

HON 'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.26929, 31164, 31318, 32264, 32591 & 32760 OF 2016

COMMON ORDER:

Heard Mr.P.Venugopal, learned senior counsel, Mr.M.See Rama Rao for petitioners and Mr.Taddi Nageshwara Rao for respondents.

The petitioners pray for Mandamus declaring the action of respondents in digitally (online) evaluating the answer sheets of petitioners, as bad in law and direct the respondents to produce answer scripts of petitioners together with supplementary answer sheets so as to examine whether verifying/totaling of answer sheets has been properly done or not; verify whether all the answer sheets have been properly uploaded or downloaded at the time of evaluation done by the evaluators and consequently direct respondents to manually evaluate the answer sheets of petitioners.

The prayer and the circumstances for filing the writ petitions are substantially same in the batch of writ petitions and for convenience, I refer to the allegations and counter in W.P.No.26929 of 2016.

Allegations in affidavit:

The petitioners are pursuing P.G. Medical Degree/Diploma Course in respondents 3 to 10/Colleges. The petitioners appeared in the final examinations conducted by 2<sup>nd</sup> respondent/University in May/June, 2016. The stand of petitioners is that hitherto the answer sheets of examinees are corrected by the Examiners. The students

had a right to verify the total number of marks assigned by the Examiners. The petitioners concede that revaluation was not permitted by the Rules of 2<sup>nd</sup> respondent. However, without prior intimation or knowledge, the answer scripts of May/June, 2016 have been subjected to online correction. The 2<sup>nd</sup> respondent did not inform the examinees about the change in the method of evaluation, namely from physical evaluation to digitised evaluation of answer scripts. The petitioners have come to know about the change in mode of evaluation only when the results were declared by the 2<sup>nd</sup> respondent. Therefore, the uninformed and inchoate method of digitized evaluation, it is contended, is arbitrary, illegal and unconstitutional. The petitioners from the available knowledge and information from sources make a few allegations against the service provider engaged by 2<sup>nd</sup> respondent for online evaluation. In this context, the petitioners state probable commissions and omissions which would have resulted in improper valuation of their answer sheets; the service provider is authorised to decode, scan and upload answer sheets on the computer to transfer the answer sheets to the respective examiners for correction. In the process, if the server is down during and in the process of uploading, all the answer sheets are not received in its entirety, thereby a few of the answer sheets of a student in the booklet go missing. The service provider does not take care whether all the papers have been uploaded or not. The petitioners suspect imperfection in uploading and downloading the answer sheets written by the petitioners. Finally, the 2<sup>nd</sup> respondent, after receiving the data from service

provider, uploaded on the website the result along with the following notice.

“In view of the introduction of digital valuation and computerised totalling, there will not be any re-totalling of answer sheets. The decision to deny re-totalling after the examinations are written is impermissible.”

The petitioners submit that re-evaluation is different from re-totalling. The definite case of petitioners is that they are interested in knowing as to whether by virtue of online valuation of answer sheets of petitioners are factually and actually received by the respective Examiners and evaluated. The petitioners apprehend fault in uploading and downloading the answer scripts and, therefore, depriving the right of re-totalling is not correct in law. Since the re-totalling is not permitted the petitioners had no opportunity to see their answer scripts. The petitioners seek the indulgence of the Court to direct official respondents to produce the answer sheets of petitioners before the Court to verify whether genuine valuation was undertaken by 2<sup>nd</sup> respondent or not. Hence, the writ petition.

Reply of 2<sup>nd</sup> respondent:

The 2<sup>nd</sup> respondent University, through its Register, filed counter affidavit. The introductory averments are that the 2<sup>nd</sup> respondent University in September, 2015 has taken up a pilot project of online valuation of about 75 answer scripts and by seeing the report, introduced digital valuation (online valuation) of answer sheets of PG Degree/Diploma examinations held in May/June, 2016. The pilot project and the online valuation of

May/June answer scripts have been entrusted to M/s Globarena Technologies Private Limited, Hyderabad. It is stated that the Examiner who valued the scripts online expressed satisfaction. The advantages of online valuation vis-à-vis OMR filling (manual valuation) are stated. On the petitioners' complaint about the inadequacy in uploading etc., it is stated that as per the direction of the 2<sup>nd</sup> respondent University digital valuation centres were established at the practical centres of respective colleges and the service provider was directed by the University to send their staff to the colleges to assess/verify the infrastructure established at the digital valuation centres. The University, after the exams are concluded, received the answer scripts from PG centres. Thereafter, the University completed the tearing work of scripts and handed over the answer scripts to service provider for scanning. The answer scripts scanned by the service provider were transferred to medical colleges for online valuation. The scanning of answer scripts was done by book scan and not sheet scanning. All precautions necessary for accurate scanning are put in place. The diagrams drawn in colour were scanned and sent to examiners in colour depiction. The possibility of missing a few sheets either in scanning or uploading is unsustainable. Such eventuality is completely denied. The Principals of respective colleges have been properly guided to oversee online valuation. By way of reply, the method of first valuation and second valuation is referred to and it is further stated that in the event of 20% or more difference between the first and the second valuations, the scripts are sent to third Examiner for valuation. The 2<sup>nd</sup> respondent admits that the

online valuation is introduced for the first time for the examinations held between May/June, 2016 and justifies denial of re-totalling, as online valuation is accurate and no exception can be taken. The steps taken by 2<sup>nd</sup> respondent University for ensuring fair and error free online evaluation are referred to.

