

Rakesh Chaudhary vs State Of U.P. And 2 Others on 2 January, 2025

Author: Saral Srivastava

Bench: Saral Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:284

Court No. - 32

Case :- WRIT - C No. - 42766 of 2024

Petitioner :- Rakesh Chaudhary

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Santosh Kumar Verma

Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. The petitioner by means of the present writ petition has prayed for following reliefs:

"i. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 to produce the answer book of subject of Pharmacology of the petitioner of Final Year of Annual System Examination, 2024 for revaluation of the answer sheet of the petitioner for securing the future of the petitioner.

ii. Issue a writ, order or direction which may be deemed fit and proper in the circumstances of the case.

iii. Award cost of the petition throughout in favour of the petitioner."

3. The submission of the learned counsel for the petitioner is that the petitioner took admission in Diploma in Pharmacy of two years course in B.K. Verma, Institute of Medical Science, Village Basuapar, Post Badhani, Tehsil Harraiya, District Basti.

4. Contention of learned counsel for the petitioner is that the marks awarded to the petitioner in Pharmacology Subject for the final year of Annual System Examination in Diploma in Pharmacy is '14' out of '80' marks' which is much less than the marks as expected by the petitioner on the basis of his performance in the said examination paper. Learned counsel for the petitioner further submitted that the petitioner believes that due to some mistake on the part of the respective authorities in evaluating the marks as the marks awarded to the petitioner in Pharmacy subject has been shown lesser than he deserves.

5. It is further submitted that the petitioner after getting the mark-sheet of Annual System Examination in Diploma in Pharmacy, preferred a scrutiny application before the respondent no.2-Secretary, Board of Technical Education, U.P. Lucknow raising his grievance on 05.10.2024, but no heed was paid by the authorities on his application.

6. Learned Standing Counsel appearing for the State respondents submits that the exercise of scrutiny of the marks in respect of all those candidates who applied for the same has now been completed and there is no provision of re-evaluation under the relevant Rules. He further submitted that it is open for the petitioner to move appropriate application under the Right to Information Act before the Public Information Officer in the office of the Board of Technical Education, U.P., Lucknow to know the correct position for his satisfaction and thereafter to take appropriate steps as permissible under law.

7. It is pertinent to note that the Apex Court in the case of Central Board of Secondary Education & Another Vs. Aditya Bandopadhyay & Others 2011 (4) ESC 600 (SC) has been pleased to secure the power of the examining bodies to permit examinees to have inspection of their answer books, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which 'information' should be furnished. The relevant paragraphs of the judgement passed in the Aditya Bandopadhyay (supra) are extracted herein below:-

"27. We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.

Re : Question (iv)

28. When an examining body engages the services of an examiner to evaluate the answer-books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer-books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator, and head-examiner who deal with the answer book. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer-books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of RTI Act. Those portions of the answer-books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer-books, under Section 10 of RTI Act.

29. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer-books for a period of six months. The fact that right to information is available in regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the RTI Act is to make available or give access to existing information or information which is expected to be preserved or maintained. If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. For example, with reference to answer-books, if an examinee makes an application to CBSE for inspection or grant of certified copies beyond three months

(or six months or such other period prescribed for preservation of the records in regard to other examining bodies) from the date of declaration of results, the application could be rejected on the ground that such information is not available. The power of the Information Commission under Section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary to secure compliance with the provision of the Act, does not include a power to direct the public authority to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority.

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34. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is Section 8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

38. In view of the foregoing, the order of the High Court directing the examining bodies to permit examinees to have inspection of their answer books is affirmed, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which 'information' should be furnished. The appeals are disposed of accordingly."

8. Accordingly, the present writ petition is disposed off with liberty to the petitioner to apply under the Right to Information Act, 2005. In case, petitioner prefers an application under the Right to Information Act, 2005 in the manner as prescribed under law along with certified copy of this order within a period of four weeks from today, the concerned authorities shall ensure furnishing of the permissible information and the documents as per law to the petitioner in the light of the judgment passed by the Apex Court in the case of Aditya Bandopadhyay (supra) within a period of one month from the date of receipt of the aforesaid application, if there is no legal impediment.

Order Date :- 2.1.2025 Sattyarth