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**(2008) 03 CAL CK 0038**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 22176 of 2007**

Pritam Rooj

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

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**Date of Decision : 28-03-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 141, 142, 19, 19(1), 19(2)  
Contempt of Courts Act, 1971 — Section 7(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 162, 172  
Income Tax Act, 1952 — Section 271(1)  
Indian Medical Council Regulations, 2000 — Regulation 104, 2.2, 7.14  
Right to Information Act, 2005 — Section 10, 12, 13, 14, 18

**Citation : AIR 2008 Cal 118 : (2008) 2 CALLT 276 : 112 CWN 570**

**Hon'ble Judges : Sanjib Banerjee, J**

**Bench : Single Bench**

**Advocate : Satdal Chatterjee, for the Appellant; Sambudha Chakraborti, Sutanu Kumar Patra and Rajib Kumar Basak, for the Respondent**

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## Judgement

Sanjib Banerjee, J.—An examinee has come a knocking imploring that he be granted another look at his answered paper, citing a statute standing on the bedrock of a right ordained unto every citizen by the Constitution. The only question, one of some importance, that is raised in the present petition under Article 226 of the Constitution is whether an examinee has access to his evaluated answerscript under the Right to Information Act, 2005.

2. The petitioner appears to be a reasonably meritorious student. He obtained 91.6 per cent in his Madhyamik (Class X) Examinations and 80.8 per cent in his Higher Secondary (Class XII) Examinations, fie enrolled for the mathematics honours course of the Calcutta University in Presidency College where admission itself is an acknowledgment of merit. In 2006, the petitioner took his Part I Bachelor's degree examinations and secured a somewhat modest 52 per cent score. In the following year he appeared for his Part II Examinations and secured 208 marks out of a maximum of 400. The petitioner was particularly aggrieved

by his being awarded 28 out of 100 in the fifth paper.

3. The petitioner applied for a post publication scrutiny, seeking re-evaluation of his answerscripts in the fifth and sixth papers in accordance with the rules prescribed by the University. On view, the marks awarded to him in the fifth paper increased by four and a fresh, corrected mark sheet was issued to him.

4. The petitioner claims that he was called for an interview for the integrated Ph.D. programme in mathematics at the Tata Institute of Fundamental Research, Bangalore Centre after clearing the written examination there for. He claims that his poor marks in the second leg of his Bachelor's course led to his exclusion from the final list. The petitioner avers that the poor marks stand in the way of his obtaining admission for the master's programme in any of the better universities. The petitioner cleared the written examination for the integrated doctoral programme in mathematical sciences at the Indian Institute of Science, Bangalore and following the interview, was placed eighth on the merit list. The petitioner's provisional application fell through as he failed to obtain a first class in his Bachelor's course.

5. On August 14, 2007 the petitioner made a request to obtain his University answerscript in appropriate format to the State Public Information Officer under the Right to Information Act, 2005 (hereinafter referred to as the said Act). Such officer rejected the application by a writing of September 17, 2007 which is the subject matter of the challenge in the present proceedings. The said officer's cryptic rejection runs as follows:

Re.: Your Application Dt. 14-8-2007 Under R.T.I. Act, 2005.

Dear Sir, In response to your above application I am to inform you that it has been decided that henceforth no inspection of any answer script of any examination conducted by the University shall be allowed to any applicant under the Right to Information Act, 2005.

Thus we cannot entertain your application and the same is rejected.

Thanking you,

Yours faithfully, Sd/- State Public Information Officer And Registrar.

6. The letter appears to be on a printed format where there is a blank left for the date at the top; there is a space left for the examinee's name and address being inserted; an, the date of the application is also left open to be filled up. The officer has used his pen to fill up the date of the letter, the name and address of the examine, the date of the application and has inserted the word "been" as there is an obvious mistake in the printed form. The officer acknowledged the receipt of an application under the said Act but did not deal with the application in the manner provided by the said Act and it is such action and the stereo typed decision evident from the letter of rejection that has prompted the writ petition to be entertained rather than requiring the petitioner to exhaust the alternative

remedy ordinarily available under the said Act.

7. The respondent University has mentioned the point of alternative remedy in passing without really insisting thereon. The University has, in effect, invited a decision on merits on a matter of public importance and throughout the hearing the matter has been conducted on behalf of the University with commendable impartiality and a degree of desirable dispassion.

8. Section 7 of the said Act lays down the manner of disposal of a request for obtaining information received under the said Act. Sub-section (8) of Section 7 stipulates that where a request has been rejected under Sub-section (1), the relevant officer shall communicate to the person making the request, the reasons for such rejection; the period within which an appeal against such rejection may be preferred; and, the particulars of the appellate authority. The letter of rejection of September 17, 2007 is lacking on all three counts. It does not convey any reason for the rejection. It does not inform the petitioner of his right to appellate authority. In its assertion that, "it has been decided", the State Public Information Officer appears not to make a decision but merely to convey a fiat whether imposed on him or that he seeks to impose on any examinee seeking to obtain his or her answerscript. The rejection is, in the manner that it has been made, wholly without jurisdiction and in not conveying any reasons it is in contravention of the mandate u/s 7(8) of the said Act and per se contrary to the principles of natural justice. When the order is assessed to be of such poor quality that it fails to comply with the statutory requirements, a petition challenging the order may be received under Article 226 of the Constitution.

9. The alternative remedy that would otherwise have been available to the petitioner herein is, in the present case, an illusory right. In not furnishing the particulars of the appellate authority, the Public Information Officer has acted in derogation of the command of Section 7(8)(iii). It is not as if in every case that there is a fixed appellate forum that a person aggrieved by the manner of disposal of his request may otherwise be aware of. Section 19(1) of the said Act provides that an appeal will lie to such officer who is senior in rank in the public authority to the Public Information Officer who disposed of the request. The appellate authority would vary with each public authority and it is for such purpose that Section 7(8)(iii) has been engrafted and assumes more significance than being a routine matter where there is a general appellate forum to receive appeals from all disposals of requests.

10. There is a further factor. The expression, "it has been decided" betrays a general acceptance by the public authority (here, the University) of the principle that answerscripts do not fall within the description of information for any request to obtain them being entertained from an examinee. There is an element of intransigent conviction that the refusal conveys: that the matter is closed and not open to any question being entertained. To thereafter subject an examinee to the usual process of appeal and second appeal, however time bound such steps may have been made under the said Act, would be an exercise in futility in view

of a decision of the Central Information Commission which, if not binding on the ultimate appellate forum available to the petitioner, can be seen to be of such persuasive value that would render the right of appeal and second appeal, meaningless.

11. The University has referred to the judgments reported at Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, and T.K. Rangarajan Vs. Government of Tamil Nadu and Others, where, according to the University, there has been a departure from the Whirlpool principle Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in the Supreme Court holding that unless exceptional circumstances are made out to knock at the High Court doors, without availing the effective alternative remedy available a petition under Article 226 of the Constitution should not be accepted. In the present case, the petitioner has not even been made aware of the appellate authority; he has received an unexceptional order of rejection singularly lacking in content, that does not comply with the requirements u/s 7(8) of the Act and, if he is left to work out his alternative remedy, he will, more likely than not, be doomed to fail by reason of the Central Information Commission order holding the field. The University has rightly not urged that the bar u/s 23 of the said Act would apply to the present proceedings.

