

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/NIMNS/A/2018/106650-BJ

Mr. Jay Datt Bhatt

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO

National Institute of Mental Health & Neuro Sciences
Hosur Road, Bengaluru – 560029

...प्रतिवादीगण /Respondent

Date of Hearing : 18.06.2019

Date of Decision : 19.06.2019

Date of RTI application	05.12.2017
CPIO's response	01.01.2018
Date of the First Appeal	10.01.2018
First Appellate Authority's response	18.01.2018
Date of diarised receipt of Appeal by the Commission	31.01.2018

ORDER

FACTS:

The Appellant vide his RTI application sought information on 07 points regarding the copy of his evaluated answer book for M.Phil PSW Part I Annual Examination, June 2017, Supplementary Examination, November, 2017 as per the decision of the Hon'ble Supreme Court in the case of CBSE vs. Aditya Bandopadhyay, 2011, statement of marks for both Annual and Supplementary Examination and issues related thereto.

The CPIO, vide its letter dated 01.01.2018, provided a point-wise response to the Appellant. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA, vide its order dated 18.1.2018, provided additional clarifications on points 1(i) & (ii), 02 & 06 of the RTI application.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Jay Datt Bhatt through VC;

Respondent: Ms. Revathi, AO & CPIO and Mr. Praseed Kumar, Chief Administrative Officer & Nodal Officer (RTI) through VC;

The Appellant reiterated the contents of the RTI application and stated that complete and satisfactory information had not been received by him. It was further articulated that he had specifically sought for the copy of evaluated answer sheet for M.Phil PSW Part I Annual Examination, June, 2017 and Supplementary Examination, November, 2017, which was malafidely denied by the Respondent on account of existing system at NIMHANS as there was no provision for providing evaluated answer scripts to PG students. He had also sought for the copy of Regulations notified in the Official Gazette under Section 31(1)(d) of NIMHANS, Bangalore Act, 2012 (No. 38 of 2012) along with the copy of 3rd Academic Committee Resolution, which was not provided to him. He further relied on his written submission. The Commission was in receipt of a written submission from the Appellant dated nil, wherein while explaining the background of the matter it was stated that he had demanded for a copy of the evaluated answer sheet since there was no system of re-checking and re-evaluation in the Public Authority for M.Phil. Courses and the Apex Court in Aditya Bandopadhyay vs. CBSE had clearly given an analogy that if there were less number of applicants in any course and supplying of answer sheet was not going to jeopardize the functioning of the Public Authority then they should supply the evaluated answer sheet at reasonable cost despite the batch not exceeding 24 students. While providing the point wise contention against the replies provided against the RTI application it was stated that NIMHANS was given Institute of National Importance Status by the Parliament of India by enacting the NIMHANS Bengaluru Act, 2012 which specifically provided that the Regulations made by the Institute under the Act in discharge of its functions would be published in official gazette and would be tabled before each house of Parliament and that it was a settled principle of law that whatever that cannot be denied to Parliament cannot be denied to Citizens also under the RTI Act, 2005. It was further mentioned that due to non-transparency in declaring the marks in exam his result got delayed, while he had completed his tenure as JRF in NIMHANS in June, 2018 he had only passed part – 1 of M. Phil PSW which had impacted his admission to Phd course as without completing M. Phil one could not be allowed to join Phd. Thereafter he faced difficulties in data collection and with the intervention of Hon'ble Karnataka High Court in W.P. 53159/2018 he got the opportunity to complete his remaining thesis submission, but for selection in Phd in PSW in NIMHANS he was still facing issues since the institute was not publishing merit list of successful candidates and stated that the selected candidates would be given instruction in personal e-mail. He further mentioned that despite UGC designating him as SRF the institute had not published external fellowship category applicant details for interview on 29.05.2019 hence unless some drastic measures were taken by the Commission un-written commands would be followed since the institute was functioning totally in non-transparent manner. In its reply, the Respondent while explaining the procedure followed by the Institute in conducting the examination and process of evaluation of answer sheets, submitted that as per the existing system/Bye laws at NIMHAS, there was no provision for providing evaluated answer scripts to PG students and hence the information sought was denied accordingly. The Commission was also in receipt of a written submission from the Respondent dated 11.06.2019, wherein the Respondent enclosed the reply of the CPIO/FAA. On being queried by the Commission whether the results of the written exam had been declared, the Respondent replied in the affirmative. It was also explained that a comprehensive assessment of marks by the internal and external examiner was provided in the Respondent Public Authority.

