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20.12.2018 Item No. 09

Ct. No.4

AP

**W.P. 13937 (W) of 2018**

**Washim Akram Hossain**

**-Versus – The Union of India & Ors.**

Mr. Subir Sanyal Mr. Tanmay Mukherjee

..... For the petitioner

Mr. Sougata Bhattacharya Mr. Sunit Kumar Roy

..... for the MCI

Mr. Supratic Roy Mr. D. N. Maiti

Mr. U. S. Menon Mr. Abhirup Chakraborty ..... For the CBSE

Ms. Chama Mookherji Ms. Monika Pandit

..... for the State

Mr. Vipul Kundalia Mr. Subhankar Chakraborty Mr. Saptarshi Bhattachrjee

..... for Union of India

Petitioner took National Eligibility cum Entrance

Test, Under Graduate 2018, (NEET-UG, 2018) under  
aegis of Central Board of Secondary Education (CBSE).

He first applied to be added as party in another  
candidate's writ petition, withdrew the same to file this  
writ petition by himself. He has sought compensatory  
marks being awarded to him by reason of errors in  
translation of questions in the test paper. He took the  
test in Bengali and thereby suffered by reason of such  
errors. The writ petition was heard on several dates and today.

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Mr. Sanyal learned advocate appearing on behalf  
of petitioner had made submissions to demonstrate  
errors of translation. As a result of several hearings his  
client's final case is reliance upon **judgment dated 13<sup>th</sup>**

**June, 2018** of Supreme Court in **Writ Petition (Civil)**

**551 of 2018 (Disha Panchal & Ors. Vs. Union of**

**India, the Secretary and Ors.)**. He submits, Supreme

Court had applied a formula by which 9.90

compensatory marks were added by reason of

computers in the online test being dysfunctional and

consequences thereby. He relies on **order dated 25<sup>th</sup>**

**January, 2018** in **Writ Petition (Civil) 390 of 2017**

**(Sankalp Charitable Trust vs. Union of India & Ors.)**,

wherein Supreme Court had quoted its earlier **order**

**dated 10<sup>th</sup> August, 2017**. The extract is reproduced

below:-

*“Heard Ms. Indira Jaising, learned senior counsel along with Mr. Harsh Parashar, learned counsel for the petitioners, Mr. Ajit Kumar Sinha, learned senior counsel for Union of India, Mr. Maninder Singh, learned Additional Solicitor General and Mr. Tara Chandra Sharma, learned counsel for the Central Board of Secondary Education (CBSE) and Mr. Gaurav Sharma, learned counsel for*

*the Medical Council of India.*

*Having heard learned counsel for the parties at length, we are of the considered opinion that the NEET examination conducted by the CBSE should be without any kind of ambiguity. **Be it stated that the question papers are set in English, Hindi and regional languages. The picture that had been projected before us is that there is difference in the question papers and,***

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*therefore, CBSE applies the principle of equivalent difficulty. We are disposed to think that it would be appropriate for CBSE the question papers set in English, Hindi or in regional languages should be the same. It shall facilitate the students' community to choose the language they intend to adopt to answer the questions and in that event the principle of uniformity shall be appositely maintained for all the categories of students. When there is appropriate translation, the*

*identity and uniformity of the question papers will be in the realm of certainty.*

*We have been apprised that it is difficult to translate certain areas in regional languages pertaining to medical terms. In such circumstances, it shall be within the domain of the experts to use the medical terms as they are. It relates to the experience of the experts.”*

(Emphasis supplied).

He had obtained for his client interim order for keeping one seat vacant in a Government College. He seeks interference for compensatory marks being given to his client, for him to qualify for admission and be allotted that seat kept vacant.

Mr. Menon learned advocate appearing on behalf of CBSE had submitted, similar point of challenge was simultaneously under consideration before Supreme Court and hence hearing of this writ petition stood adjourned. He relies on the case since decided as in **Civil Appeal 11230 of 2018 (Central Board of Secondary Education and another Vs. T. K.**

**Rangarajan & Others)** dealt with by Supreme Court in its **judgment dated 22<sup>nd</sup> November, 2018**. He submits,

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Supreme Court did not uphold impugned judgment of Madras High Court, by which compensatory marks were awarded on all questions erroneously translated to Tamil, to students who took the test in that language. Said Court by the judgment set aside the judgment. Hence, Supreme Court has said no to award of compensatory marks. What said Court did was give directions for better translation in translated question papers of tests to follow. Mr. Bhattacharya, learned advocate appearing on behalf of Medical Council of India (MCI) had adopted submissions made by Mr. Menon and on outcome of hearing today submits, if enquiry made by Court has resulted in finding of a few questions containing errors of translation, even if petitioner is awarded marks therefor, he would not achieve such tally to improve his rank over last candidate having got

admission. Hence, he submits, petitioner has no relief in the facts and circumstances.

