**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**
**SPECIAL CIVIL APPLICATION NO. 14870 of 2015**
**With**
**SPECIAL CIVIL APPLICATION NO. 14877 of 2015**
**With**
**SPECIAL CIVIL APPLICATION NO. 16815 of 2015**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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|---|---|---|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

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SANDHYA NARANBHAI MARU....Petitioner(s)
Versus
SECRETARY - GUJARAT PANCHAYAT & 4....Respondent(s)

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Appearance:
RUCHIR A PATEL, ADVOCATE for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GP/PP for the Respondent(s) No. 1
MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 1 , 3 - 5

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 19/02/2016**

**ORAL COMMON JUDGMENT**

1 Since the issues raised in all the three captioned writ applications are more or less the same, those were heard analogously and are being disposed of by this common judgment and order.

2 The Special Civil Application No.14870 of 2015 is treated as the lead matter. By this writ application, the applicant has prayed for the following reliefs:

> *"10 A. Your Lordships may kindly be pleased to admit and allow the Special Civil Application.*
>
> *B. Your Lordships may kindly be pleased to issue a writ of mandamus, or writ in the nature of mandamus or any other appropriate writ, order or direction, to quash and set aside the provisional recommendation list as well as the final recommendation list declared by respondent no.2 for the post of Talati cum Mantri, Rajkot in accordance with law.*
>
> *C. Your Lordships may kindly be pleased to issue a writ of mandamus, or writ in the nature of mandamus or any other appropriate writ, order or direction to set aside the final answer key and to publish new final list with the corrected answer key, dated 28.08.2015 declared by respondent no.2 in accordance with law.*
>
> *D. Pending admission and final disposal of the petition, Your Lordships may kindly be pleased to stay the appointment made on the basis of the final recommendation list declared by respondent no.2 for the post of Talati cum Mantri, Rajkot in accordance with law.*
>
> *E. Your Lordships may be pleased to pass such other and/or further orders as may be deemed fit, just and proper in the interest of justice."*

3 The facts of this case may be summarized as under:

3.1 The respondent No.2 – Rajkot District Panchayat Service Selection Committee issued a public advertisement for the purpose of recruitment on the post of 'Talati-cum-Mantri'. The advertisement of the examination

to be conducted for the purpose of recruitment was in the form of a Notification issued in all twenty six districts of the State dated 8th April, 2015.

3.2 The applicant filled in an on-line application form for the post of 'Talati-cum-Mantri' on the website of the Gujarat Government – 'On-line Job Application System' called '*www.ojas.guj.nic.in*'.

3.3 The applicant received an examination call letter dated 17th August, 2015 from the District Panchayat Service Selection Committee, Rajkot, with the necessary details of the examination centre, time and date of the examination and the seat number.

3.4 The examination was conducted on 23rd August, 2015. The applicant appeared at Rajkot.

3.5 Thereafter, a provisional answer key was made available on-line on the same day of the examination. The controversy is with respect to the three questions which were asked in the question paper bearing No.58, 71 and 9.



3.6 Question No.58 reads as under:

> *"58. ____ Mount Everest is the highest mountain in the world?*
> *(A) A (B) An (C) The (D) No Article (E) Not attempted."*

3.6 Question No.71 reads as under:

> *"71. Who was the first person to bestow the word Mahatma for Gandhiji?*
> *(A) Ravindranath Tagore (B) Vinoda Bhave (C) Sardar Vallabhai Patel (D) Unknown Journalist (E) Not attempted."*

3.7 Question No.97 reads as under:

> *"97. Which is the longest river in India?*

*(A) Ganga (B) Yamuna (C) Brahmputra (D) Saraswati (E) Not attempted."*

3.8 The petitioner answered the above mentioned three questions as '(C)', '(A)' and '(A)' respectively in the Provisional Answer Key.

