

Rajasthan High Court - Jodhpur

Alka Matoria vs M.G.S. University Bikaner & Ors on 21 December, 2012

D.B. Civil Writ Petition No.12471/2012

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

:ORDER

Alka Matoria
Vs.
Maharaja Ganga Singh University & Ors.

D.B. Civil Writ Petition No.12471/2012

Date of Order:

21st December 2012

Present

HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MRS. JUSTICE NISHA GUPTA

Mr.Hemant Jagga, for the petitioner.
Mr.D.D.Chitlangi, for the respondent.

Reportable BY THE COURT:(Per Hon'ble Dinesh Maheshwari,J.)

The petitioner, having pursued the Bachelor of Arts (B.A.) course with a college affiliated to the respondent No.1, Maharaja Ganga Singh University, Bikaner ('the respondent-University' hereafter), has filed this writ petition in challenge to a condition occurring in the "Regulation for Obtaining Certified Copy of Answer- book under RTI Act-2005", as framed by the respondent-University insofar it requires payment of a non-refundable fee of Rs.1,000/- per answer-book for obtaining certified copy thereof.

The factual aspects of the matter are not of dispute and could be taken note of, in brief, as follows: The petitioner, said to be having in the background a good academic record, has been pursuing her B.A. course as a regular student at Sri Atam Vallabh Jain Girls College, Sriganganagar, which is affiliated to the respondent-University, with the optional subjects: Political Science, D.B. Civil Writ Petition No.12471/2012 English Literature and Philosophy. After having successfully completed Part-I and Part-II of the said course, the petitioner appeared in B.A. Part-III Examination held this year i.e., 2012; and in the result declared by the respondent-University, she was awarded 47 marks in English Literature Paper-I. Being dissatisfied with the marks so awarded, the petitioner sought re-evaluation of her answer- book of English Literature Paper-I; and, in the re-evaluation, her marks were shown as reduced from 47 to 28.

After getting such unfavourable result in the re-evaluation, the petitioner filed an application on 15.10.2012 with reference to Section 7(1) of the Right to Information Act, 2005 ('the Act of 2005' hereafter) seeking certified copy of her answer-book of English Literature Paper-I with the application fee of Rs.10/-. Then, for the concerned Public Information Officer having failed to provide the requisite certified copy within time, the petitioner preferred an appeal under Section 19 of the Act of 2005.

It appears from the material placed on record that after filing of the application by the petitioner, the respondent-University proceeded to notify the regulations framed by it for the purpose of supplying of the certified copy of answer-books under the provisions of the Act of 2005 under the notification dated 26.10.2012 (Annex.9); and these regulations were also uploaded on the website of the respondent-University. The Information Officer informed the petitioner about publication of such regulations by his communication dated 05.11.2012 (Annex.7) and thereafter, the Vice-Chancellor of the University proceeded to dispose of the appeal filed by the petitioner by the order dated 08.11.2012 (Annex.8) whereby the petitioner was directed to apply in accordance with the new D.B. Civil Writ Petition No.12471/2012 regulations and the concerned Information Officer was also directed to decide the application for information within time.

After having noted the contents of the regulations so framed by the respondent-University, the petitioner filed this writ petition on 21.11.2012 while questioning condition No.2 thereof, whereby and whereunder, a fees of Rs.1,000/- is to be paid for obtaining certified copy of the answer-book, as being contrary to the overriding provisions of the Act of 2005 and the rules framed thereunder. The questioned condition No.2 in the regulations of the respondent- University reads as under:-

"2. Application for obtaining certified copy of the answer book(s) of one or more papers can be submitted alongwith a non- refundable fee of Rs. 1,000/- per answer book. The fee should be deposited only through Account-payee Demand Draft in favour of the Registrar, Maharaja Ganga Singh University Bikaner payable at Bikaner. Postal orders/Money orders/Cheques/Cash will not be accepted. Applicant must attach his/her attested photo copy of marksheet along with the application."

In this petition, notices for final disposal were issued on 26.11.2012 while directing the respondents to keep intact the answer-book in question.

The respondents have filed a reply seeking to justify the questioned condition as regards charging of Rs.1,000/- as the fees for providing copy of the answer-book.