12. The University has indicated that save the fact that its regulations do not permit evaluated answerscripts being opened to examinees, it has no material to rely on that would warrant the use of an affidavit. To wit, the University cannot supplement the order of rejection of the request by furnishing reasons that did not find place in the order. The matter has been taken up without any affidavit being called for, or being insisted upon by the University, to decide the issue in principle. The fair stand taken by the University in not delaying the matter by seeking to unnecessarily use an affidavit should not be taken to be an admission of any of the averments in the petition save the matters of record.

13. To begin with, the University supports the order of rejection on the ground that the Central Information Commission addressed the same question that falls for consideration here, and by a judgment running into some 24 pages held that in regard to public examinations conducted by institutions established by the Constitution or institutions established by any enactment which have an established system and by their own rules prohibit disclosure of evaluated answer-sheets or where such disclosure would result in rendering the system unworkable in practice, a citizen cannot seek disclosure of the answer-sheets under the said Act. It is submitted on behalf of the University that it is such decision which has been conveyed to the present examinee by the State Public Information Officer, albeit the letter of rejection not specifically referring thereto and the reasons given by the Central Information Commission not being forwarded to this examinee. The University asserts that the Central Information Commission being a superior authority, its decision is binding on the State Public Information Officer and the letter of rejection did not convey any decision

imposed on such officer but merely reflected the decision made on contest by the Central Information Commission on April 24, 2007.

14. It is, in effect, the basis of the order made by the Central Information Commission that is in question in these proceedings, as to the desirability of answerscripts being made available to examinees upon a request being made for obtaining information u/s 6 of the said Act.

15. The petitioner suggests that there is no jugglery of interpretation that is called for in the present context. He says that the inclusive definition of "information" appearing in Section 2(f) of the said Act would accommodate an answerscript within its fold and if the other expressions therein would not admit of an answerscript being included, an answerscript would certainly be a record within the meaning of Section 2(i) of the Act. It is urged that the definitions of both "information" and "record" are inclusive and the substantive right in Section 3 of the Act cannot be whittled down by any constrictive reading of what would amount to information. The relevant provisions need to be noticed to gauge the scope of the present exercise:

## 2. Definitions.-...

(f) "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;

...

(i) "record" includes-

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm whether enlarged or not; and

(iv) any other material produced by a computer or any other device;

3. Right to information.--Subject to the provisions of this Act, all citizens shall have the right to information.

16. The petitioner insists that once it is recognised that the definition of "information", which is what is required to be made accessible to a person seeking it, is of widest import, no other consideration comes into play. A literal construction of a provision is the first tool available and only upon such literal construction running into any difficulty can the other tools of construction and interpretation be brought out.

17. More than the petitioner being required to show that he is entitled to receive

his answering pursuant to a request being made therefore u/s 6 of the said Act, in keeping with the tenor of the Act it is the public authority which has been required to justify the denial of the request. Though the provision strictly applies to an appeal, Section 19(5) of the said Act stipulates that in an appeal from a decision of the State Public Information Officer, the onus to prove that the denial of the request was justified shall be on the Public Information Officer who denied the request.

18. The University urges that an answerscript of an examinee cannot be information within the meaning of the Act that the examinee can seek by way of a request u/s 6. The University says that the examinee is expected to be aware of the paper he wrote and he cannot seek inspection of the document that he submitted as the contents thereof would not be unknown to him. The real purpose, the University alleges, is to find out how the paper was evaluated and it is beyond question that an examinee cannot be involved in the process of evaluation of his examination. At the highest, says the University, an examinee is entitled to information as to the marks allotted to the examinee in respect of every question that the examinee had answered; and such information the University is agreeable to be made over without the University being required to furnish the corrected answerscript. The fundamental basis of the University's argument is that it accepts that it is liable to give a break-up of the marks awarded to an examinee, but it should not be compelled to make over the corrected answerscript to an examinee under the said Act.

19. The University seeks to address the larger question of what it is that the examinee ultimately seeks. According to the University, the petition suggests that the examinee is disappointed with the marks he obtained, whether it be disappointment at the petitioner's own shortcoming or a grievance as to the manner of assessment. The University argues that since the petitioner ought to be aware of how he answered each question, he should be satisfied with information being supplied under the said Act as to the marks allotted to each answer, rather than the entire answerscript being opened to inspection.

20. The point that the University makes is that the additional material that the answerscript takes is the marking and assessment, and as long as the individual marks are disclosed, an examinee can have no need for any further information. As a corollary, it is submitted on behalf of the University that individual examiners have their peculiarities and way of putting pen on the answerscript in course of evaluation thereof. There cannot be a standard guideline given by a Board or University nor would the individual idiosyncrasies permit such a rigid guideline being met. It is equally possible as the University says that one examiner may go through an entire question without betraying any impression reflected in any sign, except for assigning the marks thereof, while another may underline here and encircle there, put a tick mark against a point that appeals or a cross against something that the examiner finds disagreeable. The University says that it would vary from one individual examiner to another even in respect

of answerscripts relating to the same question paper and, in the absence of any acceptable norms in that regard, the possible expression of an examiner's impression reflected in his etchings on an answerscript can be of no interest to an examinee and will certainly not be information that a citizen can seek u/s 6 of the Act.

21. If a principle is to be decided, the University suggests then all possible situations that could arise have to be taken into consideration. If it is not necessary that an examiner points out what is correct in one part of an answer and what is incorrect in another part; that a particular examiner chooses to express his process of evaluation when another may not, would not show the one examiner in poor light for being too demanding or the other in equally poor light for his apparent indifference. There is merit in the point. If there are no rules as to how an examiner is to put his pen to the paper that he assesses, that one is generous with his ink and the other is not, is of no consequence. And, in the absence of any rules, the nature of etchings by an examiner on the paper is no information for want of a sequitur.

22. It is equally true that some answerscripts have to be left unmarked by rule. An example of this kind would be in case of a thesis or dissertation which ordinarily is evaluated by more than one examiner, and sometimes by an external examiner. The paper is required to be left in the form it is received so that any etchings left on an evaluated paper albeit the marks awarded not being indicated--do not influence the subsequent assessor. But this discussion is slightly removed from the right that the petitioner asserts under a statute.

23. The University claims that in making answerscripts available to examinees, it would be exposing its examiners who the University ought to protect. It is a point which is noticed in the Central Information Commission order of April 24, 2007 and one that, in the ultimate analysis, did not count with the Commission. Again, the duty to protect that the University asserts has to be tested against the right of a citizen that the said Act ordains.

