* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th May, 2012

\+ **LPA No.1090/2011**

% **CENTRAL BOARD OF SECONDARY EDUCATION....Appellant**
Through: Ms. Manisha Singh, Adv. for
Mr. Amit Bansal, Adv.

Versus

SH. ANIL KUMAR KATHPAL ..... Respondent
Through: Respondent in person.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 07.12.2011 of the learned Single Judge dismissing W.P.(C) No.8532/2011 preferred by the appellant. The said writ petition was filed by the appellant assailing the order dated 27.09.2011 of the Central Information Commission (CIC) allowing the appeal of the respondent.

2. The daughter of the respondent passed the Class X examination held by the appellant in the year 2010 and her result declared by the appellant was as under:

SUB CODE	SUB NAME	GRADE	GRADE POINT
101	ENGLISH COMM.	A2	09
002	HINDI COURSE-A	A1	10
041	MATHEMATICS	A1	10
086	SCIENCE	A1	10
087	SOCIAL SCIENCE	A1	10

3. The respondent, under the provisions of the Right to Information Act, 2005, sought from the appellant the actual marks secured by his daughter in each subject for the reason "this information will help me to identify her week areas in studies and take timely action, so that she can pursue her career after XII. I hereby certify that I will neither reveal the above information to her nor put any pressure on her."

4. The Information Officer of the appellant informed the respondent that with the introduction of the grading system at secondary examination with effect from the year 2010, the appellant had done away with intimating marks and therefore the information sought could not be provided.

5. The respondent preferred the statutory first appeal which was dismissed observing that:

i) the National Policy on Education 1986 and Programme of Action 1992 had provided for recasting of the examination system and suggested that grades be used in place of marks;

ii) that the National Curriculum Framework 2005 also envisaged

an evaluation system which would grade the students on their regular activities in the classroom and enable students to understand and focus on their learning gaps and learn through these as part of Formative Assessment;

iii). that the introduction of grades in the examination had been debated by the appellant also and after holding countrywide consultations and deliberations with eminent educationists and experts, the nine point grading system had been introduced in the secondary school examination from the year 2010;

iv). The system of declaring subject wise marks had thus been replaced by subject wise grades and grade point;

v). the purpose of introducing the grading system was to take away the frightening judgmental quality of marks, to lead to a stress free and joyful learning environment and was intended to minimize mis-classification of students on the basis of marks, to eliminate unhealthy cut-throat competition and to reduce societal pressure etc.

The order denying information as to marks was thus upheld.

6. The respondent pursued the matter before the CIC. It was the

contention of the appellant before the CIC also that, to provide specific marks would be contrary to the policy of introducing the grading system and would undo the grading system. However the appellant, on enquiry by the CIC, confirmed that the marks awarded were available with the appellant in their data. The CIC held that since, the marks were available with the appellant and since none of the exemptions under the RTI Act were attracted to support the non disclosure thereof, the appellant was bound to and directed to provide the information sought.

7. It was the argument of the appellant before the learned Single Judge also that disclosure of the marks would dilute and defeat the grading system. The learned Single Judge however held that since the respondent was seeking disclosure of marks, only of his daughter and further since his daughter who has since attained majority had also consented to the same and since the respondent was not seeking disclosure of marks obtained by other students and further since the appellant was possessed of the information sought, it was required to disclose the same. It was further observed that a student is entitled to know the marks secured by him / her.

8. Notice of this appeal was issued and the operation of the impugned order stayed. The respondent appearing in person has been heard. Though

opportunity was given to the appellant to file written arguments but no written arguments were filed.

9. The documents filed by the appellant show that the appellant, vide its letter dated 29.09.2009 to the Heads of all the Institutions affiliated to it, while introducing the system of Grading at Secondary School level, explained the evaluation process as under:

> "2.3 *In this system, student's performance will be assessed using conventional numerical marking mode, and the same will be later converted into the grades on the basis of the pre-determined marks ranges as detailed below:*

MARKS RANGE	***GRADE***	***GRADE POINT***
91-100	*A1*	*10.0*
81-90	*A2*	*9.0*
71-80	*B1*	*8.0*
61-70	*B2*	*7.0*
51-60	*C1*	*6.0*
41-50	*C2*	*5.0*
33-40	*D*	*4.0*
21-32	*E1*	--
20 and below	*E2*	--

The operational modalities were prescribed in the said letter as under:

> ***"4. Operational Modalities***
> *4.1 The student's performance shall be assessed using conventional method of* ***numerical marking****.*
> *4.2 The 'Grades' shall be awarded to indicate the subject wise performance.*
> *4.3 The 'Grades' shall be awarded on a nine point scale as per Table at para 2.3.*

*4.4 Only subject wise grades shall be shown in the **"Statement of Subject wise Performance"** to be issued to all candidates.*

4.5 Subject-wise percentile score / rank at the National level shall be provided to the schools on demand."

10. The appellant has also placed before us the judgment of Division Bench of this Court in ***Independent Schools' Federation of India (Regd.) Vs. Central Board of Secondary Education*** 183(2011) DLT 211 upholding the grading system introduced by the appellant and dismissing the challenge thereto. The challenge to the grading system, in the said proceeding also was *inter alia* on the ground that replacing marks by grades was only a cosmetic change and would mar the quality of education and the concept of grading was virtually an eye-wash. Needless to state that the said challenge was also found to be without any basis and rejected.

