DECISION

Name of the Appellant : Mrs. Malsawmkimi, Mission Vengthlang, Aizawl.
Name of the Respondent : SPIO, Mizoram Board of School Education, Aizawl.

This Second Appeal has risen on account of 'Answer-sheets' of the daughter of Appellant, who appeared in the High School Leaving Certificate (HSLC) Examination 2014-2015 conducted by the Mizoram Board of School Education (MBSE). The Respondent (i.e. MBSE) had no objection, as per MBSE Bye-Laws, in giving out photocopy of Answer-scripts by paying the requisite Fee fixed by the Board i.e. Photocopy of Answer-scripts (per subject) - Rs.500/-. However, the Appellant resorted to the use of the Right to Information (RTI) in getting the aforementioned Answer-sheets at the rate prescribed for documents under the RTI Act and RTI Rules which the State Public Information Officer (SPIO) and the Departmental Appellate Authority (DAA), MBSE have denied. The Appellant has approached Mizoram Information Commission (MIC) by submitting 2nd Appeal under RTI Act. This 2nd Appeal, therefore, is concerning 'Non acceptance' of the Fees being charged by MBSE for Answer-scripts and not concerning 'Non-furnishing' of Information by the Public Authority.

FACTS:

2. Miss R.Lalhriatpuii, daughter of the Appellant, Mrs. Malsawmkimi appeared for the High School Leaving Certificate (HSLC) Examination, 2014-2015, which was conducted by the Mizoram Board of School Education (MBSE). When Miss Lalhriatpuii got the 'Mark-sheet', she was disappointed with her marks. She thought that she had done well in the examination but she felt her Answer-books were not properly evaluated and that improper evaluation had resulted in her getting low marks. Therefore, her mother, Mrs. Malsawmkimi (the Appellant) W/o Lalthmingliana M-58(C) Mission Vengthlang Aizawl, Mizoram submitted an RTI Application dated 14th May, 2015 to the State Public Information Officer (SPIO), MBSE, Mizoram Aizawl, requesting information to be furnished i.e. "All the 'Answer-sheets' submitted by R.Lalhriatpuii, Roll No.1501003598, Regn.No.15889 of 2013-14, Centre Code AZL-12 St.Paul's Higher Secondary School during the HSLC Examination, 2015 conducted by MBSE (i.e. Mizo, English, S.S., Science, Mathematics, Information Technology)".
3. The State Public Information Officer (SPIO), MBSE, vide letter No.MBSE/RTI(cases) 2012-2013/198 dt. 11.06.2015, denied the request for supply of the documents under RTI Act. The reasons for denying were:-

"With the implementation of Section 4(2) of the RTI Act, 2005 which reads ‘It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section(1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information’, the MBSE had issued Notification No.MBSE/Ex(Hs)8/2011/22 dated 06.01.2012 wherein it is mentioned that a photo-copy of the Answer-scrip(s) shall be given on request accompanied by the requisite fee as fixed by the Board from time to time”.

4. Para 1 to 3 of the MBSE’s Notification No.MBSE/Ex(Hs)8/2011/22 dt. 6th January, 2012, [which are based on Section 34 “Issue of Photocopy of Answer-script(s) of the Examination Bye-Laws of MBSE 2008] mentioned that –

(1) A photo copy of the Answer-script(s) shall be given on request accompanied by the requisite fee per subject as fixed by the Board from time to time.

(2) Photocopies of Answer-script(s) can be applied for and claimed by only the candidate himself/herself upon production of his/her original admit card issued by the MBSE for the Examination under consideration. The Board will not entertain any application/claims made on behalf of the candidate(s).

(3) The rate for obtaining a photocopy of answer-script(s) is as follows: Photocopy of Answer-script (per subject) – Rs.500.00.