24. It is the next point that the University makes is one that weighed with the Central Information Commission. The University says that it is one of the primary functions of any University or educational institution to conduct examinations and assess answerscripts. It is human nature for every candidate to think that his best endeavour reflected in his paper merited more than the marks ultimately allotted, be he the first-placed in the examination or a failed student. If answerscripts were made available to each examinee, argues the University, it would open a floodgate of requests and lead to an unworkable situation and an undesirable lack of finality and timeliness upon the possible protests for half marks being missed out here and there.

25. The last substantial ground urged by the University is one u/s 8(1)(b) of the said Act which provides that there shall be no obligation to furnish any information which has been expressly forbidden to be published by any Court of

law or tribunal or the disclosure of which may constitute contempt of Court. The University argues that in the many pronouncements of the Supreme Court, there are observations that answerscripts should ordinarily not be made available to examinees and observations to the effect that examinees cannot be associated with the process of evaluation of their answerscripts. The University says that such judgments of the Supreme Court have, in any event, binding effect on all Courts under Article 141 of the Constitution.

26. The parties have referred to several judgments on propositions ranging from the need to have an informed citizenry, to the desirability of answerscripts being called upon by Courts for assessment and examinees being given the slightest say in the process of the evaluation of their papers.

27. While the petitioner refers to the judgment reported at Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket Association of Bengal and others, to emphasise the virtues of information percolating to the least privileged citizen and the recognition therein of the liberty of circulation and the liberty of publication being adjuncts to the freedom of speech and expression, the University cautions against the principle being twisted out of context to render the said Act unworkable by making as exacting a demand for all answerscripts to be potentially made available to all examinees.

28. So that the exercise here may remain on track and not fall prey to passion or populism or stray into any disagreeable bylane of adventurism, the University reminds of the fundamental principles of construction; of the grammatical meaning having necessarily to be harnessed in the context of the purpose of the legislation. *Tirath Singh Vs. Bachittar Singh and Others*, is placed for its enunciation of law in the following passage at paragraph 7 of the report:

7. ...It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." (Maxwell's Interpretation of Statutes, 10th Ed. page 229).

29. The judgment reported at *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, is relied on to show that in every case it is the object of the legislation which has to be assessed and the wider or the narrower, or even the apparently improbable, construction arrived at in harmony with the avowed intent of the enactment. The principle laid down at paragraph 8 of the report is emphasised:

8. ...Attributing a literal meaning to the words used would amount to imputing to



the Legislature an intention deliberately to transgress the restrictions imposed by the Constitution Act upon the Provincial Legislative authority. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of Its powers invalid. If the narrow and technical concept sale is discarded and it be assumed that the Legislature sought to use the expression sale in a wider sense as including transactions in which property was transferred for consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object....

30. In the judgment of State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, the Supreme Court quoted with approval from Francis Bennion's Statutory Interpretation (1984 Ed.) as to the distinction between the purpose or object of an enactment and the legislative intention governing it. The former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment. Paragraph 82 of the report is the essence of the judgment:

82 Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady, on the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For determining the purpose of legislation, indeed, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation it is open to the Court to look into the statement of "Objects and Reasons" of the Bill which accentuated the statement to provide a remedy for the then existing malady. In the case of State of West Bengal Vs. Union of India, this Court ruled that the "Statement of Objects and Reasons" accompanying a Bill when introduced in Parliament can be used for the limited purpose of understanding the background and state of affairs leading up to the legislation.

31. In the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , the fundamentals of contextual interpretation have been emphasised. It is both the reason for the statute and the text of the statute that have to be seen while assessing its scope. At paragraph 33 of the report, the Supreme Court held as follows:

33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation

is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

32. The petitioner relies on passages from Maxwell's Interpretation of Statutes (12th Ed.) to assert that there is no reason why a request for inspection of an answerscript should be declined when a plain reading of the definition of "information" and "record" would permit answerscripts to form part of information and being a record within the meaning of the Act. The petitioner says that to hold that answerscripts would not fall within "information" or "record" would entail a construction which would leave without effect a part of the language of the statute and would, thus, be impermissible. The following passages from Maxwell have been relied upon:

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which is omitted to express. (Para 33)

In dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense : "Loquitur ut vulgus, that is, according to the common understanding and acceptation of the terms." If an "Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language." "I do not think," said Diplock L.J., "that anywhere, except in a Court of law, it would be argued with gravity that a Dutch barn or grain and fodder stores or any ordinary farm buildings are properly described as repositories. A Gloucestershire farmer would say they were farm buildings and would laugh at their being called "repositories."" In the same spirit, Stamp J. rejected the argument that the carrying on of the business of a crematorium involved the "subjection of goods or materials to any process" within Section 271(1)(c) of the Income Tax Act, 1952 as "a distortion of the English language.... I protest against subjecting the English language, and more particularly a simple English phrase, to this kind of process of philology and semasiology.(Pages 81-82).

33. The decision next relied upon by the University--one closer to home in the present context of examinations - is reported at Maharashtra State Board of

Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, which the University holds on to as its sheet-anchor in furtherance of its argument u/s 8(1)(b) of the said Act read with Article 141 of the Constitution. The opening lines of the judgment catch the spirit of insatiable expectations of a candidate from his answerscript, as if in a dream it would conjure more worthy answers and better marks than what the author scripted. The significance which the University attaches to this judgment requires the context of the judgment to be appreciated in detail.

34. Two clauses of a regulation of the Maharashtra State Board of Secondary and Higher Secondary Education fell for consideration. The first clause provided that a candidate who had appeared at the Higher Secondary Certificate examination could apply for verification of marks in any particular subject whereupon the verification would be restricted to checking whether all the answers had been examined and that there was no mistake in totalling the marks and transcribing the marks correctly. The clause stipulated that there could be no evaluation of the answerbook. The other clause spelt out that no candidate could claim, or be entitled to re-evaluation of his answers or disclosure or inspection of the answerbook or other documents as "those were treated as most confidential.

35. Before the Bombay High Court the writ petitioner in that case challenged the two clauses on three grounds : that the impugned clauses were violative of the principles of natural justice; that both clauses were ultra vires and void on the ground of their being in excess of the regulation making powers of the Board conferred under statute; and, that the provisions were highly unreasonable. The Bombay High Court did not accept the challenge on the ground of the clauses being in violation of the principles of natural justice. The related argument that every adverse verification resulted in a condemnation of the examinee behind the examinee's back did not also find favour with the High Court. In affirming the High Court view repelling the challenge on the ground of violation of the principles of natural justice, the Supreme Court opined at paragraph 12:

12...The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. As succinctly put by Mathew, J. in his judgment in the Union of India v. Mohan Lal Kapoor AIR 1994 SC 87 it is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be. (SCC para 56, p. 863 : SCC (L & S) p. 31). The challenge levelled against the validity of Clause (3) of Regulation 104 based on the plea of violation of natural justice, was therefore, rightly rejected by the High Court.

The Supreme Court also rejected the other challenges to the impugned clauses,

which had been accepted by the High Court, for reasons that are not relevant for the present purpose.

