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महासचिव पीएचडी
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Secretary General



भारतीय विश्वविद्यालय संघ

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ASSOCIATION OF INDIAN UNIVERSITIES
AIU HOUSE, 16, Comrade Indrajit Gupta Marg, New Delhi 110 002

Through e-mail

No. AIU/RTI/2015
February 9, 2016

Dear Vice Chancellor/Director,

I am enclosing a copy of the order of Prof Sridhar Acharyulu, Information Commissioner, Central Information Commission, New Delhi issued under RTI Act, 2005 for your kind perusal and information.

You are requested to consider the directions contained in the order for implementation in your University/Institute. I shall appreciate informing AIU about the action taken by your University in this regard.

With kind regards,

Yours sincerely,

(Prof. Furqan Qamar)

Encl: As above.

All Vice Chancellors/Directors of
Member Universities/Institution

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/C/2015/901116

Abne Ingty v. CPIO, Delhi University, New Delhi

Important Dates and time taken:

RTI: NIL	PIO : 25.03.2015	FAA: 31.03.2015
SA: 14.07.2015	Hearing: 27.08.2015	Decision: 15-01-2016
Result: Appeal allowed		

PARTIES PRESENT:

1. Appellant is present and Respondent authority represented by Mr. Jay Chanda, CPIO.

FACTS:

2. Appellant sought for information regarding constraints including huge fees being charged for providing certified copy of evaluated answer sheet, which in his opinion was against the rules of RTI Act and against the judgment of Hon'ble Supreme Court of India in CBSE vs. Aditya Bandopadhyay. CPIO by his letter dated 25.03.2015, enclosed the reply of examination branch,

in which a notification dated 01.11.2011 was enclosed concerning the rules under which the students can seek the copies of the answer sheet by paying Rs 750 per paper only from 61st day to 75th day after release of results. Being unsatisfied, appellant filed first appeal. Having received no reply from FAA, approached the commission.

PROCEEDINGS BEFORE THE COMMISSION:

3. CPIO submitted that fee and timing was notified on dated 19.09.2009 after due approval by the executive council of the University. Appellant contended that high fee for a copy of answer book was against the RTI Act and Rules, as fee was far beyond cost of copying. The CPIO contended that University was an autonomous body having every authority to decide the fee for giving a copy of answer-book. The questions raised and decided are:
- a) Whether it is the complaint against unreasonable fee for access to information? Answer: **Yes**
 - b) Whether the Commission has power and authority to examine the complaint? Answer: **Yes.**
 - c) Can Rules over take 'Act'? Answer: **No.**
 - d) Whether the Delhi University Rules to the extent of high fee and prescription of time limits are 'reasonable' and in consonance with provisions of RTI Act? Answer: **No.**
 - e) Whether Rules made by Delhi University are overridden by the RTI Act as per section 22? Answer: **Yes.**

DECISION:

4. Though it is called an appeal, by content it is a complaint. Appellant was questioning the regulation of Delhi University alleging that it enables University to impose unreasonable time-frames and cost constraints on their right to secure copy of answer-sheet. He wanted information about fee and reasons for collecting huge fee. He contended that the time taken and cost being charged by the University was against the Act and also the judgment of

Honorable Supreme Court of India in the case of **CBSE v Aditya Bandopadhyay [SLP (C) No. 7526/2009]**. Appellant Mr. Abner Ingty contended that DU policy was infringement of liberty of students to get a photocopy of answer script and their right to access was denied by prescribing unreasonable time and cost constraints. Because of this the student will lose his right to evaluate himself after going through the answer script and to improve upon. He claimed that information he sought was related to life and liberty as he was deprived of self-evaluation. On 14th July 2015, the appellant along with some other students wrote a letter to CPIO that if a student desires to assess his performance by taking the copies of answer-sheets in five papers, he has to pay Rs 3750 and such a request should be made between the 61st and 75th days from the date of declaration of the results which is far too long considering the date of next examinations and need for preparation. This right is claimed by students not with reference to rules or byelaws of examining body but under RTI Act. They claimed that the DU Rules do not refer to RTI of students, as they were part of general examination rules. If they want to decide the RTI applications with those general rules, the question of conflict between those rules and RTI Act should be answered. Section 22 of RTI Act, the RTI Act laid down specifically that RTI Act will prevail and override the University rules and bye-laws if they conflict with the disclosure norms of RTI Act.

