

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/CC/A/2014/000666

Rajesh Madhukant, v. PIO, Hemwati Nandan Bahuguna Garhwal University

Important Dates and time taken:

RTI: 02.06.2014	FAO: 16.08.2014	SA: 19.09.2014
Disposed of	Hearing: 03.11.2016	Decided on: 14.12.2016

Parties Present:

1. Appellant: Not present.
Public authority: Not present.

FACTS:

2. The appellant is seeking information about the MA degree, enrolment number and related copies of documents of Mr. Ramesh Pokhriyal "Nishank", son of Late Shri Permanand Pokhriyal, the member of Lok Sabha and Former Chief Minister of Uttarakhand, who pursued MA in the Hamwati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. The CPIO reply and the FA order, both, dated 16.08.2014 stated that it is third party information and cannot be furnished. The appellant approached the Commission.

Analysis:

3. There are two frequent questions coming up before the Commission whether degree related information of a particular student is his or her personal information or third party information, and whether such information was given to University in fiduciary capacity, as contented by public authority?
4. A University that conducts various courses of education openly, registers the graduation of candidates is a public activity. Like registration of transfer of land or registration of a society, the registration of graduation details/degree details forms part of public record like the register. The purpose of register is to

maintain a public record, and whenever there is a need, refer the register and the details could be accessed. Acquiring education qualification through process of registration, from admission to graduation with an authorised university is similar to acquiring property through authorised registration process. Like land or property documents, the degrees and related information is also in public domain. Though original degree certificate is given to the candidate, the authentication of the same along with details is available in the register. There is no provision, rule or regulation made by the university authorizing it to keep the degree related information as secret and prohibit the access to register. Whether the degree related information sought is about the Chief Minister or an ordinary man, the access to information has to be provided by the public authority. The PIO did not come up with any basis for considering the degree related information of the students as third party information, except claiming so.

5. The Commission finds neither merit nor legality in the contention of the University that the information about Chief Minister of Uttarakhand was third party information. The PIO of public authority should have applied his mind, understood the aims and objects of RTI Act before flatly denying the request. Even if it is assumed that PIO was correct in contending that the information sought was third party information belonging to Mr. Ramesh Pokhriyal "Nishank"; the PIO was under an obligation under Section 11 (1) of RTI Act to seek the opinion of the Mr. Ramesh Pokhriyal "Nishank". The PIO failed to fulfil such obligation. Even if the Chief Minister raises objection against disclosure, it is the duty of PIO to examine independently the public interest factor and decide whether information was to be disclosed. There is no record to show that the PIO of HNBBG University has taken any independent decision on these lines prescribed by RTI Act, nor he gave any reason for the rejection.

6. It is relevant to refer to the judgment of Supreme Court Bench of Justice A R Dave and Justice L Nageswara Rao in Civil Appeal No. 2649 of 2016; in ***Mairembam Prithviraj v. Pukhrem Sharat Chandra Singh***, quashing the election of Manipur Congress MLA, Mairembam Prithviraj for falsely declaring in his nomination papers that he had an MBA degree. The Supreme Court held that right to vote would be meaningless unless citizens were well informed about the antecedents of candidates, including their educational qualification. It said all information about a candidate contesting elections must be available in public

domain as exposure to public scrutiny was one of the surest means to cleanse the democratic governing system and have competent legislators. The apex court has held that every voter has a fundamental right to know the educational qualifications of a candidate. The bench dismissed the appeals filed by Mairembam Prithviraj Singh and Pukhrem Sharatchandra Singh. Both of them contested the Manipur Legislative Assembly elections from the Moirang constituency. While Mairembam who contested on a Nationalist Congress Party ticket won, his election was declared void by the High Court of Manipur. Both the appeals challenged the judgement of the High Court. The said:

A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

It is also clear from the provisions of the Representation of the People Act 1951, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications.

