HIGH COURT OF MADHYA PRADESH: JABALPUR
(Larger Bench)

Writ Appeal No.581/2017

Nitin Pathak ..... Appellant

- V/s -

State of M.P. & Others ..... Respondents

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice C.V. Sirpurkar, Judge
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri Prashant Sharma, Advocate and Shri Navnidhi Paarharya, Advocate for the appellant.

Shri Samdarshi Tiwari, Additional Advocate General, for respondents No.1 and 2/State.

Shri Manas Verma, Advocate for respondent No.3.

Whether Approved for Reporting : **Yes**

Law Laid Down:

(1) In exercise of power of Judicial Review, the Court should not refer the matter to court appointed expert as the courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.

(2) Secondly, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power.

Law laid down in Chanchal Modi Vs. State of MP and another [(2014) 3 MPLJ 84], stands over-ruled.

Followed:
(1994) 6 SCC 651; (2001) 3 SCC 328; (2007) 8 SCC 242; (2008) 1 SCC 683; (2010) 6 SCC 759; (2010) 8 SCC 372; (2013) 10 SCC 519; (2014) 14 SCC 523;
Division Bench of Patna High Court reported as 2016 SCC Online Pat 5800; and, of Karnataka High Court reported as 2004(3) Karnataka Law Journal 218.

Division Bench cases reported as 2012 (4) MPLJ 388 and 2003(3) MPLJ 368 – **approved**.

Significant Paragraph Nos: Paragraphs 25 to 32.

Judgment Reserved on : 27.07.2017

Delivered on : 04 .09.2017

J U D G M E N T
(04-09-2017)

Per : Hemant Gupta, Chief Justice:

The matter has been placed before this Bench in terms of an order passed by a Division Bench of this Court on 29.06.2017 for opinion of the Larger Bench on the following questions:-

> "(1) Whether this Court in exercise of power of judicial review can refer the matter to a Court chosen Expert?
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> (2) Whether in exercise of power of judicial review, this Court can act as Court of appeal to take a different view than what has been finalized as the model answer key by the Examining Body?

> (3) Any other question, which the Larger Bench may think it appropriate at the time of hearing on the basis of assistance of the learned counsel for the parties."

2. The said questions arises out of the fact that a Division Bench of this Court in a judgment reported as **2014 (3) MPLJ 84 (Chanchal Modi v. State of M.P. And another)** substituted the Model Answer Key finalized by the Public Service Commission on the basis of opinion of a Former Chief Justice of this Court after the matter was referred for his opinion.

3. A perusal of the judgment of this Court in **Chanchal Modi's case** shows that the Public Service Commission sought opinion of a Former Judge of this Court, who did not find any error in the Model Answer Key. But this Court sought an opinion from a Former Judge of the Supreme Court for the reason that the opinion of the former Judge is not supported by reasons. However, the Hon'ble Judge refused to give opinion. Thereafter, this Court referred the matter to a Former Chief Justice. The former Chief Justice opined that the Model Answer Key finalized by the Public Service Commission on certain questions is not correct. The Court directed to correct answer key of some questions and directed revaluation of the answer sheets. It is in this background, the Court has held as under:-

> "17. These two judgments are somewhat direct on the point in regard to the power of the Court to interfere in correctness of the answers provided by the expert body. In earlier case,

> quoted above, which is a decision of three Judge bench, the Court has specifically answered that if the answers provided by the examiner or expert body are incorrect to the extent that no reasonable body of men well versed in the particular subject would regard as correct, then the Court can interfere. In our opinion, the principle of law laid down by the Hon'ble Supreme Court in *Kanpur University* (supra) [Kanpur University vs. Samir Gupta (AIR 1983 SC 1230)] is correct and has to be followed in the present case.
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> 18. xxx xxx xxx
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> 19. It is further well settled principle of law that an opinion of the expert is not beyond the peril of judicial review and it would certainly not be so when the statutory authority transgresses its jurisdiction. It is held by the Hon'ble Supreme Court in the case of *ICFAI vs. Council of the Institute of Chartered Accountants of India*, reported in (2007) 12 SCC 210 and in the case of *Vasu Dev Singh vs. Union of India*, reported in 2006 (12) SCC 753."

4. It is in this background, the Division Bench was not in agreement with the view expressed by the Bench in **Chanchal Modi's** case and therefore the matter has been referred to the Larger Bench.

5. The challenge in the writ petition is to the result of the post of Taxation Assistant for which an advertisement was issued in the month of March, 2010 for filling up of 275 posts, as up-dated, by Madhya Pradesh Public Service Commission (for short "the Commission"). As per the Scheme of examination, there were two question papers of objective type; one in the subject of General Studies of 150 marks and other of Commerce of 300 marks. The examination was conducted on 25.07.2010.

