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

+ LPA 22/2015 & CM No.1716/2015

% Date of decision : 13th July, 2018

SMALL INDUSTRIES DEVELOPMENT

BANK OF INDIA & ANR. Appellants

Through : Mr. Ashish Azad, Adv.

versus

RANDOLPH ROWE Respondent

Through : Mr. Pradeep Chhindra, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE V.KAMESWAR RAO

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

LPA No.22/2015

1. The challenge in this intra-court appeal is to an order dated 5th November, 2014 passed by the learned Single Judge in W.P.(C) No. 4643/2014 which was filed by the appellants herein impugning an order dated 11th July, 2014 passed by the Central Information

Commission (CIC) allowing the respondent's appeal and directing the appellants to provide the Annual Performance Appraisal Reports (APARs), relating to the respondent, for the period 2000 to 2013, to him.

2. The relevant facts as noted by the learned Single Judge deserve to be considered herein as well.

3. The respondent, an employee of the appellant bank, stood dismissed from service on account of misconduct, after disciplinary proceedings. The respondent sought his Annual Performance Appraisal Report (reporting and reviewing parts) and the complete Special Performance Appraisal Reports for the year 2000 to 2013. However, this information was not provided by the CPIO as it was held that the same was exempt under Section 8(1)(e), (g) and (j) of the Right to Information Act, 2005 (RTI Act).

4. Aggrieved by this decision of the CPIO, the respondent preferred an appeal which was also rejected by the First Appellate Authority on 14th June, 2013. The respondent thereafter preferred an appeal to the CIC which was allowed, following the decision of the Supreme Court reported at, **(2008) 8 SCC 725 Dev Dutt v. Union of India**. The appellants were directed to provide the respondent's APARs, as sought by him.

5. The appellants herein challenged the order of the CIC by way

of the writ petition before the learned Single Judge, primarily on the ground that the issue as to whether APARs are exempt under the provisions of Section 8 of the RTI Act was pending consideration before a Division Bench of this court and that the issue has also been referred to a Larger Bench of the Supreme Court.

6. The appellants also pressed their sole reservation in providing the APARs to the effect that the same would result in disclosure of the names of the officers who have made the entries in the APARs which was likely to create an adverse atmosphere in the bank.

7. It is to be noted that on the 5th of November, 2014 when the matter was taken up for consideration before the learned Single Judge, counsel for the respondent employee had stated that he would be satisfied if the contents of the APARs are disclosed without the names of the senior officers on whose behalf the entries were made.

8. It was upon a consideration of these matters that the learned Single Judge rejected the writ petition and held that in view of this submission on behalf of the respondent, the apprehension of the appellants would no longer survive. The writ petition was therefore disposed of with the direction to the appellants to provide the information as directed by the CIC after redacting the names of the concerned officers.

9. It appears that despite the protection granted by the learned

Single Judge to the apprehensions evinced by the appellants, the appellants were not satisfied and have assailed the order dated 5th November, 2014 by way of the present letters patent appeal.

10. We have heard Mr. Ashish Azad, learned counsel for the appellants and Mr. Pradeep Chhindra, learned counsel who appears for the respondent. This appeal has been pressed on the very ground which was pressed before the learned Single Judge, as noted above.

11. Appearing for the respondent, Mr. Pradeep Chhindra has pointed out that identical issues and objections to the processing of the information were raised before us in a similar matter by the State Bank of India in ***LPA No. 714/2010 titled State Bank of India v. Mohd. Sahjahan*** which was rejected by our decision dated 9th May, 2017. Mr. Chhindra has submitted that a Special Leave Petition No. 22065/2017 preferred by the State Bank of India, was dismissed by the Supreme Court of India by its order dated 4th September, 2017.

12. So far as the reservation to provide the APARs pressed by the appellant-SIDBI before the learned Single Judge and also before us is concerned, the same is premised on the ground that it would disclose the name of the officers who had made the entries in the APARs, which would lead to an adverse atmosphere in the bank. This objection was pressed before us in LPA No. 714/2010. It had also been contended therein by the State Bank of India that disclosure of

the information would breach the fiduciary relationship that the State Bank of India had with its superior officers. In this regard, we had adverted to the pronouncement of the Supreme Court reported at **(2011) 8 SCC 497 Central Bank of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors.** The relevant extract of this pronouncement and the principles laid down by the Supreme Court deserve to be considered *in extenso* and read as follows :

*“41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words **“information available to a person in his fiduciary relationship”** are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised 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 shareholder, 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. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

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48. This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is: whether the information relating to the “evaluation” (that is, assigning of marks) is held by the examining body in a fiduciary relationship? The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer books. On a careful examination we find that this contention has no merit.

49. The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the “principal” and the examiner is the “agent” entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner.

50. On the other hand, when an answer book is entrusted to the examiner for the purpose of evaluation, for the period the answer book is in his custody and to

the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer book or the result of evaluation of the answer book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copyright or proprietary right, or confidentiality right in regard to the evaluation. Therefore, it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner.

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53. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or

otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act.”

(Emphasis by us)

13. Placing reliance on this pronouncement in ***State Bank of India***

v. Mohd. Shahjahan, we had held thus :

*“11. In the case in hand, the examiner has returned the answer books to the SBI after completion of the examination. In the light of the principles laid down in **Central Board of Secondary Education v Aditya Bandopadhyay** the examining body (the SBI in this case) does not hold the evaluated answer sheets (in the written exam) or the assessment sheet of the interview in a fiduciary relationship, qua the examiner/member of the interview board.*

12. Secondly, such a plea would be tenable if the identity of the officer who is part of the DPC and making the evaluation of the officer is disclosed to the person seeking the marks. There is no difficulty in keeping the identity confidential while giving the information to the person who has made the application seeking information about the evaluation. If this procedure is evolved, this plea of the appellant that the disclosure of the marks shall be breach of fiduciary relationship would also be unsustainable.

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17. The disclosure of the marks in the annual confidential reports has been thus directed in as much as it has been held that the knowledge thereof would enable the person concerned to improve his performance in future. It cannot be denied that the disclosure of the disaggregate marks to a person in the promotion process would enable the person concerned

*to make efforts and further improve his performance. Therefore, it cannot be denied that the principles laid down by the Supreme Court directing disclosure of adverse remarks or below bench mark remarks in the ACRs in **Devdutt and Sukhdev** would apply on all fours to the issue under consideration before us. The application of these principles by the learned Single Judge in the present case, therefore, cannot be faulted.”*

14. The above observations apply squarely to the case in hand. It is also to be noted that in the present case, the respondent himself had made a categorical statement before the court that he did not want the disclosure of the names of the superior officers at whose behest the entries were made. In this background, the apprehensions evinced by the appellants are therefore of no consequence. Even the statement made on behalf of the respondent was in consonance with the principles laid down by the Supreme Court in **Aditya Bandopadhyay** (supra).

No other objection is pressed before us.

15. For all these reasons, we find no merit in this appeal which is hereby dismissed.

CM No.1716/2015

In view of the orders passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

Copy of this order be sent to Sh. Randolph Rowe, the respondent herein by the Registry.

ACTING CHIEF JUSTICE

V. KAMESWAR RAO, J

JULY 13, 2018/kr