5. Feeling aggrieved by the decision of the SPIO, the Appellant submitted First Appeal under the RTI Act 2005 on 7th July 2015 to the Departmental Appellate Authority (DAA), Mizoram Board of School Education (MBSE) and sought the following reliefs:-

“All the Answer-sheets of Miss. R.Lalhriatpuii, which were submitted by her for the HSLC Examination conducted by MBSE for the year 2014-2015. (i.e. Mizo, English, S.S., Science, Mathematics, Information Technology) Student’s Roll No. is 1501003598, Registration No.15889, student of 2013-2015 batch of St. Paul’s Higher Secondary be furnished” under the RTI Act and at the rates prescribed as per Mizoram RTI Rules 2006.

6. The Departmental Appellate Authority (DAA), MBSE held a ‘Hearing’ and in his Judgment dated. 24.07.2015, bearing No. MBSE/PS.40/2008-09/39-42 disposed the said 1st Appeal and ‘regretted’ the Appeal. He relied upon the following :-

(i) Paras, 16, 33 and 37 of the Judgment of the Hon’ble Supreme Court in Civil Appeal No.6454/2011, CBSE Vs. Aditya Bandopadhyay;

(ii) Section 7((9) of the RTI Act, 2005; and

(iii) Section 34 (1) & (2) of the MBSE Examination Bye-Laws.
7. The Departmental Appellate Authority (DAA) of MBSE citing the Judgment of the Hon'ble Supreme Court in Civil Appeal No.6454/2011, CBSE Vs. Aditya Bandopadhyay stated:

"The Acts seeks to bring about a balance between two conflicting interests as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information in actual practice does not conflict with other public interests which include efficient operation of the government's optimum use of limited fiscal resources...... The Supreme Court has further observed at para 37 of the same case that 'The Nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act should not lead to employees of a public authorities (sic) prioritizing information furnishing at the cost of their normal and regular duties. The bigger picture of serving larger public interest had to be considered in the fixation of rates'.

8. The Departmental Appellate Authority (DAA), MBSE further stated:

"In view of the facts and circumstances mentioned above and also taking into consideration the said ruling and observation made by the Apex Court at Para 16, 33 and 37 in the case of CBSC Vs Aditya Bandopadhyay & others reported in 2011 volume 8SCC page 497 together with Section 7 Clause 9 of the RTI Act, which states 'An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question', the apprehensions of MBSE officials that allowing release of photo copies of answer-scripts by RTI way would consequently result in unmanageable number of applications which in turn "would disproportionately divert the resources" of the MBSE, and bring a scenario where larger number of the MBSE's staff would spend most of their time in collecting and furnishing answer scripts to the applicants instead of discharging their regular public duties, are, in the opinion of the Appellate Authority, reasonable; and the rate prescribed by the MBSE for photocopy of answer scripts is reasonable compared to the practices of cited State Boards. The MBSE's provision for issue of photocopy of scripts at reasonable rate sufficiently fulfills the requirement of the RTI Act, of maintaining accountability and transparency. The instant appeal is, therefore regretted and the present appeal is disposed of accordingly"."
9. Not being satisfied with the ruling of the DAA, MBSE, the Appellant preferred Second Appeal before the Mizoram Information Commission on 14th October 2015 [although not been given in writing (as required by the RTI Act) that if she was not satisfied that she could approach the MIC for 2nd Appeal] and sought the following reliefs:

(i) To set aside and quash the judgment dated 24.07.2015 passed by the Departmental Appellate Authority, MBSE;

(ii) To direct MBSE to allow and access the information sought for i.e. copies of the answer-sheets of Miss R.Lalhriatpuii (Mizo, English, Social Studies, Science, Mathematics, Information Technology) who appeared in the HSLC Examination 2014-2015 as per the rates prescribed under the Mizoram RTI Rules, 2006, i.e. Rs.2/- per page (A-4 size).

(iii) To issue order and impose penalty against the erring officials of the MBSE as provided under the RTI Act, 2005.

