

(2011) 08 DEL CK 0053
In the Delhi High Court
Case No : Writ Petition (C) 5779 of 2011

Soumik Mitra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Examination Bye Laws — Rule 61, 62
Right to Information Act, 2005 — Section 20, 25

Citation : (2011) 182 DLT 74

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Raj Panjwani and Aditya Shamlal, for the Appellant; Sweetie Manchanda, C.G.S.C. for Respondent 1 and Atul Kumar, for Respondent 3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 19th August, 2010 of the Central Information Commission (CIC) disposing of the appeal preferred by the Petitioner in terms of the order on the same date in another appeal preferred by one Mr. Amitawa Choudhary.

2. The Petitioner had appeared in the Senior School Certificate Examination held by the Respondent CBSE, first in the year 2008 and being unsuccessful therein, again in the year 2009. Being dissatisfied with his result of the examination taken in the year 2009 also, he in accordance with the Bye-Laws of the examination, applied for re-checking. The Respondent CBSE vides its letter dated 22nd June, 2009 to Petitioner intimated that upon re-checking, no mistake had been detected. The Petitioner being still dissatisfied preferred W.P. 12593(W) of 2009 before the Calcutta High Court. It is the case of the Petitioner that the Calcutta High Court called for the answer scripts and which were produced before the Court and the Court came to the conclusion that the same were genuine and accordingly dismissed the writ petition vides order dated 28th August, 2009.

3. The Petitioner thereafter on 7th October, 2009 applied under the RTI Act, 2005 for the answer sheets to be supplied to him. The PIO, Allahabad vide order dated 31st October, 2009, relying upon Rule 61(iv) of the Examination Bye-Laws prohibiting disclosure of answer sheets refused to provide the same.

4. The Petitioner preferred an appeal to the First Appellate Authority, Allahabad under the Act and which was also rejected on 25th November, 2009.

5. Aggrieved therefrom the Petitioner on 4th March, 2010 preferred the second appeal to the CIC impugning the order whereon, this petition has been filed.

6. The CIC has held that in accordance with the decision dated 4th November, 2009 of Full Bench of the CIC in *Rakesh Kumar Singh v. PIO, Lok Sabha Secretariat* copies of the answer sheet were not required to be provided under the RTI Act, including by the CBSE. It was accordingly held that there was no error in the orders of the PIO and the First Appellate Authority. The CIC nevertheless on the plea that the replies furnished by the PIO, Allahabad of the CBSE were sketchy, issued a direction to the CBSE to place a credible system under which the applications are examined and disposed of in conformity with the provision of the RTI Act.

7. It is the case of the Petitioner himself in this petition that representative of the Respondent CBSE during the hearing before the CIC had stated that the answer sheets of the Petitioner have been destroyed. The senior counsel for the Petitioner has contended that since the CIC has disposed of the appeal preferred by the Petitioner by merely adopting the order in the case of *Mr. Amitawa Choudhary*, it has failed to record the said fact also. The Petitioner has in the present writ petition claimed the following reliefs:

a) A writ, order or direction in the nature of certiorari for quashing the impugned order dated 19-08-2010, passed by Smt. Deepak Sandhu, Learned Information Commissioner at the CIC.

b) Call for the tapes of the video conference held at the CIC, dated 19-08-2010, in connection with the Petitioner's case.

c) Call for a record of destruction, if any, which has recorded the destruction of the Petitioner's answer scripts.

d) To initiate proceedings u/s 20 of the RTI Act, for the imposition of penalty against those officers who were responsible for the destruction of the answer sheets of the Petitioner.

8. The senior counsel for the Petitioner at the outset has stated that the Apex Court in a recent decision reported in the newspapers has held that answer sheets are to be provided to the examinees. He states that the judgment dated 9th August, 2011 in *Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others*, has not been uploaded as yet and is hence not available.

9. It has however been put to the senior counsel for the Petitioner as to what purpose the aforesaid judgment of the Apex Court would serve, since it is the case of the Petitioner himself that the answer sheets have been destroyed. The senior counsel states that the Respondent CBSE has not stated so on affidavit till now and seeks a direction to the Respondent CBSE to file an affidavit in this regard.

10. The counsel for the Respondent CBSE has with reference to Rule 62 of the Examination Bye-Laws of the CBSE providing for destruction of the answer sheets within three months of the declaration of the result and which in the present case was declared in May, 2009 states that he has instructions that the answer sheets have been so destroyed.

11. Thus the possibility of directing production or giving inspection of the answer sheets, as Supreme Court has held "permissible", does not exist now.

12. The senior counsel has however urged that the Petitioner in his application to the PIO as well as in the first appeal and in the second appeal has been seeking a direction for preservation of the answer sheets and contends that thus, destruction of the answer sheets is in violation of Section 20 of the RTI Act and the CIC has erred in not taking action hereunder, neither of imposition of penalty nor for prosecution of the concerned official, and the Petitioner is entitled to the said relief.

13. The Petitioner in the present case was before the Calcutta High Court with respect to his result and which Court immediately called for the answer sheets and recorded its satisfaction that all questions answered by the Petitioner had been duly assessed and there was no totaling error. The Petitioner, neither from the Calcutta High Court nor from any other Court, sought the relief of restraining the Respondent CBSE from destroying the answer sheets. The question which arises is, whether the authorities under the RTI Act, on the request of the Petitioner for preservation of the answer sheets were required to or competent to pass any orders for such preservation.

14. The senior counsel for Petitioner, except, for drawing attention to Section 25 of RTI Act dealing with mandatory report and which admittedly does not empower such authorities to order the preservation, has not been able to show any provision in the Act in this regard. However attention is invited to an order passed by the PIO referring to another order of the CIC where such direction for preservation was given. However, without the Act empowering the authorities in this regard, I am unable to hold that the remedy if any of the Petitioner seeking preservation of the answer sheets was before the authorities under the RTI Act. The request made to them was thus of no consequence and no error can be found with the non-issuance of direction of preservation by the said authorities.

15. The senior counsel for the Petitioner has next contended that the Division Bench of the Calcutta High Court as far back as in the year 2009 had held that the examinees are entitled to the inspection of the answer sheet and contends

that the CIC erred in not following the same. However the senior counsel fairly admits that neither the Petitioner in the appeal before the CIC nor during the hearing cited the said judgment of the Calcutta High Court.

16. Once it is found that the authorities under the RTI Act were not empowered to make any order on the request of the Petitioner for preservation, it cannot be said that they are liable for any action for not acceding thereto.

17. Reference to Section 20 of the RTI Act providing for imposition of penalty and prosecution for destruction also has to be seen in the light of other applicable rules. Once the Examination Bye-Laws of the CBSE permitted the CBSE to destroy the answer sheets within three months of the declaration of the result, destruction in accordance with the said Bye-Laws cannot be said to invite penalties u/s 20 of the RTI Act. 1

18. There is thus no merit in the petition; the same is dismissed. No order as to costs.