

---

**(1985) 10 CAL CK 0001**

**Calcutta High Court**

**Case No:** Appeal No. 432 of 1984 and Matter No. 127 of 1982

Somnath Bandopadhyay

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

---

**Date of Decision:** Oct. 7, 1985

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** 90 CWN 743

**Hon'ble Judges:** T.K. Basu, J

**Bench:** Single Bench

**Advocate:** A.P. Chatterjee and Nigam Chakrabarti, for the Appellant; S. Mukherjee, for the Respondent

**Final Decision:** Allowed

---

### **Judgement**

T.K. Basu, J.

This appeal has been referred to as me on a difference between the two learned Judges of a Division Bench of this Court consisting of D.K. Sen, J. and Ajit Kumar Sengupta, J. The facts relating to the writ petition out of which the appeal arises may be briefly noted. The appellant Somnath Bandopadhyay was a student of fairly good academic career having passed the Higher Secondary Examination in the First Division. He secured 74.8% marks and was awarded National Scholarship as well as a Tata Jubilee Scholarship.

2. Thereafter the appellant was admitted to the M.B.B.S. Course. He obtained First Class marks in all his examinations of that Course. He also passed his D.T.M. & H. Examination of the University and obtained over 60% marks.

3. Admission to different specialist of the Post Graduate Course in Medicine is regulated through an Entrance test which is held every year for selection of candidates.

4. The appellant appeared for the Entrance Examination held" by the University in the years 1978, 1979 and 1980 for admission to the M. D. (General Medicine) Course but he was not selected on any of these occasions. On one of these occasions, he was unsuccessful for just 1/2 a mark.

5. In May, 1981 an advertisement appeared in the statement Calcutta Edition inviting applications by the Post Graduate Admission Board from candidates seeking admission to differed Post Graduate Course in Medicine including M. D. Generate Medicine). According to the Rules and Regulations of (sic) Examination prepared by the concerned authorities, it appears that there are 2 5 seats in the M.D. (General Medicine (sic) in Calcutta University of which five seats are reserved the members of the West Bengal Health Services. raced sew

6. The Rules and Regulations further provided that there would be an objective tests for admission to the said corset For the first time in the year 1981 candidates who completed their Horsemanship training by the middle of 1981-82 were also made eligible to apply for the M.D. (General Medicine course. In the normal course such, candidates would have been eligible to apply for admission to the Post Graduate Course only in the following year. As a result of this relaxation, there were very many candidates in the field.

7. The appellant appeared in the Entrance Examination which was held on the 14th July, 1981.

8. The following instructions were given to the candidates on the question papers.

(a) There is only one correct answer to each question, out of the alternatives given you are required to tick only one.

(b) For each wrong answer 1/2 mark will be deducted.

9. There were 75 questions and the answers were to be indicated in the question paper itself.

10. On or about the 25th August, 1981 the Secretary, Council for Post Graduate Studies in Medicine and Secretary, Institute of Post Graduate Medical Education and Research, Notified a list of 2 3 candidates selected for admission to the M.D. (General Medicine) Course for the session commencing in 1981. The list did not include the name of the appellant. It appears that subsequently a further list of three candidates was issued by the authorities thereby making the total number of candidates selected for admission 26 on as against 25 seats allotted.

11. Thereafter, by a letter dated the 27th January, 1982 the appellant demanded a scrutiny and review of his paper as also connected papers by a body of impartial experts not in any way connected with the holding of the Entrance Test. The appellant also demanded an opportunity of identifying his answer papers as also a personal hearing in order to enable him to represent his case fully and effectively

before the said experts. As no reply was given by the authorities to this representation the appellant moved this Court under Article 226 of the Constitution of India challenging the manner in which the select list was prepared.

12. On the 16th February, 1982 B. C. Basak, J passed an order, the relevant portion whereof is quoted below:

Rule as prayed for. Returnable six weeks hence. There will be no interim order, save and except that if the petitioner succeeds, he should be allowed by the respondents to be admitted into the M.D. General Medicine course of the Calcutta University without any further procedural formalities. During the intervening period it will be deemed that the petitioner has attended all the lectures.

