

CENTRAL INFORMATION COMMISSION

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

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/SA/A/2016/001451

Subhash Chandra Tyagi v. CBSE

Important Dates and time taken:

RTI/PIO: 6-10/16-12-15(71)	FAA Order: 28-1-2016	2 nd Appeal: 25-6-2016
Show cause issued	Hearing: 12-7-2016	Decided on: 21-07-2016

Appellant: Absent

Public Authority: Mr. P. P. Verma, CPIO

FACTS:

2. Appellant through his RTI application had sought information relating to candidate Mr. Kamal Tyagi who was enrolled as private candidate in year 1999 and 2001. CPIO stated that the sought information pertains to certification which is not covered under RTI act. The FAA dismissed the appeal saying that the information pertains to third party and is personal information of third party, without whose consent it could be given. Appellant thereafter approached the Commission.

DECISION:

3. In his second appeal, the appellant Mr. Subhash Chandra Tyagi, explained why he was seeking this information about Mr. Kamal Tyagi. He had a reasonable apprehension about the genuineness of educational qualification of Mr Kamal Tyagi. He says that Kamal Tyagi had not attended regularly the school and he was doing the business during that period. In fact,

the appellant has presented photo copies of marks and certificates of class 10 and 12 of Mr. Kamal Tyagi. It is important to note that appellant himself has stated that the candidate appeared as a private candidate.

4. The CPIO Mr. Mukesh Arora, from CBSE replied on 16-12-2015 asking the appellant to make payment of Rs.250/- for marks sheet or certificate. The FAA i.e. Regional director Mr. Kamal Pathak of CBSE, Ajmer wrote again to the appellant on 28-1-2016 asking him to deposit Rs.250/- per copy.

5. From the first appeal and second appeal, it is clear that the appellant is asking the CBSE to verify and tell him whether the certificates issued were genuine or forged. Neither the CPIO nor the FAA answered this question.

6. The CPIO has tried to consult the third party as prescribed under Section 11(2), but could not do so because of absence of proper address. The CPIO is expected to understand that the consent of third party is not required but, consultation with him is mandatory. Even if the third party does not consent or object to disclosure, the CPIO is expected to apply his mind, examine the public interest, if any, and decide whether to disclose or not. In this case, there is no such application of mind by the CPIO, who has simply tried to contact the third party, but did not contact because the address was not available. He did nothing.

7. It is apparent from facts on record and submissions that Mr. Kamal Tyagi was enrolled as private candidate. It is notable that under the byelaws of CBSE, a private candidate means a person who is not a Regular Candidate but, is allowed to undertake and/or appear in the All India/Delhi Senior School Certificate Examination or All India/Delhi Secondary School Examination of the Board. Thus the allegation of appellant that the candidate Mr. Kamal Tyagi was not attending classes loses ground. However, as complainant is also expressing doubts about genuineness of certificates and marks of Kamal Tyagi, in that case, the CBSE has to consider this as a complaint, verify the genuineness of the records and report the result to the appellant. This was not done. During the second appeal, the CPIO Mr. PP Verma has made entirely new arguments that the information sought was personal/third party information, there

was no consent available and hence could not be given. This is in contradiction to the stand taken by the earlier CPIO, who offered the information, but wanted an exorbitant cost of Rs.250/- per page. It is absolutely illegal on the part of CPIO to charge Rs 250/- per page. The Public authority/CBSE has to comply with RTI Act and RTI Rules, under which charges for copying should not exceed Rs.2/- per page. The rules of CBSE which enabled them to collect Rs.250/- per page cannot be implemented, when an applicant approaches under RTI Act. Section 22 of RTI Act specifically overrides every other rule or law, which is contradictory to RTI Act.