While challenging the aforementioned condition No.2 in the regulations, the learned counsel for the petitioner has contended that such a condition requiring a candidate to make payment of an amount of Rs.1,000/- for the purpose of obtaining certified copy of his/her answer-book remains illegal for being contrary to the rules framed by the State Government under the Act of 2005 i.e., the Rajasthan Right to Information Rules, 2005 ['the Rajasthan Rules of 2005' hereafter] and so also by the Central Government i.e., the D.B. Civil Writ Petition No.12471/2012 Right to Information (Regulation of Fee and Cost) Rules, 2005 ['the Central Rules of 2005' hereafter]. The learned

counsel submitted that as per Rule 4 of the Rajasthan Rules of 2005, the rate chargeable for providing information under sub-section (1) of Section 7 is Rs.2/- for each page (A-4 or A-3 size paper) or actual cost or cost price of a copy in large size paper but not beyond; and the same nature charges are provided in Rule 4 of the Central Rules of 2005 too. The learned counsel submitted that cost of a copy of the answer-book carrying about 32 pages, in no case could be Rs.1,000/-. The learned counsel further submitted that per Section 22, the Act of 2005 has an overriding effect and the respondent- University is not entitled to frame any regulation that contradicts the requirements of the Act of 2005. It is submitted that exorbitant fees to tune of Rs.1,000/- has been provided only in order to discourage the students from asking for copies of the answer-books; that the annual examination fee in total is Rs.450/- that includes even the practical papers and the entire process of examination; and that there cannot be even a remote justification for charging Rs.1,000/- per answer-book only for the purpose of providing copy thereof. It is submitted that the petitioner belongs to a poor family and is practically unable to deposit such an excessive fee for obtaining the copy of her answer-book. The learned counsel has also referred to the fees as regards similar nature information as charged by the other Universities in country.

Per contra, the learned counsel for the respondent-University submitted that the University has prescribed Rs.1,000/- as fee for providing certified copy of the answer-book as per resolution No.10/2008 dated 08.06.2012, as adopted by the Academic Council D.B. Civil Writ Petition No.12471/2012 and as approved by the Board of Management under its resolution dated 21.07.2012; and the notification has also been forwarded to the State Government for information. The learned counsel submitted that in an academic session, lacs of answer-books are preserved by the respondent-University and such preservation and maintenance of record entails huge expenditure; and the fee has been provided keeping in view such costs incurred by the University. According to learned counsel for the respondent-University, neither the fee as provided is exorbitant nor could be said to be suffering from any want of authority. The learned counsel has referred to the fees charged by the other Universities in Rajasthan for furnishing similar nature information.

After having given thoughtful consideration to the rival submissions, having examined the material placed on record and having taken into comprehension the law applicable, we are clearly of the view that the questioned condition in the regulation framed by the respondent-University requiring payment of a fee of Rs.1,000/- per answer-book for the purpose of obtaining its copy under the Act of 2005 cannot be sustained.

It needs hardly any elaboration that the Right to Information Act, 2005, having been enacted with the avowed object of setting out the practical regime of right to information in order to promote transparency and accountability in the working of every public authority, takes within its sweep an examinee's right to inspect his/her evaluated answer-book and to obtain certified copy thereof. The doubts in this regard, if any, were set at rest with the authoritative pronouncement of the Hon'ble Supreme Court in the case of Central Board of Secondary Education & Anr. Vs. Aditya D.B. Civil Writ Petition No.12471/2012 Bandopadhyay & Ors.: (2011) 8 SCC 497. Of course, such right was pronounced by the Hon'ble Supreme Court as being conditioned with relevant limitations and safeguards.

The Hon'ble Supreme Court in Aditya Bandopadhyay's case (supra) declared that the provisions of the Act of 2005 will prevail over the provisions of bye-laws/rules of examining bodies in regard to the examination; and observed that unless the examining body was able to demonstrate that answer-book fell under the exempted category of information as described in clause (e) of Section 8 (1) of the Act of 2005, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer- book. The Hon'ble Supreme Court said,-

"36. Section 22 of the RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws / rules of the examining bodies in regard to examinations. As a result, unless the examining body able to demonstrate that the answer books fall under the exempted category of information described in clause (e) of Section 8 (1) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye- laws of the examining body governing the examinations....." The Hon'ble Supreme Court further considered the question as to whether any exemption under clause (e) of Section 8(1) was available to the examining body in such a matter; and answered in the negative as under:-

"51. 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 the evaluated answer books. As no other exemption under Section 8 is available in respect of the evaluated answer books, the examining bodies will have to permit inspection sought by the examinees."