The appellant was successful in the examination and was called for viva-voce test on 18.01.2011.

6. Since the appellant was not appointed in terms of the final result declared, he sought information in respect of his attempt in the examination, which was accepted and total marks in both the written papers were supplied.

7. The appellant filed a writ petition before this Court. In terms of direction issued, the answer-sheets of the appellant and model answer sheets have been provided on 06.06.2012. The grievance of the appellant is that after cross-checking and comparing the answers attempted by the appellants with authentic books and literature in this regard, he found that some of the Answer Keys have been wrongly set in the model answer sheet and thus he has sustained loss of 18 marks. He has disputed the answer key of eight questions in the subject of General Studies and 5 in Commerce.

8. The stand of the Public Service Commission in the reply is that originally Model Answer Keys are prepared by setters and Committee of Experts in all subjects. The model answers have been examined and have been found to be correct except question No.99 in the subject of Commerce Second Paper and Question No.49 in General Studies. The answer-sheets have been examined as per corrected model answers after verification from a Committee of Experts. It was stated that

the report of Committee will be placed for perusal of the Court at the time of final hearing. It is also pointed out that there was no negative marking; therefore, final result is not affected.

9. The writ petition filed by the appellant was dismissed on 15.07.2016 wherein, the appellant relied upon a judgment of this Court in **Chanchal Modi's** case. The writ petition was dismissed *inter alia* on the ground the persons appointed in pursuance of the selection process have not been impleaded as party as vitally affected person and secondly that there is no report of expert that the model answers were palpably wrong and that the life of the panel has exhausted much before the filing of the petition therefore upsetting settled position will not be in the interest of justice.

10. Learned counsel for the appellant relies upon an interim order passed in W.A. No.439/2012 in **Chanchal Modi's case** on 24.01.2013. The Division Bench remitted the matter to a Former Judge of Supreme Court holding that if answers finalized by the Public Service Commission is *per se* illegal, then this Court has jurisdiction to intervene in the matter as laid down by the Hon'ble Supreme Court in **Kanpur University, Through Vice-Chancellor and Others v. Samir Gupta and Others (1983) 4 SCC 309**. It is thus contended that similar direction is required to be issued in the present appeal as well.

11. It is contended that the appellant is seeking intervention of this Court for finalization of Model Answer Key by an Expert or Committee of Experts so that a candidate who has answered the questions correctly is not deprived of the selection. Reliance is placed upon **Samir Gupta's** case wherein, while examining the multiple choice questions, the Court held as under:-

> "16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the 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. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.
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> 17. xxx xxx xxx
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> 18. If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problems are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. *Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters.* Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must

know the meaning of the scientific terminology and the art of translation. Fourthly, 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. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. *Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it.*"

(Emphasis supplied)

12. It is argued that in view of the aforesaid judgment, in exercise of power of judicial review, this Court should refer the matter to the Committee of Experts to examine the model answer key finalized by the Public Services Commission as some of the answers are palpably wrong. It is contended that the appellant was given time to submit objections to the model answer key finalized by the Commission but such objections could not be supported by any reason or document and therefore an appropriate opportunity of hearing should have been granted to the Objectors to explain that the model answer is not correct. It is also argued that in terms of Section 45 of the Evidence Act, the opinion of Experts on a question of science and art is relevant, therefore, the opinion of Expert is required to determine the correctness of the answer key finalized by the Commission. It is also argued that keeping in view the provisions of Order 26 Rule 10A of Code of Civil Procedure, the Court should refer the matter for scientific investigation as such investigations

in the matter of correctness of answer key cannot be conveniently conducted by the Court. The appellant relied upon the judgments reported as **(2007) 12 SCC 210 (Institute of Chartered Financial Analysis of India and others v. Council of the Institute of Chartered Accountants of India and others);** and, **(2006) 12 SCC 753 (Vasu Dev Singh and Others v. Union of India and Others)** in support of the contention. The reliance has also been placed be upon a Single Bench judgment of this Court in **Rekha Sachdev vs. State of Madhya Pradesh and Others** passed in W.P.No.1506/2012(S) on 07.12.2012 wherein this Court has directed re-tabulation of entire result of the preliminary examination as there were wrong questions and marks have been awarded on the basis of wrong answers to the candidates. The selection in the said case was of M.P. Civil Services Commission 2010.

