a larger group. The purpose of the question was to know whether the candidate is able to discern the difference between the election of the President and the Vice President. He is expected to understand the demand of the

question and decide the choice. Out of 2,87,465 candidates, 1,04,765 candidates replied this question correctly.

31.Question No.35: The question pertains to Mangrove Trees. The perception of the petitioners at statement No.4 that mangrove trees are extremely tall in height is correct. On examination of the material even as supported by the candidates, the question was whether the Mangroves are extremely tall ? The Board being aware of normal common Mangroves, worded the question and it was to be understood in that context.

32.Question No.75: With regard to this question the controversy was in context of whether it was a right statement that the Tropic of Cancer passes near Ahmedabad. The statement no.2

had to be viewed in light of the statement no.1 which was a statement mentioning that the Greenwich line passes through Greenwich city. Co-relating both these statements therefore what was the perspective was to keep the fine nuances of the construction of the question into consideration. Merely because, in the perception of the petitioners the Tropic of Cancer was at a distance of 99 miles from Ahmedabad would itself not make the statement doubtful.

33.Question No.93: The objection is with regard to the cancellation of this question which was in context of Tirthankers of the Jain Dharma. After the provisional answer key was published, 73 objections were received. It was found that statement no.3 that Neminath was the 21st Tirthanker was incorrect. It was in fact

Naminath. Neminath was the 22nd Tirthankar and therefore, it was thought fit to cancel the question as there was no correct option in the question. After the question was cancelled, the Board received 20 objections but it was though proper not to reverse the decision.

34. Question No.94: The stand of the petitioner is that the statement 1 had a spelling error 'Bhibetka' whereas it should have been 'Bhimbetka'. The error was not of such an ambiguous nature which would be difficult for the candidate to find the correct answer. In fact, out of 2,87,465 candidates 55,770 answered it correctly. In the larger context, the question should have been understood which was regarding Cave paintings in the country and with the combination, it was therefore reasonably expected of a candidate to comprehend the

question.

35. With regard to the submission of Shri N.K.Majmudar, learned counsel for the petitioner that the yardstick for assessment was changed inasmuch as against 1 for right answer, the marking was changed to 1.02 and for an incorrect answer negative marking was enhanced from 0.250 to 0.255, the reduction had to be proportionate to the number of questions. With two cancelled questions, the questions got reduced to 98. Therefore, in order to normalize the marks proportionately, such reassessment was done.

36. In framing the questions, the Board did consider the material of the GCERT and the NCERT books and therefore the publication of the final answer key, was after consultation with the experts and

discussion as set out in the affidavit in reply which has been extensively reproduced herein above.

37. In the recruitment process, the scope of judicial review, and interference with key answers needs judicial restraint. In the case of ***Uttar Pradesh Public Service Commission, Through Its Chairman And Another v. Rahul Singh and Another*** reported in ***(2018) 7 SCC 254***, the Supreme Court has held that the law is well settled that it is the onus on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required. Para 12 of the decision reads as under:

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally

apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case (supra), the Court recommended a system of - (1) moderation; (2) avoiding ambiguity in the questions; (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.”

38. In case of **Richal and others v. Rajasthan Public Service Commission and others** reported in **(2018) 8 SCC 81**, the Supreme Court has held that there is an assumption that the key answer published are correct unless proved clearly wrong.

39. In case of **Ran Vijay Singh** (supra) the Supreme Court in paras 30 to 34 held as under:

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet

as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate - it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical

precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question.

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

the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.

34. Having come to the conclusion that the High Court (the learned Single Judge as well as the Division Bench) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers, the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process and depend on the result declared on 14th September, 2010 or to go

by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment.”

40. Thus, it is not open for the Court to take upon itself to actually ascertain the correctness of the key answers. Whichever option is chosen, there will be some candidates who are likely to suffer.

41. In case of **Vikesh Kumar Gupta v. State of Rajasthan** reported in **(2021) 2 SCC 309**, the relevant paragraph nos.15 to 17 read as under:

“15. Examining the scope of judicial review with regards to re- evaluation of answer sheets, this Court in [Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.](#)³ held that court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows:

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the

examination authority, the complete body of candidates suffers.

The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the

consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

16. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the Expert Committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on [Richal & Ors. v. Rajasthan Public Service Commission & Ors.](#) 4 In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert 4 (2018) 8 SCC 81 committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.

17. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in

finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel."

42. In case of ***Priteshkumar Jasubhai Barevadia*** (supra) considering the decision in case of Ranvijaysingh (supra) the Court held that when there are conflicting views, judges are not expected to act as experts in the fields and overstep.

43. In case of ***High Court of Tripura through The Registrar General v. Tirtha Sarathi Mukherjee and others*** reported in **(2019) 16 SCC 663**, the Supreme Court referred to the case law and reiterated that a question cannot be re-valuated by any inferential process of

reasoning or by a process of rationalization.

44.If the contentions of the petitioners are to be accepted, especially, in considering the correctness of Questions 19 and 26, the Court will have to undertake an inferential process or reasoning. It has been demonstrated that the most plausible unit of measuring distances is kilometers and miles which has been considered by experts after receiving objections. As far as the question of election to the President and the Vice President, as is stipulated in the advertisement itself, what the candidate was expected to know is the basic feature of the constitution and discern the difference between the election of the President and the Vice President. For all other questions too, if an exercise as contemplated by the petitioners is to be undertaken, the Court would fall into an

exercise of undertaking an inferential process of reasoning, which it cannot.

45. For the aforesaid reasons all the petitions are dismissed.

ANKIT SHAH

(BIREN VAISHNAV, J)