10. The Appellant contended the Judgment of the Supreme Court dated 9.8.2011 in Civil Appeal No. 6454 of 2011, CBSE Vs. Aditya Bandopadhyay that had held the examining body will have to permit inspection of evaluated answer books to the examinee. The Appellant indicated in Para 5 (iv) of her Appeal:

“For that the Notification of MBSE dated 06.01.2012 bearing Memo No.MBSE/Ex(Hs)8/2011 has been made in contravention of the provisions of the Mizoram Right to Information Rules, 2006 whereby the said notification has prescribed the cost for copy of a document at a rate much higher than the rate prescribed by the Mizoram Right to Information Rules, 2006. As such, such Notification cannot be said to have any legal force whatsoever”.

Further in Para 5(x): “For that is humbly submitted that having regard to Section 22 of the Right to Information Act, 2005, the provisions of the said Act will have to effect notwithstanding anything inconsistent in any law and will prevail over any rule, regulation or bye law of the MBSE barring or prohibiting inspection of the statement of the witnesses that have been recorded.

Section 22 of the RTI Act is reproduced below for easy reference:

“The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act”.
11. **Hearing of the Respondent** was conducted both by the Chief Information Commissioner (CIC), MIC Mr. Lal Dingliana and the Information Commissioner (IC), MIC Mr. L. Hrangnawna on **15.12.2015** at 11.00 A.M. where Pu Lalhmangaihblua, SAPIO, MBSE was present in person. The Respondent, (SAPIO) informed the Commission that the SPIO was out of station from 13th to 20th December, 2015 for attending RTI Training in Goa. This position was intimated earlier in writing by MBSE and he was accepted by MIC in line with the provisions of Rule 7(3)(d) of Mizoram RTI Rules 2010 which permits SAPIO to represent Public Authority and in order to expedite the 2nd Appeal case. When questioned about whether he had any document to submit before the Commission and whether he had anything to clarify the position of MBSE, he submitted a copy of the **MBSE Examination Bye-Laws** and a copy of the **Notification No.MBSE/Ex(Hs)8/2011/22 dated 6th January, 2012.** He also added that he did not have anything more to submit other than the Judgment dt. 24.07.2015 passed by the DAA, MBSE. The Respondent stated that the evaluated Answer-scripts come under the core functioning of MBSE working. He further stated that while the MBSE was willing to furnish the evaluated Answer-scripts, however, if the Answer-scripts are disclosed liberally as desired by the Appellant under the RTI Act, then it would adversely affect the functioning of MBSE. He further mentioned that the disclosure should be under the Bye-Laws of MBSE, which was also in line with the practices of several other Boards of different States, therefore, in the larger public interest, it deserves to be exempted from disclosure under the RTI Act.

12. **The Appellant** was also heard both by the Chief Information Commissioner, MIC and the Information Commissioner, MIC on **17.12.2015** at 11 a.m. where Mrs. Malsawmkimi, Mission Vengthlang was present in person. The Appellant stated that what she had asked for was copies of the Answer sheets of her daughter Miss. R. Lalhriatpuii (Mizo, English, Social Studies, Science, Mathematics, Information Technology) who appeared in the HSLC Examination 2014-2015. She stated she did not have anything more to add other than what had been written in her 2nd Appeal. Regarding the original RTI Application and the subsequent 1st and 2nd Appeals submitted by her and not by her daughter, Miss R. Lalhriatpuii (as required by the MBSE), the Appellant stated that her daughter is continuing her studies in school therefore, she has been pursuing this RTI case on behalf of her daughter and the MBSE had not raised any objection in the matter.

13. It was pointed out to the Appellant that quoting of the Mizoram RTI Rules, 2006 in her Appeal was not relevant at this stage as the Mizoram RTI Rules, 2006 had been repealed by the Mizoram RTI Rules, 2010 vide Memo No.F.130111/4/2008-IPR dt. 20.09.2010. The existing rate prescribed under Rule 4(a) of the Mizoram RTI Rules, 2010 for supply of information is now Rupee 1/- for each page (in A-4 or A-3 size paper) created or copied and no longer Rupees 2/- in the Mizoram RTI Rules 2006.
14. **CONSIDERATION OF MIC:**

Mizoram Information Commission, right from the start, has taken careful consideration of this Second Appeal case and the contention of the Appellant which was based on the Hon’ble Supreme Court in Civil Appeal No.6454 of 2011, CBSE Vs. Aditya Bandopadhyay dated 9-8-2011. Moreover, subsequent to this cited case of 9/8/2011, there have been several other, more or less similar cases, in the Central Information Commission, in the High Courts of some States and in the Supreme Court of India, some of them which are on-going and some others which have been stayed by the Apex Court.