Thus, there remains nothing to doubt that the respondent-

University is bound to provide certified copy of the answer-book as D.B. Civil Writ Petition No.12471/2012 sought for by the petitioner. The only question is about the legality of charging a fee of Rs.1,000/- per answer-book under the questioned condition No.2 of the regulations framed by the respondent- University. In our view, only a glimpse of the basic provisions of the Act of 2005 is sufficient to declare the questioned condition as invalid. Section 22 of the Act of 2005 makes it clear, in no uncertain terms, that this enactment is having overriding effect over any other law for the time being in force or any instrument having effect by virtue of any law. Section 22 of the Act of 2005 reads as under:-

"22. Act to have overriding effect.- 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."

Then, for the purpose of carrying out the provisions of the Act of 2005, Section 27 thereof has invested the appropriate Government with the power to make the necessary rules by notification in

the official gazette. Sub-section (2) of Section 27 in particular makes it clear that such rules may provide for the matters relating, inter alia, to the fee payable under sub-section (1) of Section 6 and the fee payable under sub-section (1) and (5) of Section 7. Section 27 of the Act of 2005 reads as under:-

"27. Power to make rules by appropriate Government.- (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of Section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-section (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information D.B. Civil Writ Petition No.12471/2012 Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed."

The State Government in Rajasthan, with reference to the powers conferred under Section 27 *ibid.* has framed the Rajasthan Right to Information Rules, 2005 and sub-sections (3) and (4) thereof, being relevant for the present purpose, could be noticed as under:-

"3. Application fee.- A request for obtaining information under Sub-section (1) of Section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque payable to the public authority.

4. Fee for providing information.- (1) For providing information under Sub-section (1) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the public authority at the following rates:-

(a) rupees two for each page (in A-4 or A-3 size paper) created or copied;

(b) actual charge or cost price of a copy in large size paper;

(c) actual cost price for sample or models; and

(d) for inspection of records, no fee for the first hour, and a fee of rupees five for each fifteen minutes or fraction thereof thereafter. (2) For providing the information under Sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the public authority at the following rate:-

(a) for information provided in diskette or floppy rupees fifty per diskette or floppy; and

(b) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication."

It may be noticed that the Central Government too, with reference to clauses (b) and (c) of sub-section (2) of Section 27 *ibid.* has framed the Right to Information (Regulation of Fee and Cost) Rules, 2005; and Rules 3 to 5 thereof could be noticed as under:-

"3. A request for obtaining information under Sub-section (1) of Section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority.

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4. For providing the information under Sub-section (1) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates:-

(a) rupees two for each page (in A-4 or A-3 size paper) created or copied;

(b) actual charge or cost price of a copy in larger size paper;

(c) actual cost or price for samples or models; and

(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof).

5. For providing the information under Sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rate:-

- (a) for information provided in diskette or floppy rupees fifty per diskette or floppy; and
- (b) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication."

As noticed, per Section 22, the Act of 2005 has an overriding effect over any other law; and as a necessary corollary, the rules framed thereunder for the purpose of giving effect to its provisions shall have overriding effect in the field they operate and are supposed to operate. The field in question i.e., the "fee payable" for the purpose of making application under Section 6 and for the purpose of providing information under Section 7 is the one which is governed by the rules under Section 27 of the Act of 2005. Any rule or regulation framed by the respondent-University, to the extent standing at contradiction to such rules cannot be regarded as valid.

