

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 14.08.2014

+ W.P.(C) 880/2014 & CM No. 1771/2014

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

versus

MANOJ KUMAR SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Naresh Kaushik & Mr Vardhman Kaushik,
Advocates.

For the Respondent : Respondent in person.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. This petition has been filed by Union Public Service Commission impugning the order dated 20.11.2012 passed by Central Information Commission (CIC), New Delhi in as much as the petitioner has been directed to provide certified copies of the evaluated answer sheet of the Hindi paper as well as inform the respondent as to the cut off/qualifying marks both for the Hindi and English tests paper taken by the respondent as a part of the Civil Services Main Examination, 2010.

2. Briefly stated, the facts are that the respondent had appeared in the Civil Services Main Examination 2010. Apparently, he did not qualify in the Hindi paper, which is a qualifying subject. Dissatisfied with his results,

he filed an application under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') on 19.08.2011, seeking the following information:-

“i Photocopies of my Compulsory Hindi paper for Civil Services Main Exam 2010.

ii. qualifying/passing marks in Compulsory Indian Language Paper Hindi and English Paper for Civil Services Main Exam 2010.

iii. Whether there has been any moderation in my compulsory Hindi paper?

iv. Whether there is any moderation in Compulsory paper?”

3. The petitioner responded to the said application by a letter dated 16.09.2011 and denied the information as sought for by the respondent with respect to point (i) and (ii) as quoted above. With respect to the first point, the petitioner stated that it was examining the judgment of the Supreme Court in **CBSE v. Aditya Bandopadhyay: (2011) 8 SCC 497** and further information on this question would be provided in due course. With respect to the second point, the response of the petitioner was as under:-

“Point (2): It is intimated that revealing the qualifying marks of Indian Language Papers could lead to candidates possess this information putting in only as much efforts as is required to achieve this standard (since these do count for merit) and not putting in their best effort in all papers of the examination, as is desired. Therefore this adversely affect the competitive interest of other candidates who do not possess this information, and exemption under section 8 (1) (d) of the RTI Act is invoked. (b) Also, disclosure of this information would be from the examination's competitiveness/prestige in so far as these papers are concerned (as candidates be tempted to put in less effort in these papers to merely achieve minimum qualifying standard) and Commission's own interest (which is in fact the larger public interest) would also be adversely

affected. Therefore, Commission on par with an affected third party which is permissible in terms of CIC's relevant judgment order) which claims exemption under section 8 (1) (d) of the RTI Act.”

4. The petitioner's denial to provide the information was carried in appeal before the Appellate Authority. The Appellate Authority rejected the appeal of the respondent by stating that the response given by the CPIO was appropriate. Aggrieved by the same, the respondent preferred an appeal before the CIC. Before the CIC, it was contended by the respondent that the answer sheets had been destroyed. Nonetheless, by the impugned order, the CIC directed the CPIO to verify the records and if the same were found, to provide, certified copies of the evaluated answer sheets for the Hindi paper to the respondent within fifteen days. The CIC also directed the CPIO to inform the respondent about the cut off/qualifying marks for the subjects of Hindi and English in respect of the examination in question. Aggrieved by the directions issued by the CIC by the impugned order, the petitioner has filed the present petition.

5. With respect to the first question, whether certified of the evaluated answer sheets ought to be supplied to the candidate, the learned counsel for the petitioner states that the said question is pending before the Supreme Court in *SLP (Civil) No. 33761/2012* which was preferred by the petitioner against an order dated 03.08.2012 passed by Kerala High Court in W.P. (C) No. 37734/2010 whereby the petitioner was directed to supply a copy of the evaluated answer sheets to the candidates. The learned counsel for the petitioner states that it would abide by the decision in the said Special Leave Petition and in the event the petitioner does not succeed before the Supreme Court, the answer sheets if available would be provided to the

respondent. The issue with regard to the providing certified copies of the answer sheets, can be disposed of in view of the statement made by the learned counsel for the petitioner. The petitioner would provide copies of the evaluated answer sheets to the respondent in the event the petitioner does not prevail before the Supreme Court in SLP No. 33761/2012.

6. In respect of the second question, whether the petitioner is obliged to disclose the cut off/qualifying marks for the said subjects, it would be necessary to examine Section 8(1)(d) of the RTI Act which, according to the petitioner, exempts the petitioner from disclosing this information. Sub-Clause (d) of Section 8(1) of the RTI Act reads as under:-

“8. Exemption from disclosure of information.— (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

XXXX XXXX XXXX XXXX XXXX

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;”

7. A plain reading of the said provision indicates that only information with regard to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party is exempt from the provisions of the RTI Act. Plainly, the information sought by the respondent is not such information. According to the petitioner, disclosing such marks would lower its standards because the papers in question are qualifying papers and it is not necessary for the candidates to excel in these papers but merely cross the threshold of the qualifying marks. It is argued that if the qualifying marks are known to the

candidates they would not focus on these subjects and this would tend to lower the competitive standards.

8. In my view, the argument put forth by the petitioner is stated to be rejected. First of all, the exemption under Section 8(1)(d) of the RTI Act would not apply to any secret competitive standards that are sought to be set by the petitioner and applies only disclosure of information which would harm the competitive position of a third party. The said clause is wholly inapplicable to the situation in hand. Secondly, the reasoning for not disclosing the cut off mark also seems to be convoluted. In the event the petitioner desires to set high competitive standards, it has only to increase the qualifying marks. Competitive standards are not met by keeping the qualifying marks a secret but setting a higher bar. To my mind, the purpose of providing a cut off/qualifying marks is to set the required standard and to ensure that only those candidates that clear the threshold, are selected. The theory of raising the competitive standards keeping the same a secret as is canvassed by the petitioner can, most charitably, be described as incomprehensible. Accordingly, the said contention is rejected and the directions of the CIC to communicate the cut off/qualifying marks for Hindi and English with respect to Civil Services Main Examination, 2010 is upheld.

9. The writ petition is disposed of with the aforesaid directions. Parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 14, 2014/pkv