15. The Hon’ble Supreme Court in Para 37 of the aforesaid ruling of the case of CBSE Vs. Aditya Bandopadhyay indicates –

“The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalty under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising ‘information furnishing’ at the cost of their normal and regular duties”.

16. **The Conclusion of the Hon’ble Supreme Court at Para 38 CBSE Vs. Aditya Bandopadhyay states:**

“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”.

As could be seen the Conclusion of the Hon’ble Supreme Court was to permit examinees to have inspection of their evaluated answer books but not specifically to supply copies of Answer-scripts.

17. Subsequently, the Hon’ble High Court of Kerala at Ernakulam, vide their judgment dated 03.08.2012 in WP(C0 No 37734/2010. W.A No 1403/2012 ( TR Rajesh Vs UPSC) taking inference from Aditya Bandopadhyay case directed the respondent UPSC to disclose the evaluated answer books to the Petitioner. However, the said judgment was challenged by the UPSC in the Hon’ble Supreme Court of India and Hon’ble Supreme Court in their judgment dated 23.11.2012 in SLA (C) No 3376/2012 had stayed the operation of the Order of the judgment.
18. There are also the under mentioned three Appeal cases, as recent as 30.07.2015, in the Central Information Commission:

(i) Shri Ashish Lal, Bungalow No.11, Judges Colony, R/o Court Campus, Allahabad, Uttar Pradesh Vrs CPIO/Jt. Director, UPSC, Shahjahan Road, New Delhi vide No.CIC/DS/A/2013/002167/SB dt. 30.07.2015.

(ii) Shri Rajeev Parmar, C/o J.S. Parmar (Retd. Head Master) VPO-Kandwal, Tehsil - Nurpur, Distt. Kangra, Himachal Pradesh Vrs CPIO/Joint Director, UPSC, Shahjahan Road, New Delhi vide No.CIC/DS/A/2013/002448/SB/ dt. 30.07.2015.

(iii) Shri Ujjwal Khatoni, Radhakunj Apartment, Lakh Nagar, Guwahati, Assam – 781005 Vrs CPIO/ Joint Director, UPSC Shajahan Road, New Delhi vide No.CIC/DS/A/2013/002675/SB/ dt. 30.07.2015

In all these cases, the Central Information Commission took decisions as follows:

"The Commission observes that the Hon’ble Supreme Court in Civil Appeal No.6454/2011, CBSE Vs. Aditya Bandopadhyay had held that the examining body will have to permit inspection of evaluated answer books to the examinee. However, in view of the fact the Hon’ble Supreme Court vide order dated 23.11.2012 had stayed the order of the Hon’ble High Court of Kerala directing UPSC to disclose the answer books to the examinee it would be expedient to await the final decision of the Hon’ble Supreme Court. In view of this, it would be judicious to have the evaluated answer book of the candidate preserved till the disposal of the SLA (C) NO.33761/2012 in the Hon’ble Supreme Court".

19. Regarding the Fees charged by Public Authorities, in the case of Sh. Maneesha Kumar, New Delhi Vs University of Delhi, when questioning the legality of Rs.750/- per Answer-scrip when as per the RTI Act the fee prescribed Rs.2/- per page, the Central Information Commission vide File No.CIC/RM/A/2012/000573 dated 30.04.2013 had observed:

- “Section 2(j) of the RTI Act defines “Right to Information means the Right of information accessible under this Act which is held by or under the control of any public authority and includes the right to...”. Similar case has been dealt with by the Hon’ble High Court of Delhi in the case of Registrar of Companies and Others Vs Dharmendra Kumar Garg, [W.P (C) 11271/2009] decided on 1.6.2012. In this case it has been held that information, in respect of which there is a statutory mechanism evolved (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedures, and upon fulfillment of the prescribed conditions, cannot be said to be information which “is held by or under the control of any public authority.” and the Central Information Commission concluded, “In view of the above, the Commission sees no reason to interfere with the order of the CPIO/AA”.