5. The RTI Act and Rules have dealt with the aspect of fee and cost specifically. They are as follows:

- (i) Section 7 of RTI Act says: "...provide the information on payment of such fee as may be prescribed...".
- (ii) Section 7(2)(a) says that the PIO has to 'give details of further fees representing cost of providing the information as determined by him together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section(1) requesting him to deposit that fees....".

(iii) As per Section 7(2)(b), the PIO has to inform the applicant “concerning his right with respect to review the decision as to the amount of fee charged or the form of access provided...”.

(iv) The Right to Information (Regulation of Fee and Cost) Rules 2005, framed by the Central Government mandates under Rule 4 ‘For providing information under S7(1), the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque (or Indian Postal Order) payable to the Accounts Office of the public authority at the following rates, (a) rupees two for each page (in A4 or A3 size paper) created or copied; (b) actual charge or cost price of a copy in larger size paper; (c) actual cost or price for samples or models; and (d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof).

6. Dean, Examination Branch of Delhi University issued a notification on 19th September 2009 listing out details of examination fee for various examinations, re-evaluation, re-checking of paper etc. The official website of Delhi University displayed the Rules for supply of copy of evaluated answer script which says “Prescribed fee: Rs 750 per paper is to be deposited with the University Cashier. These Rules made it mandatory for students to submit certain documents, verification from Head, and prescribed place and time of submission etc. These rules and Regulations are made generally by the University. They are not specifically prescribed to deal with the applications filed under Right to Information Act, 2005. Apparently, these rules are in conflict with the RTI Rules promulgated by Central Government in 2005 as mentioned in previous paragraph.

7. Hon’ble of Supreme Court of India in **CBSE v Aditya Bandopadhyay [SLP (C) No. 7526/2009]** had held as follows:

“The definition of ‘information’ in section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term ‘record’ is defined in section 2(i) of the said Act as including any document, manuscript or file among others. When a candidate participates in an examination and writes his answers in an answer-book and submits it to the examining body for evaluation and declaration of the result, **the answer-book is a document or record**. When the answer-book is evaluated by an examiner appointed by the examining body, the **evaluated answer-book becomes a record containing the ‘opinion’ of the examiner**. Therefore the evaluated answer-book is also an ‘information’ under the RTI Act.” Rejecting the contention that exemption in S 8(1)(e) applies to answer book, the SC held: “if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book, seeking inspection or disclosure of it. (Para 24) In paragraph 29, the Supreme Court stated: “The right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books”.

8. In Aditya Bandopadhyaya case, Hon’ble Supreme Court of India in paragraph 25 had further observed that :

“An evaluated answer book of an examinee is a combination of two different ‘information’. The first is the answers written by the examinee and second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the specific marks assigned to each of his answers. When an examinee seeks ‘information’ by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof. When an examinee is permitted to examine

an answer-book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue therefore is not in regard to the answer-book but in regard to the marks awarded on evaluation of the answer-book. Even here the total marks given to the examinee in regard to his answer-book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner”.

9. Hon'ble Supreme Court of India in the case of **ICAI v. Shaunak Satya [SLP (C) No. 2040/2011]** had held that copies of evaluated answer-sheet cannot be under any exemption prescribed under RTI Act. In **Manish Goel v Union Public Service Commission [CIC/SM/A/2012/001654 & 1708]**, the Central Information Commission held that this right to get copies of answer sheet could not be denied.

10. Hon'ble Rajasthan High Court has thoroughly examined the issue of charging a higher fee for answer-sheet by universities in case of **Alka Matoria vs Maharaja Ganga Singh University and Ors. [AIR 2013 Raj 126]** dated 21.12.2012 held:

“Having regard to the purpose of the enactment and the nature and purport of the provisions therein, we are of the view that even if the respondent-University were to make independent regulations for the purpose of providing certified copies, so far the fields covered by the

Rajasthan Rules of 2005 are concerned, the **respondent University cannot make any such regulation that could stand at conflict with such rules.** (Page 10)

....

