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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th December, 2024

+ W.P.(C) 10118/2021

RAJEEV KUMAR

.....Petitioner

Through: Ms. Anju Agrawal, Ms. Manisha Singh, Mr. Abhai Pandey, Mr. Varun Sharma, Mr. Nishant Rai, Mr. Gautam Kumar, Mr. Manish Aryan, Ms. Swati Mittal, Mr. Dhruv Tandon and Ms. Shivani Singh, Advocates.

versus

1.CENTRAL INFORMATION COMMISSION (CIC) THROUGH CPIO & ORS.Respondents

Through: Mr. Pritish Sabharwal, SC for R-3. Mr. Rahul Sharma and Mr. Mani Kant S., Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner filed an online RTI application with the Public Information Officer¹ of Jamia Millia Islamia University² – Respondent No. 3 on 26th March, 2019, *inter-alia* seeking access to PhD thesis titled as ‘*Studies on some nitrogen fixing genes of Azotobacter vinelandii*’³ authored by a scholar, Mr. Umesh Kumar Bageshwar. In response, the PIO, *vide*

¹ “PIO”

² “JMIU”

³ “PhD thesis”



response dated 14th April, 2019, merely forwarded the reply dated 10th April, 2019, of the Librarian of the University which stated that “the said thesis has been put in absolute safe custody of the Librarian by order of the competent authority of the University,” without providing any response to the request as regards access to the PhD thesis. Dissatisfied, the Petitioner filed a first appeal which also was rejected by order dated 24th May, 2019 on the ground of Section 8(1)(d) of the Right to Information Act, 2005.⁴

2. The Petitioner then preferred a second appeal before Central Information Commission⁵ impugning the decision of the First Appellate Authority. The CIC decided the appeal through order dated 12th April, 2021, the operative portion reads as under:

⁴ “RTI Act”

⁵ “CIC”



Decision

The Commission having perused the instant grounds of Appeal and having heard the parties at length observes that the Appellant has primarily harped on the relevant University Ordinances to insist that the thesis of the averred research scholar ought to be disclosed in the public domain as once the scholar submits the thesis to the University, it ceases to be the property of the scholar and hence the consent or dissent of the said scholar is not consequential to the disclosure of the thesis in the public domain. In this regard, the Appellant has emphasised on the aspects of transparency; fair use; research advancement among other reasons to accord a larger public interest in the disclosure of the thesis.

While, the CPIO has insisted on an unambiguous argument that having received the request from the concerned scholar to not disclose the thesis paper without having a NDA signed with him for the reasons of commercial viability or because of an impending patent filing in India, the information is exempted under Section 8(1)(d) of the RTI Act.

In the considered view of the Commission, the arguments of the representative of the Appellant questioning the originality of the said thesis or challenging the Patent filing on the grounds that the idea invested in the thesis is no more 'novel' are more in the nature of self-serving arguments or at best calls for intervention of the University administration to assess if any procedural or ethical lacunae is pertinent in the award of degree based on the averred thesis in the context of the serious allegations of the Appellant.

From the standpoint of the RTI Act, the reasons tendered by the FAA in his order which was further relied upon by the CPIO during the hearing ably justifies the applicability of Section 8(1)(d) of the RTI Act which provides as under:

"8. Exemption from disclosure of information, —

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;..."



Moreover, the Appellant may note that merely because University Ordinance prescribes publication of the thesis does not take away the protection available to the disclosure of the same under the RTI Act if exemption of Section 8 and/or 9 therein is applied and justified. The thesis publication of the research scholars cannot be reasonably even brought under any of the *suo motu* components of disclosure envisaged under Section 4 of the RTI Act, thereby reinforcing the proposition that the protection of Section 8 and 9 exemptions is very much available to the CPIO in the instant case. As for the larger public interest argued by the representative of the Appellant, the Commission is not inclined to accept the same in the absence of any material on record to even remotely substantiate the serious allegations of plagiarism in the face of a US patent said to have been already procured by the third party, which fact was also not disputed by the representative of the Appellant. In fact, the arguments tendered by the representative of the Appellant to this effect during the hearing appeared to be rather laboured and feeble.