7. The Congress MLA, in this case contended that there was a "clerical error" on the part of his lawyer and agent who had filed the nomination papers in 2012 and pleaded to the court not to quash his election as the defect was not of substantial nature. Mr. Prithviraj had mentioned in the nomination papers that he had passed MBA in 2004 from Mysore University. The bench, however, rejected his plea saying that the election result was materially affected by the false declaration and it had to be quashed. The court noted that,

He had made the false declaration in the 2008 assembly election as well. The contention of the appellant that the declaration relating to his educational qualification in the affidavit is a clerical error cannot be accepted. It is not an error committed once. Since 2008, he was making the statement that he has an MBA degree. The information provided by him in the affidavit filed in form 26 would amount to a false declaration. The said false declaration cannot be said to be a defect which is not substantial. An educated person cannot hide his

education. He will necessarily incorporate his academic qualifications, as his achievements and if he secures any gold medal or rank, he will definitely display that in his bio-data papers. Education being a qualification concerning the society in general, can never be treated as personal information. If someone chooses not to disclose his educational qualifications, it could be his personal choice, but if he uses those qualifications for achieving an employment or higher education or a position, that becomes public information. It is no more *res integra* (issue not decided by the court) that every candidate has to disclose his educational qualification to subserve the right to information of the voter. Having made a false declaration relating to his educational qualification, he cannot be permitted to contend that the declaration is not of a substantial character.

8. The educational qualification of an individual is conferred to that individual in convocation, meaning thereby that such a qualification is publicly celebrated and there is nothing which affects the privacy of an individual by such disclosure. The Commission has in its earlier order dated 01-11-2016, *CIC/SA/A/2016/001065, Harkrishan Das Nijhawan v. Dept of Legal Affairs, GOI* held that the eligibility & educational qualification required for a post, and other information showing merit for appointment etc, cannot be considered as personal and access to that cannot be denied. Every University celebrates Convocation each year, where degrees to the qualified students are awarded by the hands of the Chancellor, who generally is the Governor of the State. Every graduate is expected to attend the ceremony and take an oath that he/she would conduct as worthy of the education/degree. The Governor administers the oath to students, like he administers to the Chief Ministers and Ministers. The graduation ceremony i.e. Convocation is, thus, an open public activity. The people who attended convocation are supposed to take notice of the graduation of young persons, who are going into the society as educated citizen. The registration of public activity in a register makes that register a public document and access to that cannot be denied. Registering itself means notice to public in general about a public activity. The oath makes the celebration of convocation very significant one, reminding the educated person of his responsibility.

9. For instance, the National Academy of Legal Studies and Research, (NALSAR) University of Law, Hyderabad, administers oath as follows:

The Chancellor, NALSAR University of Law ... says: "Let the candidates for other Degrees and Diplomas stand forward." All the candidates standing, the Chancellor puts to them the following question: "**Do you sincerely promise** and declare that, if admitted to the Degree or Diploma for which you are candidates, and for which you have been recommended, you will in your daily life and conversation **conduct yourselves as worthy members of this University?**"

All the candidates will collectively answer: "**I do promise.**" With this, the candidates resume their seats. Then the Chancellor says: "Let the candidates be now presented.

10. If one could not attend the degree in absentia, for which he has to sign an under taking that he would live worthy of education attained, in a mandatory declaration. NALSAR prescribed following declaration degree/diploma in absentia):

I hereby solemnly declare and promise that if admitted to the Degree / Diploma of _____ for which I have been recommended, I shall in my professional as well as personal life and conversation **conduct myself as befits member of this University**; that I shall, to the utmost of my capacity and opportunity, support the cause of justice, fairness and peace; and that as far as in me lies, **I shall uphold and advance the social order** constitutionally established and well being of all human beings everywhere and rule of law within the country and outside.

11. The parents, relatives and friends will attend the ceremony and bless/greet the graduate. This being a public function, the society will come to know that a particular person became a graduate and took an oath to live worthy of that degree/education. The people will get a chance to check whether such a graduate is living up to the expectation or is he worthy of the degree he possessed.

12. Thus the Commission finds no basis for considering the educational qualification related information as personal to the particular candidate.

13. The present CPIO has not verified his own record before contending that the information sought was third party information. Once a student passes an examination and qualifies to secure a degree, the degree and passing details cannot be treated as private or third party information. Passing an examination is a qualification and awarding the degree such as 10th Class, 12th Class or

Intermediate, graduation or post graduation, is a public activity and that certificate is a public document generated by a public institution. The academic institutions awarding such degrees under a statutory authority are discharging their statutory duties such as registering the qualification details and degree related information.

