

Present :- Hon'ble Justice Amrita Sinha

Sayantan Biswas

The University of Calcutta & Ors.

Judgment on :- 30-07-2021

The petitioner appeared in the Part-I examination in the year 2019. Being dissatisfied with the marks awarded in his Chemistry examination the petitioner applied for revaluation of his answer scripts of the Chemistry (Hons.) practical paper. He also made application under the Right to Information Act, 2005 praying for authenticated copy of the Chemistry (Hons.) practical answer scripts. As there was no reply from the State Public Information Officer he preferred an appeal before the First Appellate Authority. There was no reply once again. The petitioner

preferred second appeal before the West Bengal State Information Commission on 13th February, 2020. By an order dated 24th December, 2020 the second appellate authority directed the State Public Information Officer to provide the information to the petitioner since none of the information sought for by the petitioner appeared to be exempted from disclosure under any provision of the Right to Information Act, 2005.

In spite of the order passed by the appellate authority, the petitioner was not provided with the copies of his practical answer scripts. Instead, the petitioner has been intimated that in view of the rules and regulations followed by the University of Calcutta, his prayer for obtaining photocopy of the evaluated answer script of practical paper cannot be entertained.

The petitioner contends that it is obligatory on the part of the University to permit him to inspect the practical answer script in accordance with the provisions of the Right to Information Act, 2005.

In support of his case the petitioner relies upon the decision delivered by this Court in the matter of **University of Calcutta & Ors. –vs- Pritam Rooj** reported in **AIR 2009 Cal 97** (paragraphs 52, 59 and 66). Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the matter of **CBSE & Anr. –vs- Aditya Bandopadhyay & Ors.** reported in **2011 AIR SCW 4888** (paragraphs 17 and 18).

The petitioner also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of **Institute of Companies Secretaries of India –vs- Paras Jain** reported in **(2019) 16 SCC 790** (paragraph 12).

The petitioner submits that admission to the next year course will begin in the following week and prays for a direction for inspection of his practical answer script.

The learned advocate representing the University of Calcutta submits that the University is bound by their own guidelines which bar applications for obtaining

photocopies of evaluated answer scripts in practical papers. The relevant notification has been produced before this Court. It appears therefrom that the University permits inspection of the evaluated answer scripts on application in the prescribed format and on payment of the necessary charges, provided, no application for providing photocopy of evaluated answer scripts in practical papers, compulsory languages and environmental sciences is entertained.

According to the University as there is a specific bar in entertaining the application for providing photocopy of answer scripts of the practical papers, accordingly the prayer of the petitioner cannot be entertained. It has been argued that the regulation/guideline of the University barring supplying of practical answer scripts is not under challenge before the Court. As long as the regulation/guideline is in force, the University will not be in a position to permit the petitioner to inspect or obtain photocopy of the practical answer script.

It has been submitted that the order passed by the appellate authority of the Information Commission is an ex parte order and the said order has been passed overlooking the relevant rules. However, it has been candidly submitted that no appeal against the order of the Information Commission has been filed by the University till date.

The learned advocate appearing for the University relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Maharashtra State Board of Secondary and Higher Secondary Education & Anr. -vs- Paritosh Bhupeshkumar Sheth & Ors.*** reported in ***(1984) 4 SCC 27*** (paragraph 29). Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Central Board of Secondary Education & Ors. -vs- Khushboo Shrivastava & Ors.*** reported in ***(2014) 14 SCC 523*** (paragraph 7).

Prayer has been made for dismissal of the writ petition.

The learned advocate representing the West Bengal Information Commission submits that at the time of hearing of the second appeal it appeared to the Commission that the information sought for by the petitioner was not exempted from disclosure under any provision of the RTI Act, 2005 and accordingly direction has been passed upon the State Public Information Officer to provide the information to the petitioner.

I have heard the submissions made on behalf of all the parties.

What is to be decided in the instant writ petition is whether a candidate may be allowed to inspect and obtain authenticated photocopy of the answer scripts of the practical examination despite the bar in the University guidelines.

The Hon'ble Division Bench of this Court while deciding a similar issue in *Pritam Roj (supra)* held that an assessed/evaluated answer script of an examinee writing a public examination conducted by the University does come within the purview 'information' as defined in the Right to Information Act, 2005.

The Court further held that Section 22 of the RTI Act lays down that the provisions of the RTI Act shall have overriding effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force. In view of the overriding effect of the RTI Act a subordinate legislation framed by the public body which conducted the examination that is clearly inconsistent with the spirit of the RTI cannot whittle down and/or negate a right flowing from it.

The Court went on to hold that in view of such overriding effect an examinee is not required to challenge the validity of the regulation which bars inspection of answer scripts, being clearly inconsistent with the provisions of the RTI Act. The same has to be read down to save it from the charge of being ultra vires the provisions thereof.

