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CBSE's DISREGARD OF RTI ACT : LEGITIMACY OF CBSE's CHARGES

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The Right to Information is recognized as a crucial part of freedom of speech guaranteed under Article 19 of the Constitution and landmark judgments of the Supreme Court have reinforced this view, time and again. The Constitutional Bench of the Supreme Court in *S.P. Gupta & Ors. v. President of India and Ors.*³ held: "The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a)." Again, in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others*⁴, the Supreme Court recognized that the Right to Information is a fundamental right under Article 21 of the Constitution. Right to Information Act has been hailed as a landmark step in ensuring transparency in public administration and affording an opportunity to the public to hold public authorities accountable with a firm grip. Section 3 of the RTI Act, 2005 provides that all citizens shall have the right to information (subject to the restrictions mentioned within the Act).⁵ The term 'right to information' is defined under section 2(f) as, "information accessible under the Act which is held by or under the control of any public authority"⁶. Therefore, Section 3 holds that citizens have the right to access/demand the information held by any public authority only and not against private individuals. According to The Right to Information (Regulation of Fee and Cost) Rules, 2005 a fee of Rs10 is charged along with the RTI application. The RTI Regulation of fee and cost rules further provide that persons below poverty line need not pay any fees under the RTI Act

Recently, the debate about the right of the examinee to access copies of the answer-books after the declaration of the result sparked a crucial debate, regarding the extent and applicability of the RTI Act, 2005. In the case of *Central Board of Secondary Education and Anr. V Aditya Bandopadhyay & Ors.*⁷, the Supreme Court closely considered the contentions brought before it, sprouting from a Special Leave Petition (SLP) filed against the judgment of the Hon'ble High Court of Calcutta. The High Court had held that evaluated answer-books of an examinee writing a public examination conducted by statutory bodies like CBSE or any University or Board of Secondary Education fell within the definition of "information" as provided under section 2(f) of the RTI, Act. The High Court further held that the provisions of RTI Act should be interpreted in a manner

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³AIR 1982 SC 149.

⁴1988 4 SCC 582.

⁵Section 3, Right to Information Act, 2005.

⁶: section 2(f), Right to Information Act, 2005.

⁷Civil Appeal No.6454 of 2011.

which leads to dissemination of information rather than withholding the same, however, the Court kept the right of re-evaluation of the answer-books outside the scope of the Act.⁸ During the proceedings before the Supreme Court, CBSE contended that the evaluated answer-books are exempt from disclosure under section 8(1)(e) of the RTI Act as they are holding this information under a fiduciary relationship. The Hon'ble Supreme Court found this argument to be erroneous and explained that the Board does not hold the answer-books in a fiduciary relationship and no other exemption under section 8 of the Act applies. The Hon'ble Supreme Court held “The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly, and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.⁹”, thereby affirming the judgment of the Calcutta High-Court. Further, in *In Manish Goel v Union Public Service Commission*¹⁰ The Central Information Commission held that the right to get copies of the answer sheet could not be denied.

While the 2011 judgment (supra) afforded the students a right to inspect their answer-books and to get a copy of the same, till 2018 the students were paying Rs 1000/- and Rs,1,200/- (per subject) for class 10th and 12th answer-books respectively to get a copy of the same. The Board faced a lot of criticism, and many believed that this exorbitant fee was in contravention of their Right to Information. This led to the filing of a Contempt petition before the Supreme Court in 2016.¹¹ The Court passed an order directing the Board to "scrupulously" follow the 2011 judgment, and to charge fees prescribed under The Right to Information (Regulation of Fee and Cost) Rules, 2005. The Board announced that it will concur with the judgment and that the students can now get a copy of their answer-books by filling a form on their website and depositing a fee of Rs 10. However, as far as the rules of re-evaluation go, the CBSE rules will be followed as the judgment has kept the provision of re-evaluation outside the scope of RTI Act. In *Alka Matoriav. Maharaja Ganga Singh University*¹², The Rajasthan High Court held: “**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 and it stands in stark conflict with the rules governing the field, and appears to be highly unreasonable.**” Following the judgment, the university filed

⁸2011 8 SCC 497.

⁹ Supra 5.

¹⁰ CIC/SM/A/2012/001654&1708.

¹¹ <https://www.moneylife.in/article/sc-asks-cbse-to-provide-answer-sheets-strictly-under-rti-act-without-charging-exorbitant-fees/48060.html> (accessed: 05 August,2020).

¹² AIR 2013 Raj 126.

an SLP before the Supreme Court, which the Court dismissed after hearing the Counsel, thus, reaffirming the decision of the Rajasthan High Court. The Central Information Commission in the case of Anbe Ignty v. CPIO, Delhi University¹³ held that, 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. It was further observed that the Delhi University rules created two classes of students, those who can afford to have a copy by paying Rs 750 and those who cannot. This was held to be a clear breach of Right to equality guaranteed by Article 14 of the Indian Constitution. Hence the Commission held 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.

Conclusion:

The recent notification issued by CBSE clearly depicts the intention of the CBSE to disregard the SC judgment and to make a quick buck at the cost of transparency and accountability by not adhering to the RTI Act. The Bandopadhyay judgment was delivered almost 9 years ago and even today CBSE remains unbothered, it is baffling to notice that even after the Supreme Court adjudicated on the Contempt petition and issued an order demanding scrupulous adherence to the RTI act and the complimentary rules. As per the CBSE's order No. CBSE/COORD/F.11 dated 16.7.2020 any student who wishes to obtain a copy of any of his answer-sheets has to (as a preliminary step) necessarily sign-up for 'verification of marks' by paying an amount of Rs.500 per subject. It is only after the afore-mentioned payment that one becomes 'eligible' to apply for photocopies of answer-books for the subjects paid for. The CBSE then goes-on to charge Rs.500 per subject under the garb of 'processing fee' for each subject that one wishes to obtain the answer-sheet photocopies for. Therefore, the bare minimum that a student ends-up paying (per subject) to obtain a photo-copy is Rs.1000. This conduct of the CBSE is simply baffling. Not only has the right of a student to obtain copies of the answer-sheets under the RTI Act been recognized by the Supreme Court, but the CBSE has there-after been hauled-up in a Contempt Petition as well. However, the CBSE keeps thumbing its nose at the students, utterly disregarding the intent of the RTI Act, the ruling of the Hon'ble Supreme Court and its own responsible position in the academic world.

¹³ CIC/SA/C/2015/901116.