14. The Commission has earlier in file no. CIC/SA/A/2016/001451, **Subhash Chandra Tyagi vs CBSE** on 21 July, 2016 observed that “when there is an apprehension or doubt about validity or existence of a qualification, it is necessary to verify genuineness of the same. If verification proves that it is a genuine degree, it vindicates the qualification of the candidate. If it is proved to be a wrong degree, it will serve a larger public interest. Hence the degree or academic qualification related information need to be accessible to the citizen. If a student fails in an examination and attempts again to finally clear the test and secure qualification, there are two kinds of information - one, public information i.e. the tested qualification, two, private information i.e. the details of failure or disqualification, which is personal to the candidate which has nothing to do with public activity, disclosure of which would cause unwarranted invasion of privacy and thus it has to be treated as third party information. ”

15. Whoever claims a benefit of restriction under section 8 of RTI Act has a duty to substantiate or justify withholding of the information sought, which was clearly stated in section 19(5): “*In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.*”

16. Generally every student who graduated will use the degree of graduation for pursuing post graduate studies or for any employment which required graduation as an eligibility criterion. For instance: If BA degree is a requirement for studying MA, the student who wants to study MA has to prove that he graduated. If he does not have that qualifying degree and manipulates to secure admission MA or an employment where it is prescribed as qualification, it has to be checked. For higher education or employment, he has to reveal his details of education details. If a candidate wants to treat the patients as doctor, he has to prove medical graduation. In such cases, it is the duty of the student to disclose

or share details of his graduation with the concerned authorities etc. The record of this educational qualification is maintained for the general information of public and for verification of the genuineness of the degree, if needed. Any competing student whose opportunity in higher studies or employment is expected to share his degree related information and see the competitor's degree related information. All this is happening in routine. It was never considered as private or personal information. Another important factor is that every student aspiring for career advancement will necessarily disclose his qualifications, percentage of marks, distinctions or awards if any, in his C.V. or bio-data voluntarily. Only the information relating to failures or when marks obtained were less than required for passing or qualifying, is not disclosed by the concerned candidate, because none likes to project that he failed in examination. If a candidate passed his examination and obtained graduation degree, his earlier failures become irrelevant, unless they are specifically declared as disqualifications for any specific purpose. (For instance, candidate needs to obtain distinction in the first instance itself for claiming a gold medal or rank). Hence, the degree or academic-qualification-related-information needs to be accessible to the citizen. If student fails and attempts again to finally clear the test and secure qualification, final result could be public information. Every academic/educational qualification at land mark stages like 10th class, Intermediate, Graduation, Post Graduation or Ph.D. and clearing of every annual examination that promotes the student into next year, cannot be stated to be private information, they are in public domain. Keeping this degree related information secret might lead to manipulations and frauds.

17. Thus, every university is a public body and the activity of awarding degrees is a public activity and it can be concluded that all degree related information as available in the permanent register of the university is accessible public document. This basic principle of public record was laid down in the Indian Evidence Act, 1872. The right to information was made available in Section 76 of Indian Evidence Act, 1872. Further, section 74 of Evidence Act, gave list of "public documents":

- (1) The following documents are public documents: (i) of the sovereign authority,
- (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial

and executive, of any part of India or of the Commonwealth, or of a foreign country; (2) public records kept in India or private documents.

18. Section 76 provides for right to inspect and to obtain certified copies, as now provided by the RTI Act. Section 76 says:

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

19. The degree related information of students is considered as directory information in the United States of America and it is disclosable. It was not considered as personal information. The United States has a law called the Family Educational Rights Protection Act (FERPA) relating to the disclosure of Student related information. The FERPA is aimed at protecting information related to students. The FERPA has clearly put three distinctions on the information of a student: educational information, personally identifiable information, and directory information. Each of which will vary in the limitations subjected to by the FERPA.

20. Cases involving request for disclosure of educational records fall under the ambit of directory information which is defined as "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed." Directory information is public information and will be made available to the public unless the student has restricted it. In no way does the disclosure of the information of a student's educational records or his achievements or honours during his tenure at the institution, amounts to his breach of privacy.