3.9 The final Answer Key was declared by the District Panchayat Service Selection Committee, Gandhinagar dated 28th August, 2015 and was shown as '(A)', '(D)' and '(C)' to the above referred three questions.

3.10 It is the case of the applicant that the answers, in the final Answer Key declared, are wrong. It is her case that on account of the same, her result has been affected and needs to be rectified. It is her case that she secured 66.5 marks, whereas the cut-off marks for a candidate of the Scheduled Caste category are 67.3 marks. If the marks for the correct answers said to have been answered by the writ applicant are added, then the final tally would be 70.4 marks and would be sufficient for the selection on the post of 'Talati-cum-Mantri'.

3.11 The picture that emerges is that according to the writ applicant, the correct answer to the question No.58 is (C) i.e. Article "the". So far as the question No.71 is concerned, the correct answer is (A) i.e. "Ravindranath Tagore", and so far as the answer to the question No.97 is concerned, the same is "A" i.e. "Ganga".



3.12 On the other, according to the respondents, the correct answers are "the Mount Everest", "some author" and "Brahmputra" to the questions Nos.58, 71 and 97 respectively.

3.13 The writ applicant wants this Court to look into the correctness of the answer key published by the respondents and take an appropriate decision whether the final answer key with respect to the above three questions is correct or not. The applicant has placed strong reliance on

the decision of the Supreme Court in the case of **Rajesh Kumar and others v. State of Bihar [(2013) 4 SCC 690]**.

4 Normally, the courts will be slow to enter into a controversy which relates to examinations or tests held for recruitment to a particular post. In the matter of examination, the examination authorities must be trusted to hold the examinations in a fair and proper manner and interference by the court must be in the rarest of rare cases where the court is satisfied that the examination has been held in such a manner that it has resulted in arbitrary results so that the examination or the test held and the result declared has not resulted in the test of merit but has left much to the luck or chance of the candidates concerned. There are, however, exceptions to this rule and in exceptional circumstances courts have interfered to grant relief to the meritorious candidates whose merit has been ignored because of improper setting of papers or incorrect answers declared in the key-answer. I may refer to two decisions of the Supreme Court on this question. In the case reported in **AIR 1983 SC 1230 Kanpur University v. Samir Gupta**, the question that arose for determination has been succinctly posed in the first part of the judgment of the learned Chief Justice as follows :-

> "*If a paper setter commits an error while indicating the correct answer to a question set by Him, can the students who answered that question correctly be failed for the reason that though their answer is correct, it does not tally with the answer sent by the paper setter to the University as the correct answer?*"

5 While considering the question, it was observed that none can accuse the teacher of not knowing the correct answer to the question set by him. But occasionally not enough care is taken by the teachers to set questions which are free from ambiguity and to supply key answers which are correct beyond reasonable controversy. The court then

considered the questions and the suggested answers and came to the conclusion that some of the answers given were demonstrably wrong. The Court observed that the key answer should be deemed to be correct unless it is proved to be wrong and that it should not be held to be wrong by a 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 man well versed in a particular subject would regard as correct. If there was a case of doubt, one would unquestionably prefer the key answer. But if the matter is beyond the realm of doubt it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

6 Having found that some of the answers were demonstrably incorrect, the court considered the question as to what relief could be granted to the concerned candidates. The High Court in that case had found that the respondents had not been awarded marks for the questions correctly answered by them though those answers were not in accordance with the answers given by the paper setter in the key answer which were demonstrated to be wrong. The Supreme Court directed that they should be granted those marks and the answer books be reassessed. It was not disputed in that case that if the answer books were reassessed the respondents would be entitled to be admitted to the M.B.B.S. course. In that view of the matter, the Supreme Court confirmed the directions given by the High Court in regard to the reassessment of the particular question and the admission of the respondents to the M.B.B.S. course.

