

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 310 OF 2014

The University of Pune .. Petitioner
Ganeshkhind, Pune
(Through its Registrar)
vs.
State of Maharashtra & Ors. .. Respondents

Mr. A. Y. Sakhare – Senior Advocate with Mr. Nikhil Chavan i/b. Mr. Rajendra Anthule for Petitioner.

Ms P. S. Cardozo – AGP for Respondent No. 1.

Mr. R. S. Apte -Senior Advocate i/b. Mr. Ketan Joshi for Respondent No. 2.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 10 March 2015

Date of Pronouncing the Judgment: 13 March 2015

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] The University of Pune, by this petition impugns the order dated 27 December 2013 made by the State Chief Information Commissioner (SCIC) under the provisions of the Right to Information Act, 2005 (said Act). By the impugned order dated 27 December 2013, upon concluding that certain clauses of Circular No. 239 of 2013 issued by the Vice Chancellor, University of Pune in exercise of powers vested in him under Section 14(8) of the Maharashtra Universities Act, 1994 (MU Act) are in conflict with the provisions of the RTI Act, has directed the '*deletion / correction*' thereof and to report compliance by 15 January 2014. By order dated 3 February 2014, this Court stayed the directions contained in

the impugned order and directed that it would be appropriate to hear this petition finally, at the stage of admission.

3] Section 14 of the MU Act defines the powers and duties of Vice Chancellor, who shall be the principal academic and executive officer of the university responsible for the development of academic programmes of the university. The Vice Chancellor, in terms of this Section, is expected to oversee and monitor the administration of the academic programmes and general administration of the university to ensure efficiency and good order. Sub clause (8) of Section 14 provides that where any matter is required to be regulated by the Statutes, Ordinances or Regulations, but no Statutes, Ordinances or Regulations are made in that behalf, the Vice Chancellor may, for the time being, regulate matter by issuing such directions as he thinks necessary, and shall, at the earliest opportunity thereafter, place them before the Management Council or other authority or body concerned for approval. The Vice Chancellor may, at that time, place before such authority or body for consideration the draft of the Statutes, Ordinances and Regulations, as the case may be, required to be made in that behalf.

4] The Management Council of the University of Pune in its meeting held on 19 September 2013 had approved the new Ordinances 184(A) and 184(B) concerning supply of photocopies of assessed answer books to examinees and revaluation of answer books in theory papers and amended Ordinance 7 concerning amendments to results. As the directives of the Chancellor under Section 54(4) of the MU Act were awaited in respect of the aforesaid new and amended Ordinances, the Vice Chancellor, in exercise of powers vested in him under sub section (8) of Section 14

of the MU Act, vide Order / Circular No. 239 of 2013, issued the following directives :

“1. Provisions as regards supply of photo copy(ies) of assessed answer book(s) to the examinees and revaluation of answer book(s) of theory paper(s) of as mentioned in Annexure-A shall be made applicable with effect from the examinations conducted in October / November, 2013 and onwards. Present Ordinance 134(A) and (B), Ordinance 149 and Ordinance 182 shall not continue to remain in force, and shall stand substituted by Annexure-A to this Order.

2. Provisions as regards amendment of results of examinations as mentioned in Annexure-B shall be made applicable with effect from the examinations conducted in October / November 2013 and onwards. Present Ordinance 7, Ordinance 146 and Ordinance 147 shall not continue to remain in force, and shall stand substituted by Annexure-B to this Order.”

The Annexure-A annexed to the Circular No. 239 of 2013 concern with the supply of photocopies of assessed answer books, fee structure, terms of supply, revaluation of answer books of theory papers, fee structure, the terms thereof and finally the general terms in such matters. The Annexure-B concerns amendments of results, with which we are not concerned in the present petition.