21. In *Zumbrun v. University of Southern California*, 101 Cal. Rptr. 499, 506 (Ct. App. 1972) (<https://casetext.com/case/zumbrun-v-university-of-southern-california>) the Court of Appeal in California, Second District, Division Five, [25

Cal.App.3d 1 (Cal.Ct.App.1972)] held that "finding that facts giving rise to a fiduciary duty had not been pleaded and that "[t]he mere placing of trust in another person does not create a fiduciary relationship". And in paragraph 10 it held: "(10) The basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract." (This conclusion was based on following cases: Carrv. St. John's University, New York (1962) 17 A.D.2d 632, 633 [231 N.Y.S.2d 410, 413], affd. 12 N.Y.2d 802 [235 N.Y.S.2d 834]; Anthonyv. Syracuse University (1928) 224 App. Div. 487, 489-490 [231 N.Y.S. 435, 438-439]; Goldstein v. New York University (1902) 76 App. Div. 80, 82-83 [78 N.Y.S. 739, 740]; People ex rel. Cecil v. Bellevue Hospital Medical College (1891) 60 Hun 107 [14 N.Y.S. 490], affd. 128 N.Y. 621 [28 N.E. 253]; John B. Stetson University v. Hunt (1925) 88 Fla. 510, 517 [102 So. 637, 640]; University of Miami v. Militana(Fla.App. 1966) 184 So.2d 701, 703-704; Barker v. Trustees of Bryn Mawr College (1923) 278 Pa. 121, 122 [122 A. 220, 221]; Greene v. Howard University (D.C. Dist. Col. 1967) 271 F. Supp. 609, 613; see Dixon v. Alabama State Board of Education (5th Cir. 1961) 294 F.2d 150, 157, cert. den. 368 U.S. 930 [7 L.Ed.2d 193, 82 S.Ct. 368]; Searlev. Regents of the University of California (1972) 23 Cal.App.3d 448, 452 [100 Cal.Rptr. 194].) Kaus, P.J., and Reppy, J., concurred.

22. In Shapiro v. Butterfield, 921 S.W.2d 649, 651-52 (Mo. Ct. App. 1996) it was held that that no fiduciary relationship between faculty advisor and student existed; In Nigro v. Research College of Nursing, 876 S.W.2d 681, 686-87 (Mo. Ct. App. 1994) it was held that "there is no fiduciary relationship between an educational institution and its applicants". Similar judicial orders were given in following cases: President and Bd. of Trustees v. Smith, 1999 WL 51799, at *2 (Ohio Ct. App. Feb. 1, 1999) (finding that there was no support for the existence of a "fiduciary relationship between an educational institution and a prospective student"); Ho v. University of Tex., 984 S.W.2d 672, 693 (Tex. App. 1998) (finding, as a matter of law, that no fiduciary duty between student and faculty member/advisor existed); Abrams v. Mary Washington College, 1994 WL 1031166, at *4 (Va. Cir. Ct. Apr. 27, 1994) (finding no basis in common law for creating a fiduciary relationship between senior college officials and students).

23. The Central Information Commissioner Smt. Annapurna Dixit in Case No: CIC/AD/A/2012/000256, stated, "In relation to the marks obtained by a principal, it was held that: "The educational qualifications cannot be considered as personal in nature"

24. Thus the contention of the CPIO that 'the information of students is personal' is not correct. Other contention that 'the information furnished by the students to the public authority in fiduciary capacity' is also not correct, because the marks obtained by students, whether passed or not is the information generated by the university, and that was not given by the students. Father's name will be necessary to identify the degree-holding student as there might be several students with the same name; students' roll numbers and other ancillary details are also essential for specific identification of the degree-holder.

25. The identification details of the graduates are in the public domain. They should be made available for verification and the results and marks obtained is also relevant public information which is necessary for the society to know whether a particular candidate is an eligible graduate or not.

26. With regard to question whether disclosure of such identification related information causes invasion of privacy, or is that unwarranted invasion of privacy, the PIO has not put forward any evidence or explained possibility to show that disclosure of degree related information infringes the privacy or causes unwarranted invasion of privacy. If name and father's name, degree obtained, the date or the marks or the roll number are revealed, how can that cause invasion of privacy? The Commission observes that the disclosure of details of educational records of a student, maintained at University in no way infringes his/her right to privacy , hence there cannot be any violation of section 8(1)(j) of the Right to Information Act, 2005. This is primarily because the matters relating to educational qualifications of a student (former/current) fall under the public domain.

27. Having examined the case, the synonymous legislations and previous decisions, the Commission states that matters relating to education of a student (current/former) fall under the public domain and hence order the relevant public authority to disclose information accordingly.

28. In view of above observations, the Commission directs the HNBSG University, Srinagar, Uttarakhand to provide complete information about the MA degree of Mr. Ramesh Pokhriyal "Nishank" as available with the University, before 30th December 2016.

Sd/-
(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

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