[Signature]
THE MOST RECENT RTI CASE AND DECISION IN REGARD TO FURNISHING OF ‘ANSWER-SCRIPTS’ AND THE FEES CHARGED.

Central Information Commission Appeal No: CIC/SA/C/2015/901116.

ABNE INGTY Vs CPIO DELHI UNIVERSITY.

Date of Application -25/3/2015; Date of 1st Appeal to FAA- 31/03/2015; Date of 2nd Appeal to Central Information Commission 14/7/2015; Date of Hearing in Central Information Commission conducted by Information Commissioner Prof M. Sridhar Acharyulu-27/08/2015 and Date of Decision 15/1/2016

20. In this recent case of Abne Ingty Vs CPIO, Delhi University, the Central Information Commission made careful examinations of various RTI cases relating to the furnishing of ‘Answer-scripts’ under the RTI Act as well as Fees charged by different Institutions/Examination Boards etc under their ‘Bye Laws’. Some of the ‘On-going’ cases and ‘Stay’ Order on ‘Writ Petitions’ in the Hon’ble High Courts and the Apex Supreme Court were also examined and taken into consideration. Excerpts of the proceedings; the examinations of related cases and the ‘Observations’ and ‘Decision’ of the Central Information Commission are given below:

QUOTE

- At para 2. “The Appellant (Abne Ingty), sought for information regarding constraints including huge fees being charged for providing Certified copy of evaluated answer sheet, which in his opinion, was against the rules of the RTI Act and against the judgment of Hon’ble Supreme Court of India in ‘CBSE vs Aditya Bandopadhyay’. The CPIO of Delhi University, vide his letter dated 25/3/2015 enclosed the reply of Examination Branch, in which a Notification dated 1/11/2011 was enclosed concerning the Rules under which the students can seek the copies of the Answer Sheet by paying Rs 750/- per paper only from 61st to 75th of the release of results.. Being unsatisfied the Appellant first appeal, Having received no reply from the First Appellate Authority (FAA), approached the Central Information Commission.”

- At Para 3. “The CPIO contented that University was an autonomous body having every authority to decide the fee for giving a copy of answer book”

- At Para 4. “Though it is called an Appeal, by content it is a complaint. Appellant was questioning the regulation of Delhi University alleging that it enables University to impose unreasonable timeframes and cost constraints on their right to secure copy of Answer sheet.....He contended that the time taken and cost being charged by the university was against the Act and also the judgment of Hon’ble Supreme Court in the case of ‘CBSE vs Aditya Bandopadhyay’.
At Para 5. "Then RTI Act and Rules have dealt with the aspect of fee and cost specially. They are as follows:

(i) Section 7 of RTI Act says "....provide the information on payment of such fee as may be prescribed....."

(ii) Section 7(2) (a) says that the PIO has 'to give details of further fees representing the cost of providing the information as determined by him together with the calculations made to arrive at the amount in accordance with fees prescribed under sub-section(10) requesting him to deposit that fees'.

At Para 9 "Hon'ble Supreme Court of India in the case of ICAI vs Shaunak Satya (SLP(C)No.2040/2011) had held that copies of evaluated answer-sheet cannot be under any exemption prescribed under RTI Act. In Manish Goel Vs Union Public Service Commission [CIC/SM/A/2012/001654 & 1708] the Central Information Commission held that this right to get copies of answer-sheet could not be denied".

