

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **14-10-2019**

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.16108 of 2019

And

W.M.P.No.15866 of 2019

The Tamil Nadu Dr.Ambedkar Law University,
Represented by its Registrar,
' Poompoozhil',
No.5, Dr.D.G.S.Dhinakaran Salai,
Chennai-600 028. .. Petitioner

vs.

1.The Tamil Nadu State Information Commission,
Represented by its Assistant Registrar,
No.378, Anna Salai,
Chennai-600 018.
P.O.Box No.6408.

2.Pavan Kumar Gandhi

3.Paras Jain

4.Kumar Shanu

(R-3 & R-4 impleaded vide order of
Court dated 14.10.2019 made in
WMP No.29201 of 2019)

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records

in proceedings No.SA4393/D/2018 dated 17.12.2018 passed by the first respondent and quash the same.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondent-1 : Mr.Niranjana Rajagopalan

For Respondent-2 : Mr.Pavan Kumar Gandhi
(Party-in-Person).

For Respondents-3&4 : Ms.V.Chethana

ORDER

The writ on hand is to quash the order dated 17.12.2018 issued by the first respondent in proceedings No.SA4393/ D/2018 dated 17.12.2018.

2. The writ petitioner is the Tamil Nadu Dr.Ambedkar Law University.

3. The learned counsel appearing on behalf of the writ petitioner-University states that the second respondent is the student of the writ petitioner-Law University. The second respondent filed an application under the Right to Information Act, 2005, to furnish copies of the answer scripts, which were not furnished and consequently, the second respondent approached the Tamil Nadu State Information

Commission, who in turn passed an order on 17.12.2018, directing the writ petitioner-Law University to supply the copies of the answer scripts sought for by the second respondent under the provisions of the Right to Information Act, 2005.

4. Challenging the said order, the learned counsel for the writ petitioner states that the writ petitioner-Law University has got its own Rules and Regulations for the purpose of furnishing copies of the answer scripts. The writ petitioner-Law University has to follow the procedures and under these circumstances, they have rejected the claim of the second respondent for furnishing copies of the answer scripts sought for by him.

5. The learned counsel for the writ petitioner-Law University states that the writ petitioner-Law University is ready and willing to furnish copies of answer scripts on payment of charges prescribed under the Rules and Regulations of the Law University. The said reply was communicated to the second respondent also. Under these circumstances, it is contended that the writ petitioner-Law University has not refused to provide copies of the answer scripts, contrarily, they have insisted the second respondent that the

procedures contemplated under the University Regulations are to be followed. Thus, the writ petitioner-Law University has not rejected the claim of the second respondent, but they have insisted him to follow the procedures prescribed under the Rules and Regulations of the University.

6. The second respondent, appearing in person, opposed the contentions of the learned counsel for the writ petitioner-Law University, by stating that he submitted an application under the Right to Information Act, 2005. However, the writ petitioner-Law University by reply dated 23.01.2018 states that, the University Regulations are to be followed and the answer scripts will not be supplied under the provisions of the Right to Information Act, 2005. However, the fact remains that the writ petitioner-Law University expressed their willingness to supply the answer scripts in the event of following the procedures contemplated under the Rules and Regulations of the University.

WEB COPY

7. The first respondent Tamil Nadu State Information Commission, citing the judgment of the Supreme Court, passed an order directing the writ petitioner-Law University to furnish the copy of

the answer scripts to the second respondent under the provisions of the Right to Information Act, 2005.

8. As far as the application submitted by the second respondent under the provisions of the Right to Information Act, 2005, to the writ petitioner-Law University is concerned, it is not in dispute that the Right to Information Act is applicable. Accordingly, the second respondent is entitled to get informations under the provisions of the Right to Information Act, 2005, unless such informations are prohibited specifically under Section 8 of the Right to Information Act, 2005.

9. Shri Paras Jain and Shri Kumar Shanu filed an impleading petition in WMP No.29201 of 2019 and Ms.V.Chethana, learned counsel appearing on behalf of the impleading petitioners, solicited the attention of this Court that the Supreme Court has settled the issue in respect of furnishing of the answer scripts to the students, who all are submitting their applications under the Right to Information Act, 2005.