5] The respondent no. 2, in his capacity as President of Sajag Nagrik Manch addressed an e-mail dated 26 November 2013 to the SCIC taking exception to clauses 1(iv), 3 (iii) and 3 (xiii) of Annexure-A of Circular No. 239 of 2013 on the ground that such clauses conflict with the provisions of th RTI Act as also the law laid down by the Hon'ble Apex Court in the case of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.*¹ The

¹ (2011) 8 SCC 497

SCIC, upon treating the e-mail dated 26 November 2013 as a petition under Section 18 of the RTI Act has made the impugned order dated 27 December 2013 directing the University of Pune to '*delete or correct*' the said clauses and submit a report of compliance by 15 January 2014.

6] Mr. A. Y. Sakhare, the learned Senior Advocate for the petitioner submitted that the clauses in question cannot be read in isolation, but have to be read and construed in light of a scheme of revaluation provided therein. Thus read, the said clauses do not even remotely conflict either way the provisions of the RTI Act or the decision of the Hon'ble Apex Court in the case of *Aditya Bandopadhyay* (supra). In any case, Mr. Sakhare submitted that the SCIC in exercise of powers under Section 18 of the RTI Act has no jurisdiction to issue directions for the *deletion / correction* of circular issued by the Vice Chancellor in exercise of statutory powers under Section 14(8) of the MU Act.

7] Mr. R. S. Apte, the learned Senior Advocate appearing for the respondent No. 2 defended the impugned order by submitting that Annexure-A to the Circular No. 239 of 2013 is divided into two parts, the first part concerning supply of photocopies of assessed answer books and the second part concerning with the revaluation of answer books of theory papers. The clauses, against which the respondent No. 2 complained are contained in the first part and therefore have no concern with the scheme of revaluation. The clauses impose fetters upon right to obtain information with regard to assessed, evaluated or re-evaluated answer books. In the light of the provisions of the RTI Act, particularly as interpreted by the

Hon'ble Apex Court in the case of *Aditya Bandopadhyay* (supra), such fetters are unsustainable. The SCIC has sufficient powers, both under Sections 18 as well as 19 of the RTI Act to require a public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act, including *inter alia* by making necessary changes to its practices in relation to maintenance, management and destruction of records. Accordingly, Mr. Apte submitted that this Court ought not interfere with the impugned order, particularly since the same was entirely consistent with the provisions of the RTI Act as well as the decisions of the Hon'ble Apex Court in the case of *Aditya Bandopadhyay* (supra).

8] The rival contentions now fall for determination.

9] As noted earlier, the provisions contained in Section 14(8) of the MU Act vest in the Vice Chancellor power to regulate matters required to be regulated by the Statutes, Ordinances or Regulations by issuing said directions as he thinks necessary. The directions so issued in exercise of powers under Section 14(8) of the MU Act, though temporary in operation, are in the nature of a quasi legislation. In the present case, there is no dispute that Circular No. 239 of 2013 came to be issued by the Vice Chancellor in exercise of such powers conferred by the provisions contained in Section 14(8) of the MU Act. Consequently, the Circular No. 239 of 2013 has a statutory underpinning in the context of the provisions contained in Section 14(8) of the MU Act.

10] The analysis of Circular No. 239 of 2013, which includes *inter alia* Annexure-A thereto indicates that the same provides for the scheme of revaluation to be followed by the university. Although

Annexure-A is broadly divided into three parts, there is no basis to suggest that the said parts are either disjunctive or deal with distinct matters. The three parts, in terms, set out the scheme of revaluation to be followed by the university. The first part concerns with the supply of photocopies of the assessed, evaluated or re-evaluated answer books. The second part deals with the procedure for revaluation of answer books of theory papers and prominently provides that a candidate shall be eligible to apply for such revaluation of necessary books of theory papers of the university examinations '*only after receipt of photocopies of those answer books*' (clause 1(i) of second part). The third part concerns with the general terms and clause (1) thereof provides that evaluated, re-evaluated answer books shall be preserved by the university for a period of three months from the date of declaration of the results of the examinations concerned. It is therefore clear that the entire Annexure A, is a integrated document dealing with the scheme of re-evaluation of answer books of theory papers. The scheme provides for the procedure, time limits and fees in the matter of supply of photocopies of assessed, evaluated or re-evaluated answer books. The scheme specifies that a candidate can apply for re-evaluation only after receipt of photocopies of the answer books and provides for time limits, fee structure and terms of revaluation. Finally, certain general terms and conditions applicable both to supply of photocopies and revaluation have also been provided. Accordingly, the submission of Mr. Apte that first part of Annexure-A has no nexus with the scheme of revaluation of answer books of theory papers, cannot be accepted.