At Para 10. "Hon'ble Rajasthan High Court has thoroughly examined the issue of charging a higher fee for answer-sheet by universities in case of Alka Matoria Vs Maharaja Ganga Singh University and Ors [AIR 2013 Raj 126] dated 21/12/2012 held:

'Having regard to the purpose of the enactment and the nature and purport of the provisions of therein, we are of the view that even if the respondent University were to make independent regulations for the purpose of providing certified copies, so far the fields covered by the Rajasthan Rules 2005 are concerned, the respondent University cannot make any such regulation that could stand at conflict with such rules'.

"....Though we have noticed these different scales of fees but in our view, nothing much turns upon them either way and merely because some University has chosen to provide a higher fees, that itself does not invest the respondent-University with any right to charge such kind of fees which is otherwise not in conformity with the requirements of overriding the provisions of the Act of 2005 and rules framed there under, operating in the field of quantum of fees"

At Para 11. " Hon'ble Rajasthan High Court(supra) in relation to the exorbitant fee of Rs 1000 charged by the University further observed:

'Viewed from any angle, charging of exorbitant fees of Rs 1000/- for the purpose of providing copy of answer-book to a student by the respondent-University does not stand in conformity with the object and purpose of the Act of 2005, stands at stark conflict with the rules governing the field, and appears to be highly unreasonable.'
Charging of fees of Rs 1000/- for providing copy of answer-book, in the ultimate analysis, appears to be an ill-intended attempt on the part of the respondent-University to somehow discourage the student from seeking certified copies of their answer-books. Such strange regulations only demonstrate scant respect shown by the respondent-University to the cherished object of the Act of 2005 and the principles expounded by the Hon’ble Supreme Court in Aditya Bandopadhyay’s case (supra). The offending condition in the regulation is required to be quashed.

At Para 12. “Maharaja Ganga Singh University, Bikaner has filed Special Leave Petition before Hon’ble Supreme Court, which was called on hearing on 22nd April 2013. The bench consisting of Justice R.M.Lodha and Justice Kumar Joseph had heard Mr. H.D Thanvi and Mr. Sarad Kumar Singhania, Advocates for the petitioner and held ‘Heard learned Counsels for the petitioner, Special Leave Petition is dismissed’. This means the Judgment of Rajasthan Court has assumed finality and as per Article 141 it is the law of the nation. Thus, it is clear according to above decision of Rajasthan High Court that a university cannot charge more than what is prescribed in the RTI Rules.”

At Para 13. “Full Bench of this Commission in the case of Tehsildar &rs Vrs University of Delhi [CIC/RM/A/2012/000512/LS] dated 29/05/2014 while adjudicating on the question of whether the University of Delhi can prescribe fee of Rs 750/- for supply of an evaluated answer script under section 7(3) of the RTI Act had observed as follows:

‘As the Hon’ble Supreme Court and Hon’ble High Court of Delhi are seized of the matter which is the subject of adjudication before the Commission the appeal is adjourned until the matter is decided by the Hon’ble Courts’.

At Para 14. “This case was not decided on the merits of the issue. It was closed on the assumption that the issue was pending consideration before Delhi High or other High Courts. Though the decision of Hon’ble Rajasthan High Court referred above was brought to the notice of the Bench, the fact that the SLP filed against the decision was heard and dismissed was not brought to the notice of the Commission”.

At para 16. “...Imposing cost of Rs 750/- per answer book is, thus in violation of not only RTI Act and Rules, but also in breach of their own manual for RTI, besides being against the order of Rajasthan High Court, which was finalized after SLP was heard and dismissed by the Supreme Court.
• **At Para 17.** “The Commission has power and function under Section 18(1) to receive and enquire into a complaint from any person who has been required to pay a amount of fee which he or she considers unreasonable. The complainant in this case exactly raised the same issue Under Section 19(8)(a), the commission has power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act by making necessary changes in its practices in relation to maintenance, management and destruction of records. Thus, the Commission is under a duty as per the RTI Act to adjudicate the complaint about unreasonable charging of fee for evaluated answer-sheet and pass necessary orders”.

