

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

% Judgment reserved on: 07.10.2013

Date of Decision: 10.10.2013

+ W.P.(C) 4079/2013

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr Naresh Kaushik and Ms Aditi
Gupta and Mr Vardhman Kaushik, Advs.

versus

G.S. SANDHU Respondent

Through: Mr Subhiksh Vasudev, Adv.

+ W.P.(C) 2/2013

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr Naresh Kaushik and Ms Aditi
Gupta and Mr Vardhman Kaushik, Advs.

Versus

SHATMANYU SHARMA Respondent

Through: Counsel for the respondent.

+ W.P.(C) 8/2013

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr Naresh Kaushik and Ms Aditi
Gupta and Mr Vardhman Kaushik, Advs.

versus

SH. SAHADEVA SINGH Respondent

Through: Mr Praveen Singh, Adv with
respondent in person.

+ W.P.(C) 5630/2013

UNION PUBLIC SERVICE COMMISSION..... Petitioner

Through: Mr Naresh Kaushik and Ms Aditi
Gupta and Mr Vardhman Kaushik, Advs.

versus

K.L. MANHAS Respondent

Through: Counsel for the respondent.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The issue involved in these petitions as to whether the copies of office notings recorded on the file of UPSC and the correspondence exchanged between UPSC and the Department seeking its advice can be accessed, by the person to whom such advice relates, in RTI Act or not.

The respondent in W.P(C) No.4079/2013 sought information from the CPIO of the petitioner – Union Public Service Commission (hereinafter referred to as “UPSC”), with respect to the advice given by the petitioner – UPSC to the Government of Maharashtra in respect of departmental proceedings against him. The CPIO having declined the information sought by the respondent, an appeal was preferred by him before the First Appellate Authority. Since the appeal filed by him was dismissed, the respondent approached the Central Information Commission (hereinafter referred to as “the Commission”) by way of a second appeal. Vide impugned order dated 1.5.2013, the Commission rejected the contention of the petitioner – UPSC that the said information was exempt from disclosure under Section 8(1) (e), (g) & (j) of the Right to Information Act (the Act) and directed the petitioner to disclose the file notings relating to the matter in hand to the respondent, with liberty to the petitioner –UPSC to obliterate the name and designation of the officer who made the said notings. Being aggrieved, the petitioner – UPSC is before this Court by way of this writ petition.

2. The respondent in W.P(C) No.2/2013 sought the information from the petitioner – UPSC with respect to the advice given by it in respect of the disciplinary proceedings initiated against the said respondent. The said information having been denied by the CPIO as well as the First Appellate Authority, the respondent approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed the petitioner to provide, to the respondent, the photocopies of the relevant file after masking the signatures of the officers including other identity marks. Being aggrieved, the petitioner – UPSC is before this Court seeking quashing of the aforesaid order passed by the Commission.

3. In W.P(C) No. 5603/2013, the respondent before this Court sought information with respect to the advice given by UPSC to the State of Haryana with respect to the disciplinary proceedings instituted against him. The said information having been refused by the CPIO and the First Appellate Authority, he also approached the Commission by way of a second appeal. The Commission rejected the objections raised by the petitioner and directed disclosure of the file notings and the correspondence relating to the charge-sheet against the respondent. The petitioner being aggrieved from the said order is before this Court by way of this petition.

4. In W.P(C) No.8/2013, the respondent before this Court sought information with respect to the advice given by UPSC in a case of disciplinary proceedings instituted against him. The said information, however, was denied by the CPIO of UPSC. Feeling aggrieved, the respondent preferred an appeal before the First Appellate Authority. The

appeal, however, came to be dismissed. The respondent thereupon approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed disclosure of the information to the respondent. The petitioner – UPSC is aggrieved from the aforesaid order passed by the Commission.

5. The learned counsel for the petitioner – UPSC Mr. Naresh Kaushik has assailed the order passed by the Commission on the following grounds (i) there is a fiduciary relationship between UPSC and the department which seeks its advice and the information provided by the Department is held by UPSC in trust for it. The said information, therefore, is exempted from disclosure under Section 8(1)(e) of the Act (ii) the file notings and the correspondences exchanged between UPSC and the department seeking its advice may contain information relating not only to the information seeker but also to other persons and departments and institutions, which, being personal information, is exempt from disclosure under Section 8(1)(j) of the Act (iii) the officers who record the notings on the file of UPSC are mainly drawn on deputation from various departments. If their identity is disclosed, they may be subjected to violence, intimidation and harassment by the persons against whom an adverse note is recorded and if the said officer of UPSC, on repatriation to his parent department, happens to be posted under the person against whom an adverse noting was recorded by him, such an officer may be targeted and harassed by the person against whom the note was recorded. Such an information, therefore, is exempt from disclosure under Section 8(1)(g) of the Act and (iv) the notings recorded by UPSC officer on the file are only inputs given to the Commission to enable it to render an appropriate advice to the

concerned department and are not binding upon the Commission. Therefore, such information is not really necessary for the employee who is facing departmental inquiry, since he is concerned only with the advice ultimately rendered by UPSC to his department and not that the noting meant for consideration of the Commission.

6. Section 8(1) (e)(g) and (j) of the Act reads as under:

“Section 8(1)(e) in The Right To Information Act, 2005

Exemption from disclosure of information.-

[\(1\)](#) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

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(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

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(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;;

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(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

7. Fiduciary Relationship:

The question which arises for consideration is as to whether UPSC is placed in a fiduciary relationship vis-à-vis the department which seeks its advice and the information provided by the department is held by UPSC in trust for the said department or not. The expression 'fiduciary relationship' came to be considered by the Hon'ble Supreme Court in Central Board of Secondary Education and Another versus Aditya Bandopadhyay & Ors. [Civil Appeal No.6454 of 2011] and the following view was taken:

21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An

employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

22. ...the words 'information available to a person in his fiduciary relationship' are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. ..”