8. The Commission directs Mr. Vikas Arora, the then PIO, CBSE Regional Office, Ajmer, Rajasthan to show-cause why maximum penalty should not be imposed against him for demanding Rs.250/- per page from the appellant to provide a copy under RTI Act

9. The present CPIO has unreasonably contended that the information sought was third party information. He did not verify his own record. Once a student passes an examination and qualifies to secure a degree, the degree and passing details cannot be treated as private or third party information. Passing an examination is a qualification and awarding the degree such as 10th Class, 12th Class or Intermediate, graduation or post-graduation, is a public document generated by a public institution. The academic institutions awarding such degrees under a statutory authority are discharging their statutory duties such as registering the qualification details and degree related information.

10. When there is an apprehension or doubt about validity or existence of a qualification, it is necessary to verify genuineness of the same. If verification proves that it is a genuine degree, it vindicates the qualification of the candidate. If it is proved to be a wrong degree, it will serve a larger public interest. Hence the degree or academic-qualification-related-information need to be accessible to the citizen. If a student fails in an examination and attempts again to finally clear the test and secure qualification, there are two kinds of information – one, public information i.e. the tested qualification, two, private information i.e. the details of failure or disqualification, which is personal to the candidate which has nothing to do with public activity,

disclosure of which would cause unwarranted invasion of privacy and thus it has to be treated as third party information. It can be inferred that all failures and related memoranda of marks are personal to the candidates while passing the examination and securing the final award of degree should be considered as public document and should be accessible to the public in general. Qualifying an examination or possessing a degree, post-graduate degree or Ph.D. or having professional qualifications is considered pride of the candidate, family and society will also be proud of the same.

Mr. Kofi Annan once said: *'Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development'*. Aristotle says *"it is the mark of an educated mind to be able to entertain a thought without accepting it"*. John F Kennedy believed that *the goal of education is the advancement of knowledge and the dissemination of truth'*.

11. An educated person cannot hide his education. He will necessarily incorporate his academic qualifications, as his achievements and if he secures any gold medal or rank, he will definitely display that in his bio-data papers. Education being a qualification concerning the society in general, can never be treated as personal information. If someone chooses not to disclose his educational qualifications, it could be his personal choice, but if he uses those qualifications for achieving an employment or higher education or a position, that becomes public information.

12. Every University celebrates Convocation each year, which means awarding of degrees to the qualified students by the hands of the Chancellor, who generally is the Governor of the State. Every graduate is expected to attend the ceremony and take an oath that he would conduct himself as worthy of the degree being awarded to him. The Governor administers the oath to students, like he administers to the Chief Ministers and Ministers. The graduation ceremony i.e. Convocation is a public activity. The people who attended convocation are supposed to take notice of the graduation of young persons, who are going into the society as educated citizen. During the Convocation one important aspect is that the Chancellor

administers oath to the Graduates who are presented to the society. As a Registrar of National Academy of Legal Studies and Research, (NALSAR) University of Law, Hyderabad, I led team to organize Convocation, where the oath is administered as follows:

The Chancellor, NALSAR University of Law ... says:

“Let the candidates for other Degrees and Diplomas stand forward.”

All the candidates standing, the Chancellor puts to them the following question:

“Do you sincerely promise and declare that, if admitted to the Degree or Diploma for which you are candidates, and for which you have been recommended, you will in your daily life and conversation conduct yourselves as worthy members of this University?”

All the candidates will collectively answer:

“I do promise”.

With this, the candidates resume their seats. Then the Chancellor says: “Let the candidates be now presented.”

Even if the graduate is absent, he has to obtain the degree in absentia, for which he has to sign an undertaking that he would live worthy of education attained. In NALSAR University the following declaration is mandatory. (Declaration to be signed by the candidate taking the degree/diploma in *absentia*)

“I hereby solemnly declare and promise that if admitted to the Degree / Diploma of _____ for which I have been recommended, I shall in my professional as well as personal life and conversation conduct myself as befits member of this University; that I shall, to the utmost of my capacity and opportunity, support the cause of justice, fairness and peace; and that as far as in me lies, I shall uphold and advance the social order constitutionally established and well being of all human beings everywhere and rule of law within the country and outside”.

