

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.3099 of 2013
Date of decision:16.02.2015

Yadwinder Singh

...Petitioner

Versus

Punjab Public Service Commissioner through Public Information Officer,
Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vikas Arora, Advocate for the petitioner.

Mr.Piyush Bansal, DAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 19.10.2012 (Annexure P-3) passed by the State Information Commissioner, Punjab, whereby information sought by the petitioner regarding answer sheets of other candidates was denied to him.

Notice of motion was issued and pursuant thereto, reply by way of counter affidavit has been filed on behalf of the respondent.

Learned counsel for the petitioner submits that the case of the petitioner is primarily based on the judgment of the Hon'ble Supreme Court in **Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors., 2011 (3) CCC 596**. While relying upon the observations made by the Hon'ble Supreme Court, he submits that there was no bar under the Right to Information Act, 2005 ('the RTI Act' for short) in

supplying the information to the petitioner, regarding the answer sheets of other candidates, who competed with the petitioner. He prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondent submits that petitioner is not entitled for information sought. So far as the answer-sheet of the petitioner was concerned, the same has already been supplied to him. He further submits that in view of the ratio of the judgment of the Hon'ble Supreme Court in **Aditya Bandopadhyay's case (supra)**, petitioner is not entitled for the copies of answer sheets of other candidates. He also submits that even the State Information Commissioner, Punjab, who passed the order, has not been impleaded as party-respondent in the present case. He submits that since the information sought by the petitioner relates to third party, the same cannot be supplied, it being a confidential record. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

Admittedly, the copy of the answer sheet of the petitioner has already been supplied to him. By way of present writ petition, petitioner seeks the information, i.e. copies of answer sheets pertaining to other candidates, who participated in the selection process with the petitioner. A

careful perusal of the judgment of the Hon'ble Supreme Court in **Aditya Bandopadhyay's** case (supra) would show that the Hon'ble Supreme Court held entitled only the examinees to have inspection of their answer books. No examinee was held entitled to inspect the answer books of other candidates.

The conclusion arrived at by the Hon'ble Supreme Court in para 38 of the judgment, reads as under:-

“In view of the foregoing, the order of the High Court directing the examining bodies to permit examinees to have inspection of their answer books is affirmed, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which ‘information’ should be furnished. The appeals are disposed of accordingly.”

So far as the petitioner is concerned, he cannot be held as an examinee qua the answer sheets of other candidates. In such a situation, provisions of law contained in Section 11 of the RTI Act clearly debar the petitioner from seeking the information regarding the answer sheets of other candidates. It is so said, because such an information would certainly amount to a third party information. Provisions of Section 11 of the RTI Act read as under:-

“11. Third party information.—(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request

and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

Since the competitive examination was conducted by the respondent, the answer book of third party would certainly be a confidential information belonging to that third party. During the course of hearing,

when a pointed question was put to the learned counsel for the petitioner, as to under which provisions of the RTI Act, he was entitled for information regarding the answer books of other candidates, he had no answer and rightly so, because it was not provided under any of the relevant provisions of RTI Act. Further, as per the ratio of the judgment of the Hon'ble Supreme Court in **Aditya Bandopadhyay's** case (supra), petitioner is not entitled for information sought by him qua the answer sheets of other candidates. As noticed earlier, petitioner cannot be treated as an examinee regarding the answer books of other candidates. So far as the answer-sheet of the petitioner is concerned, the copy thereof has already been supplied to him. Having said that, this Court feels no hesitation to conclude that the State Information Commissioner committed no error of law, while passing the impugned order and the same deserves to be upheld.

Once the petitioner was challenging the order passed by the State Information Commissioner, Punjab, the Commission ought to have been impleaded as party-respondent. However, petitioner did not do so for the reasons best known to him. In the present case, the State Information Commissioner, Punjab, was a necessary party. Further, the State Information Commissioner, Punjab, still granted opportunity to the petitioner to approach the first appellate authority but petitioner did not approach the appellate authority at any point of time, again for undisclosed reasons. Under these circumstances, it can be safely concluded that instant writ petition is wholly misconceived and is liable to be dismissed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant writ petition stands dismissed, however with no order as to costs.

16.02.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE