
(2014) 12 AHC CK 0233

Allahabad High Court

Case No: Writ C. Nos. 60338 and 60738 of 2014

A. Pavitra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 15, 2014

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 19, 21, 226
- Right to Information Act, 2005 - Section 10, 11, 19(8), 2(f), 2(h)

Citation: (2015) 1 ADJ 3 : (2015) 3 ALJ 697 : (2015) 109 ALR 153 : (2015) 1 UPLBEC 455

Hon'ble Judges: Ashwani Kumar Mishra, J

Bench: Single Bench

Advocate: Swati Agrawal, Advocate for the Appellant; Arvind Kr. Goswami, A.S.G.I. and
Jaideep Bedi, Advocate for the Respondent

Judgement

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Ashwani Kumar Mishra, J.

The question requiring consideration of this Court, in the present writ petition, is as to whether "The Council for Indian School Certificate Examinations", (hereinafter referred to as the "Board") is a public authority, in terms of Section 2(h) of the Right to Information Act, 2005, (hereinafter referred to as the "Act") ?, and whether it is obliged, in law, to provide the information sought by the students, who have appeared in the examination conducted by the Board ?

2. The petitioners are students, who are dissatisfied with the marks awarded to them by the Board, in the examinations conducted by the said Board. Applications were, accordingly, moved under the Right to Information Act with the prayer that petitioners be supplied copies of the answer scripts, which was not bestowed any consideration, and consequently, the present writ petition has been filed for a

direction upon the Board, to provide the information sought under the RTI Act.

3. I have heard Mrs. Swati Agrawal and Sri Atul Kumar Tiwari, learned counsel for the petitioners; Sri J. Nagar, learned Senior Counsel, assisted by Sri Pratik J. Nagar, learned counsel for the respondent nos. 2 and 3, and have also gone through the materials brought on record.

4. Learned counsel for the Board, at the very outset, raised an objection that the Board is not a "public authority", in view of Section 2(h) of the Act, and consequently, it is not required to provide the information sought by the petitioners, under the Act. Substantiating the objection, Sri Nagar submits that the Board is a society registered under the provisions of the Societies Registration Act, 1860, and is not receiving any financial grant or aid from the Central or the State Government. He further submits that Board is not a creation of any Act of Legislature, and therefore, necessary ingredients to hold the Board as a "public authority", under Section 2(h) of the Act, are lacking, and consequently, the prayer made in the writ petition is not liable to be granted.

5. Petitioners have come up with three fold submissions to counter the objection of the Board. Firstly, it is contended that the Parliament has enacted the Delhi School Education Board Act, 1973, (hereinafter referred to as the "Act of 1973"), which refers to the Board as one of the bodies recognized for holding public examination, and therefore, the Board is covered under Section 2(h) of the Act. Secondly, it is urged that the Board since is conducting public examination, therefore, it is enjoined to provide information sought by virtue of the orders passed by the Apex Court in [Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others](#), . Lastly, it is contended that the Board, otherwise, consists of a body of men performing public duty, and therefore, in view of the law laid down by the Supreme Court in [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others](#), , as reiterated in [Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others](#), , and in [Ramesh Ahluwalia Vs. State of Punjab and Others](#), , the Board is an authority within the meaning of Article 226 of the Constitution of India, and therefore, the directions sought can be issued against it.

6. The claim of the petitioners, raised herein, is for a direction upon the respondent Board to provide answer scripts of the Board examination to the petitioners under the RTI Act. A direction, as prayed for by the petitioners, can be issued only if the Board qualifies to be a public authority, in terms of Section 2(h) of the Act. Section 2(h) of the Right to Information Act, 2005, is reproduced:-

"2. (h) "public authority" means any authority or body or institution of self-government established or constituted--

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any--

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"

7. The purpose of the Act of 2005 was the subject matter of consideration by the Apex Court in [Namit Sharma Vs. Union of India \(UOI\)](#), wherein in Para 29, Apex Court was pleased to observe as under:-

29. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the Government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass-root level and an attitude of secrecy within the civil services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose and object was to make the Government more transparent and accountable to the public and to provide,

@@ "freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto ".

(emphasis supplied)

8. Scheme of the Act, as well as the definition of "public authority" was again examined by the Apex Court in [Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Another](#). Paras 12 to 15 of the judgment are relevant and, thus, are reproduced:-

"12 Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act, and secondly, the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.

13. Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression "public authority" has been given an exhaustive definition under Section 2(h) of the Act as the legislature has used the word "means" which is an expression of wide connotation. Thus, "public authority" is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.

14. Section 2(f) again is exhaustive in nature. The legislature has given meaning to the expression "information" and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the "right to information" accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of "information" and "right to information" as defined under the Act.

15. Thus, what has to be seen is whether the information sought for in exercise of the right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organisations to which the Act itself does not apply in terms of Section 24 of the Act, the public authority can take such stand before the Commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third-party information, the Commission is required to follow the procedure prescribed under Section 11 of the Act."

9. A public authority has been defined in the Act to mean any authority or body or institution of self-government, established or constituted, (i) by or under the constitution; (ii) by any other law made by Parliament; (iii) by any other law made by State Legislature; (iv) by notification issued or order made by appropriate Government, and includes a body owned, controlled or substantially financed and also a non-government organization, substantially financed, directly or indirectly by the funds provided by the appropriate Government.

10. This Court, thus, is required to determine as to whether the Board is covered under the definition of "public authority", aforesaid. From the materials brought on record before this Court, it is apparent that the respondent Board does not fall in any of the first three contingencies, inasmuch as it has not been established or

constituted by or under the constitution, by any other law made by Parliament, or by any other law made by State Legislature. There is further no notification or order of the appropriate Government, brought on record before this Court, bringing the Board under the Right to Information Act. The respondent Board has categorically stated that it receives no financial support, directly or indirectly, by Central or the State Government, and therefore, it is not financed by the appropriate Government, which fact has not been effectively denied. It is undisputed that the respondent Board is a society registered under the provisions of the Societies Registration Act, 1860, and its bye-laws provides that it functions as an independent, autonomous, juristic person.

11. The name of the society has been specified in Clause 1 of the Memorandum and Articles of Association of the Board, which reads as under:-

"1. The name of the Society is: COUNCIL FOR THE INDIAN SCHOOL CERTIFICATE EXAMINATIONS (hereinafter called the "Society")."

12. The society has its registered office at Pragati House, 3rd Floor, 47-48 Nehru Place, New Delhi-110019. The members of the society have also been specified in Clause 5 of the Memorandum and Articles of Association of the Board, which reads as under:-

"5. (i) The members of the Society shall be as follows:-

(a) The Chairman who shall be appointed by the Society.

(b) Two members nominated by the Government or two Assessors (observers) of the Government of India, whichever is preferred by that Government.

(c) The Director of Education/Public Instruction (or his deputy) of the States in which there are schools affiliated for the examinations conducted by the Society.

(d) One representative of the Association of Indian Universities.

(e) Not more than six persons to be co-opted by the Executive Committee of the Council.

(f) Two representatives of the Inter-State Board for Anglo-Indian Education.

(g) Fourteen Principals of affiliated schools who shall be selected as follows:-

(i) Six, of whom two shall be ladies, elected by the Association of Heads of Anglo-Indian Schools in India.

(ii) Two, elected by the Indian Public Schools' Conference.

(iii) Six, elected by the Association of Schools for the Indian School Certificate Examination.

Provided that the maximum number of representatives of any one of the three organisations mentioned in (g) (i), (ii) and (iii) above shall not exceed six:

Provided further that if one or more of the categories mentioned in (i) (b) to (g) above are not represented on the Council this shall not prevent the Council from functioning.

5. (ii) The term of office of members specified under Clauses 5(i) (a), (d), (e), (f) and (g) sub clause (i) (ii) and (iii) shall be for three years:

Provided that when a member is appointed in place of another before expiry of the term of membership of the latter he shall hold office for the residue of the term of the original member,

Provided further that members whose term has expired shall be eligible for re-nomination/re-cooption.

5. (iii) A member shall cease to be a member of the Society:

(a) on his resignation to be signified in writing to the Secretary;

(b) on the passing of a resolution by the majority of the members of the Society at a General meeting present in person or by proxy, that he should cease to be a member;

(c) on a notification from the Government/organisation which has nominated/elected the member that the member has ceased to represent that Government/organisation.

(iv) Disqualified members shall not be entitled to vote.