It is further stated that on 24.08.2016, the Vice Chancellor of 2<sup>nd</sup> respondent University on payment of Rs.2,000/- permitted personal verification of answer scripts. On 12.09.2016, the letter was communicated to all the colleges. In response to the said letter, 72 Degree candidates and 7 Diploma candidates applied for personal verification of answer scripts and verification of answer sheets was permitted. A few of the petitioners in the instant batch had advantage of verifying the answer sheets. Further, the University constituted a Committee consisting of three Professors and one Associate Professor and were assigned to verify a) whether the totals are correct, b) whether all the answers written by the candidates are valued by the Examiners in first, second and third valuations and c) whether the candidates written the question number to all answers or not or written wrongly.

It is further replied that the University appointed subject experts to evaluate the discrepancies of unvalued answers for evaluation and after receiving the marks awarded by the subject experts, the University will re-examine the result of such candidates. If there is change in result, it will be communicated to concerned college and students as per the existing procedure. It is further stated that online valuation is more appropriate and the



allegations of petitioners are completely unfounded and untenable. The 2<sup>nd</sup> respondent prays for dismissal of the writ petitions.

On 27.09.2016, after taking note of the stand in counter-affidavit and hearing the parties, the following order directing production of record was made:

“Learned counsel for petitioners in all the writ petitions insisted for production of the answer sheets and the petitioners before this Court. Learned standing counsel fairly agreed to produce the same. Learned counsel for petitioners also admitted that for all the answers written by the students (petitioners), marks were awarded, they will not insist for evaluation of the answer sheets manually. Already the students were permitted to verify their answer sheets.”

The 2<sup>nd</sup> respondent University has produced original answer scripts, xerox copies of scanned and allegedly evaluated answer sheets of the petitioners. For clarity, answer scripts are referred as ‘original scripts’ and also one set consisting of xerox copies of scanned original scripts of all the petitioners. For brevity, the scanned xerox copies are referred as ‘Evaluation-I’ and ‘Evaluation-II’. The 2<sup>nd</sup> respondent-University to stay clear from the allegations of imperfect handling of online valuation has presented representatives of M/s Globarena Technologies Private Limited/ service provider, at the time of hearing. As per the directions of this Court, the original scripts, Evaluation-I and Evaluation-II were also permitted to be personally verified by the petitioners.

The representatives who have handled the online valuation have given a trailer of the services rendered to 2<sup>nd</sup> respondent.

Mr.P.Venugopal, leading the arguments, contends that the evaluation of manuscripts has been hitherto done manually and that the 2<sup>nd</sup> respondent did not inform the change from manual to online valuation of answer scripts. After perusing the Date/Documents, on which the 2<sup>nd</sup> respondent University relies, he contends that the 2<sup>nd</sup> respondent University in September/October, 2015 has tested the feasibility of online evaluation with miniscule answer scripts of about 100 and thereafter the pilot project is taken up with the answer scripts of examination held in May/June, 2016. Therefore, the answer scripts have become objects of study at ill-equipped diagnostic centres (evaluation centres) or at the hands of inexperienced analysts (examiners) and therefore, the reports (marks) cannot be held to be reflective of physical content of the answer scripts. On the instructions given by the petitioners, he further contends that there is nothing to inspire confidence that the Examiners have valued Evaluation-I and Evaluation-II answer scripts, the first page of the answer scripts where marks are written is also left blank, but a separate sheet called 'Script Marks Report' is appended to the answer scripts to show the marks awarded to petitioners allegedly entered by the Examiner. In other words, his contention is online valuation of answer scripts, now undertaken by the 2<sup>nd</sup> respondent, could not be taken as infallible or foolproof to refuse to value the answer scripts for recording a realistic opinion. He further contends that the 2<sup>nd</sup> respondent University having

received applications and a sum of Rs.2,000/- from candidates got the answer scripts verified, found the mistakes and altered the results of a few students. Therefore, he contends that the 2<sup>nd</sup> respondent by learning from the experience of online valuation experimented on petitioners (students), the undeveloped technology, cannot put in place as a foolproof substitute to manual valuation. Though the time schedules are reduced, utilization of technology is improving the transparency and the petitioners are not against positive changes. Therefore, the subject examinations cannot and could not be treated as a tested experiment enabling the 2<sup>nd</sup> respondent to value all future exams online. He prays for appropriate direction to 2<sup>nd</sup> respondent having regard to the various commissions and omissions pointed out by the petitioners during and in the course of hearing for valuation of the answer sheets of petitioners.