13. Every graduate will promise to live worthy of the degree of education. They do take in pride in doing so. Parents, relatives and friends will attend the ceremony and bless/greet the graduate. With this the people get a chance to check whether such a graduate is living up to the expectation or is he worthy of the degree he possessed. Education is process of learning the knowledge which is free, unlimited and universal. It cannot be owned or possessed or

prohibited for others. Every educated person has to share his education or results of that education with the society. Albert Einstein says: *“those who have the privilege to know have the duty to act”*.

14. How can a graduate consider his degree as private and personal information, and why it should be considered as someone's personal data. There is no basis for such understanding. If BA degree is a requirement for studying MA, the student who wants to study MA has to prove that he graduated. If he does not have that qualifying degree and manipulates to secure admission MA, every genuine graduate has a right to doubt the admission and to demand the disclosure of graduation details. For higher education or employment, he has to reveal his details of education details. If a candidate wants to treat the patients as doctor he has to prove medical graduation. Every person has a right to know genuineness of his degree or education. Hence, all the qualifying examinations and degrees are public information and every member of public shall have access to it. The right to information was available in its rudimentary form in Section 76 of Indian Evidence Act, 1875:

Section 76 says: Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Section 74 of Evidence Act, gave list of "public documents": *"(1) The following documents are public documents: (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country; (2) public records kept in India or private documents."*

15. The CBSE is public office and part of executive. The marks and degree related information maintained in records by the public office are public documents and they are accessible under Evidence Act, 1875. The process of accessing has been now revised and guaranteed under Right to Information Act, 2005 for achieving objectives of transparency and accountability among public authorities including educational institutions like CBSE and Universities. With Section 22 of RTI Act, the procedure of the CBSE in sharing information is overridden by RTI Act.

16. For the above reasons, the Commission holds and declares that academic/educational qualifications at land mark stages like 10th class, Intermediate, Graduation, Post Graduation or Ph.D. and clearing of every annual examination, which promotes the student into next year, are the public documents. If a student is suspected to have manipulated his promotion from one to next year, another has every right to seek its verification and it is the duty of the public academic body to clear the apprehension and take necessary action, if apprehension is proved correct. If educational details are protected as personal information, it leaves lot of scope for manipulation, corruption and misrepresentation. It is in larger public interest, we need to avoid it. To prevent cheating, the transparency is the proper method.

17. The Public Authority/CBSE and its PIO is directed to take guidance from the above reasoning and verify whether appellant is seeking the information about passing of the candidate or failure, and if the information being sought is about clearance of examinations or possession of the 10th and 12th class certificates after passing the examinations, such details need to be provided under RTI Act, to the appellant. If he is seeking information about failures, such as memorandum of marks or details of about number of appearances, the PIO can straight away reject the same, unless the appellant pleads and establishes larger public interest, as required u/s 8(1)(j) or comparative public interest, as mandated under section 8(2) of RTI Act.

18. The Commission directs the CBSE to consider this as complaint, verify the records, examine the allegation and inform the appellant whether the certificates and memorandum of

marks issued to Kamal Tyagi are genuine or not, within one month from the date of receipt of this order. Disposed of accordingly.

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Addresses of the parties:

1. The CPIO under the RTI Act, , RTI Cell, Govt of India
Central Board of Secondary Education, P.S. 1-2,
Institutional Area, IP Extension, Patparganj,
Delhi-110092

2. Shri Subhash Chandra Tyagi

E-755, Gaur Homes

Govindpuram, Ghaziabad, UP

3. Mr. Vikasw Arora, the then CPIO

C/o The CPIO under the RTI Act, , RTI Cell, Govt of India

Central Board of Secondary Education, P.S. 1-2,

Institutional Area, IP Extension, Patparganj,

Delhi-110092