Court delved into realm of academics in the facts and circumstances to ascertain veracity of petitioner's allegation regarding loss of time as impinged on his ability to correctly answer questions, as he understood, having taken the test in Bengali. Mr. Sanyal identified seven erroneously translated questions in the test paper. Some probe in the context was required so Court formulated its questions with regard to five of the identified seven said to be erroneously translated questions. Here it would be convenient to reproduce text of order dated 3<sup>rd</sup> December, 2018:-

*“Respondents in this writ petition had obtained adjournment of hearing on ground that*

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*similar issue was pending before Supreme Court in, inter alia, Civil Appeal 11230 of 2018 (Central Board of Secondary*

***Education and another Vs. T. K.***

***Rangarajan & Others***). That civil appeal and others were allowed by **judgement dated 22<sup>nd</sup> November, 2018** copy of which has been handed up. Madras High Court had awarded four marks against each erroneously translated question, which were 49 in number. Thus effect of impugned judgement before Supreme Court was that a student who attempted NEET-UG, 2018 Examination in Tamil got added to his/her score 196 marks irrespective of whether the student had attempted all or any of those questions. In **CBSE (supra)** Supreme Court while setting aside judgement impugned therein said in paragraph 20 as follows:

“20. The list of students who opted to give the NEET-UG, 2018 Examination in Tamil after the addition of 196 marks is startling. For instance, a student who got 260 marks

has been awarded a total of 456 marks. A student with 137 marks becomes entitled to 333 marks and the student who got 92 marks becomes entitled to 288 marks. Even students who have 21 marks been entitled to 217 marks. It is clear that the High Court lost sight of the primary duty of Court in such matter that is to avoid arbitrary results.”

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*Mr. Sanyal, learned advocate appearing on behalf of petitioner submits, point of challenge in his client's writ petition is regarding compensatory marks on equal difficulties presented to examinees taking the test in English and translated languages. By reason of erroneously translated questions his client had to spend more time in comparing those questions with English version. Therefore, his claim for compensatory marks.*



*Compensatory marks were awarded by Supreme Court in judgement dated 13<sup>th</sup> June, 2018 on writ petition (civil) 551 of 2018 [Disha Panchal & others Vs. Union of India, the Secretary and others]. CBSE (supra) has no application to challenge of petitioner. He points out seven questions indicating, according to him, erroneous translation and thereby to demonstrate requirement of more time by his client, as an examinee, compared to a candidate who attempted the same test in English. The questions are numbers 14, 30, 45, 121, 148, 163 and 165.*

*The Board must inform Court following regarding these questions:-*

*(i) In question 14 reflection and refraction of unpolarised light was put to examinees.*

*Board will inform whether reflection and*

*refraction of light, incident on a plain surface, is*

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*possible. If yes, whether any answer option would correctly answer that question with reference to light as opposed to unpolarised light?*

*(ii) In question 30 while the English question asked for rate of production of heat, translated question asked for measure of kinetic energy. Board will inform whether answer options given in the question contained correct answer to the question put in relation to kinetic energy?*

*(iii) 4<sup>th</sup> answer option to question 121 states upright pyramid of numbers of stages. Key answer, as submitted, is inverted pyramid of bio-mass. Board is to answer what is upright pyramid considering it to have key answer as inverted pyramid, whether upright pyramid not*

*being inverted pyramid, is a pyramid in a different position than usually found?*

*(iv) By question number 163 in English, bond dissociation energy was asked for.*

*Translated question in Bengali asked for bond association energy. Board is to inform Court whether of answer options given in that question, there is any answer option which is correct for the question if had been for bond association energy?*

*(v) Board will inform Court whether density of iron at room temperature (bcc structure) or its density at 900 degrees centigrade (fcc*

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*structure) can be expressed other than as a fraction?*

*Above information sought from CBSE is expected on adjourned date, urgency since challenge relates to admission.*

*Registrar General will serve a copy of this order, along with copy of the question paper handed up to Court, upon Calcutta University, through its Vice-Chancellor which is requested to assist in adjudication of this writ petition by also supplying information sought, as perceived by Court to be in its domain, on adjourned date.*