13. On the 1st March, 19 83 Basak, J. passed a further Order in this matter:

In this matter on the basis of respective action taken of the question papers and answers given therein Mr. Chakra borty has submitted that various things have come to light which were not within the knowledge of the petitioner at the time of making this application because the petitioner was not in possession of the question papers which contained the alternative suggested answers and which had to be answered and returned back. His client was not in a position of quoting verbatim from his own memory all the 75 answers and face or six answers of each of the said questions. Accordingly, after such inspection is taken, he wants an opportunity to deal with the same and to take any additional point in connection therewith. No one opposes this prayer. In my opinion, this is a reasonable and proper prayer made on behalf of the petitioner. Leave is given to the petitioner to file a supplementary affidavit on the basis of such inspection and take any additional points, if any

14. On the 9th March, 1983 Basak, J. passed a further order which is as follows:

After hearing the learned Advocates of the parties the Court passes the following order:

Let it be recorded that this order is not being objected to by the parties concerned and at the invitation of the parties the Court is passing the following order.

This Court passed an order similar to the order passed in the case of Anjan Krishna Chatterjee v. University of Calcutta.

This relates to the admission to the Post Graduate Medical Course in General Medicine. The dispute between the parties lies within a short compass. There are various questions and sets of answers in respect of a particular question. It was one of those cases of "objective answers". More than one answer is given in the question paper.

The grievance of the petitioner is that instead of one correct answer there are more than one correct answers and though he has given a correct answer that has not been accepted on the ground that some other alleged "correct answer" is only

acceptable to the University. Further it is not stated that in some cases there is no correct answer.

After hearing for sometime the parties are agreed that this aspect of the matter can be disposed of in the following manner.

The University has submitted to the Court the original question papers and with answers relating to petitioner. The University is directed to submit the model answers or copies thereof authenticated by the learned lawyers by next Wednesday in a sealed envelope and a list of "experts" outside West Bengal.

It is agreed that this Court shall send such question papers to one of the experts, whether within or outside the State. The specialist may belong to any State including the State of West Bengal.

This matter, accordingly, is adjourned for a fortnight from date.

The specialist shall consider and give his opinion firstly as to which, in his opinion, is the correct answer and if there are more than one correct answer, he shall indicate the same and he shall also indicate if none of the proposed answers are correct answers.

On the basis of such opinion of the specialist, the rest of the application will be heard and disposed of.

All parties concerned to act on. a signed copy of the minutes of this order on the usual undertaking.

15. Thereafter the matter was referred to a Specialist in terms of the above order. From the records it is not clear as to who the Specialist was. It is significant however that although the question paper was sent to the Specialist the answer of the appellant was not sent to the Specialist.

16. Ultimately, the matter came up before Basak, J. on the 31st. August, 1984. Basak, J. in his judgment records the fact that both according to the marks given by the University and according to the Specialist's opinion, the appellant was not entitled to the requisite number of marks which would have entitled him to admission in the above course. The learned Judge records the contention on behalf of the appellant before him that in respect of those questions which are found to be incorrect by the Specialist the appellant should be given the benefit of those answers. His Lordship rejected this contention. His Lordship further held that the appellant prayed for re-examination of the answer papers and such re-examination has been done. Even after such re-examinations the appellant has not obtained the requisite marks. He further held that it is not open to the appellant to go behind the order of re-examination or raise any other contention.

17. For these reasons His Lordship dismissed the application and discharged the Rule.

18. As already indicated, an appeal was taken from this order of Basak J. and was heard by a Division Bench of this Court presided over by D. K. Sen, J. and Ajit Kumar Sengupta, J.

19. The learned Judges differed in their conclusions. On one point however the learned Judges were unanimous and that point which was considerably emphasized by Mr. Arun Prokash Chatterjee appearing before me on behalf of the appellant was that there was no re-examination of the answer papers of the appellant by the Specialist. Mr. Chatterjee submitted that indeed there could not be any re-examination for the simple reason that the answer paper of the appellant was never sent to the Specialist. He further submitted that the learned trial Judge was entirely wrong in his view that there was a re-examination at the request of the appellant. I may indicate that at this stage I am entirely in agreement with the submission of Mr. Chatterjee and the views of the two learned Judges of the Division Bench on this aspect of the matter.

20. Before I shortly refer to the findings of the two learned Judges I must indicate that this appeal will basically turn on the question of arithmetical calculation viz., how many marks the appellant is entitled to. It may be mentioned at this stage and there is no dispute that "the last three candidates who were admitted in the relevant year obtained 55-1/2 marks each.

