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

Date of judgment: 30.04.2009

\+ W.P.(C) 8529/2009

ICAI ..... Petitioner
Through : Mr. Parag. P. Tripathi, ASG with Mr. Rakesh Agarwal and Ms. Vismai Rao, Advocate.

versus

CENTRAL INFORMATION COMMISSIONER & ANR. ..... Respondents
Through : Nemo.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be Allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S. RAVINDRA BHAT, J (OPEN COURT)

C.M. No. 5520/2009 (Condonation of delay)

For the reasons averred, the application is allowed.

W.P. (C) 8529/2009, C.M. No. 5519/2009 (Stay Application)

1. The writ petitioners, *The Institute of Chartered Accountants of India (ICAI),* claims to be aggrieved by an order of the Central Information Commission (CIC) dated 23.12.2008 to the extent that

the Commission directed disclosure of the applicant complainant's answer sheet to the information applicant. The applicant had elicited various kinds of information, including a copy of the answer sheet of the examination attempted by him. At the outset, learned ASG who appeared for the Institute submitted that the Division Bench ruling in *Pritam Rooj v. University of Calcutta & Ors.* AIR 2008 Cal 118 covers the issues since that High Court had the occasion to deal with identical issues, i.e. data disclosure of examination in the form of answer sheet, to an individual who participates in the process. He also conceded that answer sheets do fall within the meaning of the expression "information" under Section 2(f) of the Right to Information Act, 2005 (RTI).

2. Learned ASG, however, contended that the question as to the right to information and the right of the class of individuals who attempt examinations to access their answer sheets is squarely covered by the rulings of the Supreme Court in *Secretary West Bengal Council for Higher Secondary Education v. Ayan Das* 2007 (8) SCC 242 and *President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr.* 2007(1) SCC 603. The argument was that the interpretation placed by the Supreme Court unalterably fixed the character of the right, in the sense that the declarations exclude the right of a candidate participating in the examination process to access information about the examination process by demanding copies of answer sheets.

3. The Supreme Court in *President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr.* 2007 (1) SCC 603 states as follows:

> *"XXXX XXXX XXXX XXXX*
>
> *The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkurmar Sheth, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own 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 would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated 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 pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof."

XXXX XXXX XXXX XXXX"

The said judgment and reasoning was reiterated in *Ayan Das's case (supra).*

4. The subsidiary argument made by the ASG was that the right to seek answer sheets, if at all, could be claimed as part of Article 19(1)(a) of the Constitution and since the Supreme Court excluded that possibility, having regard to the objects of the RTI Act, i.e. effectuation of provisions of the right to freedom of expression and information, the possibility of accessing such class of information stands excluded from the right to freedom of expression.

5. The judgment of the Division Bench of the Calcutta High Court while upholding the right of a candidate, seeking copies of his answer sheets in public examination held even by statutory bodies examined and considered the judgment of the Supreme Court in *Suvankar's case (supra)*; the relevant discussion of the Division Bench of Calcutta High Court is as follows:

"XXXX XXXX XXXX XXXX

75. There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The argument made on behalf of the public authorities before the Central Information Commission has, thankfully, not been put forward in this case. This University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness here to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not

apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation."

XXXX XXXX XXXX XXXX"

6. There is no dispute in this case that Section 2(f) defines "information" in the broadest possible manner. It states as follows:

> *"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"*

7. Under the scheme of the enactment, all classes of information except those which are explicitly exempted from disclosure under Section 8 have to be revealed. The exemption regime is itself broad and covers various diverse matters, including commercial information, trade secrets and so on. The information authorities set up under the enactment are empowered by Section 10 to sever such information which should not be disclosed from such class of information, which can be. Section 22 of the Act which overbears all existing laws states as follows:

> *"**22. Act to have overriding effect.**-The provisions of this Act shall have 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."*

8. The argument of the petitioner that since the Supreme Court declared the law in such matters, and that candidates who seek copies of answer sheet cannot claim it as a matter of right, is unpersuasive. The Supreme Court's decisions were similar in both the instances; in *Ayan*

Das case *(supra)* and *D. Suvankar* case *(supra),* the context was wide directions by High Court, requiring revaluation/re-verification (in the *Suvankar* case) and direction to reassess through another examiner in *Ayan Das's* case *(supra).* There is no discussion or mention of the RTI Act. Concededly, the judgments were not examining information applications under the RTI Act. Yet, a close scrutiny of the facts mentioned in both the judgments reveal that the claims were not premised on any of the provisions of the enactment. Apparently, they were in the context of writ petitions filed before the High Court. The judgments, therefore, have to be read in their terms, and in the contextual setting. There is no gain saying that the judgments of the Supreme Court on an issue constitute law declared under Article 141 of the Constitution. Yet, the judgments are in the context of what is declared and what is not declared. The "unarticulated" argument of no right under Article 19(1)(a) by the learned ASG cannot, therefore, be accepted. Doing so would mean that this Court would be reading into the two judgments on the intention to overbear the provisions of the RTI Act; a result too startling to accept.

9. As regards the second contention that since the Supreme Court held that there is no right to claim disclosure of answer sheets or copies, and the same is not part of the Right to Freedom of Expression and, therefore, implicitly excluded from the RTI Act; the contention too cannot be accepted. The mere fact that the statement of objects of, or the long title to the RTI Act mentions that it is a practical regime of the right to information for citizens; would not mean that a cribbed

interpretation has to be placed on its provisions, on the same notion of implicit exclusion of that which would legitimately fall within Article 19(1)(a). No rule or interpretation or judgment of Supreme Court was discussed or relied on the point that the ruling in *Suvankar's* case *(supra)* excluded the right to access answer sheets, which would otherwise fall within the expression and, therefore, would fall within the purview of the RTI Act. The interpretation canvassed would lead to startling consequences when in the absence of enacted law under Article 19(2), the Court would be legislating, as it were, without the possibility of such exclusion being tested in Courts. A salutary rule of interpreting the Constitution is that fundamental rights should be construed broadly, to enable citizens to enjoy them [*Ahmedabad St. Xavier's College Society v. State of Gujarat* 1974(1)SCC 717; *Dr. Pradeep Jain v. Union of India* 1984 (3) SCC 654]. In any event, the Act confers positive rights which can be enforced through its mechanism. This Court should be extremely slow in interpreting such rights, dealing with personal liberties and freedoms on the basis of some inarticulate premise of a judgment.

10. For the above reasons, the writ petition and accompanying application are dismissed as misconceived. It is, however, open to the petitioner to work-out a regime where inspection can be afforded to the respondent/applicant, if such a proposal is acceptable to him.

S. RAVINDRA BHAT
JUDGE

APRIL 30, 2009
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