(v) Persons, institutions and organisations in known sympathy with the objects of the Society may be admitted as Associate members with the approval of the Society on such terms as the Society may determine. As Associate members they shall have no right to vote at a General Body Meeting."

13. Sri Nagar submits that only two observers have been appointed by the Government of India. Director of Education (or his deputy), of the States, in which there are schools affiliated, for the examinations conducted by the society, is merely a member. The association of governmental authorities does not change the nature of society itself, which remains a private juristic person. The society functions independently in accordance with its bye-laws. The nature of the Board, which is a society, therefore, does not change on account of the aforesaid constitution, and such association would not bring the Board within the definition of Clause 2(h), if it otherwise is not covered.

14. Learned counsel for the petitioners contend that Board qualifies to be a "public authority, as it finds specific mention in the Delhi School Education Board Act, 1973, enacted by the Parliament. The definition of Clause 2(s) of the Act of 1973, defines

public examination in the following words:-

"2. (s) "public examination" means an examination conducted by the Central Board of Secondary Education, Council for Indian School Certificate Examinations or any other Board which may hereafter be established for the purpose, and recognised by the Administrator or any other officer authorised by him in this behalf;"

15. Apart from the definition clause, attention of the Court has not been invited to any other provision of the Act of 1973, which may support the petitioners' contention. The fact that the examination conducted by the Board is recognized as a public examination, would not be a determining factor. Mere recognition of the examination conducted by the Board, as a public examination, would not mean that Board becomes a "public authority" within the meaning of Section 2(h) of the Act. It is just that the examination conducted by the Board is recognized by the Act of 1973, and nothing further can be added to it. Therefore, this Court is of the opinion that definition contained in Clause 2(g) of the Act of 1973, would not bring the "Board" within the definition of Clause 2(h) of the Act.

16. The constitution of the Board has also been specified in the bye-laws, which have been brought on record. Sri Nagar has also placed reliance upon a Division Bench judgment of the Delhi High Court in LPA No. 617 of 2011, dated 24th July, 2012. Paras 2 and 3 of the said judgment is reproduced:-

"2. Upon going through the impugned decision we find that the learned Single Judge has been persuaded to hold that the Council was a public authority merely on the basis of the constitution of the membership of the Council. It is an admitted position that the Council is a registered society under the Societies Registration Act, 1860. There is also a letter on record issued on 24.03.2006 by the Ministry of Human Resource Development L.P.A. 617/2011 Page 2 of 4 which indicates clearly that the Council is not owned or controlled by the Ministry of Human Resource Development. Therefore, according to the learned counsel for the petitioner since the Council is neither owned nor it is substantially financed and, because of the clear statement made in the said communication dated 24.03.2006, nor is it controlled by Central Government, the question of the Council being regarded as public authority does not arise at all.

3. There is yet another aspect of the matter. The definition clause contained in Section 2(h) of the said Act has reference to "appropriate government". Appropriate Government could either mean the Central Government or the State Government. Clearly the Central Government has indicated that it does not control the Council. Insofar as State Governments are concerned, only one person, namely, the Director of Education of that particular State would be a Member of the Society. Therefore, no particular State would have control over the Council. Consequently, there is prima facie some merit in what the learned counsel for the petitioner has contended with regard to the Council not falling within the definition of public authority under

Section 2(h) of the said Act. "

Although, the Division Bench judgment of the Delhi High Court does not answer the question as to whether the Board is a "public authority" or not, under the Act of 2005, yet the facts throw light upon the nature of the constitution of the Society itself. In view of the discussions made above, I am of the considered opinion that the Board does not qualify to be a "public authority", in view of Section 2(h) of the Act, on account of its recognition under Section 2(g) of the Delhi School Education Board Act, 1973, or on account of the nature of constitution of the Board itself.

17. In view of the aforesaid observations, this Court finds that the Board is not covered within the definition clause 2(h), and consequently, it is not under any obligation to provide the information, as sought by the petitioners, under the RTI Act.