7 Similar situation arose in the case reported in **AIR 1984 SC 1402, Abhijit Sen v. State of U.P.** This was also a case where the key answer to one of the questions was demonstrated to be wrong. The court, after

noticing the judgment of the Supreme Court in Kanpur University case (supra), observed as follows :-

> *"Suffice it to say that this Court has expressed therein a clear and categorical view that if the "key answer' (i.e. the answer which the paper-setter has supplied to the University as the correct answer and which has been fed into the computer) is shown to be demonstrably wrong, that is to say, such as no reasonable body of men well versed in the particular subject would regard it as correct and if the answer given by a student is correct if regard be had to acknowledged text-books or books which the students were expected to read and consult before appearing for the test it would be unfair to penalise the student for not giving an answer which accords with the 'key-answer' that is to say with an answer which is demonstrated to be wrong."*
>
> *After applying these principles, the court, while considering the question as to the relief to be granted, held that in a situation where both the answers, namely, one given by the candidate concerned as well as the key-answer supplied by the paper setter were found to be wrong with reference to the correct answer as determined by the court, no relief could be granted to the concerned candidate. Applying that principle one of the appellants before the Supreme Court was denied any relief because even though the answer in the key-answer supplied by the paper setter was found to be wrong, since the answer given by the appellant was also wrong. He, therefore, could not get any relief. Another student, however, who had given the correct answer which was not in accordance with the answer given in the key-answer, was granted relief because the key answer was found to be demonstrably in-correct."*



8 The principle that emerges from these two decisions is that, if the key answer is shown to be demonstrably wrong and the answer given by the student concerned is correct, the student concerned should not be penalised for not giving an answer which accords with the key-answer, that is to say, with an answer which is demonstrated to be wrong.

9 Let me now look into the decision of the Supreme Court in the case of **Rajesh Kumar (supra**). The Supreme Court took notice of an

erroneous "Model Answer Key" for evaluation of the answer scripts of the candidates who had appeared in a competitive examination. The Supreme Court observed that application of an erroneous "Model Answer Key" for evaluation of answer scripts of candidates appearing in competitive examination was bound to lead to an erroneous results and an equally erroneous *inter-se* merit list of such candidates. I deem fit to quote the entire judgment as under:

> *"3. By an advertisement dated 14th August 2006, applications were invited by the Bihar State Staff Selection Commission from eligible candidates for appointment against 2268 posts of Junior Engineer (Civil) out of which 1057 posts were in the open merit category. The selection process, it appears, comprised a written objective type examination, held by the Staff Selection Commission who drew up a Select List of 210 successful candidates including 143 appellants in these appeals based on the performance of the candidates in the examination. The evaluation of the answer scripts was, however, assailed by 13 unsuccessful candidates, respondents 6 to 18 in these appeals, in CWJC No.885 of 2007. The writ petitioners did not implead the selected candidates as party respondents ostensibly because the petitioners prayed for a limited relief of a writ of mandamus to the Staff Selection Commission to produce the answer-sheets in the Court and to get the same re-evaluated manually by an independent body.*
>
> *4. While the above writ petition was still pending, 35 candidates were appointed as Junior Engineers in Road Construction Department of the Government of Bihar while 144 others were appointed in Water Resources Department. Nine of the selected candidates were appointed in the Public Health Engineering Department taking the total number of those appointed to 188 out of 210 candidates included in the merit list. Posting orders were also issued to all those appointed. Needless to say that since only 210 candidates had qualified for appointment in terms of the relevant Rules, the selection process left nearly 2080 posts of Junior Engineers unfilled in the State.*
>
> *5. In the writ petition filed by the aggrieved candidates, a Single Judge of the High Court referred the "Model Answer Key" to experts. The model answers were examined by two experts, Dr. (Prof.) C.N. Sinha, and Prof. KSP Singh, associated with NIT, Patna, who found several such answers to be wrong. In addition, two questions were also found to be wrong while two others were found to have been repeated. Question No.100 was also*

*found to be defective as the choices in the answer key were printed but only partially.*