11. What we find to have prevailed with the CIC and the learned Single Judge is that, despite introduction of grading system, marks existed with the appellant; it was held that once the information sought was available, there could be no denial thereof. What also prevailed was that the respondent was seeking marks only of his ward and not of other students and thus there could be no objection to disclosure thereof. The CIC also observed that the information sought was not exempt.

12. We are unable to agree; we feel that the CIC as well as the learned Single Judge, by directing disclosure of 'marks', in the regime of 'grades' have indeed undone what was sought to be done by replacing marks with grades and defeated the very objective thereof. The objective, in replacing the marks with grades, as can be gathered from the documents on record, was to grade students in a bandwidth rather than numerically; it was felt that difference, between a student having 81% and a student having 89%, could be owing to subjectivity in marking and there was no reason to otherwise consider a bearer of 81 percentile to be inferior to a bearer of 89 percentile and there was no reason to treat them differently. It was thus decided to place both in grade A2 with grade point 9 as aforesaid. Though ideally, the examiner in such cases ought to give both of them grade A2 only, without giving them 81% and 89% as aforesaid but it appears that since the teachers and examiners also, owing to the long past practice were used to marking instead grading students, for their guidance, the range was prescribed as aforesaid. Thus it appears that though the marks are available but in law and fact they ought not to have been available. The marks appear to be available with the appellant only owing to the examiners and teachers being not immediately accustomed to grading and for their convenience.

13. The question which arises is, whether the information which ought not to have been there as per the changed policy upheld by the Court can be treated as information within the meaning of the RTI Act. In our opinion no. Information which is forbidden by law or information of a nature, if disclosed, would defeat the provisions of any law or disclosure whereof is opposed to public policy, cannot be regarded as 'lawful' and is to be ignored and no disclosure thereof can be made or directed to be made.

14. No doubt, as the CIC also has observed, none of the clauses of Section 8, if literally interpreted, are attracted. However while interpreting a statutory provision, we cannot shut our eyes to hard realities, to what was sought to be achieved thereby and cannot in a pedantic manner allow the literal interpretation to run amock and create a situation not intended by the statute. Moreover, a reading of the provisions of the RTI Act in the manner done by the CIC and the learned Single Judge would bring it in conflict with other laws and notwithstanding the overriding effect given thereto by Section 22 thereof, the first attempt has to be to harmonise its provisions with other laws. Once a purposive interpretation is given to Section 8, it will be found that information forbidden to be published [Section 8(1)(b)] and information available in fiduciary relationship [Section 8(1)(e)] is exempt.

In our opinion, even though there is no express order of any court of law forbidding publication of marks [as is the want of Section 8(1)(b)] but the effect of bringing the regime of grades in place of marks and of dismissal of challenge thereto, is to forbid publication/disclosure of marks. Similarly, in the evaluation process prescribed by appellant, for guidance of its examiners, marks are only to arrive at a grade, perhaps as aforesaid to acquaint the examiners with the grading system and as a transitory stage in the shift from marks to grades.

15. The Supreme Court in ***Kailash Chand v. Dharam Das*** (2005) 5 SCC 375 reiterated that a statute can never be exhaustive and legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances and it is for the Court to interpret the law with pragmatism and consistently with demands of varying situations. The legislative intent has to be found out and effectuated. Earlier also in ***Smt. Pushpa Devi v. Milkhi Ram*** (1990) 2 SCC 134 the same sentiment was expressed by holding that law as creative response should be so interpreted to meet the different fact situations coming before the court, for Acts of Parliament were not drafted with divine prescience and perfect clarity and when conflicting interests arise, the court by consideration of

legislative intent must supplement the written word with force and life. Lord Denning (in ***Seaford Estate Ltd. v. Asher*** (1949) 2 KB 481) observing that the judge must consciously seek to mould the law so as to serve the needs of time and must not be a mere mechanic, was quoted with approval.

16. The Supreme Court recently in ***The Institute of Chartered Accountants of India v. Shaunak H. Satya*** (2011) 8 SCC 781, in the context of the RTI Act itself held that in achieving the objective of transparency and accountability of the RTI Act other equally important public interests including preservation of confidentiality of sensitive information, are not to be ignored or sacrificed and that it has to be ensured that the revelation of information in actual practice, does not harm or adversely affect other public interests including of preservation of confidentiality of sensitive information. We have already held above that disclosure of marks, which though exists with the appellant would amount to allowing play to the policy earlier prevalent of marking the examinees. Merely because the appellant/its examiners for the purpose of grading, first mark the students would not compel this court to put at naught or to allow full play to the new policy of grades.

17. No weightage can also be given to the submission of the respondent

that the marks even if disclosed would not be used for any other purpose. Such an offer cannot be enforced by the Court and the Court cannot on the basis thereof allow disclosure of something which was not intended to exist in the first place. The possibility of the respondent and his ward, in securing admission and for other purposes using the said information to secure an advantage over others cannot be ruled out.

18. We are therefore unable to agree with the reasoning of the CIC and of the learned Single Judge and allow this appeal. We hold the information, disclosure of which was sought, to be no information and also exempt from disclosure. We allow this appeal as well as the writ petition preferred by the respondent and set aside the order dated 27.09.2011 of the CIC.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 24, 2012
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