The Commission referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes”

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE and Anr. Vs. Aditya Bandopadhyay and Ors), wherein it was held as under:

35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. *“...Under the RTI Act “information” is defined under Section 2(f) which provides:*

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”

7. *“...the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

Having heard both the parties, the Commission at the outset observed that the issue of access of his own answer sheet by a candidate had been long settled. The Hon'ble Supreme Court in the matter of CBSE and Anr. v. Aditya Bandopadhyay and Ors. SLP (C) NO. 7526/2009 observed that every examinee will have the right to access his evaluated answer-books, by either inspecting them or taking certified copies thereof unless the same was exempted under Section 8 (1) (e) of the RTI Act, 2005. The relevant observations made in the judgment are as under:

“11. The definition of ‘information’ in section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term ‘record’ is defined in section 2(i) of the said Act as including any document, manuscript or file among others. When a candidate participates in an examination and writes his answers in an answer-book and submits it to the examining body for evaluation and declaration of the result, the answer-book is a document or record. When the answer-book is evaluated by an examiner appointed by the examining body, the evaluated answer-book becomes a record containing the ‘opinion’ of the examiner. Therefore the evaluated answer-book is also an ‘information’ under the RTI Act.”

It was furthermore stated in Para 14 of the above mentioned judgment

*“The examining bodies contend that the evaluated answer-books are exempted from disclosure under section 8(1)(e) of the RTI Act, as they are ‘information’ held in its fiduciary relationship. They fairly conceded that evaluated answer-books will not fall under any other exemptions in sub section (1) of section 8. **Every examinee will have the right to access his evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted under section 8(1)(e) of the RTI Act.**”*

It was furthermore stated in Para 18 of the above mentioned judgment

*“In these cases, the High Court has rightly denied the prayer for reevaluation of answer-books sought by the candidates in view of the bar contained in the rules and regulations of the examining bodies. It is also not a relief available under the RTI Act. Therefore the question whether reevaluation should be permitted or not, does not arise for our consideration. **What arises for consideration is the question whether the examinee is entitled to inspect his evaluated answer-books or take certified copies thereof. This right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them and entitles them to have access to the answer-books as ‘information’ and inspect them and take certified copies thereof. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in Maharashtra State Board (supra) and the***

subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.”

The aforesaid decision of the Hon’ble Supreme Court of India *CBSE and Anr. V. Aditya Bandopadhyay* was further relied in the decision pronounced on 16.08.2016 by the Hon’ble Supreme Court of India in *Kumar Shanu and Anr. V. CBSE* in I.A. No. 01/2016 in Contempt Petition No. 9837/2016 Civil Appeal NO.6454/2011.

Moreover, the Hon’ble High Court of Delhi in the matter of *SBI vs. Mohd. Sahjahan LPA 714/2010* dated 09.05.2017 had held as under:

11. In the case in hand, the examiner has returned the answer books to the SBI after completion of the examination. In the light of the principles laid down in Central Board of Secondary Education v Aditya Bandopadhyay the examining body (the SBI in this case) does not hold the evaluated answer sheets (in the written exam) or the assessment sheet of the interview in a fiduciary relationship, qua the examiner/member of the interview board.

Moreover, the Commission also observed that in a recent decision in *CIC/UODEL/A/2017/140992-BJ+ CIC/UODEL/A/2017/603074-BJ* dated 18.06.2018 it had held that the student was entitled to inspection of his/ her answer sheet. The said decision was also challenged before the Hon’ble High Court of Delhi in the matter of the *University of Delhi vs. Shri Mohit Kumar Gupta and Anr* in *W.P.(C) 9993/2018* dated 24.09.2018, wherein the Court while fixing the next date of hearing in the matter on 30.01.2019 held as under:

“It is clarified that this Court has not stayed the impugned order dated 18.06.2018 and inspection of the evaluated answer sheet shall be provided to the respondent no. 1 as directed. The question whether a student had any right to seek inspection of his/ her answer sheet will be considered on the next date.”

Furthermore, in a recent decision in the matter of *Mradul Mishra vs. Chairman, U.P. Public Service Commission and Ors.*, Civil Appeal No. 6723 of 2018 (Arising Out of SLP No. 33006 of 2017) dated 16.07.2018, the Hon’ble Supreme Court of India had while deciding the issue as to whether the Appellant is entitled to see the answer sheets of the examination in which he participated, held as under:

“14. In our opinion, permitting a candidate to inspect the answer sheet does not involve any public interest nor does it affect the efficient operation of the Government. There are issues of confidentiality and disclosure of sensitive information that may arise, but those have already been taken care of in the case of Aditya Bandopadhyay where it has categorically been held that the identity of the examiner cannot be disclosed for reasons of confidentiality.

15. That being the position, we have no doubt that the Appellant is entitled to inspect the answer sheets. Accordingly, we direct the Respondent - U.P. Public Service Commission to fix the date, time and place where the Appellant can come and inspect the answer sheet within four weeks.”

The Commission also felt that issue under consideration involved Larger Public Interest affecting the fate of all the students who wish to obtain information regarding their answer sheet/ marks obtained by them which would understandably have a bearing on their future career prospects which in turn would ostensibly affect their right to life and livelihood. Hence allowing inspection of their own answer sheet to the students ought to be allowed as per the provisions of the RTI Act, 2005. The Commission therefore referred to the decision of the Hon'ble Supreme Court in the matter of Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61 while explaining the term "Public Interest" held:

"22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh([AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.).]"