13. On the other hand, learned counsel for the State refers to a judgment **(2001) 3 SCC 328 (Buddhi Nath Chaudhary and others v. Abahi Kumar and others); (2010) 6 SCC 759 (H.P. Public Service Commission v. Mukesh Thakur**); **2003 (3) MPLJ 368 (Neha Indurkhya v. M.P. Board of Secondary Education, Bhopal)"; (2000 MPHT 95) Pranshu Indurkhya vs. State of MP and others**; Karnataka High Court Judgment reported as **2004 (3) Karnataka Law journal 218 (Dr. Praveen Kumar I. Kusubi Vs. Rajiv Gandhi University of Health Sciences and Others);** and, a judgment of Division Bench of Patna High Court in L.P.A. No.1235/2016 decided on 4th October, 2016

reported in **2016 SCC Online Pat 5800 (Ashutosh Kumar Jha and others vs. The of Bihar & Others)** in support of the plea that the answer key finalized by the experts should not be interfered with in exercise of power of judicial review as the opinion of the experts has to be respected and this Court in exercise of power of judicial review under Article 226 of the Constitution of India cannot substitute the opinion of Experts either by itself or seeking an opinion of a Court appointed Expert. It is contended that neither Court has expertise or the resource to choose experts of the subject and to seek an opinion when the Commission, a specialized examining body having a pool of experts in different subjects, is competent to verify the correctness of Model Answer Keys. In the present case, the Model Answer Key was examined by Committee of Experts and such Committee of Experts has found two questions to be incorrect; one in General Studies and one in Commerce. Therefore, in exercise of power of judicial review this Court is not called upon to appoint another expert to examine the Model Answer Key finalized by the Commission. In addition thereto, the reliance is placed upon Supreme Court judgment report as **(2008) 1 SCC 683 (Divisional Manager, Aravali Golf Club and Another v. Chander Hass and Another),** wherein the scope of interference in exercise of writ jurisdiction has been delineated**.**

14. We have heard learned counsel for the parties.

15. Learned counsel for the appellant could not refer to any judgment of the Hon'ble Supreme Court wherein the Court has interfered with the model answer key on the basis of opinion of a Court appointed Expert. However, it is argued that in terms of Section 45 of the Evidence Act and the provisions of Order 26 Rule 10A of CPC and also in exercise of inherent writ jurisdiction of this court, to do complete justice, this Court has jurisdiction to appoint an Expert and direct the Commission to re-tabulate result on the basis of opinion of such Expert. As mentioned above, the appellant derives support in **Samir Gupta's** case.

16. The reliance of the Appellant is upon the Judgment in ***Institute of Chartered Financial Analysts of India case (Supra),*** wherein the court held as under:-

> **"35.** Interpretation of law is the job of the superior court. An opinion of an expert is not beyond the pale of judicial review. It would certainly not be so when the statutory authority transgresses its jurisdiction. A decision taken in excess of jurisdiction would render the same a nullity. (**See**: *Vasu Dev Singh* v. *Union of India – (2006) 12 SCC 753*)

17- In **Buddhi Nath Chaudhary**'s case (supra), the appointment as Motor Vehicle Inspector conducted by Bihar Public Service Commission was subject matter of challenge before the Patna High Court. The High Court directed the matter to be considered by the Transport Commissioner. The Supreme Court held that if the selection of the candidates was improper, the same should have been set aside with appropriate directions to redo the process of selection, but the Transport

Commissioner cannot be entrusted with the process of examining the qualification of the candidates. It was held as under:-

> "5. We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner."

18. In **Mukesh Thakur's** case, one of the question examined was whether it is permissible for the Court to take upon itself the task to examine discrepancies and inconsistency in question paper and evaluation thereof assigned to examiner – selection board. The Supreme Court held that the Court cannot take upon itself the task of statutory authority. It was held as under:-

> "20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly,

> when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. ”

19. The Court also held that in the absence of any provisions under the Statute or statutory Rules and Regulations, the Court should not generally direct re-evaluation. Reference was made to **(1984) 4 SCC 27** (**Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**); and, **(2004) 6 SCC 714 (Pramod Kumar Srivastava v. Bihar Public Service Commission**) and other judgments.

20. In a judgment reported as **(2014) 14 SCC 523 (Central Board of Secondary Education through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination and others v. Khushboo Shrivastava and others),** the Supreme Court held that the High Court in exercise of power under Article 226 of the Constitution could not have substituted its own views of the answers of the candidates for that of the examiners and thus High Court has exceeded its power of judicial review under Article 226 of the Constitution. The Court held as under:-

> “11. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own viwes for that of the examiners and

awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (1984) 4 SCC 27) has observed: (SCC pp. 56-57, para 29)

> "29. ….....As has been repeatedly pointed out by this Court, the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grassroots problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded."

