

Right to Information and Good Governance

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Lecture - 55

Exempted Information - 9

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Fiduciary relationship: Sec 8 (1) (e)



- CPIO, Supreme Court of India, New Delhi v. Subhash Chandra Agarwal 2009 SC
- CBSE v. Aditya Bandhopadhyay 2011 SC: candidate got the mark sheet he was disappointed with his marks. He thought that he had done well in the examination but his answer-books were not properly valued and that improper valuation had resulted in low marks. Therefore he made an application for inspection and re-evaluation of his answer-books. CBSE rejected the said request by letter dated 12.7.2008. The reasons for rejection were:
 - (i) The information sought was exempted under Sec. 8 (1)(e) of RTI Act since CBSE shared fiduciary relationship with its evaluators and maintain confidentiality of both manner and method of evaluation.
 - (ii) The Examination Bye-laws of the Board provided that no candidate shall claim or is entitled to re-evaluation of his answers or disclosure or inspection of answer book(s) or other documents.
 - (iii) The larger public interest does not warrant the disclosure of such information sought.
- CIC ruled out the disclosure. It may be noted that the answer books shall be maintained for a period of three months.



Now, interestingly, the Subhash Chandra Agarwal case versus CPIO, Supreme Court is a long case, which was in the relation to the declaration of Assets and Liabilities by judges through the Chief Justice of the Supreme Court of India. This has been quite a long issue and that was taken up at the Delhi High Court and later on, even by the Supreme Court as the case may be.

Now in 2009, RTI Act to which Subhash Chandra Agarwal sought copies of a resolution that was passed in 1997. This was a resolution of 1997 which required all judges of the Supreme Court to declare their assets to the Chief Justice of India, and he wanted a copy of that resolution and he also wanted to know whether you know, judges are actually declaring these assets or not.

So, what he sought was details of the assets of the Chief Justice of various High Courts. Unfortunately, this request was denied by the CPIO, and later on, Mr. S. C. Agarwal approached the Central Information Commission and the CIC directed that there should be such disclosure of such information regarding the personal assets of the judges.

Now, the order of the CIC was challenged with Delhi High Court and it was held that the Chief Justice of India is a public authority under the Right to Information Act and the CJI holds the information pertaining into asset declaration in his capacity as the Chief Justice which is a public office. And hence, the information pertaining to such declaration which is at the CJI must be information that should be provided under Right to Information Act.

However, the CJI, in this case, held that the said information is held in a fiduciary capacity, and hence, under Section 8(1)(j) this can be treated as information that is in trust and confidence and hence, the said information shall not be available under the Right to Information Act.

So, in the S. C. Agarwal case, you realize the use Section 8(1)(e) and Section 8(1)(j), which is in regarding to personal information which were used to deny the said information as the case may be.

However, you know that right now the office of the CJI has been declared the public authority, we have already discussed this matter. And after having discussed the said matter, once it is a public authority, then the second question is whether the information held is in fiduciary capacity or is personal information and whether, the said information should provide or not.

However, when you apply the Girish Ramchandra Despande's case, it is the Supreme Court judgment 2013, you will notice that assets and liabilities statement of public servants are personal information and hence, they shall not provide under Right to Information Act. And judges are also public servants and hence, such said information cannot be accessed under the Right to Information Act right now.

The second interesting case on fiduciary relationship is the CBSE versus Aditya Bandhopadhyay case. A very celebrated case that has been used and used as a precedent, quoted in other several cases after 2011, decided by the Supreme Court, and again, it involved the Central Board Secondary Education.

And this was a case where the candidate got his marks but was very disappointed with his marks. So, what he requested at the Central Board Secondary Education was, can he get to see his answer-book. So, what he wanted to do was to inspect his answer-book and get a copy of the same.

So, you know, naturally, you know being a candidate has taken part in an examination, you are always bothered about the fact whether the marks have been properly calculated, whether the totalling has been done or not, whether all the answers have been checked or not; so, this is kind of anxiousness that every examinee has. So, they would definitely want to check whether the answer-book copy has been properly evaluated and hence, he wanted a copy of his answer-book. And hence, he made an application to the CBSE and the CBSE rejected the same, way back in 2008.