*Per contra*, Mr. Taddi Nageswari Rao contends that the foremost premise in the case of petitioners is that all the answer sheets in the original scripts would not have been scanned by the service provider and/or that the Examiners could not have corrected all the answers, or given marks to petitioners, or that answers written are ignored so on and so forth. To bring home the stand of University that the entire exercise undertaken by service provider in this behalf is infallible, with the assistance of University staff and the service provider, he tried to demonstrate that the contentions of petitioners are mere apprehensions. On the jurisdiction and authority of Vice Chancellor, he places reliance



upon Section 12 of the N.T.R University of Health Sciences Act, 1986  
which reads thus:

12) 1) Vice-Chancellor shall be appointed by the Chancellor from out of a panel of names of distinguished educationists in the field of medicine in the alphabetical order which shall not be less than three, but not more than five, suggested by a Committee consisting of-

- i) a nominee of the Chancellor;
- ii) a nominee of the Government who shall also be the Convenor of the Committee; and
- iii) a nominee of the Executive Council:

Provided that no employee of the University or member of any authority of the University shall be a member of the Committee.

2) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

3) The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter:

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4) The Vice-Chancellor shall exercise such other powers and perform such other functions as may be prescribed by the Statutes or Ordinances."

He contends that the Vice Chancellor of University is entitled to take decision for change of mode of valuation from manual to online and the decisions of Vice Chancellor is ratified by Vice Chancellor of 2<sup>nd</sup> respondent University. He places reliance upon SAHITI AND OTHERS V. CHANCELLOR DR.N.T.R.UNIVERSITY OF HEALTH

SCIENCES AND OTHERS<sup>1</sup>. The relevant portions in the judgment read thus:

Sub-section (3) of Section 12 provides that the Vice- Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under the Act and shall report to such authority the action taken by him on such matter. The proviso to sub-Section (3) stipulates that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Chancellor whose decision thereon shall be final.

A conjoint and meaningful reading of the provisions of Section 12(2) of the Act with Section 12(3) of the Act makes it evident that the Vice-Chancellor has power to take appropriate action relating to the affairs of the University, which includes conduct of examination also. The Vice-Chancellor is the conscious keeper of the University. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. *(emphasis added)*

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The Vice-Chancellor has right to regulate the work and conduct of officers and other employees of the University. He has also emergency powers to deal with any untoward situation. The power conferred under Section 12(2) and 12(3) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. However, he must report to the concerned authority or body, who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal

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<sup>1</sup>(2009)1 SCC 599

position as the principal executive officer also carries with him certain implied powers. It is the magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil he has to act firmly and promptly to put down indiscipline and malpractice.

As per the Statutes of university, the Vice-Chancellor is whole-time Officer of the university and by virtue of his office, is a Member and Chairman of the Executive Council and of the Academic Council. He has power to convene meetings of the Executive Council and the Academic Council.

The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the Judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority.

He further contends that the power of this Court to order for reevaluation is no more *res integra* and relies upon the following decisions:

1. BOARD OF SECONDARY EDUCATION v. PRAVAS RANJAN PANDA AND ANOTHER<sup>2</sup>
2. HIMACHAL PRADESH PUBLIC SERVICE COMMISSION V. MUKESH THAKUR AND ANOTHER<sup>3</sup>

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<sup>2</sup> (2004) 13 SCC 383

<sup>3</sup> (2010) 6 SCC 759

3. CENTRAL BOARD OF SECONDARY EDUCATION THROUGH  
SECRETARY, ALL INDIA PRE-MEDICAL/PRE-DENTAL ENTRANCE  
EXAMINATION AND OTHERS v. KHUSHBOO SHRIVASTAVA AND  
OTHERS<sup>4</sup>

In PRAVASRANJAN PANDA's (2 supra) case, the Apex Court held  
thus:

"The High Court though observed that the writ petitioners who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation of marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer books has been examined by us in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission (2004)<sup>6</sup> SCC 714 decided on 6.8.2004. It has been held therein that in absence of rules providing for re-evaluation of answer books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court direction for re-evaluation of the answer books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.

In HIMACHAL PRADESH PUBLIC SERVICE COMMISSION's case  
(3 supra), it was held as follows:

"The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh

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<sup>4</sup> (2014)14 SCC 523

Kurmarsheth etc.etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

".....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...

.....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act....."

This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116 observing as under:

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re- evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking



whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks." (emphasis added)

26. A similar view has been reiterated in Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors. AIR 1984 SC 1585; Board of Secondary Education Vs. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383; President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr. (2007) 1 SCC 603; The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors. AIR 2007 SC 3098; and Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors. (2009) 1 SCC 599.

In KHUSHBOO SHRIVASTAVA's case (4 supra), the Apex Court held thus:

"In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answers sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of the respondent no.1 and accordingly rejected the representation of the respondent no.1 for re-examination/re-evaluation of her answers sheets. The respondent no.1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the respondent no.1 depositing a sum of Rs.25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the

respondent no.1 with the model answers produced by the CBSE and awarded two marks for answers given by the respondent no.1 in the Chemistry and Botany, but declined to grant any relief to the respondent no.1. When respondent no.1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the respondent no.1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the respondent no.1 deserved two additional marks for the two answers”.

The learned standing counsel, therefore, prays for dismissing the writ petitions.