21. In another judgment reported as **(2007) 8 SCC 242 (Secy. W.B. Council of Higher Secondary Education v. Ayan Das and others)** considering the **Samir Gupta's** case it was found that revaluation is a rarity and can be done only in exceptional cases. The Court held as under:-

> "11. Same would be a rarity and it can only be done in exceptional cases. The principles set out in *Maharashtra Board* case [(1984) 4 SCC 27] has been followed subsequently in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* [(2004) 6 SCC 714], *Board of Secondary Education*

> *v. Pravas Ranjan Panda* [(2004) 13 SCC 383] and *President, Board of Secondary Education v. D. Suvankar* [(2007) 1 SCC 603].
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> 12. In view of the settled position in law, the orders of the learned Single Judge and the Division Bench cannot be sustained and stand quashed."

22. The Division Bench of this Court in a case reported in **2012 (4) MPLJ 388 (Radika d/o Vinay Kumar Dubey and others v. Professional Examination Education Board, Bhopal and another)** followed the earlier judgment of Division Bench reported as **2003 (3) MPLJ 368** (**Neha Indurkhya v. M.P. Board of Secondary Education, Bhopal**) that when an Expert body has already examined the questions, it is not open for the Court to interfere into the matter. The Court held as under :-

> "12. Thus, in our considered view, when an expert body has already examined the questions, it is not open for the Courts to interfere into the matter. A Division Bench of this Court at Jabalpur in the case of Ankit Tiwari vs. State of M.P. and another (supra) has already dealt with the matter and has reached to the conclusion that in view of the law laid down by the Supreme Court in the case of Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. and others vs. Khushboo Shrivastava and others, Civil Appeal No. 7024 of 2011 decided on 17-8-2011 no interference is needed in the matter. We find no ground to take a different view. It is now well settled that the Court should not interfere in matters involving academic expertise. It would not be right for the Court to sit in judgment over the decision of the University relating to the academic question because it is not a matter on

> which the Court possesses any expertise. It is wise and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally are. See – Rajendra Prasad Mathur vs. Karnataka University and another, 1986 (suppl) SCC 740. The University of Mysore vs. C.D. Govinda, AIR 1965 SC 491, Tariq Islam vs. Aligarh Muslim University, 2001(8) SCC 546."

23. The Division Bench of Patna High Court in **Ashutosh Kumar Jha's** case held that it is not permissible for the High Court in exercise of powers of judicial review to take upon itself a task of constitutional/statutory bodies. The appointment of an Expert is for aid of the Court and therefore, the question whether the High Court reexamines a question itself or through an Expert, it is impermissible for the High Court to take upon the task of a Commission. The Court held as under:-

> "30. Mr. Lalit Kishore, learned Senior Counsel, appears to be right in his submission while placing his reliance on the Supreme Court's decision, in *Mukesh Thakur* (supra), in order to make out a case that this Court, in exercise of power of judicial review under Article 226 of the Constitution of India, may not got into the correctness or otherwise of the wisdom of the *Experts Body*, which has been accepted by the Commission. In our considered view, it is not permissible for the High Court, in exercise of power of judicial review under Article 226 of the Constitution of India, to take upon itself the task of the constitutional/statutory bodies."

The Court concluded as under:

> "43. In the background of aforementioned discussions, we conclude as follows:

(i) The appellants have failed to plead and make out a case that the action of the respondent-Commission of deletion of certain questions, which, according to them, were wrongly deleted and *Model Key Answers,* which, according to appellants, were incorrectly suggested by the *Expert Body,* in any manner, prejudiced their chance of being selected inasmuch as they have maintained silence with respect to their own response to such questions in the examination hall or at the time of availing opportunity of raising objections invited by the Commission after the *preliminary test* was held.

(ii) xx xx xx

(iii) xx xx xx

(iv) In view of Supreme Court's decision, in *Mukesh Thakur* (supra) and the decision of this Court, in *Ravindra Kumar Singh* (supra), we are of the considered view that it is not permissible for this Court to take upon itself the task of examiner/Selection Board and examine discrepancies and inconsistencies in the question papers and evaluation thereof. The said decision of the Supreme Court, in *Mukesh Thakur* (supra), went unnoticed by the Division Bench of this Court, in *Kumod Kumar* (supra), relied upon on behalf of the appellants."