36. The University refers to a judgment reported at (2007) 1 SCC 603 (President, Board of Secondary Education v. D. Suvankar) where the Supreme Court cautioned against inspection and re-verification of the answerscript being allowed upon writ petitions challenging examination results being entertained. Paragraph 5 of the report has been placed by the University:

5. The Board is in appeal against the order imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, 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.

37. In a recent judgment reported at The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, the Supreme Court frowned upon an examinee's prayer for reassessment of a paper made by way of an application under Article 226 of the Constitution and held that such re-evaluation should normally not be allowed unless the examinee showed that a part of the paper had not been evaluated or that the evaluation was done contrary to norms fixed by the examining body. A student filed a writ petition seeking a direction on the Higher Secondary Council to produce his answerscripts in several papers. The answerscripts were required to be produced upon a deposit being made. Counsel for the writ petitioner was permitted to inspect the answerscripts and the council was directed to issue a fresh marks-sheet incorporating additional marks to the examinee. A single Judge of this Court directed that one of the papers be reassessed by another examiner. In appeal the council argued that no specific error in assessment was pointed out by the writ petitioner and there was no provision in any statute permitting inspection of the answerscript. The appeal failed. The Supreme Court granted special leave to appeal and, allowing the appeal, held:

10. The Courts normally should not direct the production of answer scripts to be

inspected by the writ petitioners unless a case is made out to show that either some questions has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the Court that model answer is different from what has been adopted by the Board. Then only can the Court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee.

38. The Ayan Das case, and the Supreme Court accepting the appellant's argument therein that there was no provision in any statute permitting an examinee to inspect his answerscripts, is sought to be used by the University as its principal ammunition for its submission that the request made by the petitioner herein could not be entertained in view of Section 8(1)(b) of the said Act. The petitioner attempts to counter the salvo by referring to the similar provision in Section 7(1)(b) of the Contempt of Courts Act, 1971, which also relates to information, though of a different kind:

7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases.--1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceedings before any Court sitting in chambers or in camera except in the following cases, that is to say,--

(a) ...

(b) where the Court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of the information of the description which is published;

39. Both sides have relied on a Division Bench judgment reported at Mr. Surupsingh Hrya Naik Vs. State of Maharashtra and Others, The writ petitioner in that case was a member of the State Legislative Assembly against whom the Supreme Court imposed a punishment of imprisonment for a month in contempt proceedings by an order dated May 10, 2006. The petitioner in that case surrendered before the police authorities on May 12, 2006 and was taken in custody. On May 14, 2006, the petitioner was shifted to a hospital for suspected heart and blood pressure problems and low blood sugar level. The petitioner claimed that he underwent treatment at the hospital for 21 days and was discharged on June 5, 2006. He served the remaining tenure of the sentence in jail and was released on June 11, 2006. A private citizen sought the medical reports of the writ petitioner on May 27, 2006, from the Public Information Officer of the hospital u/s 6 of the said Act. The Public Information Officer sought opinion from the general administration of the hospital as to the propriety of the request made under the said Act. The Public Information Officer received a reply that since the said Act was a Central Act any clarification on any doubt as to interpretation would have to be sought from the Central Government. The general administration of the hospital addressed a letter to the writ petitioner

that information about the petitioner's hospitalisation had been sought and required the petitioner to respond to such notice.

40. As the Public Information Officer did not furnish the necessary information within the time stipulated, the citizen who made the request preferred an appeal which was rejected on the technical ground that the appeal papers were not signed by the would be appellant. The citizen preferred another appeal u/s 19(1) of the Act which was rejected, following which he preferred a second appeal. The second appeal was allowed and the Public Information Officer of the hospital was directed to furnish the information as sought by the citizen. The writ petitioner thereafter submitted a letter to the Dean of the hospital with a request that the information relating to his hospitalisation should not be disclosed and sought a copy of the request made by the citizen and the order passed in the second appeal. The petitioner suggested that disclosing the information sought would be an invasion of his privacy. The writ petition was filed challenging the order made in the citizen's second appeal.

41. On such facts the Bombay High Court expressed its opinion on the procedural safeguards being required to be met before divulging third party information and on the effect of proviso appearing in Section 8(1) of the said Act. Paragraphs 10, 13 and 15 of the report are apposite:

10. The question that we are really called upon to answer is the right of an individual, to keep certain matters confidential on the one hand and the right of the public to be informed on the other, considering the provisions of the Right to Information Act, 2005.

In the instant case on facts we are dealing with the issue of to (sic, a) person convicted for Contempt of Court. Do (sic, can) such a person during the period of incarceration, claim privilege or confidentiality in respect of the medical records maintained by a public authority. The contention of the respondent No. 5 is that the larger public interest requires that this information be disclosed, as persons in high office or high positions or the like, in order to avoid serving their term in Jail/prison or orders of detention or remand to police custody or judicial remand with the connivance of officials get themselves admitted into hospitals. The public, therefore, it is submitted, has a right to know, as to whether such a person was genuinely admitted or admitted to avoid punishment/custody and thus defeat judicial orders. The public's right in such case, it is submitted, must prevail over the private interest of such third person. The Court must bear in mind the object of the Right to Information Act which is to make the public authorities accountable and their actions open. The contention that the information may be misused is of no consequence, as Parliament wherever it has chosen to deny such information has so specifically provided. As an illustration our attention is invited to Section 8 which provides for exemption from disclosure of information.

13. The right to privacy now forms a part of right to life. It would, therefore, be

apparent on a reading of Regulations 2.2 and 7.14 framed under the Medical Council of India Act that information about a patient in respect of his ailment normally cannot be disclosed because of the Regulations, which is subordinate legislation except where the Regulation provides for. The Right to Information Act is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflict between the two. The exception from disclosure of information as contained in Section 8 has some important aspects. Section 8(1)(j) provides that personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual shall not be disclosed unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied, that the larger public interest justifies the disclosure of such information. In other words, if the information be personal or would amount to invasion of privacy of the individual, what the concerned Public Information Officer has to satisfy is whether the larger public interest justifies the disclosure. In our opinion, the Regulations framed under the Indian Medical Council Act, will have to be read with Section 8(1)(j) of the Right to Information Act. So read it is within the competence of the concerned Public Information Officer to disclose the information in larger public interest or where Parliament or State Legislature could not be denied the information.

15. The question then is what is the true Import of the proviso, which sets out that the Information which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Are the medical records maintained of a patient in a public hospital covered by the provisions of the Act. Can this information be withheld to either Parliament or State Legislature as the case may be on the ground that, such Information Is confidential. To our mind generally such Information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of the information makes out a case that such information is not available to Parliament or the State Legislature under the Act. By its very constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to Parliament or State Legislature by any public authority. As the preamble notes, the Act is to provide for setting out a practical regime of right to information for citizens, to secure access to information under the control of public authorities as also to promote transparency and accountability in the working of every public authority. These objects of the legislature are to make our society more open and public authorities more accountable. Normally, therefore, all such information must be made readily available to a citizen subject to right of privacy and that information having no relationship to any public authority or entity. In the instant case the respondent No. 2 while granting the application of respondent No. 5, has given as reasons larger public interest and as that the information could not be withheld from Parliament or State Legislature. The learned Associate Advocate General informed us that the State Assembly has not framed any Rules in the

matter of receiving information.