The Hon'ble Supreme Court in *CENTRAL BOARD OF SECONDARY EDUCATION v. ADITYA BANDOPADYAYA AND OTHERS*<sup>5</sup> while considering the duty of examining bodies, the relationship between the examiner and examinee, what constitutes evaluation, has held as follows. In the above cases, the issue has arisen under the Right to Information Act. In the considered view of this Court, the following paragraphs have bearing on the issue that emerges for consideration:

“In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words ‘information available to a person in his fiduciary relationship’ are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary – a trustee with

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<sup>5</sup> (2011) 8 SCC 497

reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between 33 the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body.

The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialized Examining Bodies may simply subject candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.

This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to 'service' to a consumer, in *Bihar School Examination Board vs. Suresh Prasad Sinha* – (2009) 8 SCC 483, in the following manner: "The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.

When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-avis other examinees. The process is not therefore avilment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for avilment of any service, but the charge paid for the privilege of participation in the examination..... The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-books or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer .....” It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer-books are evaluated by the examining body.

An evaluated answer book of an examinee is a combination of two different 'informations'. The first is the answers written by the examinee and second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the



specific marks assigned to each of his answers. When an examinee seeks 'information' by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof.

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This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the 'evaluation' (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no merit.

On the other hand, when an answer-book is entrusted to the examiner for the purpose of evaluation, for the period the answer-book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer-book or the result of evaluation of the answer-book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copy-right or proprietary right, or confidentiality right in regard to the evaluation. Therefore it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner".

In **PRESIDENT, CENTRAL BOARD OF SECONDARY EDUCATION v.**

**D.SUVANKAR AND ANOTHER<sup>6</sup>**, the Apex Court held as follows:

It has to be ensured that the Examiners who make the valuation of answer papers are really equipped for the job. The paramount consideration in such cases is the ability of

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<sup>6</sup> (2007)1 SCC 603



the Examiner. The Board has bounden duty to select such persons as Examiners who have the capacity, capability to make valuation and they should really equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment. It is true that valuation of two persons cannot be equal on golden scales, but wide variation would affect credibility of the system of valuation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of valuation of answer papers is very limited. For compelling reasons and apparent infirmity in valuation, the Court step in. Care should be taken to see that the Examiners who have been appointed for a particular subject belong to the same faculty. It would be a mockery of the system of valuation of a teacher belonging to Arts stream is asked to evaluate answer papers of Science stream. It may be that a teacher had Physics. Chemistry or Biology at the Intermediate Level, but at Graduation stage he had special paper in Zoology. To ask such a teacher to evaluate Botany paper would not be proper. Similarly in the case of a teacher having Mathematics in Intermediate Level while he took his high studies in Physics, or Chemistry, or Botany at the Graduation Level, evaluation of answer paper in Mathematics by him would **not** be proper. May be that he has working knowledge in the subject. But the valuation should be done by an Examiner who is well equipped in the subject. That would rule out the chance of variation improper valuation. Board authorities should ensure that anomalous situations as pointed out above do not occur. Additional steps should be taken for assessing the capacity of a teacher before he is appointed as an Examiner. For this purpose, the Board may constitute a Body of Experts to interview the persons who intend to be appointed as Examiners. This process is certainly time-consuming but it would further the ends for which the examinations are held. The Chief Examiner is supposed to act as a safety-valve in the matter of proper assessment.

The scope for interference in matters of evaluation of answer papers is very limited. For compelling reasons and apparent infirmity in evaluation, the court steps in."

*(emphasis added).*

I have carefully perused the material available on record and taken note of the submissions of counsel appearing for the parties. I have, with the assistance of service provider, appreciated the online evaluation of answer scripts introduced in May/June, 2016 by 2<sup>nd</sup> respondent University. At appropriate stage, the missing link in online evaluation will be adverted to.

In the case on hand, it is contextual to note that the answer scripts are not valued by this Court to deal with the argument of respondents or does not sit in appeal in academic matters or issuing directions for revaluation of answer scripts contrary to the *ratio decidendi* relied upon by the 2<sup>nd</sup> respondent.

The question for consideration is—

Whether the pilot project and resultant online evaluation introduced on 28.05.2016 warrants interference, and the 2<sup>nd</sup> respondent as examining body discharged the onus of online evaluation cast on the University? and to what relief?

This Court, at the outset, hastens to add that the endeavour of 2<sup>nd</sup> respondent to capacity build the human resources and employ information technology is appreciated. These result in perspective change of a few academic matters. This Court is of the view that the decision of Vice Chancellor of 2<sup>nd</sup> respondent University to introduce online valuation and information technology enhances transparency in conduct of affairs of the University and also the confidence of the students at large, provided the change

is foolproof. A reference to the following quotes is apt at this juncture:

This Court is reminded of a quote of Lord Budha that

“Everything changes. Nothing remains without change”.

And of a German proverb:

“To change and change for the better, are two different things”

The University to have meaningful existence and improve all branches, functions and duties, no doubt, has to keep itself abreast with the changing trends, including evaluation of Examinees. But at the same time, the change ought not to be a surprise to the Examinees or a change introduced with loose ends. The counter of 2<sup>nd</sup> respondent as already observed sets out the care and caution taken to derive acute diagnostic results of Examinees' performance. The missing link, if any, in the implementation is discerned, either in pilot project or the project is put to operational use, then these missing links are rectified along the journey. To bring home the observation, this Court considers it appropriate to scan and paste a portion of the Script Marks Report, the Answer Scripts and Evaluations-I & II on the one hand and on the other, a demo of scanned printed matter with online valuation of such scanned copy.