18. Coming to the second limb of petitioners' submission that they are entitled to the relief prayed for, on account of the judgment in Central Board of Secondary Education and Another (supra), it is to be seen that the Apex Court had the occasion to examine the right of a student to obtain information/answer scripts, under the act, in the context of public examination conducted by the Central Board of Secondary Education, New Delhi. The Apex Court considered the definition of "information" in Section 2(f) of the RTI Act. The question raised therein was regarding the scope of Section 8 of the Act and protection claimed by the CBSE thereunder. Having considered the said aspect, Apex Court held as under in Paras 26 and 27 of the said judgment:-

"26. The examining bodies (universities, Examination Boards, CBSE, etc.) are neither intelligence nor security organisations and therefore the exemption under Section 24 will not apply to them. The disclosure of information with reference to answer books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly unless the examining bodies are able to demonstrate that the evaluated answer books fall under any of the categories of exempted "information" enumerated in clauses (a) to (j) of sub-section (1) of Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.

27. The examining bodies contend that the evaluated answer books are exempted from disclosure under Section 8(1)(e) of the RTI Act, as they are "information" held in its fiduciary relationship. They fairly conceded that evaluated answer books will not fall under any other exemptions in sub-section (1) of Section 8. Every examinee will have the right to access his evaluated answer books, by either inspecting them or take certified copies thereof, unless the evaluated answer books are found to be exempted under Section 8(1)(e) of the RTI Act."

(emphasis supplied)

19. Hon"ble Apex Court also held that the examining bodies do not hold the evaluated answer books in a fiduciary relationship, and therefore, the exemption claimed under Section 8(1)(e) of the Act is not available to the examining body, with reference to the evaluated answer books. Apex Court, however, held that the disclosure with regard to details of the examiner etc. is exempted from the disclosure under Section 8(1)(g) of the Act. Paras 52 to 55 of the judgment in Central Board of Secondary Education and Another (supra) are reproduced:-

"52. 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.

53. 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/coordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the 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 the RTI Act. Those portions of the answer books which contain information regarding the examiners/coordinators/scrutiniser s/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 the RTI Act.

54. 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.

55. 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."

(emphasis supplied)

20. In the judgment aforesaid of the Apex Court, the constitution of CBSE Board as being covered by under Section 2(h) of the Act was not in issue. Since CBSE Board functions under the control of the Ministry of Human Resource Development, therefore, on account of its constitution and functioning, it undisputedly was covered by the definition of "public authority", under Section 2(h), and no occasion arose to consider as to whether the RTI Act itself is applicable upon the CBSE Board or not ? However, a word of caution was mentioned in Para 68 of the aforesaid judgment of the Apex Court to the following effect:-

"68. 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."

(emphasis supplied)

21. Therefore, the question involved in the present case as to whether the Board herein is a public authority, under Section 2(h) of the Act, did not arise for consideration in the aforesaid judgment of the Apex Court and the petitioners, consequently, cannot derive any strength from the observations made therein.

22. Coming to the last submission of the petitioners that the Board is a body of men performing public duty, would be relevant, only when it is to be examined as to whether the Board is an authority, and is amenable to exercise of writ jurisdiction,

under Article 226 of the Constitution of India. The considerations for an authority to be included in the definition of "other authority", for the purposes of invoking jurisdiction under Article 226 of the Constitution of India, is entirely distinct, and has no relevance for the question, which has come up for consideration in the instant case. The petitioners herein are seeking relief under the Act, and therefore, what is relevant to be determined is as to whether the Board is included within the definition of the "public authority" or not. Therefore, this Court is not required to answer the question as to whether the Board would qualify to be an authority within the meaning of Article 12 of the Constitution of India or to examine as to whether it is a body of men performing public duty, so as to make it subservient to the exercise of jurisdiction under Article 226 of the Constitution of India.

23. Even if the Board is amenable to exercise of writ jurisdiction under Article 226 of the Constitution of India, even then, a direction to produce the answer books or to re-evaluate it, cannot be issued, in view of law settled by the Apex Court in [Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others](#), . There is no provision or rules and regulations of the Board, which permits the petitioners to secure the information from it, and therefore, in absence of the applicability of the RTI Act, the judgment aforesaid of the Apex Court would be attracted. The said decision was extensively referred to by the Apex Court in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and others (supra) in Paras 28 to 34, which is reproduced:-

"28. In Maharashtra State Board, this Court was considering whether denial of re-evaluation of answer books or denial of disclosure by way of inspection of answer books, to an examinee, under Rules 104(1) and (3) of the Maharashtra Secondary and Higher Secondary Board Rules, 1977 was violative of the principles of natural justice and violative of Articles 14 and 19 of the Constitution of India. Rule 104(1) provided that no re-evaluation of the answer books shall be done and on an application of any candidate verification will be restricted to checking whether all the answers have been examined and that there is no mistake in the totalling of marks for each question in that subject and transferring marks correctly on the first cover page of the answer book. Rule 104(3) provided that no candidate shall claim or be entitled to re-evaluation of his answer books or inspection of answer books as they were treated as confidential.