21. In the judgment of D. K. Sen, J. after recording the contention of the parties and the authorities cited from the Bar the learned Judge observed as follows:

I would like to observe at the outset that I do not approve of the practice followed in the instant case to which the University of Calcutta was a consenting party. By the order passed on the 9th March, 19 83 the determination of the correctness of the disputed answers has been left to one expert. It has been noted that the questions are complex covering all aspects of medicine including gynecology and surgery. To opine authoritatively on the correctness of the answers to the questions expertise of more than one Specialist would be required. For a proper review, the Director of Health Services of the State ought to have been approached to set up a team of Specialist. The practice adopted in the instant case, in my view, cannot help the Court to adjudicate on the dispute involved.

Thereafter His Lordship deals with the calculation of the marks with reference to the views of the University and the views of the Specialist and discusses some of the questions individually, D. K. Sen, J. comes to the conclusion that even if the appellant is awarded marks for question 38 - total would not reach the required minimum of 55-1/2.

22. In that view of the matter His Lordship dismissed the appeal.

23. Ajit Kumar Sengupta, J. in his elaborate judgment discusses the various contentions of the parties with reference to the various affidavits in some detail.

Thereafter His Lordship goes into a discussion of the various questions and the answers given by the appellant in some detail. His Lordship comes to the conclusion that the appellant has obtained the requisite, marks for admission to the above course. As I have to go into their questions and answers in some detail I refrain from dealing with this aspect of the matter.

24. Mr. Arun Prakash Chatterjee appearing for the appellant refers me to the decision of the Supreme Court in the case of [Kanpur University and Others Vs. Samir Gupta and Others](#), 12 30. He submits, on the strength of the above decision, that the model answers to the multiple-choice objective type questions set at examination are justifiable. According to Mr. Chatterjee the identical type of question involved in the present appeal was before the Supreme Court in the above case. The Supreme Court came to the conclusion that the Court can scrutinize whether the model answers (which were called key answers) in the case before the Supreme Court are wrong. According to Mr. Chatterjee the ratio of that decision is that in the multiple-choice objective question, if the option ticked by the student is demonstrated to be correct and the model answers are proved to be wrong, the student is entitled to marks in spite of the fact that his answers do not tally with the model answers.

25. Mr. Chatterjee pointed out that in the instant case a specialist was appointed by the learned trial Judge at the invitation of the parties. The appellant was not asked to give his list of experts and he did not give any. It was further pointed out that the Specialist appointed by Basak, J. was asked to give his opinion on the following points:

- (a) Which answer in his opinion is the correct answer for each question.
- (b) If there are more than one correct answers he was to indicate the same.
- (c) He was also asked to indicate if none of the proposed answers are correct.

26. In the written notes submitted by Mr. Chatterjee at the conclusion of his arguments he classified the questions and answers into four categories:

- (a) the questions admitted to be correctly answered by the University.
- (b) Disputed question No. 1.
- (c) Questions answers to which are correct according to the Specialist but not according to the University.
- (d) Questions not answered by the appellant which according to the appellant are defective.

27. Mr. Chatterjee pointed out that according to the University the appellant has admittedly correctly answered 49 questions. He drew my attention to the awarding of these 49 marks one for each question in the hand of the examiner a photo copy

of which is to be found at page 109 of the paper Book Pt. II.

28. With regard to question No.1 a dispute has been sought to be raised before me by the University. According to the University, question No.1 has not been answered by the appellant. It was pointed out by Mr. Chatterjee that there is a distinct tick mark against the option (d) of the question aero copy which is to be found at page 97 of the paper Book Pt. II. It was further pointed out that in the University's own application dated the 19th August, 1983 in Para 8 the University has made a calculation and had agreed to allot one mark for correctly answering question No. 1.

29. Reference was made to the following observations in the judgment of Ajit Kumar Sengupta, J. at page 231 of the Paper Book.

We have checked up the question paper and found the appellant has correctly ticked the question No.1. The University was not right in saying that the question No.1 was not answered at all.

According to the model answer of the University as well as the Specialist, the said question was correctly assured. This has not been disputed.

