

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1873/2016 & CM Nos. 8014/2016, 25545/2016 & 25546/2016**

UNIVERSITY OF DELHI Petitioner
Through: Mr Ankur Chhibber, Advocate.
versus
ABNER INGTY Respondent
Through: Ms Ruhini Dey, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER
% **10.08.2017**

VIBHU BAKHRU, J

1. The petitioner - University of Delhi (hereafter 'DU') - has filed the present petition impugning an order dated 15.01.2016 passed by the Central Information Commission (CIC). The controversy involved in the present petition is that whether DU is required to provide copies of answer scripts on payment of ₹2 per page as provided under the Right to Information Act, 2005 (hereafter 'the Act') or in terms of its Rules which provide for charging ₹750/- for such information.
2. The respondent, who is a student undergoing the course of Bachelor of Law (LLB), had filed an application under the Act, on 10.03.2015, requesting for certain information regarding marks obtained in the exams undertaken by him. He had requested verification of the marks awarded to him (and as indicated online), inasmuch as his name had been incorrectly spelt and he, thus, had some apprehension as to the correctness of his marks.
3. The CPIO of the DU referred the respondent's request to the Deputy

Controller of Examination (Re-evaluation). The said officer informed that DU had developed a mechanism for providing copies of answer scripts and that any student could obtain the same in the manner as provided. The application for photocopy of the answer sheets could only be made between the 61st to 75th day of uploading of result on DU website and this was duly communicated to the respondent.

4. Aggrieved by the aforesaid decision, the respondent preferred an appeal before the First Appellate Authority (hereafter 'FAA'), *inter alia*, praying that copies of answer sheets be provided at the cost of ₹2/- per page and further that the time provided for making such request was not reasonable.

5. This appeal was disposed of by the FAA on 18.05.2015 by affirming the decision of the CPIO and advising the respondent to apply for the copy of the evaluated answer scripts as per DU's notification, which was also available on the website of DU.

6. Aggrieved by the aforesaid decision, the respondent preferred a second appeal under Section 19(3) of the Act before the CIC. The CIC disposed of the said appeal by issuing various directions, which are set out below:-

“40. The Commission, in view of above discussion, exercising its power and performing its function under Section 18(1)(d) accepts this complaint against the unreasonable cost demanded from student appellant and unreasonable time limits on this right, and exercising power under Section 19(8)(iv) RTI Act, require the Delhi University:

- a) shall make necessary changes to its practices in relation to providing access and having a copy of answer sheet at cost of Rs.2 per page as per their

very own manual no.17 and to accept RTI applications from the date of results declaration throughout the period of retention of record, as mandated by the RTI Act and Rules, as soon as possible but not beyond one month from date of this order.

- b) recommends the honourable members of the Executive Council to change the rule concerning the answer sheet, which is discouraging students from seeking re-evaluation of answersheets facilitating lack of accountability much against the letter and spirit of RTI Act.
- c) directs the CPIO to show cause why maximum penalty should not be imposed against him for charging unreasonably high cost for answersheet in breach of the Delhi University Manual which does not allow him to charge more than Rs.2 per page.
- d) directs the public authority to show casue why it should not be directed to pay suitable compensation to the appellant or students who were similarly charged high and unreasonable cost for furnishing answer sheets.
- e) directs all the Universities in India, including deemed University and all examining bodies to provides copies of answer sheets only at a cost of Rs.2 per page and make necessary charges to their respective notifications accordingly as soon as possible but not beyond 30 days from the date of this order.
- f) directs University Grant Commission and Association of India Universities, to circulate publicize and insist on implementation of this order in all academic/examining bodies.
- g) directs the Ministry of Human Resources Development, to circulate this order to all examining bodies including Universities and make it mandatory for them to bring uniformity in the rules and regulations by fixing cost at not more

than Rs.2 per page of answer sheet.”

7. The learned counsel for the petitioner has assailed the impugned order mainly on three fronts. Firstly, he submits that the decision of the CIC is contrary to an earlier Full Bench decision of the CIC in CIC/RM/A/2012/000540/LS whereby it was decided to await the decision of the Supreme Court in the case of ***Institute of Companies Secretaries of India v. Paras Jain : SLP(C) No. 12692/2014***. According to the petitioner, the issue involved in the said petition is identical to the issue involved in this petition; that is, whether the copies of answer sheets are to be provided on payment of charges as prescribed under the Act or as per the rules framed by the concerned institution.