• **At Para 18.** “......As per RTI Act this Commission has no power to interfere with the general fee structure of the University, but RTI Act has given power and authority to the Commission to prevent denial of access to his own answer sheet by public authority through this way of imposing unreasonable cost and time constraints. Charging so high a fee/cost will not only deny the accessibility, but also immunize the public authority from being accountable to students. The resultant situation is: If a student cannot pay Rs 750/-, the Delhi University will become not accountable for its evaluation! This is against objective and scheme of RTI Act.”

• **At Para 19.** “Evaluated answer-book is ‘information’ as defined under RTI Act and as explained by the Hon’ble Supreme Court of India. In petition under RTI, the students can seek only for a certified copy of their own answer-sheets, but cannot demand re-evaluation etc for which one has to necessarily approach university authorities, pay fee whatever prescribed and follow the prescribed procedures...”

• **At Para 21.** “ It is relevant to refer to the judgment of REGISTRAR OF COMPANIES & ORS Vs DHARMENDRA KUMAR GARG &ANR [W.P.C( C ) 11271/2009] wherein Hon’ble Delhi High Court has discussed the status of RTI Act in relation to a special enactment regarding the fees. Having gone through the judgment, Commission is of the view that although a University or Public Authority has the power to enforce their own fee in relation to providing of information, but the only condition is that it has to be ‘reasonable’. The notification quoted by the respondent authority is a general one for obtaining answer sheet and is not specifically with regard to RTI Act. Moreover, this fee was prescribed by way of notification in general and not as per the RTI fee rules prescribed by them”.

• **At Para 22.** “Rules and regulations are called ‘subordinate legislation’ which the executive wing i.e. the public authority can frame within the framework of the Statute under which the rule are being made. The Act delegates some power to the appropriate authority to make this subordinate legislation. If they prescribe rules in excess of the statute, it will be ‘excessive delegation’, which can be challenged”. 
At Para 23. "...If the subordinate legislation prescribe conditions beyond scope of statute, they do not have legal force in general. Even without invoking Section 22 of RTI Act, applying Rules of Delhi University to deny the access to answer sheets, can be considered as violative of right to information".

At Para 31. "Commission finds merit in contention of the student appellant that prescribing unreasonable cost and constraint will in fact amount to complete denial of information to students on grounds of their economic status, which is in violation of Article 14, 15, and 16 of the Constitution of India. No citizen shall be discriminated on the basis of his access to resources or any criteria including poverty as per his fundamental report to equality. It is very sad that educational institution like university is not mindful of the basic fact and they are going on denying information to the students, by imposing high cost, which means if you cannot afford, you cannot access. Thus, charging of Rs 750/- per answer sheet will amount to breach of sections 3, 6 and 7 of the RTI Act ."

At Para 33. "The overriding effect of Section 22 cannot be watered down by Rule makers of public authority. The Hon'ble Kerala High Court in the case of KPSC Vs State Information Commission (AIR 2011 KER 135) had observed as follows:

'. This is because Section 22 of the RTI Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secret Act 1923 (19 of 1923) and any other law for the time being in force or any instrument having effect by virtue of any law other than that Act.

Such statutory provision having been made by the legislature within its competence, it cannot be watered down or modified except by recourse to legislative procedures....'

At Para 35. "This not only violates the right under RTI Act 2005 but also infringes fundamental right under Article 19(1)(a) of the Constitution of India. In People's Union for Civil Liberties V Union of India-[2004] 2 SCC 476], Supreme Court of India held that right to information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions. This was reaffirmed by referring to this judgment in CBSE V Aditya Bandopadhyay's case.

At Para 36. "In State of Rajasthan v. Basabi Nahata [AIR 2005 SC 3401] Hon'ble Supreme Court of India observed that essential functions could not be delegated by legislature to the executive. It must be judged with touch stone of Article 14 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative power."
• **At Para 37.** A University or any other authority cannot use its authority to make subordinate legislation to infringe the legal and constitution rights of the students/citizens. Delhi University Rules created two classes of students, those who can afford to have the copy by paying Rs 750/- and those who cannot. This is a clear breach of right to equality guaranteed by the Article 14 of the Constitution of India”.