The Hon'ble Supreme Court in the matter of Ashok Kumar Pandey vs The State Of West Bengal (decided on 18 November, 2003 Writ Petition (crl.) 199 of 2003) had made reference to the following texts for defining the meaning of "public interest", which is stated as under:

"Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus: "Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."
In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows : Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

In *Mardia Chemical Limited v. Union of India* (2004) 4 SCC 311, the Hon'ble Supreme Court of India while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, recognised the significance of Public Interest and had held as under :

".....Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country....."

Every action of a Public Authority is expected to be carried out in Public Interest. The Hon'ble Supreme Court of India in the matter of *Kumari Shrilekha Vidyarthi, etc vs. State of UP and Ors.*, 1990 SCR Supl. (1) 625 dated 20.09.1990 wherein it had been held as under:

"Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it,

for public good and in public interest. The impact of every State action is also on public interest.”

Similarly, the Hon’ble Supreme Court of India in the matter of LIC of India vs. Consumer Education and Research Centre, AIR 1995 SC 1811 dated 10.05.1995 had held as under:

“Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge.”

With regard to redressal of personal grievance of the Appellant, the Commission observed that the framework of the RTI Act, 2005 restricts the jurisdiction of the Commission to provide a ruling on the issues pertaining to access/ right to information and to venture into the merits of a case or redressal of grievance. The Commission in a plethora of decisions including Shri Vikram Singh v. Delhi Police, North East District, CIC/SS/A/2011/001615 dated 17.02.2012 Sh. Triveni Prasad Bahuguna vs. LIC of India, Lucknow CIC/DS/A/2012/000906 dated 06.09.2012, Mr. H. K. Bansal vs. CPIO & GM (OP), MTNL CIC/LS/A/2011/000982/BS/1786 dated 29.01.2013 had held that RTI Act was not the proper law for redressal of grievances/disputes.

The Hon’ble Supreme Court of India in the matter of Union of India v. Namit Sharma in REVIEW PETITION [C] No.2309 OF 2012 IN Writ Petition [C] No.210 OF 2012 with State of Rajasthan and Anr. vs. Namit Sharma Review Petition [C] No.2675 OF 2012 In Writ Petition [C] No.210 OF 2012 had held as under:

“While deciding whether a citizen should or should not get a particular information “which is held by or under the control of any public authority”, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.”

Furthermore, the High Court of Delhi in the matter of Hansi Rawat and Anr. vs. Punjab National Bank and Ors. LPA No.785/2012 dated 11.01.2013 held as under:

“6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2 LPA No.785/2012 from the employment of the respondent Bank is admittedly pending consideration before the appropriate forum. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished.”

Moreover, in a recent decision in Govt. of NCT vs. Rajendra Prasad WP (C) 10676/2016 dated 30.11.2017, the Hon’ble High Court of Delhi had held as under:

6. The CIC has been constituted under Section 12 of the Act and the powers of CIC are delineated under the Act. The CIC being a statutory body has to act strictly within the confines of the Act and is neither required to nor has the jurisdiction to examine any other controversy or disputes.

7. In the present case, it is apparent that CIC had decided issues which were plainly outside the scope of the jurisdiction of CIC under the Act. The limited scope of examination by the CIC was: (i) whether the information sought for by the respondent

was provided to him; (ii) if the same was denied, whether such denial was justified; (iii) whether any punitive action was required to be taken against the concerned PIO; and (iv) whether any directions under Section 19(8) were warranted. In addition, the CIC also exercises powers under Section 18 of the Act and also performs certain other functions as expressly provided under various provisions of the Act including Section 25 of the Act. It is plainly not within the jurisdiction of the CIC to examine the dispute as to whether respondent no.2 was entitled to and was allotted a plot of land under the 20-Point Programme.

A similar view delineating the scope of the Commission's jurisdiction was also taken by the Hon'ble High Court of Delhi in Sher Singh Rawat vs. Chief Information Commissioner and Ors., W.P. (C) 5220/2017 and CM No. 22184/2017 dated 29.08.2017 and in the matter of Shobha Vijender vs. Chief Information Commissioner W.P. (C) No. 8289/2016 and CM 34297/2016 dated 29.11.2017.

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, and in the light of the spirit of the aforesaid decision of the Hon'ble Supreme Court relating to the seeking his own answer sheets by an information seeker, the Commission directs the Respondent to provide a copy of evaluated answer sheet of the Appellant for Annual and Supplementary Examination as sought in the RTI application within a period of 15 days from the date of receipt of this order. The Commission also directs the Respondent to re-examine the RTI application and provide a revised point-wise response to the Appellant as per the provisions of the RTI Act, 2005 within the above-stated period.

The Commission also instructs the Respondent Public Authority to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

The Appeal stands disposed with the above directions.

(Bimal Julka) (बिमल जुल्का)
(Information Commissioner) (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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