Having observed as above, the Commission although upholds the denial of the information on point no.1 of the RTI Application under Section 8(1)(d) of the RTI Act as espoused by the FAA, however, the order of the FAA is not appropriate for points no.2 & 3 of the RTI Application. The Appellant has sought for reasons and clarifications through these points which in principle do not conform to Section 2(f) of the RTI Act but warranted at least a specific reply by the CPIO & FAA to this effect.

Nonetheless, advertent to the peculiarity of the instant case in the context of the serious allegations of the Appellant and the admitted stance of the CPIO that the third party has intimated that the thesis be withheld from public disclosure or publication, the Commission deems it expedient to harmonise the conflicting interests of the concerned parties herein in keeping with the letter and spirit of the RTI Act.

In doing so, for point no. 2 of the RTI Application, the CPIO is directed to provide a copy of the relevant and available instructions received from the said third party requesting for complete confidentiality of the said thesis or in the absence of said record, any other corresponding document as available should be provided to the Appellant. Similarly, for point no.3 of the RTI Application, the CPIO is directed to provide the relevant and available guidelines governing restricted access of thesis submitted by the scholars of the University to the Appellant. In the event that, no



relevant recorded form of information is available for one or both of points 2 & 3 of the RTI Application, a categorical statement to this effect shall be stated in the CPIO's reply.

The available information as directed above should be provided free of cost to the Appellant within 15 days from the date of receipt of this order by the CPIO under due intimation to the Commission.

Further, adverting to the submission of the CPIO regarding facilitating access to the thesis subject to signing of NDA in consultation with the concerned research scholar, the Appellant is at liberty to approach the University for the said purpose. In the event that a request to this effect is received from the Appellant, the CPIO shall ensure due assistance in getting him in touch with the said research scholar.

A copy of this order is further marked to the Vice Chancellor, JMI and to the Chairman, UGC to note that the instant case impliedly suggests that despite relevant University Ordinances stipulating access permission to the submitted thesis of scholars, the prerogative lies with the University to withhold one such thesis in absolute confidentiality on the grounds of commercial viability and market competition. If that be the message that the Respondent University is conveying, it may be assessed if the said prerogative of the University is backed by any UGC Regulations and if the same is conducive to the interests of the research community at large.

In the same regard, Vice Chancellor, JMI may also consider placing in public domain any exceptions to the rule of granting access to submitted thesis of the scholars in order to dispel the apprehensions of other fellow research scholars or the general public at large and to avoid casting aspersions on the work of the scholars.

The appeal is disposed of accordingly.

Saroj Punhani (सरोजपुनहानि)
Information Commissioner (सूचनाआयुक्त)

3. Aggrieved by the aforementioned decision, the Petitioner has filed the instant petition seeking a copy of or access to the PhD thesis.
4. Counsel for the Petitioner makes the following submissions:
 - 4.1 The CIC has failed to appreciate that the thesis submitted with JMIU is an academic document. It must always be open to public scrutiny for various purposes such as study, further research, testing plagiarism etc. and



the refusal on the part of JMIU, is breach of its duties as the custodian of the thesis.

4.2 As per the regulations of JMIU, specifically Rule 13(b) of Ordinance 9(IX), the University is bound to make every Ph.D thesis available without any exception. In terms of Section 13.1 of the UGC (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) Regulations, 2016, the University is supposed to submit the PhD thesis to UGC for hosting the same on INFLIBNET⁶ in order to make it accessible to all other Institutions/Universities. Thus, the PhD document is not a confidential document or an intellectual property which cannot be shared.

4.3 The PhD thesis was previously accessible, as evidenced by citations in other academic works. However, JMIU has now adopted an inconsistent stance, unjustifiably withholding access.

4.4 The CIC has wrongly attached commercial value to an academic document by contending that the PhD thesis has gained immense commercial importance. No commercial value or importance can be attached to the PhD thesis as the same is only an academic research document, which must be mandatorily published and available to the public.

4.5 The CIC has wrongly observed that disclosure of thesis would harm the competitive position of the stakeholders without clarifying as to who are the stakeholders. The author of the PhD thesis cannot in any way be regarded as a 'commercial competitor' whose commercial position could be harmed upon disclosure of such information. Even JMIU cannot be considered as a commercial competitor, who are only custodians of PhD

⁶ Information and Library Network (INFLIBNET) Centre is a data network connecting university libraries and other information centres.



thesis and must mandatorily publish the thesis.