30. It was further pointed out that the contention of the University before me that the appellant cancelled the tick mark, under his initial with regard to question No.1 was never made on behalf of the University in any of the affidavits filed. It was pointed out that when the question paper along with the answers of the appellant were produced before the Trial Court on or about the 1st March, 1983, the appellant was given liberty to file a supplementary affidavit on the basis of the inspection of the question paper with the answers, and to take any additional point in connection therewith. This order it was pointed out was made by consent of parties. The University was given liberty to reply to the Supplementary affidavit to be filed by the appellant. Pursuant to the liberty given, the appellant filed his affidavit on the 4th April, 1983. In para 4 of the affidavit the appellant categorically stated that he gave his initial to the answer in question No.1 as a matter of abundant caution against the tick mark to option (d) because it was blurred due to over writing and that there was no reason for treating the said question No.1 as not having been attempted by the appellant. This statement in the appellant's affidavit has not been traversed by the University because no affidavit has been filed by the University in answer to the supplementary affidavit of the appellant. It was further submitted that on careful scrutiny, the tick mark against option (d) in question No.1 will be found to be over written and not a fine tick mark as in other cases. The appellant gave his initials in order to assure the examiner that though thick, he meant to tick option (d). Lastly, on the question no.1 it was pointed out that although there is no express observation of D. K. Sen, J. on this point both the learned Judges have come to the conclusion that question no.1 has been rightly answered by the appellant and that he should get one mark for that question.

31. Mr. Chatterjee thereafter made his submissions on the questions and answers where the views of the University and the Specialist do not tally. He pointed out that according to the University the appellant incorrectly answered 12 questions, namely, questions 5, 6, 7, 16, 17, 24, 39, 40, 44, 52, 65 and 70. According to the Specialist the appellant's answers to questions 5, 2, 4, 39 and 70 are correct. It was pointed out that this opinion of the Specialist as to these questions has not been controverted by any expert on behalf of the University although the University had ample opportunity of doing so. The only affidavit, it was pointed out, was an affidavit by the Registrar of the University who was far from competent in expressing any opinion on medical questions. It was again pointed out that the order of Basak, J. referring the matter to the Specialist for his opinion was an order by consent. In that state of affairs there having been no effective traverse to the opinion of the Specialist with regard to the answer to questions 5, 24, 39 and 70 I should hold that the model answers of the University to these questions demonstrably wrong and the appellants answers are correct. It was submitted that the appellant should therefore be entitled to four marks on those questions.

32. With regard to question No. 6 reference was made to the discussion at length by A.K. Sengupta, J. in his judgment. It was pointed out that option (d) is the correct answer if it is a case of closed heart surgery and option (e) is the correct answer if it is a case of open heart surgery. It was submitted that the question not having indicated whether it referred to closed heart surgery or open heart surgery the appellant was entitled to make his own assumption and tick option (d). The Specialist ticked option (e) obviously on the assumption that it related to open heart surgery. Reference was again made to the illustrations given by the Supreme Court in the Kanpur University's case which dealt with two different answers for electrolysis and electrolytic dissociation and the Supreme Court held that the Hindi version of the question using a Hindi synonym for electrolysis only, students were entitled to tick the name of Faraday, though, according to the English version of the same question using the word electrolytic dissociation the correct tick mark should have been against the name Arachnids. It was submitted that on identical analogy, the appellant, assuming the question as referring to closed heart surgery ticked option (d) which is the correct answer for closed heart surgery and is entitled to one mark for this question.

33. Thereafter, Mr. Chatterjee made his submissions on those questions which were not answered by the appellant.

34. According to Mr. Chatterjee these questions fall into two different categories

(a) those which are un-answerable and

(b) those which have more than one answer.

35. With regard to category (a) my attention was drawn to two questions namely, question Nos. 38 and 32. Question No. 38 is as follows:



38. Which of the following may be a feature of Renter's Syndrome:

- (a) Pyoderma gangrenosa
- (b) Painless mouth ulcers
- (c) Soleromalacia
- (d) Positive Roseweller test
- (e) All of the above.

36. It was pointed out that according to the Specialist none of the alternatives can be a correct answer on the question as it stands. It was submitted by Mr. Chatterjee that the appellant was not entitled to correct the question and thereafter give his answers. That being so the appellant is entitled to a mark for question no. 38.

37. According to Mr. Chatterjee, question no. 32 is also in the same category and is as follows:

32. All of the following are characteristics of the infant that is small for the gestational age except:

- (a) Hypoglycaemia
- (b) Congenital, anomalies
- (c) Anaemia
- (d) Chronic intra-uterine infection
- (e) Foetal distress.

38. It was submitted by Mr. Chatterjee that the question begins by referring to the characteristic of the infant that is small for the gestational age. Obviously, option (d) namely, chronic Intra-uterine infection cannot be referable to "infant" who is a human being after he is born. It was pointed out that intra-uterine infection is infection inside the uterus. Similarly, option (e) refers to fetal distress. The fetus is human embryo inside the womb before birth and foetal distress cannot be relevant or referable to an infant. Thus question 32 as it stands is also unanswerable and the appellant should get one mark.

