

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 283/2015**

VISHAL GAJANAN NAIK.

..... PETITIONER.

V/S.

THE STATE OF GOA,

THROUGH ITS CHIEF SECRETARY & 5 ORS. RESPONDENTS.

Petitioner in person.

Mr. Sagar Gurudas Dhargalkar, Additional Govt. Advocate for the
respondent No.1.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 29 SEPTEMBER 2015.

P.C. :

Heard the petitioner in person and Mr. S.G. Dhargalkar,
learned Additional Govt. Advocate for the respondent No.1.

2. This petition challenges the Rules framed by the State Government dated 4/2/2008, as well as the Circular dated 12.12.2011, issued by the Board of Technical Education. The petitioner in person has pointed out that the concerned authority has no powers to frame

the Rules and, as such, the fees and costs as claimed by the respondents for the purpose of issuing photo copies and inspection of the answer books is not justified. It is further submitted that as the Rules are not framed in terms of the provisions of the Right to Information Act, the Rules stand vitiated and, as such, the same deserve to be quashed and set aside. It is further submitted by the petitioner in person that the costs/fees charged for such services are exorbitant, besides the fact that the Authority has no power to charge any fees. It is further submitted that such costs/fees have been prescribed on the basis of the salaries of the concerned officials for furnishing information/supplying xerox copies, which is not contemplated under the Act. It is further pointed out that as such, the petition deserves consideration and the said Rules and the Circular deserve to be quashed and set aside.

3. On the other hand, Mr. Dhargalkar, learned Addl. Govt. Advocate has submitted that the Rules have been framed in terms of the powers conferred upon the Appropriate Government in terms of Section 27 of the RTI Act. It is further submitted by the learned Additional Govt. Advocate that issuing copies of the answer books and supplying information entail a lot of work to the concerned Official/s

to trace the documents and thereafter maintain secrecy of the examiner, as well as the examinee, before providing inspection of such answer books. The learned Additional Government has also brought to our notice paras 43 to 45 of the affidavit-in-reply wherein the concerned Authority has justified the amount of costs/fees fixed by such Authority. The learned Additional Govt. Advocate has also highlighted the observations of the Apex Court in the Judgment reported in (2011) 8 SCC 497, in the case of *Central Board of Secondary Education and Another vs. Aditya Bandopadhyay and others*. The learned Additional Govt. Advocate, as such, submits that the petition deserves to be rejected.

4. We have given our thoughtful consideration to the rival submissions and we have also gone through the records. A perusal of the provisions of Section 27 of the RTI Act makes it clear that the Appropriate Government has powers to frame Rules for specific purposes, including costs for supplying copies of the documents, as well as the fees required to be charged for supplying such information. In exercise of such powers, Rule 4 has been introduced by the Notification dated 4th February, 2008. As such, the contention of the petitioner that the Rules have been framed without any authority under

the RTI Act, cannot be accepted.

5. As far as the contention of the petitioner that the fees are exorbitant and that there is no power conferred on the Authority to charge such fees, we find that considering the averments in paras 43 and 44 of the affidavit-in-reply as pointed out by the learned Additional Govt. Advocate, the costs/fees charged by the concerned Authority, cannot be said to be unreasonable. Said paras 43 and 44 of the Affidavit-in-reply read thus :

“ 43. I say that therefore taking into consideration the services utilized of the Officer, Clerk and Peon for issue of photocopy of the answerbook, for the total duration of minimum 02 hours, it is clear that the total cost of issuing photocopies of answerbooks works out to ₹.1800/-. This cost of ₹.1800/- is arrived and calculated by considering the monthly salary of an Officer, Clerk and Peon as ₹1,50,000/-. Assuming that the working days are 22 days, and each day consists of 7 ½ working hours, the cost per hour would work to ₹ .900/-. Therefore the cost incurred by the respondent for using services of the expert for the purpose of issuing photocopies of answerbooks under Rule 14B comes to Rs.1800/-. However, Board has fixed the rate for issue of photocopies of answerbooks to ₹.350/- only. It is thus

clear that in the circumstances the amount charged under Rule 14B is very much reasonable and in any case it is very small amount in comparison with the cost incurred by the respondent for issuing the information.

44. I say that if the fees as provided under Rule 14B of Board Rule is not charged, then it would lead to serious implications of misuse of the provisions of the Act without having reasonable cause. The respondent incurs this cost in order to maintain high level of secrecy as regards the name and signature of the examiner. Since in the event, such information is made known to the examinee, disgruntled examinee who is not satisfied with the evaluation of the answerbooks, may act to the prejudice of the examiner by attempting to endanger his physical safety and property. Further, if this safeguard is not adopted by the respondent, then any apprehension on the part of the examiner that there may be a risk to his life, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties as examiner.”

Taking note of the averments, it appears that the fees which have been fixed apparently appear to have been worked out considering the services utilized of the concerned officials in connection with the work required to be put up for obtaining such copies or furnishing such

information.

6. Apart from that, a perusal of the Circular dated 12/12/2011 impugned in the above petition, discloses that the fees for general verification of marks is retained as ₹ 100/- per subject. The fees referred to therein are for special facilities to issue photocopies for inspection verification in the presence and revaluation of answerbooks which requires specialised services.

7. The Apex Court in said Judgment in the case of ***Central Board of Secondary Education and Another*** (supra) has, inter alia, observed that 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, hire or avail 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.

8. Taking note of the powers conferred on the concerned authority in terms of the provisions of Section 27 of the RTI Act, to provide the norms set up for discharging its functions and fixing the costs, as well as the fees payable to furnish the information, we find that the costs and the fees prescribed in terms of the said Circular dated 12/12/2011 are not exorbitant, nor unreasonable, considering the special facilities sought by the petitioner.

9. As such, we find no merit in the above writ petition which stands, accordingly, rejected.

K.L. WADANE, J.

F.M. REIS, J.

ssm.