• **At Para 38.** “Hence, the Commission holds that Delhi University or any other university of public authority or that matter cannot ignore or bypass the mandate of Indian Parliament in Right to Information Act. The temple of Education cannot segregate students with reference to access right on the ground of affordability.

• **At Para 39.** “The Commission would agree with the opinion of Rajasthan High Court about charging high fee that it appears an ill-intentioned attempt on the part of the Delhi University to somehow discourage the students from seeking certified copies of their answer-books. “Such strange regulations only demonstrate scant respect by the respondent-University to the cherished object of the Act of 2005 and the principles expounded by the Hon‘ble Supreme Court in Aditya Bandopadhyay’s case (supra). In that case Rajasthan High Court has quashed the offending condition. ....”.

(Excerpts of the Order/Decision and Directions of Central Information Commission).

• **At Para 40.** “The Commission, in view of above discussion, exercising its power and performing its function under Section 18(1)(d) accepts this complaint against the unreasonable cost demanded from student appellant and unreasonable time limits on this right, and exercising power under Section 19(8)(iv) RTI Act require the Delhi University:

a) ‘Shall make necessary changes to its practices in relation to providing access and having a copy of answer sheet at a cost of Rs 2/- per page as per their very own manual No 17 and to accept RTI applications from the date of result declaration throughout the period of retention of record, as mandated by the RTI Act and Rules, as soon as possible but not beyond one month from the date of this order.’

b) ‘recommends the honorable members of the Executive Council to change the rule concerning the answer sheet, which is discouraging students from seeking re-evaluation of answer-sheets facilitating lack of accountability much against the RTI Act’.

e) ‘directs all the Universities in India, including deemed Universities and all examining bodies to provide copies of answer sheet only at a cost of Rs 2 per page and make necessary changes to their respective notifications accordingly as soon as possible but not beyond 30 days from the date of this order’.
f) 'directs University Grant Commission and Association of Indian Universities, to circulate, publicize and insist on implementation of this order in all academic/examining bodies'.

g) 'directs the Ministry of human Resources Development to circulate this order all examining bodies including Universities and make it mandatory for them to bring uniformity in the rules and regulations by fixing cost at not more than Rs 2/- per page of answer-sheet.'.

UNQUOTE

Mizoram Information Commission, while considering the 2nd Appeal case of Mrs. Malsawmkimi Vs Mizoram Board of School Education (MBSE) had carefully examined several RTI and Writ Petition cases concerning furnishing of certified copies of Answer-Sheets to students which were dealt, on-going and stayed in the Central Information Commission; in High Courts of different States and in the Apex Supreme Court of India. The Central Information Commission had also thoroughly examined these same cases in connection with the RTI 2nd Appeal/Complaint Case [CIC/SA/C/2015/901116] i.e ABNE INGTY v CPIO, DELHI UNIVERSITY and arrived at a decision and issued Order on 15th January 2016, cited above after referring to these cases earlier known to be adjourned and stayed, however, which are now indicated as final.

22. In view of the above, this Commission agrees with the most recent Decision of the Central Information Commission, dated 15th January 2016, that Answer-Sheet/s of Students can be furnished under the provisions of RTI Act 2005 and RTI Rules and Examining bodies can only charge the rate fixed as per RTI Rules. Accordingly MBSE is directed to furnish the Answer-sheets of Miss. R. Lalhriatpuii to her mother, Mrs Malsawmkimi (the Appellant) within 15 (fifteen) days of the receipt of this order under intimation to Mizoram Information Commission (MIC) at the rate of Rupee One (1) for each page (in A-4 or A-3 size paper) created or copied, as per Rule 4(a) of ‘The Mizoram RTI Rules 2010’.

The Appeal is disposed of. Copy of decision be given free of cost to the parties.

(LHRANGNAWNA)
Information Commissioner
Mizoram Information Commission
Mizoram Aizawl

(LAL DINGLIANA)
Chief Information Commissioner
Mizoram Information Commission
Mizoram Aizawl