... it is noticeable from the regulations of Banaras Hindu University and University of Delhi that such Universities have provided for the fees squarely in conformity with the fees as prescribed and as provided in the aforesaid (RTI) Rules of 2005 whereas Dr. Sarvapalli Radhakrishnan Rajasthan Ayurved University, Jodhpur has provided a **fees of Rs. 1,000/-** so as to **show the answer-book** to the candidate; the University of Rajasthan has provided a fees of Rs. **580/-** for obtaining **certified copy of answer-book**; and the University of Kota has provided for such fees for certified copy at **Rs. 500/- per answer-book**. Though we have noticed these different scales of fees but in our view, nothing much turns upon them either way and merely because some University has chosen to provide a higher fees, that by itself **does not invest the respondent-University with any right to charge such kind of fees which is otherwise not in conformity with the requirements of overriding the provisions of the Act of 2005 and rules framed there under**, operating in the field of quantum of fees.

In the ultimate analysis, we are clearly of view that the impugned condition i.e., condition No. 2 as reproduced hereinabove in the **regulations framed by the respondent-University deserves to be quashed as illegal and the respondent-University deserves to be directed to provide the certified copy of the answer-book to the petitioner after charging the fees as prescribed under the Rajasthan Rules of 2005 and not beyond.**"

11. Hon'ble Rajasthan High Court (supra) in relation to the exorbitant fee of Rs 1000 charged by the University, further observed that :

"Viewed from any angle, charging of exorbitant fees of Rs.1,000/- for the purpose of providing copy of answer-book to a student by the respondent-University does not

stand in conformity with the object and purpose of the Act of 2005, stands at stark conflict with the rules governing the field, and appears to be highly unreasonable.

So far incurring of the extra expenditure by the University is concerned, the submissions have only been noted to be rejected. Any such vague reference to the alleged expenditure cannot, by any stretch of imagination, be the justification for the respondent University to flout the requirements of the applicable statutory provisions; and the University cannot claim any special treatment than the other public authorities as regards the operation of the Act of 2005. So far the operation of the Act of 2005 is concerned, particularly as regards costs of providing information, such submissions on the part of the respondent-University who is supposed to be an agency of the welfare State, appear to be rather illogical and unreasonable apart from being totally baseless....

“Charging of fees of Rs.1,000/- for providing copy of answer book, in the ultimate analysis, appears to be an ill-intended attempt on the part of the respondent-University to somehow discourage the students from seeking certified copies of their answer-books. Such strange regulations only demonstrate scant respect shown by the respondent-University to the cherished object of the Act of 2005 and the principles expounded by the Hon'ble Supreme Court in Aditya Bandopadhyay's case (supra). The offending condition in the regulation is required to be quashed”

12. Maharaja Ganga Singh University, Bikaner has filed Special Leave Petition before the Hon'ble Supreme Court, which was called on for hearing on 22nd April 2013. The Bench consisting of Justice R M Lodha and Justice Kurian Joseph had heard Mr H D Thanvi and Mr Sarad Kumar Singhania Advocates for petitioners and held: 'Heard learned counsel for the petitioner. Special Leave Petition is dismissed'. This means the Judgment of Rajasthan High Court has assumed finality and as per Article 141 it is the law for the nation. Thus, it is clear

according to above decision of Rajasthan High Court that a university cannot charge more than what is prescribed by the RTI Rules.

13. Full bench of this Commission in the case of **Tehsildar & Ors Vs. University of Delhi** [CIC/RM/A/2012/000512/LS] dated 29.05.2014 while adjudicating on the question of Whether the University of Delhi can prescribe fee of Rs 750/- for supply of copy of an evaluated answer script under section 7(3) of RTI Act, had observed as follows:

“As the Hon’ble Supreme Court and Hon’ble High Court of Delhi are seized of the matter which is the subject matter of adjudication before the Commission, the appeal is adjourned until the matter is decided by the Hon’ble Courts.”