The test always in such matter is between private rights of a citizen and the right of third person to be informed. The third person need not give any reason for his information. Considering that, we must hold that the object of the Act leans in favour of making available the records in the custody or control of the public authorities.

42. Despite the acknowledgment that disclosure of information, even to a third party, was the rule, the writ petitioner legislator succeeded in dislodging the order passed In the citizen's second appeal on the ground that the second appellate authority did not afford the recuperating legislator a chance to present his case. A citizen's right under Article 19 of the Constitution as enlarged by the said Act came up short against another citizen's claim to privacy protected by Article 21 of the Constitution, at least in the recognition that the two had to be pitted more fairly against each other before a call could be taken. The man in public life was afforded an opportunity to canvass that the state of his health and the reports as to the condition of his heart were matters he was entitled to keep close to his chest without every passing citizen and his neighbour being offered a peek into them.

43. Though the Bombay judgment was rendered in a different context and the right to privacy was recognised as a facet of the right to life, it is the sanctity attached to the provisions of the said Act which is of importance. The Bombay High Court concluded that the object of the said Act is to make public authorities accountable and their actions open. That information obtained may be misused is considered to be of no consequence. A judgment reported at Reliance Industries Ltd. Vs. Gujarat State Information Commission and Others, has also been placed, again a matter relating to third party information. In the Gujarat case it was held that the State Information Commission had no jurisdiction to pass an order directing a Public Information Officer to part with information relating to third party.

44. The petitioner relies on a judgment reported at Union of India (UOI) Vs. Association for Democratic Reforms and Another, where the Supreme Court held that in a democratic form of Government voters are of utmost importance and voters have a right to know the antecedents of a candidate. Relying on the International Covenant on Civil and Political Rights the Supreme Court held at paragraph 46(5) of the report as follows:

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

...

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political



Rights, which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and Impart information and Ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

45. The Supreme Court expressed the view that if it appeared that a field meant for legislature and executive was left unoccupied in a manner detrimental to public interest, the Supreme Court would have to fill in, deriving its authority under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest. What was found to be of paramount importance was that, "the little man may think over before making his choice of electing lawbreakers as law-makers."

46. As to how precedents should influence the decision or the decision-making process In a matter, the following passage from the judgment reported at Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, Is placed:

Precedents should not be petrified nor Judicial dicta divorced from the socio-economic mores of the age. Judges are not prophets and only interpret laws in the light of the contemporary ethos. To regard them otherwise is unscientific. My thesis is that while applying the policy of statutory construction we should not forget the conditions and concepts which moved the judges whose rulings are cited nor be obsessed by respect at the expense of reason.

47. The petitioner also suggests that the argument made by the University and one that found favour in the judgment of the Central Information Commission as to the opening of a flood-gate if answer scripts were found to be liable to be produced under the said Act, should be disregarded. Paragraph 19 of the judgment reported at Coal India Ltd. and Others Vs. Saroj Kumar Mishra, is cited for the purpose:

19. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties. (See Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others,

48. And then there is the Central Information Commission's judgment of April 23, 2004. In addressing a question whether answer scripts should be furnished following a request to obtain information made under the said Act, the Commission framed two main questions. The first was as to whether the disclosure of evaluated answer scripts was exempted u/s 8(1)(e) of the said Act; and the. second as to whether such disclosure was exempted u/s 8(1)(g) of the

Act. Section 8(1)(e) exempts the disclosure of any information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. Section 8(1)(g) exempts the disclosure of any Information which would endanger the life or physical safety of any person or identify the source of information or assistance given In confidence for law enforcement or security purposes.

49. In dealing with such questions, the Commission noticed the argument made on behalf of the public authorities before it that an examining body is obliged to not disclose the identity of the examiners as such disclosure would be in breach of the fiduciary duty said to be owed by the examining body to the examiners. The connected argument was also noticed, that upon the identity of the examiners being revealed their lives and physical safety may be at risk. It is not necessary to go into the reasons as to why the Commission found that neither Section 8(1)(e) nor Section 8(1)(g) exempted disclosure of the evaluated answer scripts as the Commission held that only the disclosure as to the identity of the examiners was exempted. It is the argument as to the unworkability of the right to inspect answer scripts that ultimately weighed with the Commission. In the words of the Commission.

...it is matter of common knowledge that the parents and the students are never satisfied with their assessment. Every University and Board has a mechanism for re-evaluation which can be made use of by those who have genuine apprehensions about the fairness of the system. The disclosure, therefore, of the evaluated answer sheets may be taken recourse in rare cases but it cannot have an en-bono application, unless the University or the Board as the case may be introduces a system where the giving back of the evaluated answer sheets becomes or is made a regular practice, which this Commission hereby recommends.

50. The Commission thereafter noticed the Paritosh Bhupeshkumar Sheth case, a Constitution Bench judgment in Fatehchand Himmatlal and Others Vs. State of Maharashtra, and the Suvankar case to conclude that the Supreme Court pronouncements negating an examinee's right to demand disclosure and personal inspection of his answer script, were based on larger public interest which the Commission also found to be the basis of the said Act. The Commission thereafter proceeded to make a distinction between public examinations conducted by institutions established by the Constitution or by any enactment like the Union Public Service Commission or Universities or the Central Board of Secondary Education and examinations conducted by other public authorities whose principal function is not of conducting examinations but who hold examinations for filling up posts either by promotion or by recruitment. The Commission held that for public authorities designed to conduct examinations, a citizen cannot seek disclosure of the evaluated answer script under the said Act. But for other public authorities incidentally conducting examinations, "the disclosure of the answer sheets shall be the general rule but"

each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice." The Commission added a rider to the case of public authorities incidentally conducting examinations : the identity of the examiner, supervisor or other person associated with the process of examination should not be disclosed so as to endanger their lives or physical safety, and if it was not possible to make over the information without concealing the identities of the connected persons, the public authority could decline the disclosure of the evaluated answer scripts u/s 8(1)(g) of the said Act. In case of departmental examinees, the Commission took a view that disclosure of proceedings and disclosure of answer scripts, not only of the examinees but also of other candidates, was necessary to bring in fairness and neutrality for the system to be more transparent and accountable.

51. In effect, the Commission discovered an exemption not expressly provided for in the statute to deny information despite accepting that the words used in the said Act could not be read to be a bar to the right asserted thereunder. But, more on the Commission's opinion later.