5. Respondent No.3, on the other hand, in their counter affidavit oppose the request made in the petition. They submit that the PhD thesis sought by the Petitioner has gained commercial importance and involves intellectual property. As the same comes within the ambit of Sections 8(1)(d) of the RTI Act, the information sought by the Petitioner cannot be made available to him. That apart, they submit that the guidelines of the university with regards to submission of the thesis, relied upon by the Petitioner, can in no way override Section 8(1) (d) of the RTI Act.

Analysis and Findings:

Background: Concept of a PhD theses

6. A PhD thesis represents the culmination of years of dedicated scholarly research and is submitted as a requirement for the award of a doctoral degree. Its primary purpose is to contribute to the existing body of knowledge in a particular field, promote academic discourse, and enable further research. Other researchers can build upon the work presented in the thesis, using it as a foundation for their own studies. Therefore, transparency and accessibility are essential to these goals, as they facilitate validation, reproducibility, and the progress of scientific research, which are beneficial to both the academic community and society at large.

7. Universities, as custodians of knowledge, play an important role in preserving and disseminating PhD theses. They hold these documents in their libraries or repositories, making them available for academic purposes. They usually have policies regarding the access and distribution of these documents. In the present case, the relevant regulations of JMIU unequivocally mandate the accessibility of PhD theses. Rule 13 (b) of



Ordinance 9(IX) of JMIU provides, “*One of the soft copies of the thesis and the synopsis will be submitted by the Controller of Examinations to INFLIBNET digital depository and another for posting on the University’s portal.*” There are no carve outs or exceptions to the aforementioned Rule. Similarly, the UGC (Minimum Standards and Procedure for Award of M.PHIL./PH.D Degrees) Regulations, 2016 also mandate the submission of an electronic copy of the Ph. D. thesis to the INFLIBNET digital depository, to make it accessible to all Institutions/Colleges. Together, these regulations, mandating it to be a public document, prevents the PhD thesis from being fully confidential. Therefore, the idea that a PhD thesis is inherently confidential would be contrary to the primary purpose of a PhD thesis and is not supported by either the regulations of JMIU or the UGC.

8. Against the above backdrop, the crux of the present dispute is whether the PhD thesis qualifies as ‘information’ under the RTI Act, and whether it can be withheld under the exemption provided in Section 8(1)(d).

9. The RTI Act defines “information” broadly, including any material in any form, such as records, documents, emails, opinions, and more. The Act applies to public authorities, including universities such as JMIU. Since a PhD thesis is a document held by the university, it falls under this definition. Under the RTI Act, any information held by or under the control of a public authority can be requested, unless it falls under the exemptions specified in the Act. JMIU’s refusal to disclose the information is premised on Section 8(1)(d) of the RTI Act. This provision specifically exempts disclosure only when the information constitutes “commercial confidence”, “trade secrets”, or “intellectual property”, and its disclosure would harm the competitive position of a third party. For information to be exempted under Section



8(1)(d), the public authority must satisfy a dual test: First, that the information falls within the categories of commercial confidence, trade secrets, or intellectual property; and second, that its disclosure would harm the competitive position of a third party. Thus, both elements of this dual test must be satisfied to justify withholding information under Section 8(1)(d) of the RTI Act. Merely asserting that the thesis involves intellectual property or holds commercial value does not suffice; there must be clear and cogent evidence that its disclosure would indeed harm the competitive position of a third party.

10. It is undisputed that a PhD thesis is often an intellectual property, comprising of both the university's investment in resources or funding and the scholar's original work. This creation enjoys protection under the Copyright Act, 1957, which grants the author exclusive rights to control reproduction, distribution, and adaptation of their work. However, in the Court's opinion, mere existence of copyright does not automatically justify invoking Section 8(1)(d) to deny access to the information. Copyright law is not intended to curtail access to information; rather, it safeguards an author's economic and moral rights. Section 8(1)(d) of the Act protects intellectual property that is at risk of being exploited. In the present case, JMIU has failed to substantiate how disclosure of the thesis, an academic document inherently meant to be published, to promote public knowledge and further research, in the name of the research scholar, would lead to a breach of copyright or harm the author's competitive position. That apart, section 8(1)(d) of the RTI Act requires more than a mere assertion of intellectual property. It mandates evidence that disclosure would materially harm the competitive standing of a third party. Here, neither the author nor the



university has demonstrated such harm. Therefore, the invocation of Section 8(1)(d) is untenable, as neither limb of the exemption's dual test i.e., establishing both intellectual property and demonstrable harm, has not been satisfied.