The Hon'ble Supreme Court in the case of Aditya Bandopadhyay (supra) while deciding a similar issue framed a couple of questions. The following questions framed by the Court will be relevant to decide the issue herein:

- 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 [1984 (4) SCC 27: (AIR 1984 SC 1543)] 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?

In answer to the aforesaid questions the Court categorically held that the provisions of the RTI Act will prevail over the provisions of the bye laws/rules of the examining bodies in regard to examinations. Unless the examining body is able to demonstrate that the answer books fall under the exempted category of information as described in Clause (e) of Section 8(i) 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 examination. The Court held that the decision in the case of 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.

In the instant case the rules and regulations followed by the University of Calcutta does not permit supplying photocopies of the evaluated answer scripts only in respect of the practical papers, compulsory languages and environmental studies. No justifiable reason has been shown as to why the answer scripts only in respect of the above subjects cannot be allowed to be inspected or photocopies handed thereof.

The Court fails to understand the rationale of such classification. It appears that the University is trying to set up a separate class within a class. The examinees are to be taken as a class of their own. They ought not to be segregated as students of any particular subject. All examinees are to be treated equally. The University is treating equals unequally. The same is prohibited in law.

It is not that the University does not permit inspection of answer scripts at all. Self-inspection is permitted according to the rules of the University, however with a rider, that it will be impermissible to inspect practical, compulsory language and environmental studies answer scripts. As to why the answer scripts of the practical papers, compulsory languages and environmental studies cannot be inspected by an examinee has not been spelt out in the rules.

Classification is permissible in law, provided the same is just and reasonable. It is settled law that to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. Article 14 of the Constitution condemns discrimination not only by a substantive law but also by a law of procedure. (***D.S Nakara & Ors. vs Union of India & Ors.*** reported in **1983 SCC (1) 305**)

The University has failed to satisfy the Court that there is any reasonable justification to withhold the evaluated answer scripts from being inspected by an aggrieved examinee. The answer scripts of the above subjects certainly do not fall under the exempted category of information. The University refused to entertain the application of the petitioner only relying upon the rules and regulations of the University and not for any other reason. The second appellate authority of the

Information Commission thought it fit to direct the University to provide the required information to the petitioner as the information sought for does not appear to be exempted from disclosure under any provision of the RTI Act, 2005.

As per Section 22 of the RTI Act, 2005 the provisions of the RTI Act will prevail over the rules and regulations of the University. The issue is no longer res integra and has been put at rest conclusively by the decision delivered by the Hon'ble Supreme Court in the case of Aditya Bandopadhyay (supra). The rules and bye-laws of the University barring inspection of evaluated answer script will not stand in the way of the examinee to inspect his/her answer script under the provisions of the RTI Act. The University is legally bound to permit the examinee to inspect the answer script in the light of the RTI Act, 2005.

In view of the above, the instant writ petition is disposed of by directing the University to permit the petitioner to take inspection of the answer scripts of his Chemistry practical examination at the earliest, but positively within 4th August, 2021.

The learned advocate on record of the petitioner is granted leave to correct the presentation form and the front sheet of the writ petition.

W.P.O. No. 176 of 2021 stands disposed of.

(Amrita Sinha, J.)

Later

As per the desire of the Court, the learned advocate representing the University of Calcutta has produced the practical answer script of the petitioner, in original, in Court today. It appears therefrom that the front page of the booklet contains the marks awarded by the examiner and the marks awarded by the head examiner. It is noticed that the marks have been re-written by the head examiner Mr. Shantanu

Bhattacharyya. The marks awarded by the examiner were sixteen whereas the said Mr. Shantanu Bhattacharyya increased the marks to twenty.

The tabular form of total marking also mentions that for preliminary orientation test out of total twenty marks initially ten and half marks was awarded, thereafter two marks have been added and it has been made twelve and half. Similarly, in the grand total, out of thirty-five initially ten and half was granted and thereafter it went up to twelve and half.

In the answer booklet it appears that the initial marks awarded by the examiner in red ink have been increased by adding extra marks by black ink in nearly all the pages. Initially the corrections and marks were noted with red ink but thereafter the black ink comes in and there has been increase in the marks. The black ink has been used by Mr. Shantanu Bhattacharyya as appears from his signature at the very first page of the booklet. Mr. S. Banerjee, the examiner all along used pen with red ink.

Since the issue before this Court is only with regard to the law relating to inspection of evaluated answer script by an aggrieved examinee, accordingly, the Court restricted the order with regard to the said point of law only, but thereafter as the aforesaid incident has been brought before the Court, the Court takes judicial notice of it and permits the University of Calcutta to initiate appropriate proceeding against the erring examiner and/or the person(s) responsible, strictly in accordance with law, if so advised.

As a good gesture on the part of the learned advocate appearing on behalf of the University, a photocopy of the answer script of the petitioner has been handed over to the learned advocate of the petitioner in Court. The original answer script along with the envelope is returned back to the learned advocate representing the University.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(AMRITA SINHA, J.)