We may observe for the present purpose that the respondent- University is a public authority within the meaning of the Act of 2005 for having been established by a law made by the State Legislature i.e., Maharana Ganga Singh University Act, 2003. As per the averments taken, the Governor of State of Rajasthan is Chancellor of the University and the Vice-Chancellor is appointed by the Chancellor upon the advice of the State Government. The Registrar D.B. Civil Writ Petition No.12471/2012 of the respondent-University is appointed by the State Government on deputation from amongst the officers serving in the State services. For all its practical purposes, it being a University established in the State of Rajasthan is essentially governed for the present purpose by the Rajasthan Rules of 2005, or at any rate, by the principles thereof. The regulations regarding charge of fees by the respondent-University, therefore, cannot operate over and above the fees prescribed in Rules 3 and 4 *ibid*. As noticed, even in the Central Rules of 2005, the scale of fees is similar to that of the Rajasthan Rules of 2005.

Having regard to the purpose of the enactment and the nature and purport of the provisions 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 of 2005 are concerned, the respondent- University cannot make any such regulation that could stand at conflict with such rules.

It may be observed that even under the proviso to sub-section (5) of Section 7, the Legislature has contemplated in no uncertain terms that the fees to be prescribed for the purpose of Sections 6 & 7 of the Act should be reasonable and is not to be charged at all from the persons who are of below poverty line. The proviso reads as under:-

"Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government."

Viewed from any angle, charging of exorbitant fees of Rs.1,000/- for the purpose of providing copy of answer-book to a D.B. Civil Writ Petition No.12471/2012 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.

So far incurring of the extra expenditure by the University is concerned, the submissions have only been noted to be rejected. Any such vague reference to the alleged expenditure cannot, by any stretch of imagination, be the justification for the respondent- University to flout the requirements of the applicable statutory provisions; and the University cannot claim any special treatment than the other public authorities as regards the operation of the Act of 2005. So far the operation of the Act of 2005 is concerned, particularly as regards costs of providing information, such submissions on the part of the respondent-University who is supposed to be an agency of the welfare State, appear to be rather illogical and unreasonable apart from being totally baseless.

Charging of fees of Rs.1,000/- 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 students 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.

Before concluding, we may notice that during the course of submissions, while the learned counsel for the petitioner has referred to some of the Regulations on the same subject by certain D.B. Civil Writ Petition No.12471/2012 Universities like Banaras Hindu University and University of Delhi and submitted that such exorbitant fees as charged by the respondent-University is not charged by these Universities. On the other hand, the learned counsel of the respondent attempted to submit that some other Universities in Rajasthan are charging the fees in the range of Rs. 500/- to Rs. 1000/- for providing similar nature information and has referred to the circulars issued by Dr. Sarvapalli Radhakrishnan Rajasthan Ayurved University, University of Rajasthan, and University of Kota.

In regard to these submissions, we may observe that while it is noticeable from the regulations of Banaras Hindu University and University of Delhi that such Universities have provided for the fees squarely in conformity with the fees as prescribed and as provided in the aforesaid Rules of 2005 whereas Dr.Sarpalli Radhakrishnan Rajasthan Ayurved University, Jodhpur has provided a fees of Rs.1,000/- so as to show the answer-book to the candidate; the University of Rajasthan has provided a fees of Rs.580/- for obtaining certified copy of answer-book; and the University of Kota has provided for such fees for certified copy at Rs.500/- per answer- book. 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 by 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 thereunder, operating in the field of quantum of fees.

In the ultimate analysis, we are clearly of view that the impugned condition i.e., condition No.2 as reproduced hereinabove D.B. Civil Writ Petition No.12471/2012 in the regulations framed by the respondent-University deserves to be quashed as illegal and the respondent-University deserves to be directed to provide the certified copy of the answer-book to the petitioner after charging the fees as prescribed under the Rajasthan Rules of 2005 and not beyond.

As a result of the aforesaid, the writ petition succeeds and is allowed. The questioned condition in the regulations of the respondent-University i.e., condition No.2 as regards charging of Rs.1,000/- as fees for providing copies of the answer-books is declared illegal and is quashed. The respondent University shall be required to provide the necessary information after charging the fee as contemplated by the Rajasthan Rules of 2005 and not beyond.

Having regard to the circumstances of the case and particularly when we find that a student has unnecessarily been driven to this avoidable litigation, we allow costs of the litigation to the writ petitioner, quantified at Rs.11,000/- (eleven thousand).

[NISHA GUPTA], J.

[DINESH MAHESHWARI], J.

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