11] The clauses in respect of which the impugned order has issued directions, read thus :

“ANNEXURE-A

SUPPLY OF PHOTO COPY(IES) OF ASSESSED ANSWER BOOK(S)

1) Procedure for submission of Application for Supply of Photo Copy(ies) of Assessed Answer Book(s) :

i)

ii)

iii)

iv) *Application for obtaining photo copy(ies) of evaluated / re-evaluated answer book(s) shall be submitted by the examinee, along with the requisite fees, within ten days from the date of declaration of results of the examination concerned. An examinee whose result has been withheld, for any reason, whatsoever, and against whom case of resorting to unfair means is reported or is under investigation / consideration, shall submit his application for photo copy(ies) of assessed answer book(s), along with the requisite fees within ten day from the date of declaration of his result of the examination concerned.”*

“3) Terms Relating to Supply of Photo Copy(ies) of Assessed Answer Book(s) :

i)

ii)

iii) *The examinee shall be sole custodian of the photo copy(ies) so supplied and shall not transfer the same to anybody for any purpose, whatsoever. The examinee shall further refrain himself from putting such photo copy(ies) to any misuse that might jeopardize the reputation of the University.”*

“(xiii) The University shall not be liable for failure or delay in supplying photo copy(ies) of evaluated / re-evaluated answer book(s) due to any reason beyond the control of the University.”

12] As noted earlier, there is no scope to read or construe the aforesaid clauses in isolation. The clauses have to be read and construed as a part of the scheme of revaluation to be followed by

the university pending the coming into force of new Ordinances 184(A) and 184(B). Thus construed it is clear that the aforesaid clauses do not in any manner concern with or even interfere with the rights, which may otherwise be available under the RTI Act. For instance clause 1(iv) provides that applications for obtaining photocopies of evaluated or re-evaluated answer books shall be submitted by the examinee along with requisite fees within ten days from the date of declaration of the results of the examination concerned. The SCIC, has found fault with this provision, because general terms in Annexure-A provide that the evaluated / re-evaluated answer books shall be preserved by the university for a period of three months from the date of declaration of result of the examination concerned. The SCIC, misconstruing certain observations in the case of *Aditya Bandopadhyay* (supra) has held that where there is an obligation to preserve answer books for a period of three months, information or copies with regard to such answer books cannot be denied under the RTI Act, where the same is applied for within the period of three months.

13] The provisions contained in Circular No. 239 of 2013 and Annexure-A thereto concern with the scheme of revaluation answer papers. If a candidate is desirous of seeking re-evaluation, then it is obligatory for him to apply for photocopies of evaluated or re-evaluated answer books within ten days from declaration of results of the examination concerned. Thereafter, within ten days from the date of receipt of such photocopies, such applicant has to submit application for revaluation. There are time limits imposed upon the examiners as well as the university in the matters of revaluation. This is necessary considering the magnitude of the requests for re-evaluation as also the necessity to complete the revaluation process

with utmost dispatch. If the time limit set out in clause 1(iv) is disturbed or varied, it is possible that an applicant seeks for copies even on the 89th day after the declaration of results and further within ten days from the receipt thereof insists that his answer papers are reevaluated. This would, possibly, lead to the collapse of the entire scheme of revaluation. In any case, these are policy matters, which are within competence of academic authorities. The scope of even judicial review by a Constitutional Court in such matters, is very limited.