24. A Single Bench of Karnataka High Court in a judgment in the case of **Dr. Praveen Kumar I. Kusubi** (supra) examined the scope of interference in the answer-key finalized by the University. It was held that in academic matter the University's word is the last word. The Court has neither the necessary expertise nor infrastructure to go into the correctness of such decision. It was held as under in paragraph 20:-

> "20. As long as the procedure adopted in evaluation of these answer scripts are not arbitrary, reasonable, consistent, then the system cannot be found fault with. As long as all the students who took the examination are treated equally, then they cannot have any grievance whatsoever. It is settled law that in academic matter, the University's word is the last word. Court neither has the necessary expertise nor infrastructure to go into the correctness of such decision. This Court cannot sit in judgment over those findings and examine the material on record and arrive at its own conclusion as a Court of appeal. It is also not possible in such circumstances to go on appointing the committees after committees to go into the correctness of the decision of the committee. There won't be any end to this exercise. Therefore, a key answer should be assumed to be correct unless it is proved to be wrong. It should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. If it is a case of doubt, unquestionably key answer is to be preferred. Only if it is beyond the realm of doubt, possibly judicial review is permissible."

25. The argument of learned counsel for the appellant that in view of Section 45 of the Evidence Act and on the basis of principles of Order 26 Rule 10A of CPC, the Court is enjoined to seek opinion of the experts is not tenable. The role of this Court while exercising the power of judicial review is not to collect evidence for and against any party. This Court in exercise of power of judicial review examines the decision making process and not the decision itself. Reference may be made to

Tata Cellular v. Union of India, ***(1994) 6 SCC 651*****,** wherein, it is inter-alia held that the power of judicial review is in respect of decision making process. The Court held as under:-

> "74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.
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> 75. In *Chief Constable of the North Wales Police* v. *Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:
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> > "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.
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> > * * *
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> > Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."
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> In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:
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> > "This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away

> from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R.* v. *Panel on Take-overs and Mergers, ex p Datafin plc* (1987) 1 All ER 564, Sir John Donaldson, M.R. commented:

> "An application for judicial review is not an appeal."

In *Lonrho plc* v. *Secretary of State for Trade and Industry* (1989) 2 All ER 609, Lord Keith said:

> "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin v. Entry Clearance Officer* (1983) 2 All ER 864, Lord Fraser observed that:

> "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made…. Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In *R.* v. *Panel on Take-overs and Mergers, ex p in Guinness plc* (1990 1 QB 146: (1989) 1 All ER 509, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will,

> under the guise of preventing the abuse of power, be itself guilty of usurping power."

26. Therefore, while exercising the power of judicial review, this Court is not to take upon itself the revaluation of Model Answer Key either itself or through Court appointed Expert, who is none else but a delegate of the Court. The Court in exercise of power of judicial review, if sufficient material exists to return a finding that Model Answer Key is palpably incorrect that no reasonable person would find the same to be acceptable, than the Court could direct the examining body to re-examine the answer key but cannot take over the function of the Commission in finalizing the answer key itself.

27. The Hon'ble Supreme Court in a judgment reported as ***Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683*** that in the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State. The Court held as under:-

> **"17.** Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.
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> **18.** Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen* (2007) 1 SCC 408;

and *S.C. Chandra* v. *State of Jharkhand* (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State—the legislature, the executive and the judiciary—must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

> "When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
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> *Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.*
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> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of

> enacting laws, that of executing the public resolutions, and of trying the causes of individuals."
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> (Emphasis supplied)
>
> We fully agree with the view expressed above. Montesquieu's warning in the passage abovequoted is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for "overreach" and encroachment into the domain of the other two organs."

28. The scope of interference in academic matters has been examined by the Supreme Court in many cases. In ***Basavaiah (Dr.) v. Dr. H.L. Ramesh, (2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640*****,** the Court held as under:-

> "38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.

29. Supreme Court in another judgment reported as ***University Grants Commission v. Neha Anil Bobde, (2013) 10 SCC 519*****,** held that in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts the Court. The Court held as under:

> "31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore* v. *C.D. Govinda Rao* AIR 1965 SC 491; *Tariq Islam* v. *Aligarh Muslim University* (2001) 8 SCC 546; and, *Rajbir Singh Dalal* v. *Chaudhary Devi Lal University* (2008) 9 SCC 284, has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps *as it may think fit* for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

30. Thus, we are of the opinion that the judgment of this Court in **Chanchal Modi**'s case (supra) does not lay down correct law.

31. In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to court appointed expert as the courts have a very limited role particularly when

no mala fides have been alleged against the experts constituted to finalize answer key. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.

32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power.

33. The third question does not arise as no other question was said to be arising in the present reference.

34. The matter be placed before the Bench as per roster in view of the opinion of this Court on the questions of law having been rendered in the above manner.

(HEMANT GUPTA)
CHIEF JUSTICE

(C.V. SIRPURKAR)
JUDGE

(VIJAY KUMAR SHUKLA)
JUDGE

Sudesh/aks