Now, the reasons for the rejection somewhat like this. They said that is CBSE said that the information sought was exempted under Section 8(1)(e) since CBSE shared fiduciary relationship with the evaluators and it has a duty to maintain the confidentiality of the manner and method of evaluation. This is what the CBSE defended.



Secondly, the CBSE also said that the examination by-laws of the Board provided that no candidate shall claim or is entitled to re-evaluation of his answer-book. So, what is purpose of inspection when there is no re-evaluation? Or he has also given a declaration that he will not seek inspection of the answer-book copy. So once he is given this declaration, what is the point of using RTI to seek the same? And lastly, the Central Board Secondary Education said that there is no public interest that warrants the said disclosure of the information.

So, unless there is public interest, why should the said information be disclosed is what CBSE said because in the most cases that you will notice, whenever there is information that is of commercial confidence, information that is held in fiduciary capacity, information that is personal; unless there is larger public interest, most of the information shall be exempted and shall be denied.

The CIC however, gave a decision and the CIC looked into the rules and regulations of answer-booklets within the CBSE and they did come to know that CBSE only maintains these answer-books for a period of only 3 months.


So, in case you want a copy or you want to check, you want to do re-totalling or re-evaluation, it is only within 3 months. So, after that, they destroy these records. So, their record maintenance of booklet copy is only for 3 months. So, the time is the essence in this case and within that time, the applicant had actually sought a copy of his answer-book.

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Aditya Bandhopadhyay: contd

- A Division Bench of the High Court heard and disposed of the said writ petition along with the connected writ petitions (relied by West Bengal Board of Secondary Education and others) by a common judgment dated 5.2.2009. The High Court held that the evaluated answer-books of an examinee writing a public examination conducted by statutory bodies like CBSE or any University or Board of Secondary Education, being a 'document, manuscript record, and opinion' fell within the definition of "information" as defined in Sec. 2(f) of the RTI Act.
- the following questions arise for our consideration :
- (i) Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof? Held: Every examinee will have the right to access his evaluated answer-books, by either inspecting them or take certified copies
- (ii) Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under Sec. 8(1)(e) of the RTI Act ? Held that the examination authority is not in a fiduciary relation with the examinee in relation to answer books.



Now, the High Court divisional bench heard and disposed the writ petition that was filed in this case, CBSE versus Aditya Bandhopadhyay, and they relied on very interesting case called the West Bengal Board of Secondary Education case.

And they held that evaluated answer-books of an examinee who writes a public examination, which are conducted by statutory bodies like CBSE and others or say, by any university, and so on and so forth, they are actually a document defined under the Right to Information Act. They are a manuscript, they are a record under the Right to Information Act, and hence, you will notice they fall within the ambit of under Section 2(f) of the Right to Information Act.

And hence, what they said is that when an examinee wants to access, inspect his evaluated answer-book, especially in a public examination, or wants to take a certified copy thereof, I think, he should get a right to the same. And this is necessary to ensure transparency and accountability of the whole examination and the evaluation system, especially when it is conducted by public examination institutions.

And most importantly, the Court held that when it comes to holding answer-booklets, the evaluated answer-booklets, kindly note, the both is not a fiduciary relationship with the examinee. So interestingly, the examination authority is not holding the answer-booklet after evaluation in any fiduciary capacity. And hence, if they cannot hold or they are not holding the same in fiduciary capacity, they cannot withhold the said information under Section 8(1)(e) is what the divisional bench of the High Court had to say.

So, I think, in the Aditya Bandhopadhyay case, very importantly, the judges favoured disclosure of inspection of answer-booklet copies especially, to individuals who were seeking there for own answer-booklet copies and they said, this will secure accountability and transparency in the working of the public authorities and it will give equal opportunity to people. And I think, what it would help is in bringing about two different system vis-a-vis public examination altogether.

I think that is where you will notice that after evaluation, I do not think that the answer-booklets copies are held by the examination authority in a fiduciary capacity. So fiduciary capacity cannot be extended beyond the traditional sense of those relationships in which it is defined and interpreted to mean as fiduciary. A relationship of trust, a relationship of confidence exists only between certain categories of individuals and it cannot be extended beyond the same.