WEB COPY

10. In the Case of **CENTRAL BOARD OF SECONDARY EDUCATION (CBSE) AND ANOTHER Vs. ADITYA**

BANDOPADHYAY & OTHERS [(2011) 8 SCC 497], the Apex Court held that "if CBSE was required to re-evaluate the answer-books or grant inspection of answer-books or grant certified copies thereof, it would interfere with its effective and efficient functioning, and will also require huge additional staff and infrastructure. It was submitted that the entire examination system and evaluation by CBSE is done in a scientific and systemic manner designed to ensure and safeguard the high academic standards and at each level utmost care was taken to achieve the object of excellence, keeping in view the interests of the students".

11. In the judgment, cited supra, the Hon'ble Supreme Court further observed in paragraph-23 that "when a candidate participates in an examination and writes his answers in an answer-book and submits it to the examining body for evaluation and declaration of the result, the answer-book is a document or record. When the answer-book is evaluated by an examiner appointed by the examining body, the evaluated answer-book becomes a record containing the 'opinion' of the examiner. Therefore, the evaluated answer-book is also an 'information' under the Right to Information Act".

12. The Apex Court of India in an unequivocal terms held that "evaluated answer is an information under the Right to Information Act". Thus, there is no option for the writ petitioner-Law University to supply the evaluated answer scripts to the second respondent under the provisions of the Right to Information Act, 2005. When the evaluated answer books are construed as an information, the same cannot be denied and therefore, the second respondent is entitled to get the evaluated answer scripts as per the application submitted by him under the provisions of the Right to Information Act, 2005.

13. It is relevant to extract paragraphs 26 and 27 of the judgment, cited supra, which are extracted as under:-

"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."

WEB COPY

14. In the case of **Institute of Companies Secretaries of India (ICSI) vs. Paras Jain [decided on 11.04.2019 in Civil Appeal No.5665 of 2014]** (the impleaded respondent in the present

writ petition), the Apex Court held that “the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the appellant”.

15. In the present case on hand, the guidelines issued by the writ petitioner-Law University also provides supply of such answer books to the students on application. However, the dispute is whether the copies can be furnished under the Right to Information Act or under the Rules and Regulations of the writ petitioner-Law University.

16. In this regard, it is relevant to consider that the Regulations formulated by the University cannot override the provisions of the Right to Information Act, 2005. If any such Guidelines, Rules or Regulations running counter to the provisions of the Right to Information Act, 2005, the spirit of the Right to Information Act alone would prevail and all these Regulations and the procedures adopted by the writ petitioner-Law University are to be kept aside. Thus, the University is bound to follow the procedures contemplated under the Right to Information Act and they cannot deny the benefit of answer scripts to the information seeker under the provisions of the Right to Information Act, by stating that the

procedures of the University would be followed.

17. The Supreme Court made an observation in the judgment, cited supra, that "in our opinion, the existence of these two avenues is not mutually exclusive and it is upto the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines".

18. Thus, two options were provided to the information seekers. An information seeker can submit an application under the provisions of the Right to Information Act, 2005 by paying the necessary prescribed fee. In the event of filing any such application under the Right to Information Act, 2005, the procedures contemplated under the Act alone must be followed and the Regulations of the writ petitioner-Law University cannot be followed. In the event of filing any application under the guidelines issued by the writ petitioner-Law University, then the second respondent is at liberty to follow the procedures contemplated under the University

Regulations as well as the fees prescribed by the University.

19. This being the options provided to the information seeker and the Apex Court also reiterated such an option, this Court is of an opinion that the application submitted by the second respondent under the Right to Information Act must be dealt with under the provisions of the Act and the University cannot take a stand that they are bound to follow the procedures prescribed under the University Regulations.

20. The learned counsel, appearing on behalf of the impleaded respondents, brought to the notice of this Court that under the Tamil Nadu Right to Information Rules, 2012, Rs.2 per page (A-4 size) is chargeable and the procedures contemplated under Rule 4 of the Right to Information Rules, 2012 is to be followed for the purpose of receiving payment from the information seeker.

21. Section 7(5) proviso clause of the Right to Information Act, stipulates that "if 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”.

22. In this regard, Rule 5 of the Right to Information Rules provide “exemption from payment of fee” and it states that “no fee under Rule 3 and Rule 4 shall be charged from any person who is below poverty line provided a copy of the Certificate issued by the appropriate Government in this regard is submitted along with the application”. Rule 6 contemplates “mode of payment of fee”.

23. Under these circumstances, the fee chargeable must be levied under Rule 4 of the Right to Information Rules and the information seeker, on application, seeks any exemption from payment of fee, then he has to produce necessary certificates to the satisfaction of the information provider.