*6. Based on the report of the said two experts, a Single Judge of the High Court held that 41 model answers out of 100 were wrong. It was also held that two questions were wrong while two others were repeated. The Single Judge on that basis held that the entire examination was liable to be cancelled and so also the appointments made on the basis thereof. Certain further and consequential directions were also issued by the Single Judge asking the Commission to identify and proceed against persons responsible for the errors in the question paper and the "Model Answer Key".*

*7. Aggrieved by the order of the Single Judge, the appellants filed LPA No.70 of 2008 before the Division Bench of that High Court. By the order impugned in these appeals, the High Court has partly allowed the appeal holding that model answers in respect of 45 questions out of 100 were wrong. The Division Bench modified the order passed by the learned Single Judge and declared that the entire examination need not be cancelled as there was no allegation of any corrupt motive or malpractice in regard to the other question papers. A fresh examination in Civil Engineering Paper only was, according to the Division Bench, sufficient to rectify the defect and prevent injustice to any candidate. The Division Bench further held that while those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. The present appeals assail the correctness of the said judgment and order of the High Court as already noticed earlier.*

*8. It is noteworthy that while the challenge to the selection process referred to above was still pending before the High Court, a fresh selection process was initiated to fill up the available vacancies in which those eligible appeared for a written test on 29th July 2007. This test was held pursuant to advertisement No.1906 of 2006 issued on 29th November 2006. The result of the examination was, however, stayed by the High Court while disposing of the appeal filed before it with a direction to the effect that the same shall be declared only after selection in pursuance of the first examination was completed. With the filing of the present appeals the restraint order against the declaration of the result pursuant to the second advertisement was vacated by this Court by an order dated 30th August 2011 with a direction that those qualified shall be given appointments without prejudice to the rights of the appellants and subject to the outcome of these appeals.*

*9. It is common ground that pursuant to the above direction, a list of 392 selected candidates was sent to the State Government by the Staff Selection Commission for issuing appointment orders in their favour. What is significant is that the writ petitioners, respondents 6 to 18 in these appeals were also declared successful in the second selection and included in the list of 392 successful candidates. That six out of the said respondents have been appointed while the remaining have not chosen to join is also admitted. They have apparently found better avenues of employment.*

*10. When the matter came up before us on 2nd July 2012, it was argued on behalf of the writ petitioners – respondents 6 to 18 by Mr. Gaurav Agrawal that they have no objection to the continuance in office of the appellants in these appeals subject to the condition that the answer scripts of the writ petitioners are re-evaluated with the help of a correct answer key and if they are found to have made the grade, the benefit of appointment earned by them in terms of the 2nd selection process related back to the date when the appellants in these appeals were first appointed, and their seniority determined according to their placement in the merit list. It was in that background that we directed an affidavit to be filed by the Government of Bihar whether it was agreeable to the re-evaluation of the answer scripts of respondents 6 to 18 on the basis of a correct key and their placement in the merit list depending upon the inter-se merit of the candidates. The Staff Selection Commission was also similarly directed to respond to the proposal made by the writ petitioners – respondents 6 to 18 and file an affidavit.*

*11. An affidavit has, pursuant to the above directions, been filed by the Commission as also by the Chief Secretary of the Government of Bihar in which the Staff Selection Commission as also the Government appear to be opposing the prayer made by the writ petitioners for re-evaluation of their answer scripts for the purpose of re-casting of the merit list which will eventually be the basis for their inter-se seniority also. The affidavits primarily do so on the premise that any re-evaluation limited to the answer scripts of respondents 6 to 18, writ petitioners before the High Court would lead to multiplicity of legal proceedings as similar requests for re-evaluation are bound to be made by other candidates who may also have been similarly prejudiced on account of the use of erroneous "Model Answer Key".*

*12. We have in the above backdrop heard learned counsel for the parties at some length who have taken us through the impugned orders and other material placed on record. Appearing for the appellants, Mr. P.P. Rao, learned senior counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue*