52. In Its long title the said Act proclaims to set about a practical regime of right to Information for citizens. The preamble opens with a reference to the Constitution having established a democratic republic and the need, therefore, for an informed citizenry. The preamble reveals that the legislature was mindful of the likely conflict between revelation of information and efficient operation of the Governments; of optimum use of resources; and, most significantly, the need to preserve the paramount virtue of the democratic ideal:

Whereas the Constitution of India has established Democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the government;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

53. If it is the preamble that has to be looked into for the reason for, or the spirit of, the statute as a key to open the minds of the makers of the Act and the mischief they intended to redress, the makers appear to have been alive to the likely difficulties of the executive to live up to the Act.

54. The said Act is arranged in six chapters containing 31 sections and has two

schedules appended to it. The first, preliminary chapter contains the short title, extent and commencement section and the definitions, The second chapter spells out the right to information and the obligations of public authorities. There is the essence of the enactment in its third section. The next eight sections in the second chapter provide for the duties of public authorities and of Public Information Officers; the procedure for receipt and disposal of requests for obtaining information; the limited exemptions from disclosure; the severability of that part of the Information that is exempt from disclosure from the other part that is not; and third party information. Chapter III spread over Sections 12 to 14 relates to the constitution, terms of office and removal of the Central Information Commission and its officers. Chapter IV is the mirror image of the previous chapter and governs the State Information Commissions. Chapter V lays down the powers and functions of the Information Commissions, appeal provisions and penalties covering Sections 18 through 20. The miscellaneous final chapter contains eleven sections, including Section 22 that provides that the said Act would have overriding effect; Section 23 that bars Jurisdiction of Courts; Section 24 that provides that the Act would not apply to certain organisations; the transitional provision of the power to remove difficulties in Section 30; and the repeal of the Freedom of Information Act, 2002 in Section 31.

55. At the heart of the said Act is Section 3, which includes the word that is apparently left unsaid in it. Every previous word in the statute builds up to an absolute right to know and each word following the section cements the right amid the sundry exemptions to its exercise, the manner of attainment of the right and the body of procedure set up there for. Through every pore of its 31 sections, the Act celebrates the spirit of knowledge.

56. Knowledge is the plinth on which a polity is built and which it draws from for its sustenance. Access to information is at the foundation of a democracy, for what is a choice if it is uninformed. Education is part of the process of empowerment that the Constitution mandates the State to strive for. The freedom of speech and expression that the Constitution guarantees unto all citizens is considerably larger than the words used in Article 19(1)(a). The promise held out in Article 38 is for a social order to be brought in, in which Justice, social, economic and political shall inform all the institutions of national life. The State, the Constitution directs, shall strive to eliminate inequalities in status, facilities and opportunities.

57. From the first days of its taking upon the burden of balancing, the Supreme Court has read a word into what is expressly recognised in Article 19(1)(a) of the Constitution. Beginning the judgment in the Rornesh Thappar case 1950 SCR 594 : AIR 1950 SC 124, delivered some four, months into the constitutional era, the Supreme Court found the freedom of discussion to be included in Article 19(1) (a) and the freedom of press to be an aspect of the freedom of discussion so that members of a democratic society should be sufficiently informed to "be able to form their own beliefs and communicate them freely the fundamental

principle...is the people's right to know".

58. This right to know has been seen to be at the base of the democratic process and in the cases of *Sakal Papers (P) Ltd.* 1962 (3) SCR 842 : AIR 1962 SC 305, *Bennett Coleman and Co.* 1972) 2 SCC 788 : AIR 1973 SC 106 and *Indian Express Newspapers (Bombay) P. Ltd.* (1985) 1 SCC 641 : AIR 1986 SC 515. the view first expressed in the *Romesh Thappar* judgment has been echoed and amplified. Be it the case of a magazine being banned in a locality or in quality newsprint being made more difficult to obtain or in Government advertisements being released in more favoured publications, Courts have discerned in several executive actions an attempt to stifle the press; and unmuzzled the right of expression on the touchstone of the larger societal interest to inform and to be kept informed. It is now beyond question that the community has a right to be supplied with information; and the Government has a duty to educate the people within the limits of its resources (*Bennett Coleman*). Such right and the corresponding obligation is found in Article 41 of the Constitution. Secrecy in Government functioning has been deprecated by Court for the "veil of secrecy is not in the interest of public and can seldom be legitimately desired." (*State of The State of U.P. Vs. Raj Narain and Others*, Officials need must explain and justify their acts as that is the chief safeguard against oppression and corruption.

59. The voice in support of expression has reverberated through the judgments in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and the *Bhagalpur custodial Windings* cases where the privilege claimed under Sections 162 and 172 of the Criminal Procedure Code was brushed aside in the wake of the powers exercised under Articles 32 and 226 of the *Khatri and Others Vs. State of Bihar and Others*, . In the same vein the right of the press to interview prisoners whose clemency petitions had failed, has been recognised *Smt. Prabha Dutt Vs. Union of India (UOI) and Others*, and in the case of *S.P. Gupta Vs. President of India and Others*, it was held that exposure to public gaze and scrutiny is one of the surest means of achieving clean and healthy administration for it ensures effective participatory democracy and "a popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both".

60. In the more recent cases of *Dinesh Trivedi, M.P. and Others Vs. Union of India (UOI) and Others*, and *Vineet Narain and Others Vs. Union of India (UOI) and Another*, : *Vineet Narain and Others Vs. Union of India (UOI) and Another*, a citizen's right to know of the affairs of the State has been talked of whether in the context of a report submitted by a committee or as to the background of a candidate at the hustings.

61. The said Act declares in its statement of objects and reasons that it is to ensure better and more effective access to information that it has been enacted for providing "an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India". The right, therefore, is acknowledged to have been in existence and the Act is only the means to

effectuate it. The Act replaced the Freedom of Information Act, 2002 which proclaimed to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration. The right to information defined in Section 2(j) of the said Act includes the right to inspection of work, documents, records; taking notes, extracts of certified copies of documents or records; taking certified samples of material; obtaining information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device. Such definition, apart from its wider import in it being illustrative, is an expansion on the definition of "freedom of information" u/s 2(c) of the predecessor statute. Freedom of information under the Act of 2002 meant the right to obtain information from any public authority by means of inspection, taking of extracts and notes; certified copies of any records of such public authority, diskettes, floppies or in any other electronic mode or through printouts where such information was stored in a computer or in any other device.

62. The object or policy of the said Act. the growing openness of the society and the immediate history leading up to the enactment are good guides to the assessment of the sweep of the legislation. Most of what is apparent in the said Act is what was already available to the Indian citizen under Article 19 of the Constitution. If the Act attempted to abridge what the citizen was already guaranteed it would have fallen foul of the Constitution, but if it opens new vistas to progress and development and ushers in transparency, it can hardly be faulted for carrying a constitutional thought to its contemporary progression.

63. The lucid words in the definitions and the empowering provision of the said Act do not admit of any restriction of its operation, but the object or policy of the legislation may afford an answer, subject to the ground of inconvenience urged, as to whether answer scripts would be amenable to disclosure under the said Act.