11. That said, it must be acknowledged that certain circumstances may justify restricted access to a PhD thesis. While a thesis is fundamentally a contribution to collective academic knowledge, it may contain sensitive or proprietary information. For instance, research conducted under university auspices may yield inventions or discoveries with potential for patent protection. In such cases, premature disclosure—before a patent application is filed—could result in the thesis being treated as ‘prior art,’ thereby jeopardizing the patentability of the invention. This scenario highlights the fiduciary role universities often play, balancing their duty to protect the researcher's interests with their mandate to promote academic transparency. Universities often have policies in place to manage the filing of patents for research conducted under their auspices. In order to maintain confidentiality, Universities may restrict access to a thesis until a patent application is filed to prevent the disclosure of potentially patentable inventions. Section 8(1)(d) of the RTI Act may, in such cases, serve as a valid safeguard to prevent competitive harm to the researcher or institution. Similarly, Section 8(1)(e), which exempts disclosure of information held in a fiduciary capacity, could apply where the university holds the thesis as a trustee of the scholar's proprietary rights. However, even in these situations, the exemption is not absolute. The RTI Act expressly provides that larger public interest can override such exemptions.

12. In the present case, it must first be noted that the PhD thesis had



already been published, as evident from the fact that the PhD thesis had been referenced in subsequent academic works which have been annexed with the present petition. So, this is not a situation where the scholar has sought temporary withholding of publication of the PhD thesis to prevent premature publication nor has JMIU produced any formal rules or regulations which provide for thesis withholding process.

13. That apart, neither JMIU nor the CIC has demonstrated that the thesis contains sensitive information necessitating restricted access, such as an unfiled patent or proprietary research. Instead, the Respondent No.3's arguments rest on vague and unsubstantiated claims of "commercial importance" and "competitive harm," which do not satisfy the requirements of Section 8(1)(d). To invoke this exemption, it is not sufficient to merely assert these claims; the University must substantiate them. Where no demonstrable harm to intellectual property or competitive interests is evident, withholding access to a thesis violates the purpose of academic research and the spirit of transparency enshrined in the RTI Act. Moreover, the author of a thesis, having submitted it to a public university, relinquishes the right to withhold its disclosure, as it becomes part of the academic repository of the institution. Similarly, the CIC's observation that disclosure would harm the "competitive position of stakeholders" is equally unsubstantiated. It is unclear who these stakeholders are and how their competitive position would be jeopardized. Such speculative reasoning does not satisfy the threshold for invoking Section 8(1)(d).

14. Even assuming, for the sake of argument, that Section 8(1)(d) applies, Section 8(2) of the RTI Act allows disclosure if public interest outweighs the harm to protected interests. As discussed above, PhD theses are essential



to the advancement of knowledge, serving as a foundation for further research, academic scrutiny and advancement of science, which serves a larger public interest. The Impugned order of CIC, however, fails to recognize or discuss this aspect. The decision to disclose PhD theses under RTI Act in such scenarios require balancing the need for transparency and public interest against the protection of sensitive information. Each case would need evaluation on its own merits considering the specific content of the thesis and the context of the request.

15. Furthermore, during the appeal proceedings before the CIC, JMIU has not filed any documents or guidelines in support of their assertions. The CIC has not based its decision on the records but on assumptions and rhetoric put forward by JMIU's representatives and asked Respondent No.3 to confirm the assumptions later by providing guidelines, if any.

16. Thus, there is no evidence on record to suggest that the PhD thesis contains commercially sensitive or proprietary information that could harm any party's market standing. The fact that the PhD thesis was once publicly available makes the subsequent denial of access appear arbitrary and unjustified. In effect, the Respondents have failed to meet the requirements of Section 8(1)(d), and the CIC's reliance on speculative and unsubstantiated arguments renders the impugned order unsustainable.

17. In view of the above, the present petition is allowed with the following directions:

- (i) The impugned order dated 12th April, 2021, is set aside.
- (ii) Respondent No. 3 is directed to provide the information sought under the RTI application dated 26th March, 2019 within a period of two weeks from today.



18. With the above directions, the present petition along with pending applications, is disposed of.

SANJEEV NARULA, J

DECEMBER 10, 2024

as