

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

Reserved on: 27th February, 2015
Date of Decision: 17th March, 2015

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+ W.P.(C) 7431/2011

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr. Naresh Kaushik with Ms.
Aditi Gupta, Advocates.

versus

DR. MAHESH MANGALAT Respondent

Through: Ms. Shomona Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. The present Writ Petition has been filed assailing the order dated 20.07.2011 passed in Appeal No. CIC/SM/A/2011/000270/SG by the Central Information Commission, New Delhi (hereinafter referred to as 'CIC'). Through the said order CIC directed the petitioner's Public Information Officer (hereinafter referred to as 'PIO') to provide complete information sought by the appellant/respondent (Dr. Mahesh Mangalat) as per available records, which included the Names, designation and address of the members of the Selection Committee.

2. The facts as borne out from the present petition are that respondent vide letter dated 24.04.2010 sought certain information under the Right to information Act, 2005 (hereinafter referred to as

‘RTI Act’) from the Petitioner. The queries raised by the respondent included the following request specifically:

“ 5. Name, designation and address of the members of the Selection Committee.”

The Central Public Information Officer (hereinafter referred to as ‘CPIO’, vide letter dated 26.05.2010 declined to provide the aforementioned information sought for the reason:

“The members of Selection Committee furnish their personal details to the *UPSC* in a fiduciary relationship with the expectation that this information would not be disclosed to others. Hence, disclosure of information held by *UPSC* in a fiduciary capacity is exempted from disclosure under Section 8(1) (e) of the RTI Act, 2005.”

3. Aggrieved by the denial of this information, the respondent filed an appeal under Section 19 of the RTI Act dated 21.06.2010 before the Appellate Authority, Joint Secretary (R-II), Union Public Service Commission, Shahjahan Road, New Delhi. Vide Order dated 16.07.2010 the Appellate Authority disposed of the appeal of the appellant for the reasons, *inter alia* that the individual identity of the members of the Interview Board are strictly confidential and cannot be revealed.

4. Against the aforementioned order, the respondent filed a second appeal on 08.09.2010 under Section 19(3) of the RTI Act before the CIC. Vide impugned order dated 20.07.2011, CIC allowed the appeal of the respondent. In compliance with the Order dated 20.07.2011 of CIC the petitioner herein provided the requisite information as sought

by the respondent in his RTI Application dated 24.04.2010 excluding item No.5 (the specific issue mentioned above) from the RTI application of the respondent again.

5. Aggrieved by the said order dated 20.07.2011 passed by CIC the petitioner has preferred the present petition.

6. Learned counsel for the petitioner contended that the impugned order is unsustainable in law and has been passed without appreciation of the contentions and arguments of the petitioner. While passing the impugned order dated 20.07.2011, the learned CIC has failed to appreciate the various exceptions under Section 8 of the RTI Act. As per Section 8 of the RTI Act, the information sought by the respondent is exempted from disclosure. The information available with the Union Public Service Commission (hereinafter referred to as 'UPSC') establishes a relationship of mutual trust between UPSC and the person invited for interviewing and is fiduciary in nature.

7. It was further contended by the learned counsel for the petitioner that the disclosure of personal details of the members of the Selection Committee like Name, designation and address is barred from disclosure under Section 8 (1) (j) of the RTI Act also. Disclosure of such information would have caused unwarranted invasion of privacy of the Members of the Selection Committee and might also put the life and physical safety of the concerned members in danger. The petitioner is a trustee of the personal details/data provided by the members for evaluating their mettle alone and not for disseminating

these personal details to the members of the public without their expressed consent.

8. It was lastly contended by the learned counsel for the petitioner that as per the procedure followed under Section 11 of the RTI Act CPIO cannot disclose any third party information without following the procedure provided thereunder.

9. *Per Contra*, learned counsel for the respondent contended that Section 8 of the RTI Act, places an obligation on the CPIO and the appellate authority to weigh the competing interest protected under this section with the “larger public interest”. The competent authority has to carefully consider whether such public interest outweighs the interest sought to be protected under these provisions when deciding whether or not to disseminate the information sought under the RTI Act. The CIC, while arriving at its decision dated 20.07.2011 has correctly weighed the institutional interests of the petitioner with the larger public interest and determined that the larger public interest is served in release of the information sought by the respondent.

10. Learned counsel for the respondent submitted that the petitioner is a constitutional body established under Article 315 of the Constitution of India for the purpose of recruiting persons for government posts and is not a commercial organization, and is therefore not entitled to claim exemption under Section 8 (1) (d) of the RTI Act. Nothing has been placed on record by the petitioner to the effect that there was any agreement or understanding with the members

of the Selection Committee that their names, designations and addresses would be kept confidential. Since the Selection Committee is performing a public function, its members must necessarily be subjected to public scrutiny that they have performed their public duty in due compliance with principles of probity and integrity.

11. It was lastly contended by the learned counsel for the respondent that in the present case, there are serious issues of larger public interest involved, and therefore the petitioner is not entitled to the protection of Section 8 (1) (e) of the RTI Act. It is impossible to comprehend what danger could befall the members of the Selection Committee, if the fact of their participation in a selection process under the aegis of the petitioner is revealed to the public.

12. I have heard the learned counsel for the parties and have also perused the material on record.

13. The point for consideration before this Court is whether disclosure of personal information of the interviewers of the UPSC selection committee falls within the purview of exceptions provided under Section 8 of the RTI Act?

14. During the course of arguments, learned counsel for the petitioner contended that he is confining his prayer qua the information sought by the respondent as per Item No. 5 of his letter dated 24.04.2010. He had also submitted that the other information sought by the respondent in his aforesaid letter has already been supplied to him.