Script Marks Report

P-I  
2nd val

Component Name  
Candidate Name  
Candidate Number  
Centre Number

M.S. GENERAL SURGERY-PAPER 1-I  
12425593 12425593  
12425593  
44

Item	Mark	Annotated Comments
1	6	
2	7	
3	Not Attempted	
4	6	
5	Not Attempted	
6	7	
7	Not Attempted	
8	Not Attempted	
9	Not Attempted	
10	6	
Total	32	

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P-I  
1st val

Script Marks Report

Component Name  
Candidate Name  
Candidate Number  
Centre Number

M.S. GENERAL SURGERY-PAPER 1-I  
12425593 12425593  
12425593  
44

Item	Mark	Annotated Comments
1	5	
2	5	
3	3	
4	6	
5	5	
6	5	
7	5	
8	3	
9	4	
10	5	
Total	46	

This report has been provided solely for activities in connection with the management of an assessment. The User accepts all responsibility for the secure storage and any subsequent communication of this report. The User agrees to abide to the data protection responsibilities of the User's territory and the standards of the Awarding Organisation responsible for this assessment.





32 PAGES

**Dr. N.T.R. UNIVERSITY OF HEALTH SCIENCES**  
**ANDHRA PRADESH**

**MARCH - APRIL / SEPTEMBER - OCTOBER - 2016**  
**ANSWER BOOK**

<b>NAME OF THE EXAMINATION :</b> PG DEGREE	
<b>SUBJECT :</b> GENERAL SURGERY	
<b>PAPER :</b> I	<b>PART :</b>

**INSTRUCTIONS TO THE CANDIDATES :**

1. Before you begin to write the answers, fill the above particulars i.e. examination, Year, Subject, Paper and part if any in the space provided for each of them.
2. Copying in any form is a very serious offence, carrying severe punishment. Do not carry any written or printed matter, papers, cellphones and any other electric gadgets in any form to the Examination hall.
3. Do not write your name on any part of this answer book.
4. Never allow or assist anyone to copy from you.
5. You should not write your Register Number on any page of the answer book.
6. Write your answer on both sides of the paper except on the reverse of this page.
7. The answers should be legibly written in black or blue ink only.
8. Number of lines in each page should not be less than 25.
9. All rough work must be done on the right hand side leaving a margin for that purpose with the heading 'Rough Work' under lined.
10. Do not write any thing in the margin, except the question number.
11. Note the Number of the question in the margin and also in the centre of the page above the first line of each answer.
12. No paper should be detached from the answer book.
13. There shall not be overwriting in the Reg. No. on O M R Sheet. If any correction is needed, it should be attested by the Chief Superintendent.
14. You will not be allowed to write your Examination / Examinations, if you do not submit your Hall Ticket for verification by the Chief Superintendent or Assistant Superintendents.
15. University observers and Flying Squad Members are empowered to check any candidate in the examination hall or outside the examination hall during the examination for detecting any malpractice.
16. If any question or part of a question pertaining to Part - A is answered in answer book pertaining to Part - B or Vice - Versa, that question will not be valued by the Examiners.



1366336  
Control Bundle Slip No (V3):

Dr. NTRUHS, Vijayawada  
PG DEGREE EXAMS, May/June-2016

Sub. Code : 168  
Paper & Part : PAPER-I

Examiner  
Scrutiner  
Coordinator

MARKS By Scrutiner  
MARKS By Coordinator  
TOTAL MARKS  
S.NO. OF ABIN THE BUNDLE

TO BE FILLED BY THE EXAMINER

Valuation

SECTION-III  
(See instructions overleaf)

Bundle Slip No. :

Q.No.	1	2	3	4	5	TOTAL
Q.No. 1						
Q.No. 6						
Q.No. 11						
Q.No. 16						
In Words:						Grand Total

V3 (For Valuation)

1366336  
Control Bundle Slip No (V2):

Dr. NTRUHS, Vijayawada  
PG DEGREE EXAMS, May/June-2016

Sub. Code : 168  
Paper & Part : PAPER-I

Examiner  
Scrutiner  
Coordinator

MARKS By Scrutiner  
MARKS By Coordinator  
TOTAL MARKS  
S.NO. OF ABIN THE BUNDLE

TO BE FILLED BY THE EXAMINER

Valuation

SECTION-II  
(See instructions overleaf)

Bundle Slip No. :

Q.No.	1	2	3	4	5	TOTAL
Q.No. 1						
Q.No. 6						
Q.No. 11						
Q.No. 16						
In Words:						Grand Total

V3 (For Valuation)

Control Bundle Slip No (V1):

Dr. NTRUHS, Vijayawada  
PG DEGREE EXAMS, May/June-2016

Sub. Code : 168  
Paper & Part : PAPER-I

Examiner  
Scrutiner  
Coordinator

MARKS By Scrutiner  
MARKS By Coordinator  
TOTAL MARKS  
S.NO. OF ABIN THE BUNDLE

TO BE FILLED BY THE EXAMINER

Valuation

SECTION-I  
(See instructions overleaf)

Bundle Slip No. :

Q.No.	1	2	3	4	5	TOTAL
Q.No. 1						
Q.No. 6						
Q.No. 11						
Q.No. 16						
In Words:						Grand Total

V1 (For Valuation)

will not be allowed to write your Examination / Examinations

6Q

6Q

NOSOCOMIAL INFECTIONS:-

Ans - Nosocomial Infections are the acquired infections.