*List on 10<sup>th</sup> December, 2018 under heading 'for orders'.*

Calcutta University answered questions formulated by Court while CBSE could not. Prayer for further adjournment made on behalf of CBSE, for its experts to answer was rejected since challenge relates to admission in course study already commenced in current academic year. Head of Departments of Physics and Chemistry and Professor, Department of Environmental Science, all of University of Calcutta answered the questions formulated. The answers given

are reproduced below:-

A. *“My observation regarding question no.14*

*Reflection and refraction of light incident  
on a plane surface is possible.*

*Correct answer is available in the list of  
options.*

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*My observation regarding question no.30*

*The translated answer is not correctly  
translated from the English version.*

*However if we take the translated  
version as it is, then the list of answers also  
have the correct answer in it.*

*Sd/- Anindya Datta 8.12.2018 Associate Professor Head of the  
Department of Physics University of  
Calcutta”*

B. *“Q No. 121 – The Answer will be option 1-*

*Inverted pyramid of biomass.*

*Note a. The data given in the question is related to biomass. As per the data in the question the secondary consumer : 120g, Primary consumer : 60g and Primary producer 10g.*

*The given data perfectly fits as inverted pyramid of biomass. The unit of the data is also to be noted.*

*b. Pyramid of biomass – upright – when the biomass of producers is at the maximum. The given data given in the Q No. 121 does not confirm this concept.*

*Sd/- Dated 8.12.2018 PROFESSOR Dept of Environmental Science University of Calcutta”*

*C. “Q No. – 163*

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*Query : i) In English version “bond dissociation energy” was asked for – In the*

*given options answer is there*

*(ii) In Begali version “bond association energy” was asked for (bandhan niogito sakthi) – In the given options answer is not cropt in.*

*‘Dissociation energy’ is the reverse of ‘association energy’ only interm of sign.*

*Q No. 165*

*Query : Whether ‘density’ can be expressed other than as a fraction – Density can be expressed in terms of fraction, decimal etc.*

*Sd/- (Asish Ranjan Das) HOD, Chemistry, CU,*

*08/12/2018”*

Facts ascertained by Court are, inter alia, the test paper contained 180 questions. Marking was on basis of

award of four marks for correct answer and negative (-1) mark for incorrect answer. Time given for attempting answers to the questions was 180 minutes. Petitioner had attempted question 179. Aggregate of questions attempted by petitioner is 148. Also seven questions formulated above contains errors of translation as urged by petitioner but Court found five.

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Question 14 in the test is reproduced below:-

*“14. Unpolarised light is incident from air on a plane surface of a material of refractive index ‘ $\mu$ ’. At a particular angle of incidence ‘ $i$ ’, it is found that the reflected and refracted rays are perpendicular to each other. Which of the following options is correct for this situation?*

*(1) Reflected light is polarised with its electric vector parallel to the plane of incidence*

*(2) Reflected light is polarised with its electric vector perpendicular to the plane of*



*incidence*

$$(3) i = \tan^{-1} (1/\mu)$$

$$(4) i = \sin^{-1} (1/\mu)''$$

Petitioner complains translated question was with regard to light as not clarified by the word 'unpolarised'. Reference to question formulated with regard to this question and answer by Calcutta University reveals reflection and refraction of light incident on a plain surface is possible and correct answer for that situation is also available in answer options. Petitioner attempted this question but gave wrong answer.

Question 30 in the test paper is reproduced below:-

*“30. A small sphere of radius ‘r’ falls from rest in a viscous liquid. As a result, heat is produced due to viscous force. The rate of production of heat when the sphere attains its terminal velocity, is proportional to*

$$(1) r^3$$

$$(2) r^2$$

(3)  $r^4$

(4)  $r^5$

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Petitioner complains translated question is in relation to kinetic energy while question set in English asked for rate of production of heat. Calcutta University says, in answer to question formulated in this regard, if translated question is to be answered from answer options given, correct answer option is also there. Petitioner attempted this question and got it wrong.

Question 121 in the test paper is reproduced below:-

*“ 121. What type of ecological pyramid would be obtained with the following data?*

*Secondary consumer : 120 g*

*Primary consumer : 60 g*

*Primary producer : 10 g*

*(1) Inverted pyramid of biomass.*

*(2) Pyramid of energy.*

*(3) Upright pyramid of biomass*

*(4) Upright pyramid of numbers”*

The formulated question and answer thereto need not detain Court. Petitioner attempted the question and got it right.