8. Secondly, he submits that the CIC had unilaterally converted an appeal into a complaint and the CIC had no jurisdiction to do so. He has relied on the decision of the Supreme Court in the case of ***Chief Information Commissioner And. Anr. v. State of State of Manipur And Anr. (2011) 15 SCC 1*** in support of his contention.

9. Thirdly, he submits that DU was not provided with any copy of the appeal or complaint and, therefore, was handicapped in addressing the issue.

10. This Court is also informed that as per DU's rules, the answer scripts are to be preserved for a period of 135 days after the declaration of result and the answer scripts sought for by the respondent have been weeded out and are no longer available.

11. The contention that the CIC ought to have awaited the decision of the Supreme Court in the case of ***Paras Jain (supra)*** is merited. This is so because the Full Bench of CIC in ***Tehsildar vs University of Delhi :***

CIC/RM/A/2012/000512/LS and *Jugal Kishore vs University of Delhi* *CIC/RM/A/2012000540/LS* had already decided to await the aforesaid decision and indisputably the issue involved in the said matter is identical to the issue involved in the present case. The CIC had noted the same, however, had decided not to follow that course solely for the reason that, according to it, the decision of the Rajasthan High Court in *Alka Matoria v. Maharaja Ganga Singh University & Ors.: AIR 2013 Raj 126* had not been brought to the notice of the Full Bench of the CIC and the Full Bench had also not been informed that the Special Leave Petition preferred against the said decision had been dismissed by the Supreme Court.

12. The learned counsel had pointed out that the order passed by the Rajasthan High Court in the case of *Alka Matoria* (*supra*) was placed before the Full Bench of the CIC and therefore, the decision to await the decision of the Supreme Court in *Paras Jain* (*supra*) could not be distinguished on that ground.

13. The second contention that the respondent's appeal could not have been considered as a complaint and punitive measure could have been directed against the petitioner in a second appeal preferred by the respondent is plainly unmerited. The language of Section 20 of the Act is clear and the CIC is empowered to impose such penalty at the time of either deciding the complaint or an appeal, this is apparent from the opening sentence of Section 20(1) of the Act. Thus, the CIC was well within its jurisdiction to conduct an inquiry, if the CIC was of the opinion that there were reasonable grounds to enquire into the matter as provided under Section 18(2) of the Act. However, the CIC was required to follow the principles of natural justice and give a reasonable opportunity to the petitioner to be heard, as

expressly provided under the proviso to Section 20(1) of the Act.

14. The reliance placed by the learned counsel of the petitioner on the case of **Chief Information Commissioner** (*supra*) is wholly misconceived. In that case, the Supreme Court had observed that complaint under Section 18 could not be treated as an appeal and, therefore, CIC would not have the jurisdiction to direct disclosure of information while examining a complaint under Section 18 of the Act. The said judgment is not an authority for the proposition that the CIC cannot entertain the complaint regarding denial of information while considering an appeal under Section 19(3) of the Act. Thus, in a proceeding under Section 19(3) of the Act, if the CIC is of the opinion that the information has been *malafidely* denied or incorrect or incomplete information has been given or that the information has been destroyed or the request of the information seeker has been obstructed in any manner, the CIC would be well within its jurisdiction to enquire into the matter and impose the penalty as specified under Section 20(1) of the Act.

15. The contention that DU has not received a copy of the appeal is not disputed and, therefore, DU's grievance that the principles of natural justice have been violated, is merited. The CIC was also required to give a specific notice indicating that the question of imposition of penalty was being considered and provide an opportunity to be heard to the concerned CPIO as mandated by the proviso to Section 20(1) of the Act.

16. In view of the above, the decision of the CIC cannot be sustained. The same is set aside and the matter is remanded to the CIC to consider afresh after the decision is rendered by the Supreme Court in the case of **Paras Jain** (*supra*).

17. It is also clarified that the CIC would consider the question of

imposing a punitive measure after hearing the concerned CPIO considering that the information sought for by the respondent was destroyed after the respondent had sought the same under the Act.

18. The petition and pending applications are disposed of. No order as to costs.

VIBHU BAKHRU, J

AUGUST 10, 2017
MK