- These are the hospital acquired infection.

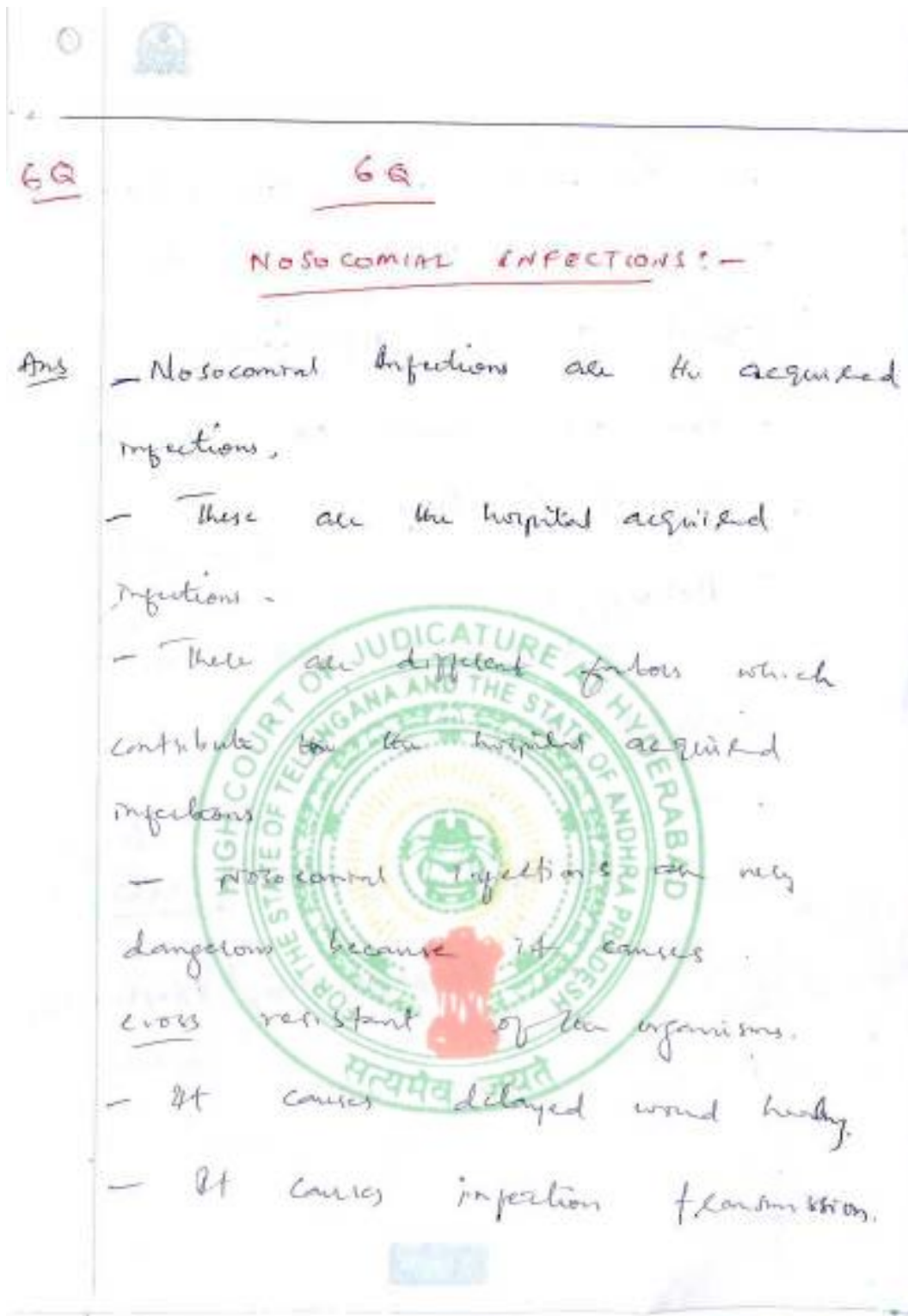
- These are different factors which contribute for the hospital acquired infections.

- Nosocomial infections are very dangerous because it causes

cross resistant of the organisms.

- It causes delayed wound healing.

- It causes infection transmission.



A careful scrutiny of the above excerpts discloses that except entering marks in the sheet appended on the top of an answer script, there is no trace of evaluation of answer sheet.

