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

+ **W.P.(C) 7925/2019, CM No. 32884/2019**

RAYKA MIHIR GANDABHAI

..... Petitioner

Through: Mr. Krishna Kumar Singh and
Mr. Rajnish Kumar Singh, Advs.

versus

UNION PUBLIC SERVICE COMMISSION

..... Respondent

Through: Mr. Naresh Kaushik, Ms. Vibhuti
Tyagi and Mr. Tapasvi Raj, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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23.07.2019

CM No. 32884/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7925/2019

The challenge in this petition is to the order dated June 24, 2019 passed by the Central Information Commission (Commission in short). The petitioner sought information in the context of Civil Services Main Examination, 2011 in terms of the certified copies of his answer books, cut-off marks for the English Compulsory paper and Gujarati Compulsory Paper for the same year; criteria for cut-off marks for English and Gujarati Compulsory paper for the same year; cut-off mark for OBC category in connection of IPS and IAS selection etc.

The case of the petitioner before the CIC was that the judgment of the

Supreme Court in *UPSC v. Angesh Kumar, Civil Appeal No. 6159-6162/2013 with Civil Appeal No. 5924/2013* only precludes the marks obtained in Civil Service Exam from disclosure and not the answer scripts. The CIC has rejected the claim of the petitioner by holding as under:

“Commission observes that the contention of the Advocate of the Appellant that Hon’ble Supreme Court in the matter of UPSC v. Angesh Kumar in Civil Appeal No (s). 6159-6162 of 2013 with C.A. no. 5924/2013 has only precluded disclosure of marks is devoid of any merit. It may be noted that Para 8 of the averred judgment clearly records the extract of the counter-affidavit filed in the matter of Prashant Ramesh Chakkarwar v. UPSC suggesting the problems in showing evaluated answer books to candidates as under:

(B) Problems in showing evaluated answer books to candidates.—(i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called ‘raw marks’ which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages.

Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (b) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter’s check of the former’s work, (d) the Additional Examiner’s work having been found erratic by the Head Examiner, been rechecked entirely by another

examiner, with or without the Head 1 (2013) 12 SCC 489 Examiner again rechecking this work.

(iii) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in Gaurav Gupta v. UPSC dated 6.7.2012(Del.)) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer books, the danger of coaching institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the [RTI Act](#)) is real, with all its attendant implications.

(vi) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners

and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional papers have very low candidature (sometimes only one), especially the literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and examiners in some of these low-candidature papers is known to be limited. Any such possibility of the examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the examination system and for the security and safety of the examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the paper-setter is also generally the Head Examiner.

(viii) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks, even where these are deserved. Mediocrity would reign

supreme and not only the prestige, but the very integrity of the system would be compromised markedly.”

In view of the foregoing, it is essentially clear that the Hon’ble Supreme Court while arriving at the decision of precluding disclosure of marks obtained by candidates in UPSC Civil Services Exam has also assessed the aspect of disclosure of answer books.”

The submission of the learned counsel for the petitioner by drawing my attention to Para 10 of the Judgment of the Supreme Court in **Angesh Kumar (supra)** is that even though the case of the petitioner is not covered under Rules and Practice, but larger public interest requires the disclosure. On a specific query to the learned counsel for the petitioner as to what is the public interest involved, he states in the case in hand, petitioner having qualified for Civil Services Examination seven times out of eight times, larger public interest require the disclosure.

I am unable to accept the said plea of the learned counsel for the petitioner that merely because on eighth occasion the petitioner has not cleared the Civil Services Examination, the petitioner is entitled to the disclosure of the information sought. In fact, there is no public interest.

I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

JULY 23, 2019/jg