64. One must tread with caution. Maxwell (supra, 12th Ed. page 87) reminds of a limited meaning being given to the expression "every inhabitant" in an act that required churchwardens and overseers formerly making clandestine rates to publish their rates for inspection. Inspection of the rate was refused to one of the church-wardens who was also an inhabitant of the parish. It was held that since the object of the Act was to protect such inhabitants who had previously no access to the rates, the meaning of the term "inhabitants" was limited and not applied to the complaining church warden as he had previous access to the rates (*Wethered v. Calculi*. (1842) 4 Man & G 566).

65. The word "piracy" was given an unusual meaning in the context of a statute that was passed to give the executive powers for effecting a treaty of 1842 between Britain and the United States, that provided that either State would, on the requisition of the other, deliver up to justice all persons charged with murder, piracy or other specified crimes committed within the jurisdiction of either State.

The Court of the Queen's Bench held that the word "piracy" was confined to those acts which were declared piracy by the municipal law of either country, such as slave-trading, but did not include such other acts which amounted to piracy in the primary sense of the word, that is, *jure gentium* (*Re Ternan*, (1864) 33 LJMC 201).

66. Right to information *jure gentium* has to be understood on the *communis opinio*, that is the evidence of what the law is, on the basis of how courts have interpreted the right under Article 19 of the Constitution. As the said Act is of recent vintage, the principle of *contemporanea expositio* is not available for the opinion of the Central Information Commission, to the extent of its understanding that there is no express bar in the said Act to answer scripts being otherwise made available, to be relied upon. Yet such Commission is a body that deals with matters under the said Act and reads the words of the statute on a regular basis to direct or refuse the disclosure of information. The Commission answered the two questions directly raised on the provisions of the said Act against the public authorities and yet found the hardship factor--call it inconvenience or unworkability -which is not expressly included in the statute as a ground for exemption, to be standing in the way of the answer scripts being made available to their authors. But though the examinees failed before the Central Information Commission there is a pious wish recorded in the order for their benefit, recommending making over of answer scripts to examinees upon a regular procedure being set down in that regard.

67. On a plain reading of the right amplified under the said Act. the question that it ought to stimulate upon a request being received is not why, but why not. If information has to be supplied unless it is exempted, the reason for refusal has to be found in Section 8 or not at all.

68. Since three of the ten clauses of Section 8(1) of the said Act have already been referred to, the other seven may be seen. Clause (a) of Sub-section (1) of Section 8 deals with information that would compromise the sovereignty or integrity of the country and like matter; Clause (c) covers such matters which would cause a breach of privilege of the Parliament or the State Legislatures; Clause (d) protects Information of commercial nature and trade secrets and their ilk; Clause (f) prevents information being disseminated if it is received in confidence from any foreign government; Clause (h) bars access to such information which would impede the process of investigation or apprehension or prosecution of offenders; Clause (1) forbids records and papers relating to deliberations of ministers and officers of the executive being made available, subject to a proviso; and, Clause (j) prohibits disclosure of personal information unless there is an element of public interest involved. The proviso at the foot of Clause (j) appears to cover the entirety of Section 8(1), notwithstanding the view taken by the Division Bench of the Bombay High Court. The manner in which the exceptions to the rule have been carved out in Section 8 and the proviso which appears to govern all the cases covered by Section 8(1) of the said Act, makes

the exemption section exhaustive.

69. Construction of a statute on the grounds of hardship or inconvenience or injustice or absurdity or anomaly arises if the statute presents a choice. The said Act does not appear to present one. For the rule of mischief to come into play there have to be material words that are capable of bearing two or more constructions. The rule of purposive construction or the mischief rule as enunciated in the Heydon case has been accepted by the Supreme Court in the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*,

23. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case (3 Co. Rep 7a; 76 ER 637) was decided that--

...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act,

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bona publico.

70. Even if the Heydon questions were to arise in the present case, the answers to them would not permit the disclosure of answer scripts being resisted. There is no discernible change of law attempted by the said Act, it has fuelled the burgeoning aspiration of a people for a transparent governance. If there is any mischief that the said Act seeks to address, it is to make the right guaranteed by the Constitution more explicit. The remedy that the Parliament has prescribed is to cure the malaise of clandestine, cloak-and-dagger functioning of any public authority. The true reason of the remedy is to ensure a level playing field.

71. If then there is hardship in its implementation or in the fructification of the aspirations recognised therein, it is not for the Court to rein in the desirable curiosity that the Act has unleashed, but for other measures to be adopted to pave the way for its operation. If the Central Information Commission could have recognised the spirit of the Act to have recommended the return of answer scripts to examinees, that there is an immediate hardship or harsh consequence is of no relevance.

72. The Act provides a right to receive information and the consequence of the



making over of such information is immaterial in the matter of construction of its provisions. As to whether an examinee would use the information received on inspection of his answer script to undo the finality of the process of examination is not an argument that can be considered to curb the operation of the statute. The Act begins with a citizen's right to obtain information and ends with the information being made available to him or his request being justly rejected on the grounds recognised by the Act: what happens before and what may be the consequence of the information being made available or rightfully denied is a matter beyond the operation of the Act.

73. The University's first challenge (and it is, indeed the University's challenge as the onus is on the rejection being required to be justified) that what an examinee seeks in asking for inspection of his answer script is not information at all, cannot be accepted. In the stricter sense, if such answer script answers to the description of information, whether such information is of the examinee's creation, counts for little. In the broader perspective, if a document submitted takes on any marking it becomes a new document. The University's offer of making the marks allotted to each individual question available to all candidates is fair and laudable, but not if it comes with the rider that the answer scripts should then be exempted from being divulged. Notwithstanding the principle of severability contained in Section 10 of the said Act, the answered paper with or without an examiner's etchings thereon is not information exempted under any of the limbs of Section 8.

74. As a matter of principle, if answer scripts cannot be opened up for inspection it should hold good for all or even most cases. Since the said Act permits a request for third party information, subject to the consideration as to desirability in every case, a third party answer script may, theoretically, be sought and obtained. The University's first argument would then not hold good for a third party answer script would be information beyond the knowledge of its seeker.

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 u/s 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.

76. Whether or not an examiner puts his pen to the answer script that he proceeds to evaluate would not rob the answer script of retaining its virtue as information within the meaning of the said Act, even if it is made available for inspection in the same form as it was received from the examinee. The etchings on an answer script may be additional information for a seeker, but the answer script all along remains a document liable to be sought and obtained following a request u/s 6 of the Act. That the etchings may be pointless or that they may be arbitrary or whimsical in the absence of any guidelines, makes little difference.

77. Education is more than just reading prescribed texts and taking examinations in a given format, it is more than a garnering of degrees, certificates and diplomas. Any real education requires the amassing of knowledge that may or may not be in the prescription for an examination. An educated human being may also strive to create a new body of knowledge that is outside the purview of prescriptions. There can be no education if limits are imposed on the amount and type of knowledge an individual may gather or create. A democracy can only be functional in all its aspects, extents and senses when there is an informed citizenry.

78. The right to information is the most basic empowerment of the individual-- the right of an individual to the source of any knowledge required for him to educate himself in any area he may choose.