The reply of 2<sup>nd</sup> respondent in this behalf is that all the Examiners have done online valuation and the marks scored or

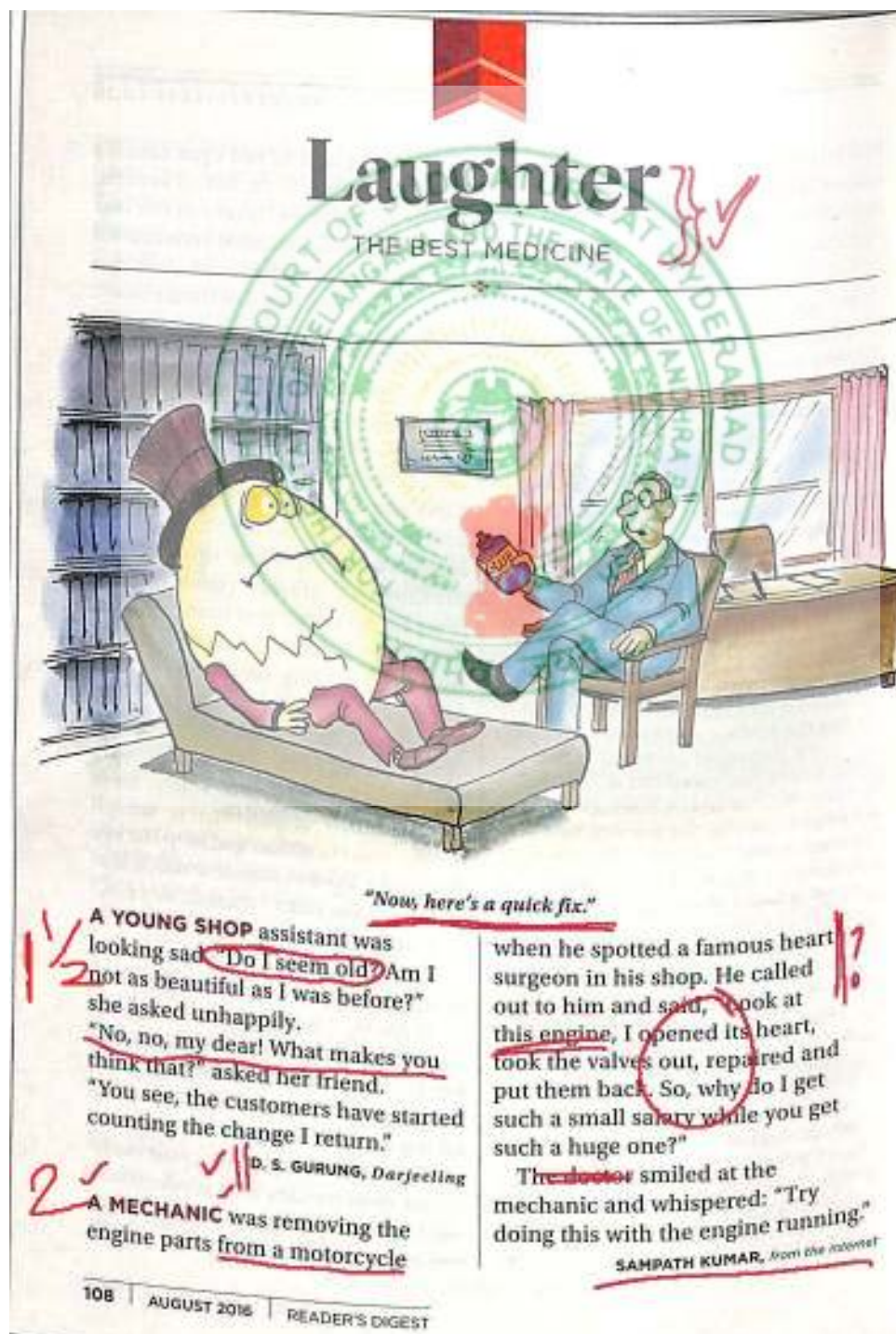


comments are entered in Script Marks Report. This reply does not satisfy the requirement of evaluation of answer scripts. (See *Aditya Bandopadya's case* (5 supra)).

The representative of service provider when specifically asked whether the technology is compatible at all the places and that the Examiners are familiarized to undertake online evaluation, it is answered that the scanned and transmitted copies to the respective evaluation centres, the software used enables making notation, remarks and award marks to a question. One of the online evaluation sheets with corrections by the Examiners is placed before the Court, however, this sheet is not made part of the order for brevity. It is admitted that in the answer sheets produced in the batch of cases, the scanned answer scripts do not bear the evaluation marks/remarks of Examiners or the marks allotted by the Examiner to each question. It is not clear whether on account of oral instructions issued by 2<sup>nd</sup> respondent not to write on the scanned answer scripts, a few of the Examiners have not shown their evaluation. But an answer sheet with online correction i.e., remarks of Examiner with the available software is produced. The possibility of just filling up the Script Marks Report, even if done (this Court is not doubting the *bona fides* of Examiners), facility for verification, evaluation with compatible technology must be put in place or used by the Examiners. But the marks have been entered in Script Marks Report. Normally, the presumption is marks are allotted on evaluation. The primary evidence to discharge onus of

evaluation is by relying on evaluated answers scripts, and not the data entered on a separate Script Marks Report.

To bring the missing link in the online evaluation, the following paragraphs from "Laughter the Best Medicine" from Readers Digest are scanned and this Court illustratively does online evaluation by using stylus.