24. Under these circumstances, the writ petitioner-Law University is bound to follow the Act as well as the Rules scrupulously, while dealing with the applications submitted under the provisions of the Right to Information Act and therefore, there is no infirmity, as such, in respect of the reasonings furnished in the order impugned by the first respondent. The order of the first respondent is in consonance

with the spirit of the Act and therefore, the writ petitioner-Law University is bound to follow the procedures contemplated under the Act and the Rules at the time of dealing with the applications, if any, submitted under the Right to Information Act, by the information seekers.

25. The very object of the Right to Information Act, 2005, stipulates that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Undoubtedly, the purpose and object of the Act, is noble and to achieve the constitutional philosophy and goals. The principles of equality can be achieved only if there is a transparency in public administration. The accountability in the public administration is of paramount importance, as 'We, the People of our Great Nation' are sandwiched between corrupt and non-corrupt. Identification of corrupt and non-corrupt may be difficult in the event of non-transparency in public administration.

26. Irregularities and illegalities in public administration cannot be sorted out if there is no transparency in the public

administration. Thus, the Right to Information Act, is a Noble Legislation, which ensures transparency in the public administration, which would be undoubtedly helpful to the citizen of our Great Nation to made the public servants accountable and responsible regarding the administrative actions.

27. In this context, this Court would like to emphasis that the Law University, being a Public Institution, is bound to implement the provisions of the Right to Information Act, scrupulously in its letter and spirit. The moot question is that why should any public authority shy for providing public informations to the information seekers. Undoubtedly, confidential files are protected under the provisions of the Act itself and therefore, the officials should not shy about providing all informations to the public domain, enabling the citizen to understand the manner in which the Public Institutions are administered.

28. After all, 'We, The People of India' solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens Justice, Liberty, Equality and Fraternity. Therefore, 'We, The People of India' enacted the Right to Information

Act, through its Parliament, then the instrumentality of the State or the Public Institutions cannot take a stand that they will adopt their own procedure for furnishing the informations under the Right to Information Act. When the Parliament enacted the law in order to develop transparency in public administration, undoubtedly, the other procedures or regulations formulated by any other institutions, cannot prevail over the Act of Parliament and those Rules and Regulations of such individual institutions can never override the purpose and object of the Right to Information Act, 2005.

29. The second respondent, in person, articulated his points by stating that large number of such applications are kept pending, by citing the pendency of the present writ petition. Further, the second respondent states that all such information seekers are waiting for the answer scripts and other informations sought for in their respective applications.

30. Under these circumstances, the writ petitioner-Law University has not established any acceptable ground for the purpose of assailing the order impugned. Per contra, the order impugned is well reasoned and candid. Thus, the second respondent is entitled to

receive the answer scripts as sought for in his application under the Right to Information Act, 2005. All such similar applications are also to be disposed of by the writ petitioner-Law University, as expeditiously as possible, without causing any undue delay, as the students would be anxious in seeing their answer scripts and on account of the pendency of the writ petition, their applications are kept pending.

31. This being the factum, the writ petitioner-Law University is directed to dispose of all the RTI applications filed under the Right to Information Act, 2005, as expeditiously as possible, by following the procedures contemplated under the RTI Act as well as the Rules in force. In respect of the application submitted by the second respondent, the answer scripts had already been furnished to him and no further directions are required in this regard.

32. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

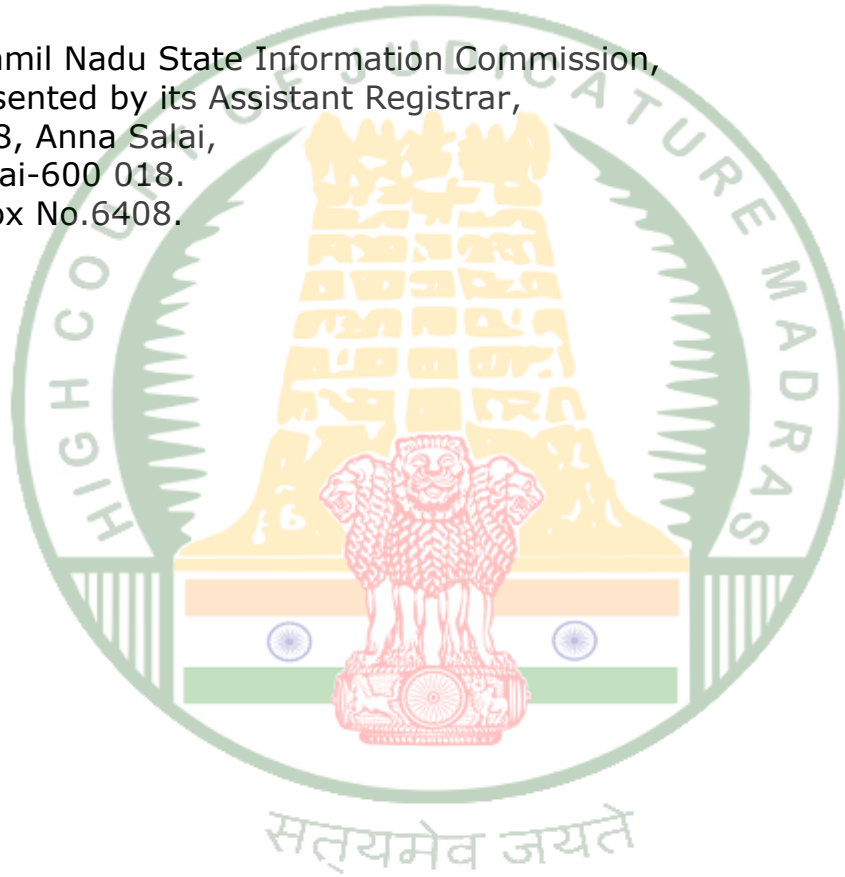
14-10-2019

Speaking Order/Non-Speaking Order.
Internet : Yes/No.
Index: Yes/No.
Svn

To

1.The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
'Poompoozhil',
No.5, Dr.D.G.S.Dhinakaran Salai,
Chennai-600 028.

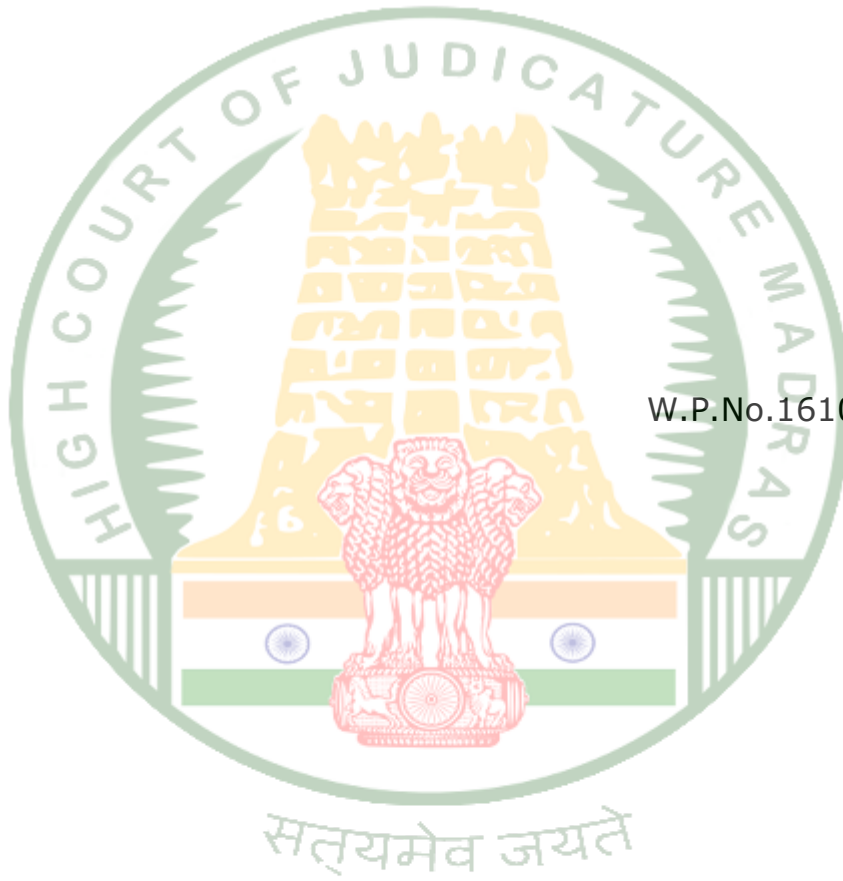
2.The Tamil Nadu State Information Commission,
Represented by its Assistant Registrar,
No.378, Anna Salai,
Chennai-600 018.
P.O.Box No.6408.



WEB COPY

S.M.SUBRAMANIAM, J.

Svn



W.P.No.16108 of 2019

WEB COPY

14-10-2019