*that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience. Reliance in support of that proposition was placed by him upon* ***Bharat Amritlal Kothari v. Dosukhan (2010) 1 SCC 234 and State of Orissa & Anr. v. Mamata Mohanty (2011) 3 SCC 436****. There is, in our view, no merit in that contention. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the "Model Answer Key" which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the "Model Answer Key" was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the "Model Answer Key" to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in 'A' series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination in so far as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.*

*13. The decisions of this Court in* ***Bharat Amritlal Kothari v. Dosukhan 2010) 1 SCC 234*** *and* ***State of Orissa & anr. v. Mamata Mohanty (2011) 3 SCC 436****, relied upon by Mr. Rao are clearly distinguishable. The power of the Court to mould the relief, according to the demands of the situation, was never the subject matter of dispute in those cases. That power is well- recognised and is available to a writ Court to do complete justice between the parties. The first limb of the argument advanced by Mr. Rao fails and is accordingly rejected.*

*14. Mr. Rao next argued that even if the result of the first selection process was vitiated by the use of erroneous "Model Answer Key" the Court had*

*the option of either directing re-evaluation of the answer scripts on the basis of a correct key or a fresh examination. Out of the two options the former was, according to Mr. Rao, better and ought to have served the purpose by not only saving considerable time but money and effort also. He urged that the Court could have removed the traces of any injustice or distortions in the selection process by directing re-evaluation of the answer scripts which would not only present the true picture of the merit of the candidates concerned but prevent any further litigation or prejudice to candidates on account of long lapse of time.*

*15. Appearing for respondents 6 to 18 Mr. Agrawal submitted that he had no objection to the order of the High Court being modified so as to replace "a fresh examination" by "revaluation of the answer scripts" on the basis of a correct key. Counsel for the Staff Selection Commission also submitted, on instructions, that the answer scripts had been preserved and could be subjected to a fresh evaluation. Learned counsel for the parties were further agreeable to the key as proposed by Dr. (Prof.) C.N. Sinha and Prof. KSP Singh of NIT, Patna forming the basis of any such re-evaluation by a suitable modification and deletion of question Nos.6 and 46 which were found to be absurd and question No.34 and 63 which were repeated as Nos.74 and 93. They further agreed to the deletion of question No.100 the answer to which was not correctly printed.*

*16. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.*

*17. That brings us to the submission by Mr. Rao that while re- evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to writ petitioners-respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the 'cut*

*off' mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the Court or justified their ouster. Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these appellants over the years would also, according to Mr. Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr. Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter-se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cut off line.*

*18. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.*

*19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that -*

*1) answer scripts of candidates appearing in 'A' series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that*

*basis.*
*2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.*
*3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.*
*4) Such of the appellants as do not make the grade after re- evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.*
*5) Needful shall be done by the respondents – State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.*

*20. Parties are directed to bear their own costs."*

10 So far as the question No.58 is concerned, I am of the view that the correct answer is (D) i.e. No article. The authorities are wrong, and at the same time, the applicant is also wrong. It cannot be (C) i.e. "the".

11 I may explain why no Article should be used before "Mount Everest". "A" or "An" and "The" are usually called Articles. They are really Demonstrative Adjectives. "A" or "An" is called the indefinite article because it is used when we do not speak of any particular or definite person or things; as,

- I saw a boy in the bazaar.
- I found an umbrella lying in the room.

The is called the Definite Article, because it is used when we speak of some particular person or things; as,

- This is the man whom I saw yesterday.
- This is the beggar who pretended to be dumb.

As a general rule, a Singular Noun which is countable when it is mentioned for the first time and represents no particular person or thing must have an Article before it; as,

- A dog is an animal.
- A house has a roof.
- A cat catches a mouse.

A is not normally used before nouns standing for things that cannot be counted, i.e. before nouns that have no plural; as, ink, water, milk, wood, meat.