29. This Court while upholding the validity of Rule 104(3) held as under: (Maharashtra State Board case1, SCC pp. 38-39 & 42, paras 12, 14, 16 & 15)

"12. ... the "process of evaluation of answer papers or of subsequent verification of marks" under clause (3) of Regulation 104 does not attract the principles of natural justice since no decision-making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such

absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. ...

* * *

14. ... So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations....

* * *

16. ... The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

* * *

"15. ... it was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are undoubtedly matters which have an intimate nexus with the objects and purposes of the enactment and are, therefore, within the ambit of the general power to make regulations...." (Maharashtra State Board case1, SCC p. 41, para 15)

30. This Court in Maharashtra State Board 1 held that Regulation 104(3) cannot be held to be unreasonable merely because in certain stray instances, errors or irregularities had gone unnoticed even after verification of the answer books concerned according to the existing procedure and it was only after further scrutiny made either on orders of the court or in the wake of contentions raised in the petitions filed before a court, that such errors or irregularities were ultimately discovered. This Court reiterated the view that "the test of reasonableness is not applied in vacuum but in the context of life's realities" and concluded that

realistically and practically, providing all the candidates inspection of their answer books or re-evaluation of the answer books in the presence of the candidates would not be feasible.

31. Dealing with the contention that every student is entitled to fair play in examination and receive marks matching his performance, this Court held: (Maharashtra State Board case1, SCC p. 31)

"What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with, [and] that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It appears that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as foolproof as can be possible and is entirely satisfactory. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when [we find that] all safeguards against errors and malpractices have been provided for, there cannot be [said to be] any denial of fair play to the examinees by reason of the prohibition against asking for revaluation."

32. This Court in Maharashtra State Board concluded that if inspection and verification in the presence of the candidates, or revaluation, have to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidate, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. This Court concluded: (Maharashtra State Board case 1, SCC pp. 56-57, para 29)

"29. ... the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass-root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded."

33. The above principles laid down in Maharashtra State Board have been followed and reiterated in several decisions of this Court, some of which are referred to in para 9 above. But the principles laid down in the decisions such as Maharashtra State Board depend upon the provisions of the rules and regulations of the examining body. If the rules and regulations of the examining body provide for re-evaluation, inspection or disclosure of the answer books, then none of the principles in Maharashtra State Board or other decisions following it, will apply or be relevant. There has been a gradual change in trend with several examining bodies permitting inspection and disclosure of the answer books.

34. It is thus now well settled that a provision barring inspection or disclosure of the answer books or re-evaluation of the answer books and restricting the remedy of the candidates only to re-totalling is valid and binding on the examinee. In the case of CBSE, the provisions barring re-evaluation and inspection contained in Bye-law 61, are akin to Rule 104 considered in Maharashtra State Board. As a consequence if an examination is governed only by the rules and regulations of the examining body which bar inspection, disclosure or re-evaluation, the examinee will be entitled only for re-totalling by checking whether all the answers have been evaluated and further checking whether there is no mistake in the totalling of marks for each question and marks have been transferred correctly to the title (abstract) page. The position may however be different, if there is a superior statutory right entitling the examinee, as a citizen to seek access to the answer books, as information."

(emphasis supplied)

24. Learned counsel for the respondent has also placed reliance upon a judgment of the Division Bench of this Court reported in [Committee of Management, Ismail Girls National Inter College Vs. State of U.P. and Others,](#), which dealt with the definition of public authority in the context of institution receiving aid from the State, and therefore, the institution was held to be a public authority. In the facts of the present case, since the institution is not receiving aid from the Government, therefore, the judgment relied upon will have no applicability.

25. Thus, in view of the discussions aforesaid, I am of the considered opinion that the respondent Board is under no obligation to provide the answer scripts to the petitioners, in respect of the examination conducted by the Board, and the relief prayed for is not liable to be granted to them. Consequently, the writ petition fails and is dismissed.

26. No order, however, is passed as to costs.