14. This case was not decided on the merits of the issue. It was closed on the assumption that this issue was pending consideration before Delhi High Court or other High Courts. Though decision of Hon’ble Rajasthan High Court referred above was brought to the notice of the Bench, the fact that the SLP filed against this decision was heard and dismissed was not brought to the notice of the Commission.

15. Looking at the facts of the case, the Commission found Delhi University made separate set of Rules under RTI Act which was not followed in this case. Delhi University’s very own manual no. 17 as per Section 4 (1)(b)(xvii) [<http://www.du.ac.in/du/uploads/rti/RTI-Handbook.pdf>] on page 29, stated:

“For providing the information under sub-section (1) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Registrar, University of Delhi at the following rates:-

(a) rupees two for each page (in A4 or A3 size paper) created or copied;

(b) actual charges or cost price of a copy in larger size paper;

(c) actual cost or price for samples or models; and

(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof.)

For providing the information under sub -section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Registrar, University of Delhi at the following rates:- (a) for information provided in diskette or floppy rupees fifty per diskette or floppy; and (b) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publications.”

16 . The above Rules of the respondent authority are in conformity with RTI (Regulation of Fee and Cost) Rules, 2005. The Delhi University has not applied these rules for copies answer-books sought under RTI Act. It cannot discriminate by asking a higher cost for copies of answer sheet from a student and Rs 2 per page in other cases. Imposing cost of Rs 750 per answer book is, thus in violation of not only RTI Act and Rules, but also in breach of their own manual for RTI, besides being against the order of Rajasthan High Court, which was finalized after SLP was heard and dismissed by the Supreme Court.

17 . The Commission has power and function under Section 18(1) (d) to receive and inquire into a complaint from any person who has been required to pay an amount of fee which he or she considers unreasonable. The complainant in this case exactly raised the same issue. Under Section 19(8) (a), commission has power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act by making necessary changes in its practices in relation to maintenance, management and destruction of

records. Thus, the Commission is under a duty as per the RTI Act, to adjudicate the complaint about unreasonable charging of fee for evaluated answer sheet and pass necessary orders.

18. Imposing time and cost constraints over and above the norms prescribed by RTI Act and Rules and charging Rs 750 per paper, which far more than Rs 2 for copy per page (as prescribed) will impose economic burden on a student. It is an additional burden on student, who has already paid an examination fee to the University, which sufficiently must have been calculated to meet the expenditure to conduct examination including the cost of evaluation. This is a huge amount over and above the fee collected, for recounting and re-evaluation. After paying tuition fee, admission fee, examination fee, the student is asked to pay Rs 3750 for copies of answer scripts in five papers. It is not end of the problem. He has to pay Rs 300 per paper for re-checking and Rs 500 per paper for re-evaluation. As per RTI Act this Commission has no power to interfere with the general fee structure of the University, but RTI Act has given power and authority to the Commission to prevent denial of access to his own answer sheet by public authority through this way of imposing unreasonable cost and time constraints. Charging so high a fee/cost will not only deny the accessibility, but also immunize the public authority from being accountable to students. The resultant situation is: If a student cannot pay Rs 750, the Delhi University will become not accountable for its evaluation! This is against objective and scheme of RTI Act.

19. Evaluated answer-book is 'information' as defined under RTI Act and as explained by Hon'ble Supreme Court of India. In a petition under RTI, the students can seek only for a certified copy of their own answer sheet, but cannot demand re-evaluation etc, for which one has to necessarily approach university authorities, pay fee whatever prescribed and follow the prescribed procedure. University need not give access to answer sheets before declaration of results. Hon'ble Supreme Court while dealing with question papers and model answered observed in the case of **ICAI vs. Shaunak H. Satya [2011 (9) SCALE 639]**:

“..Therefore it is obvious that the Appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held. In fact the question papers are disclosed to everyone at the time of examination. The Appellant voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination. Therefore Section 8(1) (d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answer scripts is completed, as at that stage they will not harm the competitive position of any third party...”