39. With regard to the second group of questions which were not answered by the appellant but which have more than one answer, it was generally submitted that unless the candidate ticks the model answer, he would lose 1 mark and 1/2 mark for each such question. Therefore it was submitted that namely it would be expected that when a candidate avoids that there may be more than one question to a question he would avoid answer in the question on the ground that it would be exposing to the risk of losing 1-1/2 marks for one such question.

40. On the strength of the Specialist Report it was submitted that there are three questions namely, question nos. 25, 36 and 47 which have more than one answer. According to the Specialist - question 2:5 and 4 7 have three correct answers and question no. 36 has two correct answers. It was pointed out that the Registrar of the University, in his affidavit affirmed on the 18th January, 1984 has inter alia mentioned these questions as having more than one answer. According to Mr. Chatterjee the appellant should be entitled to three marks for these three questions which have more than one answer.

41. Reference was made by Mr. Chatterjee to the decision of the Supreme Court in the Kanpur University case where the Supreme Court inter alia observed as follows:

If the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspected question will be excluded from the paper and no marks assigned to it.

It was pointed out that in the instant case examination having been concluded in 1981 the University of Calcutta cannot now be made to do so. But on the reasoning of that of the Supreme Court, unanswerable questions like question 32 and 38 and question having more than one answer like questions 25, 36 and 47 should be deemed to be excluded from the question paper and the percentage of the appellant should necessarily rise in a paper of 70 instead of 75 questions so as to give him the qualifying marks.

42. In the written notes submitted by Mr. Chatterjee the marks which according to him the appellant has obtained have been demonstrated in the form of a chart which may be set out herein below:

"According to the University, the appellant has correctly answered 49 questions.

1. Therefore, he is entitled to	49 marks.
---------------------------------	-----------

2. It should be held that the appellant has correctly answered question No. 1 and he is further entitled to	1"
---	----

3. According to the Specialist the appellant has answered 4 questions viz. questions 5, 24, 39 and 70 correctly (though there are incorrect according to the University) and therefore the appellant is entitled to addition of	4"
4. The appellant's answer to question No. 6 was correct in case of closed heard surgery. Accordingly, the appellant is entitled to a further addition of	1"
5. According to this Specialist the question No. 38 is defective and has no answer and therefore the appellant is entitled to	1"
6. Similarly, the question No. 32 is also unanswerable the appellant is therefore entitled to	1"
7. The appellant is entitled to career marks	4"
Total	61 marks
8. Deduct 1/2. mark for 7 questions each assuming them to be incorrectly answered Less	31" marks
Total 57-	1/2 marks
9. According to the Specialist question 25, 36 and 47 have more than one correct answer. The appellant is therefore entitled to one mark for each question and therefore he is entitled to	3 mark

Therefore the appellant is entitled to a total of 57-1/2 marks + 3 = 60-1/2 marks."

43. Several contentions were advanced on behalf of the University of Calcutta which may now be noted. It was submitted that the appeal is not maintainable because the order appealed from was a consent order. It was submitted that the Division Bench before which the appeal was argued has not specifically dealt with this contention. Next it was contended that, the academic session for which the appellant was a candidate was from 1981 to 1983. That period being over the appeal should be held to have become in fructuous. Thirdly, it was submitted that there is nothing to show that there was discrimination against the appellant. Fourthly, it was submitted that there is nothing to show that there was a discrimination against the appellant. Fourthly, it was submitted that the appellant has not shown that, any of the questions for answers were demonstrably wrong. Regarding the non-filing of the affidavit in answer to the supplementary affidavit of the appellant, it was submitted that the University was legally advised not to file any supplementary affidavit. I have recorded the rival contentions of the parties and now I shall briefly record my findings on them.

44. With regard to the contention of the University of Calcutta that the appeal is not maintainable as it was from an order passed by consent of parties, in my view, it is not open to the University at this stage to advance that contention. The final order of the learned trial Judge does not show that it was by consent, although, it is true, that" the interim order in the Rule with regard, to the opinion of the Specialist was made by consent. The final order discharging the Rule appears to be very much on contest. Secondly, it is not clear whether this submission with regard to the maintainability of the appeal was made before the Division Bench which heard the appeal in the first place. Neither of the two learned Judges who delivered separate judgments appear to have adverted to this aspect, of the matter. Mr. Mukherjee appearing on behalf of the University of Calcutta states that he made the submission regarding the maintainability of the appeal, but the Learned Judges have not chosen to come to any finding on this question. If this submission of Mr. Mukherjee is correct then, when the judgments did not deal with this question of maintainability it was open to his client to move the Division Bench for expressing an opinion on this question either by an application for review or otherwise. It must be remembered that I am hearing this appeal not as an Original Appellate Court but only on a difference between two learned Judges of the Division Bench which heard the original appeal. In that state of affairs the University of Calcutta is in my view, precluded from agitating this point before me.