Question 163 of the test paper is reproduced below:-

*“163. The bond dissociation energies of  $X_2$ ,  $Y_2$  and  $XY$  are in the ratio of 1 : 0.5 : 1  $\Delta H$  for the formation of  $XY$  is  $-200 \text{ kJ mol}^{-1}$ . The bond dissociation energy of  $X_2$  will be*

*(1)  $200 \text{ kJ mol}^{-1}$*

*(2)  $100 \text{ kJ mol}^{-1}$*

*(3)  $400 \text{ kJ mol}^{-1}$*

*(4)  $800 \text{ kJ mol}^{-1}$ ”*

Petitioner complains translated question asked for bond association energies while question set in English asked for bond dissociation energies. Calcutta University says,

with reference to formulated question in relation to this question, translated question does not have its answer as an answer option in options given. Petitioner attempted this question and got it wrong.

Question 165 of the test paper is reproduced below:-

*“165. Iron exhibits bcc structure at room temperature. Above 900°C, it transforms to fcc structure. The ratio of density of iron at room temperature to that at 900°C (assuming molar mass and atomic radii of iron remains constant with temperature) is*

(1)  $\sqrt[3]{2}$

(2)  $4\sqrt[3]{2}$

(3)  $1/2$

(4)  $3\sqrt[3]{4\sqrt{2}}$ ”

Petitioner complains translated question asked for density of iron at 900°C while question set in English asked for ratio of densities of iron between room

temperature and at 900°C. Question formulated in this regard was with intent to ascertain whether density of iron (at various temperatures) could be expressed other than as a fraction. Calcutta University has said density can be expressed in terms of fraction, decimal etc. A fraction can be converted to decimal. Petitioner, it can be inferred, attempted to answer (wrongly) in chosen answer option as describing density of iron at 900°C. All answer options are in fraction. Density of iron is expressed as a fraction. Petitioner can be taken to have

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not looked to answer a question of ratio of density.

Concise Oxford Dictionary, 11<sup>th</sup> Edition, gives meaning of 'ratio' to be "*the quantitative relation between two amounts showing the number of times one value contains or is contained within the other*". So ratios are expressed by numbers with punctuation mark 'colon' in between.

Court has already found petitioner attempted

question 179 in the test paper containing 180 questions.

Court infers petitioner perused all questions within time to answer them as he attempted question 179. At this point Mr. Sanyal submits, his client took the test for course study MBBS. It is his instruction that his client first attempted questions in the test paper that were of subject biology, then questions of subject chemistry and last, questions in subject physics. Hence, Court should not infer that his client had full opportunity or did not lose time in attempting to answer the erroneously translated questions.

It is because of errors in translation that Court has enquired to best infer situation in which petitioner was put in taking the test. Because of errors in translation and on above analysis Court is convinced petitioner should be awarded marks for those questions in the five above questions that he attempted and got wrong.

Inference for being convinced is, petitioner appears to have read all 180 questions and answered those that he

could. He gave wrong answers to erroneously translated questions. Denying him marks on contention he ought to have compared with the questions set in English would be unjust. Firstly, because an examinee, in examination to find out depth of knowledge, will not

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readily think the question is wrong. Second, comparison would then present such examinee with more difficulty.

Petitioner wrongly attempted four of the five questions having correctly answered one of them. There will be direction upon the Board to award 16 marks to petitioner for these four questions and in addition four to offset negative marking on those questions. Petitioner will thus get addition of twenty marks to his tally of marks. With this aggregate petitioner will find further relief, from appropriate authority, if available to him on the basis of improved score.

State is directed to ascertain petitioner's rank on his increased marks tally, whether it is more or same as

that of last candidate given admission in petitioner's category. In event petitioner is found to achieve this position on increased marks, he shall be given admission in the vacant seat kept vacant pursuant to interim order made in this writ petition. If otherwise, he will not get admission. The seat going vacant and a candidate deprived of it will be an unfortunate consequence of the errors in translation. Mr. Bhattacharya submits, in event petitioner is to be given admission, required attendance has to be achieved as per Graduate Medical Education Regulations, 1997. This will not stand in the way of petitioner getting admission if his increased marks tally gives him required position in relation to last admitted candidate in his category since the authorities obtained several adjournments which ate into available time in current academic year. Order sheet records number of adjournments taken.

Writ petition is disposed of as above.



Mr. Menon prays for stay of operation of this judgment dictated in Court. Prayer is considered and rejected.

**(Arindam Sinha, J.)**