- 20.** Similarly, as stated above access has to be given to students' answer scripts after declaration of results. Instead, the Delhi University is prescribing a time limit that until 60 days are exhausted, he cannot apply and after 75th day also he will be disqualified to seek copy of answer sheet. As per RTI Act and judgment of Hon'ble Supreme Court, after declaration of Results, the students are entitled to access the answer sheets also without any further limits. The only requirement is answer books should have been held by public authority. A student examinee cannot ask for a copy after the answer book was removed according to their record retention policy. Hence, imposing time limits such as, denying the RTI applications until 60 days after and beyond 75 days after declaration of results is also denial of RTI as they conflict with RTI Act.

21. It is relevant to refer to the judgment of **REGISTRAR OF COMPANIES & ORS vs. DHARMENDRA KUMAR GARG & ANR [W.P.(C) 11271/2009]**, wherein Hon'ble Delhi High Court had discussed the status of RTI Act in relation to a special enactment regarding the fees. Having gone through the judgment, Commission is of the view that although a University or Public authority has the power to enforce their own fee in relation to providing of information, but the only condition is that it has to be "reasonable". The notification quoted by the respondent authority is a general one for obtaining answer sheet and is not specifically with regard to RTI Act. Moreover, this fee was prescribed by way of notification in general and not as per the RTI fee rules prescribed by them.
22. Rules and regulations are called "subordinate legislation" which the executive wing, i.e., the public authority can frame within the frame work of the Statute under which the rules are being made. The Act delegates some power to the appropriate authority to make this subordinate legislation. If they prescribe rules in excess of the statute, it will be "excessive delegation", which can be challenged.
23. It is also relevant to refer to decision of the **Punjab and Haryana High Court** to amend its RTI Rules to tune according to RTI Act. The High Court considered the PIL filed by Arjun Shoeoran challenging "the rules framed by High Court for it and for the lower courts for their conflict with the RTI Act and Rules", as a representation to the Rules Committee (on Feb 14, 2013 in CWP 3265/2013 O&M). The Rules Committee of HC considered it and amended the rules as prayed. After amendments, now fees can be paid in cash, which was not allowed earlier under the old rules, Application can be submitted on plain paper, and cannot be rejected on the ground that it was not made in Form A, application can be made on any working day, during working hours, instead of the earlier rules where RTI applications were accepted only 2 hours in a day (11 am to 1 pm). Earlier, if a matter did not fall into his/her jurisdiction, the PIO could return the RTI application to the applicant, and the fees paid was to be forfeited. That

provision, being illegal, has been done away with, and now the PIO will be duty bound to forward the application as well as the fees to the appropriate public authority within 5 days as per RTI Act. The application fee, as suggested, has been reduced from Rs 50 per application to Rs 10 per application. If the subordinate legislation prescribes conditions beyond scope of statute, they do not have legal force in general. Even without invoking section 22 of RTI Act, applying Rules of Delhi University to deny the access to answer sheets, can be considered as violative of right to information.

24. In **Maharashtra State Board of Secondary and Higher Secondary Education and Anr. V. Paritosh Bhupeshkumar sheth and Ors. (1984) 4 SCC 27**, the Hon'ble Supreme Court of India has declared that while examining whether a particular piece of delegated legislation whether in the form of a rule or regulation or any other type of statutory instrument was in excess of the power of subordinate legislation conferred on the delegate, has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rules, regulation etc and the object and purpose of the Act as can be gathered from the various provisions of the enactment.

25. In **Paras Jain v. ICSI [LPA No. 275/2014]**, the Delhi High Court observed as follows :

“Thus, the demand by the respondents from the petitioner to pay fee in the sum of Rs 500/ per subject/answer book copy whereof is sought is not sustainable”/

26. Hon'ble Supreme Court of India in the case of **CCE, Jamshedpur Vs. Ashok ARC [2005 (121) ECR 281 (SC)]** had observed as follows :

7. “We are unable to accept the submission that such an interpretation would negate Rule 173C(1 1). **A Rule cannot override or be contrary to a Section.** Under Section 4 the normal price has to be the value at which the goods are ordinarily sold. ...”