15. UPSC was established under Article 315 of the Constitution of India and is required to be consulted in all matters relating to

recruitment in Civil Services under Article 320 of the Constitution. Therefore, UPSC is a public authority covered within the meaning of Section 2(h) of the RTI Act. Section 4 of the RTI Act places an obligation upon the public authorities to maintain records and provide prescribed information. Once an application seeking information is made as per the requirements of Section 6 of the RTI Act, the same has to be disposed of in terms of Section 7 of the RTI Act within prescribed time.

16. However, Section 8 enumerates the cases under which the public authorities are exempted from disclosure of confidential information. It provides a much-needed limitation to the uncontrolled power vested within the ambit of the 'Fundamental Right of Information'. Furthermore, the only information that can be sought by an applicant and that can be provided to him should fall within the ambit of Section 2 (f) and Section 2 (j) of the RTI Act respectively.

17. Relevant provision of Section 8 of the RTI Act are reproduced herein under:

“Section 8 - 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 not 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.

(2) Notwithstanding anything in the Official Secrets Act, 1923(19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.....”

18. Prior to the enactment of the RTI Act, access to any information pertaining to public authorities was correlated to the *locus standi* of the requestor. In other words, it was necessary for the information-seeker to show why he/she wanted the information before a decision could be made to give or not to give the information sought by him. With the enactment of the RTI Act this requirement has been changed drastically. The present Act abolishes the concept of *locus standi* as

under section 6(2) of the RTI Act no reasons need to be given for seeking information. However, this restriction on disclosure of reasons cannot be misconstrued to mean that any information pertaining to a public authority or its employees is public information.

19. It is a settled law that for seeking personal information regarding any employee of the public authority the applicant must disclose a 'sustainable public interest'. Even Section 8(1) (j) of the RTI Act was enacted to ensure that all information furnished to public authorities including personal information is not given free access to. As per this Section unless the CPIO or the State PIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies, the disclosure of any such information that invades the privacy of an individual is not permissible.

20. Further an individual or citizen's fundamental rights, which include the right to privacy are not subsumed or extinguished if he accepts or holds public office. The Hon'ble Supreme Court in '**Kameshwar Prasad v. State of Bihar**' *AIR 1962 SC 1166*, speaking in this context observed:

“(11) We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

(12) In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art.

33. That Article selects two of the Services under the State-members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them - from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, **we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g).**”

(emphasis supplied)

21. Similar view was taken by the Apex Court in ‘**O.K. Ghosh v. E.X. Joseph**’ *AIR 1963 SC 812*. Section 8 (1) (j) of the RTI Act is an affirmation of this. It ensures that all information furnished to public authorities, including personal information (such as asset disclosures) are not given blanket access to the public at large. Before any such information is sought the information seeker has to disclose a reason for ‘sustainable public interest’ that would permit its disclosure.

22. In the instant case, no specific reason has been provided by the petitioner which could establish before this court that disclosure of the personal details of the members of the Selection Committee is important for larger public interest. Learned counsel for the respondent has merely reiterated the fact that such disclosure is important for 'larger public interest' to prevail however, no grounds for the same have been stated by the respondent. In the absence of any cogent reason brought on record to establish the necessity of disclosure of the information sought by the respondent in the interest of public especially so for 'sustainable public interest' this court is not inclined to violate the right to privacy of a public officer which is a fundamental right embedded in our Constitution.

23. I now draw my attention to the observation made by CIC vide its order dated 20.07.2011 that:

"In the present matter, names, designation and address of the members of the Selection Committee is not held by UPSC in a fiduciary capacity."

24. The meaning of fiduciary relationship has been expounded by this court in **'CPIO, Supreme Court Of India v. Subhash Chandra Agarwal & Anr.'**, 162 (2009) DLT 135. While enumerating the legal meaning of fiduciary capacity, this court was of the view that:

"57. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the

other on the matters within the scope of the relationship....Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer

58. From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally" or "legally" ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles.....”

25. I am of the view that just like a fiduciary relationship is established between candidates appearing for exams who give their personal details to the examinee authority, a fiduciary relationship is also established between the examinee authority and an examiner/interviewer who expects his name and other particulars would not be disclosed to candidates and general public. Therefore, disclosure of personal details of an interviewer given in fiduciary capacity to UPSC would be violative of the provisions of Section 8(1) (e) of the RTI Act, especially so, as I have already observed that the respondent has failed to prove any larger public interest which would warrant such a disclosure. The object of transparency would be met if

the request is for the disclosure of results. However, I am unable to establish what purpose disclosure of personal details of the members of the Selection Committee would serve in order to facilitate such transparency.

26. Without prejudicing the aforementioned observations, this court is further of the view that disclosure of such information is mainly violative of Section 8(1) (g) of the RTI Act. The Apex Court in '**Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi & Anr.**' 2012 (12) SCALE 525 while giving due consideration to the confidentiality of the names of the interviewers was of the view that:

“30.The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be correlated with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence....”

27. In view of the dictum of the Apex Court in '**Bihar Public Service Commission**' (*supra*) this court is conscious of the fact that the disclosure of such information may endanger the physical safety of

an examiner/interviewer who under an apprehension of danger to his life may not be able to effectively discharge his duties. Further, such a disclosure could seriously affect the secrecy and confidentiality of the selection process.

28. In the result, the petition is partly allowed. The impugned order dated 20.07.2011 passed by the CIC qua Item No. 5 directing the disclosure of the names of the Selection Committee Members along with their designation and addresses is set aside.

(VED PRAKASH VAISH)
JUDGE

MARCH 17th, 2015
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