- Fill your pen with ink.
- We drink water.
- Milk is a perfect food.
- A chair is made of wood.
- A cat eats meat.

A or an is used before a singular countable noun which is used to represent a class of things;

- A cow has horns (i.e. All cows have horns).
- An elephant never forgets.

The names of professions and occupations take the indefinite articles; as,

- His brother is a teacher (not, is teacher).
- I hope to be a doctor (not, to be doctor).

The same things applies to nouns such as hero, genius, fool, thief and liar.

- He fought like a hero (not, like hero).
- His son is a genius (not, is genius).

- He behaved like a fool (not, like fool).
- Beware of that man; he is a thief (not, he is thief).
- Don't trust that fellow, he is a liar (not, he is liar).

**Correct use of "A' and "An"**:-

A is used before: ----

(1) Words beginning with the sound of consonants; as, a boy, a woman, a cow, a year.

(2) Such vowels as have the sound of 'yu'; as, a ewe, a useful person, a unit, a university, a European, a uniform, a utensil, a union.

(3) 'O' when it is sounded as 'wa', a one-rupee-note, a one-eyed giant, such a one, a one-way-road.

**Use of the definite Article:-**

The definite Article The is used:---

(1) When we refer to some particular person or things; as,

- The house I have just bought is a spacious one.
- Call the boy standing outside.

(2) When a Singular common noun is used to indicate a whole class; as,

- The cow is a useful animal. (=All cows are useful animals)
- The tiger is a fierce animal. (=All tigers are fierce animals)

If the noun is changed into the plural form, then the definite Article is omitted; as,

- Tigers are fierce animals. (Not, the tigers...)

**NOTE:-** The only exceptions to this rule are the words man and woman.

(1) Man may be used in the Singular without the Definite Article as

representing all men; as,

- Man is mortal.

(2) Woman may be used in the Singular without the Definite Article meaning all women; as,

- Woman is weaker than man (=Women are weaker than men.)

(3) As an adverb with comparative in such sentences,

- The more one has the more one wants.
- The fewer the better.

(4) Before rivers, ranges of mountains, and groups of islands; as,

- The Ganges, the Indus, the Thames.
- The Himalayas, the Alps.
- The British Isles, the Andamans.
- The Ganges is a holy river. (Not, Ganges is.....)

**NOTE:-** But individual mountains do not have the placed before them; as,

- Mount Everest (not, The Mount Everest) is the highest mountains in the world.

12 We always use “the” before “Himalayas”, because the rule says that we should use Article while talking about a group or range of Mountain. On the other hand, we only say “Mount Everest” and not “the Mount Everest”, because the rule says that we should not use Article while talking about a single Mountain range.

13 Thus, the Answer Key provided by the respondents is also not correct, and at the same time, the answer of the applicant is also not correct.

14 Coming to the second question about who bestowed the title "Mahatma" on Gandhiji is concerned, I may take note of the fact that in the textbooks published by the Gujarat Secondary Education Board, more particularly, Standard - 9, it has been stated therein that it was "Ravindranath Tagore", who bestowed the same. What is taught to the students in the State of Gujarat is that the Poet and Nobel laureate Rabindranath Tagore bestowed the title "Mahatma" on Gandhi in 1915 while writing his autobiography after the latter called him Gurudev.

15 If the students of the State are being taught accordingly, then I fail to understand on what basis the respondents have come to the conclusion that some unknown journalist in South Africa for the first time bestowed the title "Mahatma".

16 What I am trying to drive at is that before framing any question, the authorities concerned should be 100% sure of the answer. The candidate, who is appearing in a competitive examination, would definitely go by the textbooks published by the Gujarat Secondary and Higher Secondary Board. Let me assume for the moment that the answer is debatable, but once as a part of the education curriculum, it is made clear that it was "Rabindranath Tagore", then, there need not be any further debate on the issue. Therefore, the correct answer should be the Nobel laureate Rabindranath Tagore.