27. Hon'ble Supreme Court of India in the case of **Rallis India Ltd. Vs. The State of Andhra Pradesh [AIR1980SC749]** had observed as follows :

“10. The only other argument put forward by Mr. Desai in support of the appeal rested on the provisions of Rule 27-A above extracted in its un-amended form. **The rule can obviously be of no help to him inasmuch as even if it can be construed as laying down something in favour of the appellant it cannot override the provisions of the Act under which it is framed.** No amount of argument would make a rule override or control the legislative enactment under the authority of which it comes into being and that is why the rule was amended in 1974 so as to conform to the parent statute.”

28. Hon'ble Supreme Court of India in the case of **Association of Management of Private Colleges Vs. All India Council for Technical Education and Ors. [AIR 2013 SC 2310]** had observed in para 25 as follows :

“Further, it is contended by the learned Counsel that the High Court has failed to examine the above said legal aspect of the amendment to the Regulations of AICTE in the year 2000 enlarging the scope of the Act to areas for which it is not meant. Such amendment in Regulations will be ultra vires to the Act itself and cannot be sustained on this count alone. **This Court in several cases has laid down the legal principle that the Rules and Regulations made under the Act cannot override or enlarge the object or purpose of the Act.**”

29. In **Indian Express Newspapers (Bombay) Pvt. Ltd and Ors. Vs. Union of India and Ors. [(1985) 1 SCC 641]**, Hon'ble Supreme Court of India held :

Delegated legislation takes a number of forms and a number of terms-rules, regulations, bye-laws etc; however, instead of the said labels what is of significance is the provisions in the primary legislation which, in the first place, confer the power to enact administrative legislation. Such provisions are also called as "enabling provisions". They demarcate the extent of the administrators' legislative power, the decision-making power and the policy making power. However, any legislation enacted outside the terms of the enabling provision will be vulnerable to judicial review and ultra vires.” As regard delegated power to 'restrict and modify', it was held: "delegation ...cannot extend to the altering in essential

particulars of laws which are already in force in the area in question". "The power to restrict and modify does not import the power to make essential changes..."

30. In NEET test case (Christian Medical College ... vs Union Of India &

Ors [T.C.(C) NO.98 OF 2012] decided on 18th July, 2013, the Supreme

Court Bench consisting Justice Altamas Kabir, Anil R Dave, Vikramjit Sen, JJ, considered the question: (iv) Whether subordinate legislation, such as the right to frame Regulations, flowing from a power given under a statute, can have an overriding effect over the fundamental rights guaranteed under Articles 25, 26, 29(1) and 30 of the Constitution? The Supreme Court answered "no". Supreme Court held "that the Regulations and the amendments thereto have been framed by the MCI and the DCI with the previous permission of the Central Government under Entry 66, List I, but that the regulations cannot prevail over the Constitutional guarantees under Articles 19(1) (g), 25, 26, 29(1) and 30 of the Constitution".

31. Commission finds merit in contention of the student appellant that prescribing unreasonable cost and time constraint will in fact amount to complete denial of information to the students on grounds of their economic status, which is in violation of Article 14, 15 and 16 of the Constitution of India. No citizen shall be discriminated on the basis of his access to resources or any criteria including poverty as per his fundamental report to equality. It is very sad that educational institution like university is not mindful of the basic fact and they are going on denying information to the students, by imposing high cost, which means **if you cannot afford, you cannot access**. Thus, charging of Rs 750 per answer sheet will amount to breach of sections 3, 6 and 7 of the RTI Act.

32. Even if we accept the contention that the respondent authority was autonomous and competent enough to make its own rules and regulations', that authority has no power to restrict the access to information, which was guaranteed by the RTI Act. The authority of university to impose time and cost constraints on the student's right to answer sheet will surely fail.

33. The overriding effect of Section 22 cannot be watered down by Rule makers of public authority. the Hon'ble Kerala High Court in the case of **KPSC vs. State Information Commission [AIR 2011 KER 135]** had observed as follows:

“...This is because Section 22 of the RTI Act provides that the provisions of that 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 that Act. Such statutory provision having been made by the legislature, within its competence, it cannot be watered down or modified except by recourse to legislative procedures...”

34. Thus the high cost of Rs 750 per paper for securing copy of answer-sheet and time conditions such that appellant has to approach only after 61 days and before 75 days after result declared will unreasonably restrict the right to access to his own answer book and breakup of marks awarded.