79. An examining authority may not tell a student that he must learn how to answer questions in the format the examining authority desires, yet leave the examinee uninformed of the manner of evaluation. The examining authority cannot be exacting in its demand for transparency and clarity in answers to its questions, and yet remain inscrutable and veiled in its methods of evaluation. An examining authority has every right to judge the student's knowledge and expression of that knowledge, but it cannot take away the examinee's right to know the methodology of and the criteria for its evaluation. But again this is straying into the zone of the consequence of information of the subject kind being made available.

80. An examinee who has written hurried answers and solved problems under examination conditions sometimes several months before he gets the marksheet does not really "know" his answers. His memory of what he wrote will not be complete or accurate. He may not even have a clear recollection of what he has recorded in his answers. Alternatively, he may feel that he has written something that he actually has not. His silly mistakes, graphical or grammatical errors and oversights may not be obvious to him. A look at his evaluated answer script can serve the wonderful purpose of pointing out his mistakes - whether or not the evaluated paper marks such mistakes -- clarifying his doubts and helping him to

know once and for all, what he wrote and what he did not.

81. If inspection of answer scripts is denied to the examinee, the spirit of the Constitutional right to expression and information may be lost. The knowledge-builder's -the University's bid to perpetuate the draconian, elitist, one-sided right to know and judge and rule without being open to question or accountable to the examinee cannot be encouraged. For a system to foster meaningful proliferation of knowledge, it must itself be crystal clear to its core.

82. In the University's zeal to limit the scope of the request for information under the said Act, one may get a whiff of its inertia: its innate resistance to change, almost a sublime refusal to perceive or acknowledge how all around it has moved along. History and tradition may be cherished and preserved. But evolution cannot be impeded as it is a means for survival. If there is no infrastructure to receive the change, the need to change cannot be negated. It is possible that public authorities as the University do not desire accountability as it is a demanding taskmaster and it is difficult to shrug off old habits. It is equally likely that while public examining bodies make an ostensible show of concern for the examiners, there is a realisation that a more open scrutiny of evaluated answer scripts will require more care and caution than the low remuneration--and that is a notorious fact--to examiners can command.

83. Access to answer scripts may have the desirable side-effect of ensuring that there is no loss of any of the papers. It is not unknown for answer scripts of Board and other examinations to have been found in dishonourable places that they should never have reached, and the awareness that there may potentially be a request for furnishing every answer script may result in its better preservation. In a sense, the despair that has driven many a student to take his life in recent times may be addressed if students have access to their evaluated answer scripts.

84. The University's final shield is, ironically, the Court. It seeks to tuck the answer scripts behind the apparently insurmountable wall of Supreme Court judgments. Apart from the fact that Section 8(1)(b) of the said Act has to be read in the light of the overriding effect of the said Act sanctioned u/s 22, the argument on such score is as much a show of desperation as the floodgate theory.

85. There are two parts to Section 8(1)(b) of the Act: information that has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute contempt of Court. It is a disjunctive "or" after the word "tribunal". It is trite that an act may not be expressly forbidden by a Court and yet its commission would amount to contempt of Court. In the first limb of the clause, the expression "expressly forbidden" operates on the word "information". It necessarily implies that, that which is sought by way of a request has to be a matter that is expressly forbidden to be made available. The judicial embargo has to be explicit and a general observation may not be cited as

a bar. An express prohibition has to be more specific than what the University brings by way of Supreme Court judgments, even if its best arguable case is taken. It does not appear that the University here has stressed much on the second arm of the clause. Even the latest Ayan Das case has not altogether forbidden answer scripts being offered for inspection by a Court to an examinee. The Suvankar case spoke of the ills of court-sanctioned interventions in the process of evaluation that may rob it of its timely finality. The Suvankar case deals with the consequence of information being furnished and cannot be seen as an impediment to the information in the form of answer scripts being made available. It is a matter that comes into play, as noticed above, in the zone beyond where the said Act operates.

86. The Supreme Court's reference in the Paritosh Bhupeshkumar Sheth case to the audi alteram partem rule not operating in the twilight zone of expectations has to be read in the background of the immediate lis and the more general rule that was laid down. The challenge in that case was to two clauses of one of the regulations of the Secondary and Higher Secondary Council that barred reassessment and prohibited inspection of answer scripts. The restrictions were found to be reasonable. The matter was not considered in the light of the enactment which is the subject-matter of the present proceedings, even if it is accepted that the said Act only elucidates on the right originally guaranteed by the Constitution. There is no evil in a right born in the Constitution being enlarged by subsequent legislation nor any doubt as to the legislative competence to do so. If the right already existed under the Constitution, Parliament may widen its sweep and operation. A privilege granted under Part III of the Constitution can be legitimately magnified in keeping with the Constitutional vision in Part IV, abreast with the changing times when the said Act's avowed purpose is to bring about transparency and curb corruption.

87. Judicial discipline demands deference to precedents not only of the hierarchical superior but also of a forum of coordinate jurisdiction but it does not command a fawning obeisance in the deification of any precedent. As society progresses and aspirations rise, it shakes off the shackles that it invented in its infancy or adolescence. Marvels of yesterday become relics of today. If the Central Information Commission can rightfully aspire for a day when answer scripts would accompany the mark sheets, that there is no facility there for today would not lead to the natural words and import of the said Act to be constricted by any concern for the immediate hardship and inconvenience. The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained device of construction. In a constitutional democracy, every limb and digit of governance is ultimately answerable to the government.

88. Up until the Ayan Das case and down the ages when the Paritosh Bhupeshkumar Sheth and Suvankar cases were decided, the issues were not tested against the provisions of the said Act. Subject to the legislation being

within the bounds of constitutional propriety, the legislature may bring an enactment to undo a view expressed by Court, for notwithstanding the contemporary fading demarcations of the functions of the several organs of State, the Court may have to yield to the legislature in the business of law-making as it is the vocation of the one and the subject of scrutiny and application of the other.

89. The aspirations that the said Act addresses, the hope that it kindles and the direction that it gives to a right ordained under the Constitution, hardly permit an answer script to slip out of its refreshingly agreeable sweep. The sand in the hourglass has run out on all forms of feudal practice and the inglorious vestiges of its overstaying relics need to be ruthlessly torn down in the land belonging to the Constitution. The old order that the University seeks to preserve must yield to the mores of the times.

90. As much as an examining body may owe an obligation to its set of examiners, it owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter, for the little man to have the curriculum vitae of the candidates who seek his insignificant vote, the right of the examinee is no less to seek inspection of his answer script.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience, or on the test of openness and transparency being inherent in human rights, or by the myriad tools of construction, or even by the Wednesbury yardstick of reasonableness, the State Public Information Officer's rejection of the writ petitioner's request to obtain his answer script cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.

92. The parties shall pay and bear their own costs.

Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Later;

93. The University seeks a stay of operation of the order. Considering the gravity of the matter and the onerous candour demanded of the University, the order shall remain stayed for a period of a fortnight.