The aforesaid expression also came up for consideration of the Apex Court in Bihar Public Service Commission versus Saiyed Hussain Abbas Rizwi & Anr. [Civil Appeal No.9052 of 2012] and the following view was taken by the Apex Court:

“22....The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. This aspect has been discussed in some detail in the judgment of this Court in the case of Central Board of Secondary Education (supra).

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24...The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity...”

8. The advice from UPSC is taken by the Disciplinary Authority, as a statutory requirement under the service rules applicable to an employee and wherever the Disciplinary Authority takes such an advice into consideration while recording its findings in the matter. The concerned employee is entitled to supply of such advice to him, as a matter of right. There is no relationship of master and agent or a client and advocate between the UPSC and the department which seeks its advice. The information which the department provides to UPSC for the purpose of obtaining its advice normally would be the information pertaining to the employee against whom disciplinary proceedings have been initiated. Ordinarily such information would already be available

with the concerned employee having been supplied to him while seeking his explanation, along with the charge-sheet or during the course of the inquiry. The UPSC, while giving its advice, cannot take into consideration any material, which is not available or is not to be made available to the concerned employee. Therefore, the notings of the officials of UPSC, would contain nothing, except the information which is already made available or is required to be made available to the concerned employee. Sometimes, such information can be a third party information, which qualifies to be personal information, within the meaning of clause (j), but, such information, can always be excluded, while responding to an application made to UPSC, under RTI Act. Therefore, when such information is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between UPSC and the department seeking its advice or that the information pertaining to such an employee is held by UPSC in trust. Such a plea, in my view, can be taken only when the information is sought by someone other than the employee to whom the information pertains.

9. The learned counsel for the petitioner has referred to the decision of this Court in Ravinder Kumar versus CIC [LPA No.418/2008 3.5.2011. The aforesaid LPA arose out of a decision of the learned Single Judge of this Court in W.P(C) No.2269/2011 decided on 5.4.2011, upholding the directions of the Commission to UPSC to provide photocopies of the relevant file notings concerning of two disciplinary cases involving the respondent to him, after deleting the name and other reference to the individual officer/ authority. As noted

by a learned Single Judge of this Court in UPSC versus R.K. Jain [W.P(C) No.1243/2011 dated 13.7.2012, the order passed by the Division Bench was an order dismissing the application for restoration of the LPA and was not an order on merit and, therefore, it was not a decision on any legal proposition rendered by the Court on merit. It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No.418/2010 is wholly misplaced.

10. As regards the applicability of clause (g), it would be seen that the said clause exempts information of two kinds from disclosure – the first being the information disclosure of which would endanger the life or physical safety of any person and second being the information which would identify the source of information or assistance given in confidence for law enforcement or security purposes. The two parts of the clause are independent of each other – meaning thereby that exemption from disclosure on account of danger to the life or physical safety of any person can be ground of exemption irrespective of who had given the information, who was the person, to whom the information was given, what was the purpose of giving information and what were the terms – expressed or implied subject to which the information was provided. The aforesaid clause came up for consideration before the Hon’ble Supreme Court in Bihar Public Service Commission(supra) and the following view was taken:

“28...The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression ‘life’ has to be construed liberally. ‘Physical safety’ is a

restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression 'life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1)(g) the Act, thus, has to be understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation."

11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an

adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.

12. Personal Information

As regards clause (j), it would be difficult to dispute that the exemption cannot be claimed when the information is sought by none other than the person to whom the personal information relates. It is only when the information is sought by a third party that such an exemption can be claimed by UPSC. If, the notings recorded on the file and/or the correspondence exchanged between UPSC and the concerned department do contain any such information which pertains to a person other than the information seeker and constitutes personal information within the meaning of section 8(1)(j), the UPSC was certainly be entitled to refuse such information on the ground that it is exempted from disclosure under clause 8(1)(j) of the Act.

13. As regards the contention that the notings recorded by the employees of UPSC are not necessary for the information seeker since he is concerned with the ultimate opinion rendered by UPSC to his department and not with various notings which are recorded by the officer of the Commission, I find the same to be devoid of any merit. While seeking information under the Right to Information Act, the application is not required to disclose the purpose for which the information is sought nor is it necessary for him to satisfy the CPIO that the information sought by him was necessary for his personal purposes or for public purpose. Therefore, the question whether information seeker really needs the information is not relevant in the Scheme of the Act. The learned counsel for the petitioner drew my attention to the following observations made by the Apex Court in Central Board of Secondary Education and Another versus Aditya Bandopadhyay & Ors. (supra):

“37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary

relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.”

However, when the file noting is sought by a person in respect of whom advice is rendered by UPSC cannot be said to be indiscriminate or all and sundry information, which would affect the functioning of UPSC. Such notings are available in the file in which advice is recorded by UPSC and, therefore, it would not at all be difficult to provide the same to the information seeker.

For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

- (i) the copies of office notings recorded in the file of UPSC as well as the copies of the correspondence exchanged between UPSC and the Department by which its advice was sought, to the extent it was sought, shall be provided to the respondent after removing from the notings and correspondence, (a) the date of the noting and the letter, as the case may be; (b) the name and designation of the person recording the noting and writing the letter and; (c) any other indication in the noting and/or correspondence which may reveal or tend to reveal the identity of author of the noting/letter, as the case may be;
- (ii) if the notings and/or correspondence referred in (i) above contains personal information relating to a third party, such information will be excluded while providing the information sought by the respondent;
- (iii) the information in terms of this order shall be provided within four weeks from today.

No order as to costs.

OCTOBER 10, 2013

RD/BG

V.K. JAIN, J.