45. I will now deal with the submission on behalf of the University that this appeal has become anfractuous by virtue of lapse of time. It is true that the Session for

which the appellant sought admission has now come to an end. But that is primarily due to law's delays and not really due to any fault on the part of the appellant.

46. Secondly, this is not a case where at the end of the academic session for which the appellant sought admission, the University of Calcutta has become fuscous officio, so to speak. The academic session for M.D. Course is being held regularly by the University of Calcutta year after year. In that background if the appellant is entitled to succeed otherwise he cannot be denied relief on the ground that the particular Session for which he sought admission has come to an end. This contention on behalf of the University therefore fails.

47. On the submission of the University on the question whether the questions and answers of the University were demonstrably vague or not, it Will be dealt with in connection with the merits of the controversy.

48. With regard to the submission of the University regarding non-filing of any reply to the supplementary affidavit of the appellant filed before the learned trial Judge I am of the view that whether it was done on legal advice or not is really of no consequence. The fact remains that the University did not file any affidavit in answer to the supplementary affidavit of the appellant. Consequently the allegations in the supplementary affidavit went on contradicted What the effect of that is will be discussed a little later.

49. I accept the submission of Mr. Chatterjee on behalf of the appellant that according to the decision of the Supreme Court in [Kanpur University and Others Vs. Samir Gupta and Others](#), . that the case of model answers of multiple-choice objective type questions are justifiable in a court of law. In other words the Court can scrutinise whether the model answers are right or wrong. I accept the further submission of Mr. Chatterjee that according to the decision of the Supreme Court in the above case if the Court is satisfied that the option ticked by the. students is correct and the model answer is wrong, the student is entitled to marks for those questions in spite of the fact that his answer does not tally with the model answer.

50. As indicated earlier a Specialist was appointed to examine whether the model answers of the University were correct or not. The terms of reference of the Specialist's enquiry have also been indicated above. The Specialist Report is before the Court. There is no challenge to that Report by the University. In my view, if by applying the Report of the Specialist to the answers as furnished by the appellant (which answers were not sent to the Specialist) the Court finds that there are some answers which are correct according to the Specialist but not correct according to the University, in the facts of the present case, the appellant is entitled to the benefit of those answers.

51. With regard to question No. 6 which can be answered only on an optional basis I accept the submission of Mr. Chatterjee if the answer to question if found to be correct on the basis of one of the options the appellant should be entitled to its

benefit. I accept the submission of Mr. Chatterjee that question Nos. 32 and 38 are unanswerable and therefore there is no answer to this question as they stand. In my view, the appellant is entitled to two marks for the question Nos. 32 and 38.

52. I must record that this appeal really involves more arithmetic than law. In other words, it is essentially a matter of calculation whether the appellant has received qualifying marks or not. I am, however, unable to accept the submission of Mr. Chatterjee with regard to questions 25, 36 and 37. Admittedly, these questions have not been answered by the appellant. Even assuming that the Specialist's report for these questions admit of more than one answer which report as I have insinuated has not been traversed be accepted to be correct, in my view, it would not be proper for the Court to award any marks to the appellant as he has not answered any of these three questions. If the appellant had answered these three questions and it was found that his answer is correct according to the report of the Specialist different considerations might have arisen. By not having answered any of these questions the appellant is not entitled to the benefit of these three marks with regard to the questions 25, 36 and 37. In the result I am of the view that on the basis of the arithmetical calculation indicated above the appellant has secured -57-1/2 marks and has thereby qualified for being admitted to the M. D. Course.

In the result, this appeal succeeds and is allowed.

The Rule is made absolute.

There will be a Writ in the nature of Mandamus directing the respondent University authorities to admit the appellant in the current M.D. Course of the University for the year 1984-1986 Session.

There will be no order as to costs.

Stay of the operation of this order is prayed for and is refused.

All parties to act on a signed copy of the Minutes of the operative part of the order.