35. This not only violates the right under RTI Act, 2005 but also infringes fundamental right under Article 19(1)(a) of the Constitution of India. In **People's Union for Civil Liberties v. Union of India – [(2004) 2 SCC 476]**, Supreme Court of India held that right of information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of

the security of the state and subject to exemptions and exceptions. This was reaffirmed by referring to this judgment in *CBSE v Aditya Bandopadhyay* case.

36. In *State of Rajasthan v. Basant Nahata [AIR 2005 SC 3401]*, Hon'ble Supreme Court of India observed that essential functions could not be delegated by legislature to the executive. It must be judged with touch stone of Article 14 and Article 226 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point.

37. A University or any other authority cannot use its authority to make subordinate legislation to infringe the legal and constitutional rights of the students/citizens. Delhi University Rules created two classes of students, those who can afford to have copy by paying Rs 750 and those who cannot. This is a clear breach of right to equality guaranteed by Article 14 of the Constitution of India.

38. Hence, the Commission holds that Delhi University or any other university or public authority for that matter cannot ignore or bypass the mandate of Indian Parliament given in Right to Information Act. The temple of Education cannot segregate students with reference to access right on the grounds of affordability.

39. The Commission would agree with the opinion of Rajasthan High Court about charging high fee that it appears to be an ill-intended attempt on the part of the Delhi University to somehow discourage the students from seeking certified copies of their answer-books. "Such strange regulations only demonstrate scant respect shown by the respondent-University to the cherished object of the Act of 2005 and the principles expounded by the Hon'ble Supreme Court in *Aditya Bandopadhyay's* case (supra)". In that case Rajasthan High Court has quashed

the offending condition. Delhi University is a reputed institution with huge number of students and staff and a long history of academic excellence. I hope that the concerned authorities will realize that by creating easy access to answerbooks at a cost of Rs 2 per page will enhance the possibility of standardizing the 'accountability' process and improving the standards of evaluation.

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 honorable 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 cause 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 answersheet,
- e) **directs** all the Universities in India, including deemed Universities and all examining bodies to provide copies of answer sheet only at a cost of Rs 2 per page and make necessary changes 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 Indian 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.

(M. Sridhar Acharyulu)

Information Commissioner

Authenticated true copy

(U.C Joshi)

Deputy Registrar/Secretary

Enclosure:

- Annexure 1 [Manual 17 – Delhi University RTI Rules]

Addresses of the parties:

1. Central Public Information Officer under RTI,

Dy. Registrar, University of Delhi, Govt. of India,

New Delhi - 110007

2. Mr. Pramod Kumar Saha,

Deputy Secretary,

Ministry of Human Resource Development

SHASTRI BHAWAN,

RAJENDRA PRASAD ROAD,

NEW DELHI- 110 001

3. CPIO and First Appellate Authority (RTI),

University Grant Commission,

Bahadur Shah Zafar Marg,

New Delhi-110 002.

4 . Professor Furqan Qamar,

Secretary General,

Association of Indian Universities,

AIU House, 16, Comrade Indrajit Gupta Road

New Delhi- 110 002

5 . Sh. Abner Ingty

S/o Peter Watre Ingty, H No. 232,

First Floor, Indira Vihar,

New Delhi - 110009

ANNEXURE – 1

MANUAL - 17
Section 4(1)(b)(xvii)

Other information

The person seeking information may apply on a plain paper giving particulars of information being sought and his/her correct address for communication.

A request for obtaining information under sub-section (1) of section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Registrar, University of Delhi.

For providing the information under sub-section (1) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Registrar, University of Delhi at the following rates:-

- (a) rupees two for each page (in A4 or A3 size paper) created or copied;
- (b) actual charges or cost price of a copy in larger size paper;
- (c) actual cost or price for samples or models; and
- (d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof.)

For providing the information under sub -section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Registrar, University of Delhi at the following rates:-

- (a) for information provided in diskette or floppy rupees fifty per diskette or floppy; and
- (b) For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publications.

Link-[<http://www.du.ac.in/du/uploads/rti/RTI-Handbook.pdf>]