17 So far as the third question is concerned, the question is very specific, i.e. "which is the longest river of India?". Having considered the materials available on the question, I am of the view that it is not "Brahmaputra", but "Ganga". The reason is also very clear. "Brahmaputra" originates from the lake 'Mansarovar' and ends in the Bay of Bengal. The total length in terms of kilometer is 2900. On the

other hand, "Ganga" originates from 'Gangothri' and ends in the Bay of Bengal. The length in terms of kilometers is 2510. But the question is very specific i.e. "which is the longest river in India?" If that be so, then the length of river "Brahmaputra" should not be calculated from the lake 'Mansarovar'. The lake 'Mansarovar' is not a part of India. If the length of "Brahmaputra" within the territorial limits of India is to be considered, then it is about 1365 kilometers. Thus, having regard to the specific question, the correct answer is "Ganga".

18 Mr. Munshaw, the learned counsel appearing for the respondent Nos.2, 3, 4 and 5 very fairly conceded so far as the last question is concerned.

19 Thus, in view of the above, it could definitely be said that there are errors in the Answer Key, which are required to be corrected accordingly.

20 I do not propose to say anything further.

21 Let me remind the respondents about the decision of the Supreme Court in the case of **Guru Nanak Dev University v. Saumil Garg [2005 (13) SCC 749],** whereby the Supreme Court has observed thus**:**

> *"The High Court has also issued directions for appropriate action to be taken against those who are responsible for the entire confusion and the mess. The High Court has also issued directions for fixing responsibility on the paper setters and those who have been vested with the responsibility to finalise the key answers and consequential steps to be taken. The said direction of the High Court does not call for any interference. Those who set the papers and those who finalise the key answers have to bear in mind that what is at stake is the career of the young students at the very threshold of their attempt to get entry into professional courses where there is cut throat competition. The questions posed must have only one correct answer out of the four options given. Likewise, there is responsibility on those who finalise the key answers. If none of the answers is correct, it becomes their duty to say that none of the answers is correct,*

*so that if any remedial action is to be taken, it should be taken before the answers are valuated. It is evident that on both these aspects, there was serious lapse which resulted in litigation which is otherwise avoidable."*

*"What is paramount is the interest of the student community. Merit should not be a casualty. We feel that the interests of the students would be adequately safeguarded if we direct the appellant University to revaluate the answers of the aforesaid eight questions with reference to the key answers provided by CBSE and the University of Delhi which are same and not with reference to the key answers provided by the appellant University.*

*There is yet another problem, namely, that of seven questions which are so vague that they are incapable of having a correct answer. The appellant University, in respect of those seven questions, has given the credit to all the students who had participated in the entrance test irrespective of whether someone had answered the questions or not. We do not think that that is the proper course to follow. It is wholly unjust to give marks to a student who did not even attempt to answer those questions. This course would mean that a student who did not answer say all the seven questions would still get 28 marks, each correct answer having four marks. The reasonable procedure to be followed, in our opinion, would be to give credit only to those who attempted the said questions or some of them. Having regard to the circumstances of the case, we direct that for the students who attempted those questions or some of those questions, insofar as they are concerned, the said questions should not be treated to be part of the question paper. To illustrate, if a student answered all the said seven vague questions, insofar as that student is concerned, total marks would be counted out of 772 i.e. 800 less 28 and likewise depending upon number of such questions, if any, answered by the student. The seven vague questions are Question 4 in Physics, Questions 76 and 89 in Chemistry, Questions 147 and 148 in Botany and Questions 156 and 163 in Zoology of Question Paper Code A."*

22 In the result, I dispose of all the three writ applications with a direction that the answers given by the writ applicants be looked into accordingly, and the mistakes be rectified at the earliest. After rectifying the mistakes, appropriate marks be adjusted, and ultimately, after correction, if any of the three writ applicants find place in the merit-list, then they shall be placed accordingly.

**(J.B.PARDIWALA, J.)**

chandresh