The online evaluation as illustrated above when is pointed out to the representative of service provider, the representative has fairly admitted that the scanned answer sheets produced in the batch of cases show no trace of evaluation by the Examiners. It is pertinent to remark that the utilization of available technology such as Abode, PDF format, Wacom, Stylus etc., would have certainly helped the University to achieve the objectives which it wanted to achieve by online evaluation. Use of available tools could have furnished complete, accurate and reliable Diagnostic Reports. At this juncture, the ratio laid down by the Hon'ble Supreme Court in *Aditya Bandopadhyaya's* case (5 supra) is taken note of. The clinical examination of a patient is the preferred option of Doctors. However, of late, more and more Diagnostic Reports are preferred for accuracy. The accomplishment of accuracy of a Diagnostic Report is possible with tools and technicians. The Vice Chancellor of 2<sup>nd</sup> respondent University is equipped to decide on the missing links viz., whether the incompleteness is due to tool or technician in evaluation and fix the link for accurate results. The issue ultimately stumbles on evaluation of answer scripts by keeping in view the reasoning/illustrations given above. The University cannot be said to have discharged the onus or responsibility in this behalf or placed before the Court evaluated scripts but is claiming Script Marks Report as evaluation by Examiners of answer sheets of petitioners and award of marks as correct. This Court prefers to go that far and not beyond because on the one hand evaluation of PG/Diploma answer scripts is an academic issue and on the other technological issue of online valuation for neither strictly involves legal principles

for judicial review. The Court has examined the deficiency in online evaluation and to that extent, it is not the case of respondents that judicial review is unavailable. To the limited extent judicial review is permitted particularly by following *ratio decidendi* of (1) *Sahiti's* case (2) *Adiya Bandopadya's* case, (3) *D.Suvankar's* case, the discussion is concluded. Further, the Script Marks Report copied and posted in respect of a few answer sheets concur with the omissions and commissions pointed out by the petitioners.

To complete the narration, the Court refers to the decision of the Executive Council of respondent University in the meeting held on 31.08.2016 on digital evaluation of answer scripts reads thus:

“(4)

Digital evaluation of answer scripts:

Information given by the University in the said matter was perused and noted by the council.

Also permitted the University to take up digital evaluation of answer scripts of all examinations in future by identifying an agency and duly following the relevant procedures.

Now, online evaluation can be implemented for all examinations. The 2<sup>nd</sup> respondent reviews the infrastructure and technical compatibility of online evaluation facilities at all centres and appropriate further directions to all colleges/students are issued so that the change now introduced is made a rule or practice in the University. From the resolution dated 31.08.2016, it can be said that the Vice Chancellor has obtained *ex post facto* approval for the midway change from manual to online evaluation and by the experience now gained, and in view of the principle laid down in

*Sahiti's* case (1 supra), this Court is of the view that the Vice Chancellor of 2<sup>nd</sup> respondent University is entitled to take steps as are required for accurate diagnostic reports for the prognosis/ disease now complained in this batch of writ petitions.

Hence, the summary and conclusions are as follows:

- (a) the online evaluation of answer scripts for the examinations held in May/June, 2016 according to the stand taken by the 2<sup>nd</sup> respondent in para 2 of the counter-affidavit is in continuation of a pilot project introduced in October, 2015 and requires updating tools and skills of Examiners.
- (b) The expertise and technical compatibility of Examiners at respective centres is a matter required to be re-examined by the University and compatibility is archived by undertaking demo classes.
- (c) Consistency in the evaluation i.e., writing remarks by the Examiner on the scanned/answer scripts could not be shown in the answer sheets. Hence, keeping in perspective the technology uniform written instructions to Examiners could be issued.
- (d) The legitimate expectation of a student is that the answers written are at least looked at and appreciated for evaluation. In the case on hand, with the illustration given above, this Court is of the view that Script Answers Reports are treated as evaluation of answer scripts and no material is placed to satisfy that the evaluation of answer scripts, in fact, had taken place and Script Marks Report is the summary of such evaluation.

The decision relied upon by the 2<sup>nd</sup> respondent University comes to its aid. The missing link examined and decided by this Court is to be kept in mind. To make online evaluation fully compliant, all steps are taken by 2<sup>nd</sup> respondent. According to

the ratio laid down in *Sahiti*'s case (1 supra), the Vice Chancellor's jurisdiction in given cases to take decision and in the case on hand, the circumstances warrant the Vice Chancellor of 2<sup>nd</sup> respondent/University to re-look at the total functionality of online evaluation and change the manner of evaluation, as already noted to better the overall situation. From the present experience, needful is implemented. The grievance of petitioners is looked into by 2<sup>nd</sup> respondent. Therefore, a holistic view on the evaluation of answer scripts of petitioners is taken by the Vice Chancellor within three weeks from the date of receipt of a copy of this order and answers scripts evaluated either manually or online, however, by taking all required steps, and thereafter declare the results. The Court in the batch of writ petitions appreciates the objectivity with which the academic and technical evaluation is subjected to judicial review by 2<sup>nd</sup> respondent University.

Writ petitions are ordered as indicated above. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

Date: 31.10.2016

Note:

C.C. forth with.

LR. copy to be marked.

B/o.

Stp/Lrkm