14] In the case of *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. vs. Paritosh Bhupeshkumar Sheth & Ors.*², in the context of provisions for revaluation in the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977, the Hon'ble Apex Court has held that it is the duty cast on the State Board to formulate its policy as to how the examinations are to be conducted, how the evaluation of performance of candidate is to be made and by what procedure results are to be finalised, compiled and released. The responsible representative body entrusted with power to take policy decision in such matters and to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. The Courts should be extremely reluctant to substitute its opinions and views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated

2 (1984) 4 SCC 27

from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate, if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also as far as, avoid any decision or interpretation of the statutory provision, rule or bye-laws which would bring about rendering unworkable in practice.

15] In the case of *Aditya Bandopadhyay (supra)*, the Hon'ble Apex Court was called upon to decide the following issues :

11. *On the contentions urged, the following questions arise for our consideration :*

(i) *Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?*

(ii) *Whether the decisions of this court in Maharashtra State Board of Secondary Education and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?*

(iii) *Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under section 8 (1)(e) of RTI Act?*

(iv) *If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards?*

16] The question of the terms and conditions of a Scheme for re-evaluation of answer-books, was really not in issue. In the context of the first issue, it was held that every examinee will have the right to access his evaluated answer-books, either by inspecting them or

taking certified copies thereof, unless the evaluated answer-books are found to be exempted under Section 8(e) of RTI Act. On the second issue, it was held that it is settled that a provision barring inspection or disclosure of the answer books or re-evaluation of the answer books and restricting the remedies of the candidates only to re-totalling is valid and binding on the examinee. If, however, the rules and regulations of the examining body provide for re-evaluation, inspection or disclosure of answer-books, then none of the principles in the *Maharashtra State Board case (supra)*, or other decisions following it, will apply or be relevant. In any case, the decision in the case of *Maharashtra State Board case (supra)*, subsequent decision following the same, will not affect or interfere with the right of examinee seeking inspection of the answer-books or taking certified copies thereof. On the third issue, the contention that examining body holds the evaluated answer-books “in a fiduciary relationship” was rejected. On the fourth issue, it was held that right to inspect evaluated answer-books or to seek certified copies thereof, is subject to certain limitations, conditions and safeguards.

17] For example, in paragraph 54 of the judgment, the Hon'ble Apex Court has observed that the right to access information does not extent beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, and in case of University of Pune, the the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. The fact that right to information is available with regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the RTI Act is to make available or give access to

existing information or information which is expected to be preserved or maintained. If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. The power of Information Commission under Section 19(8) of RTI Act to require public authority to take any such steps as may be necessary *to secure compliance with the provisions of the Act*, does not include a power to direct the public authority to preserve the information for any period larger than what is provided under the rules and regulations of the public authority. The contention that there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf was rejected, has based on complete misreading and misunderstanding of Section 8(3) of the RTI Act. The period for which any particular records or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority regarding preservation of records.

18] The impugned order, by reference to aforesaid observations in paragraphs 54,55 and 56 of the judgment in case of *Aditya Bandopadhyay (supra)*, has come to the conclusion that there is an obligation on the part of University of Pune to entertain applications for supply of photocopies of assessed evaluated or re-evaluated answer-books for a period of three months from the date of declaration of the result and the curtailment of this period to 10 days from the date of declaration of result under clause 1(iv) of Annexure-A, is in conflict with the law laid down by the Hon'ble

Apex Court. Such reasoning cannot be accepted. In the first place, the judgment in case of *Aditya Bandopadhyay (supra)*, was not directly dealing with any scheme and re-evaluation of answerbooks. Secondly, Circular No. 239 of 2013 and Annexure-A thereto do not infringe upon the right of candidate, or for that matter any person to inspect or obtain photocopies of assessed, evaluated or re-evaluated answer-books within a period of three months from the date of declaration of result. However, if a candidate seeks to avail re-evaluation of his answer-books, then such candidate is required to comply with the procedure and time schedules set out in Circular No.239 of 2013 and Annexure-A thereto. Consequently, the directions to 'Correct' clause 1(iv) in Annexure-A to Circular No.239 of 2013, was not warranted.

19] The clause 3(iii) in Annexure-A to Circular No.239 of 2013 provides that the examinee, who has obtained the photocopies of the answer-books for the purposes of reevaluation, shall not transfer the same to anybody for any purpose, whatsoever. The examinee shall further refrain himself from putting such photocopies to any misuse that might jeopardize the reputation of the University. The aspect of transfer of photocopies to anybody for any purpose whatsoever, may appear to be an expression, widely worded. However, the same has to be read in the context of entire scheme providing the procedure for reevaluation. If, the photocopies of answer-books are obtained by resort to the provisions of the RTI Act, then there is no such restriction in the matter of transfer. The provision of RTI Act, in terms of Section 22 thereof have an overriding effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of

any law other than this Act. Accordingly, even though the University of Pune may not be in a position to effectively enforce the provisions of transfer contained in clause 3(iii) with regard to photocopies of answer-books obtained under RTI Act, there was no reason to issue any direction for deletion of the said clause by the SCIC in exercise of powers conferred by Section 18 of the RTI Act. The same is position with regard to clause 3(xiii) which provides that University shall not be liable for failure and delay in supplying photocopies of evaluated/re-evaluated answer-books due to any reason beyond the control of the University.

20] The SCIC has purported to exercise powers under Section 18 of the RTI Act to issue the directions for '*deletion/correction*' of certain clauses in Annexure-A to Circular No.239 of 2013. Section 18 of the RTI Act, *inter alia*, provides that it shall be the duty of the SCIC to receive and enquire into a complaint from any person who has been unable to submit a request to to the Public Information Officer (PIO) either by reason that no such officer has been appointed or because he has refused to accept the application for information; who has been refused access to any information requested under this Act; who has not been given a response to a request for information or access to information within the time limit specified under this Act; who has been required to pay an amount of fee which he or she considers unreasonable; who believes that he or she had been given incomplete, misleading or false information under this Act; and in respect of any other matter relating to requesting or obtaining access to records under this Act. Sub-clause (2) of Section 18 of the RTI Act, empowers SCIC to initiate an enquiry if there are reasonable grounds to enquire into the matter. Sub-clause (3) of Section 18 of the RTI Act, the SCIC has been vested

with same powers as are vested in a civil Court while trying a suit under CPC in respect of certain specified matters. Sub-section(4) of Section 18 of the RTI Act provides that the SCIC may during inquiry of any complaint under the RTI Act, examine any record to which the act applies, which is under the Control of public authority and no such record may be withheld on any grounds.

21] The complaint made by respondent No.2 cannot be said to be a complaint which falls within any of the predicates of Section 18 of the RTI Act. If, however, the *ominibus* clause contained in Section 18(1)(f) of the RTI Act is stretched and the complaint is regarded as one under Section 18 (1) of the RTI Act, there is still no power to be found in Section 18 of the RTI Act, under which the directions for 'deletion/correction' of Circular No.239 of 2013 issued by the Vice Chancellor in exercise of powers conferred upon him by Section 18(8) of the M.U. Act can be issued. The directions issued also cannot relate to the provisions contained in Section 19(8) of the RTI Act, which incidentally concerns the appellate jurisdiction of the SCIC, which it was admittedly not exercising whilst entertaining the complaint made by respondent No.2. Section 19(8) of the RTI Act, in any case empowers the SCIC to require public authority to take any such steps as may be necessary to secure compliance with the provisions of RTI Act, including by making necessary changes to its practices in relation to maintenance, management and destruction of records. As noted earlier, Annexure-A to Circular No.239 of 2013 deals with scheme of re-evaluation of answer-books and in that sense has no nexus with the rights of any person to obtain photocopies of answer-books simplicitor by resort to the provisions of RTI Act. Even a constitutional Court after record of conclusion as to unconstitutionality of a legislative or a *quasi* legislative exercise,

would normally strike down the same, but refrain from directing '*deletion/correction*'. In such circumstances, the directions issued for '*deletion/correction*' are clearly in excess of jurisdiction.

22] Accordingly, the impugned order dated 27 December 2013 made by SCIC is set aside.

23] Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

(M. S. SONAK, J.)

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