

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

%

Date of decision: 21st December, 2015

W.P.(C) No.8845/2014 & CM No.20281/2014 (for stay)

UNION PUBLIC SERVICE COMMISSIONPetitioner

Through: Mr. Naresh Kaushik, Adv.

Versus

CHANDAN KUMAR

.....Respondent

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order dated 1st August, 2014 of the Chief Information Commission (CIC) constituted under Right to Information (RTI) Act, 2005 in Appeal No.CIC/SM/C/2013/000253/RM.
2. Notice of this petition was issued and vide *ex parte ad interim* order dated 15th December, 2014 proceedings before the CIC were stayed. The respondent failed to appear despite being served with the notice on 28th October, 2015. Finding that the respondent is a resident of Bihar and was the information seeker before the CIC and was heard electronically before the CIC also, it was not deemed expedient to await the respondent any further and the counsel for the petitioner was heard on 18th December, 2015. However after some arguments the hearing was adjourned on the request of the counsel for

the petitioner Union Public Service Commissioner (UPSC). The counsel for the petitioner UPSC has been heard further today.

3. The respondent sought following information from the Central Public Information Officer (CPIO) of the petitioner UPSC:-

- “(1) In August 2010, UPSC released second merit list of 96 candidates to fill up the remaining posts based on Civil, Services Examination 2007. It was stated there in that UPSC is maintaining below that a Consolidated reserve List in accordance with the Rule 16(4) & 16 (5) of Civil Services Examination Rules in order of merit below the last recommended candidate under the respective category i.e. General, OBC, SC, ST etc. I want a certified copy of that very Consolidated Reserve List of all Candidates with their category wise rank along with their respective aggregate marks maintained for Civil Services Examination – 2007.*
- (2) Furthermore, please also give information about how many candidates from each category have been requisitioned by Deptt. Of Personnel & Training (DOPT) from this Consolidated Reserve List for appointment till now?”*

4. The CPIO of the petitioner UPSC in response to the aforesaid forwarded to the respondent “A list containing total marks of the candidates recommended from the consolidated Reserve List” and with respect to the remaining information sought stated “Category of candidates is information

personal to those candidates and exemption under Section 8(1)(j) of the RTI Act, 2005 is invoked. It may be mentioned that the copy of Consolidated Reserve List cannot be provided as the said list contains names of some of the non-recommended candidates also.”

5. The respondent being dissatisfied, appealed to the First Appellate Authority of the petitioner UPSC which dismissed the appeal merely stating that the reply given by the CPIO was self explanatory and no direction was warranted.

6. The respondent being still dissatisfied appealed to the CIC which vide order dated 11th January, 2013 held as under:-

“4. After carefully considering the facts of the case and the submissions made, we are of the view that the Consolidated Reserve List of candidate should be disclosed along with the marks of only those candidates who had eventually recommended. The CIC has been taking consistently the view that while disclosing any information concerning any examination process, the marks and other details of those candidates should not be disclosed who are not recommended for employment or carrier promotion as it could cause unwarranted invasion of their privacy while the same can be disclosed for the recommended candidates without any such fear. In the present case, the respondent submitted that the List prepared by the UPSC, in any case, did not contain the rank of the candidate. Therefore, out of the total information sought, the only information

which can be disclosed is the copy of the Reserve List severing from that the marks awarded to those candidates who had not been recommended by the UPSC eventually to the Appellant within 15 working day of receiving this order after duly attesting the information with his seal and signature.”

7. The CPIO of the petitioner UPSC in purported compliance of the aforesaid order of the CIC informed the respondent “that once reserve list had been operated, it extinguished and ceased to exist. In other words, no names were maintained/carried forward in the Reserve List once it had been operated. Hence no list of non recommended candidates of Civil Services Examination, 2007 can be provided being non-est”.

8. The respondent complained to the CIC of non-compliance of the order dated 11th January, 2013 by the CPIO of the petitioner UPSC and the CIC vide impugned order dated 1st August, 2014 reiterated the earlier order dated 11th January, 2013 and also ordered issuance of show cause notice to the CPIO of the petitioner UPSC as to why action under Section 20(1) of the Act be not initiated against him for unwarranted delay in providing the information.

9. During the hearing of this petition on 18th December, 2015 supra it was observed, that the petition so far as impugning the order dated 1st August, 2014 directing issuance of notice to show cause to the CPIO of the petitioner UPSC

is concerned, the remedy of the petitioner UPSC/its CPIO is to respond to the said show cause notice and only if remain aggrieved from the outcome thereof to avail of proper remedies.

10. The counsel for the petitioner UPSC, on 18th December, 2015, then argued that the petitioner UPSC is aggrieved from the order dated 1st August, 2014 to the extent it directs the petitioner UPSC to disclose information.

11. It was however observed in the order dated 18th December, 2015 that the direction for disclosure of information was in the order dated 11th January, 2013 of the CIC and which had not been challenged; a mere reiteration of the said direction in the order dated 1st August, 2014 is thus not challengeable.

12. However notwithstanding the aforesaid it was enquired from the counsel for the petitioner UPSC as to what is the grievance of the petitioner UPSC against the order dated 11th January, 2013.

13. The counsel for the petitioner UPSC had contended that there is a judgment to the effect that particulars of non recommended candidates cannot be disclosed and sought adjournment to cite the said judgment. The matter on that date was adjourned to today. Today the counsel for the petitioner UPSC states that the petitioner UPSC be either permitted to amend this petition to incorporate a challenge therein to the order dated 11th January, 2013 of CIC or

to withdraw this petition with liberty to file afresh so as to incorporate a challenge to the order dated 11th January, 2013 of the CIC.

14. I am however of the view that such technical error on the part of the petitioner UPSC should not be permitted to prolong or to multiply litigation. The counsel for the petitioner UPSC was thus asked to address on merits of the challenge to the order dated 11th January, 2013.

15. The counsel for the petitioner UPSC has drawn attention to the judgment dated 12th December, 2011 of the Division Bench (DB) of this Court in LPA No. 797/2011 titled ***Union Public Service Commission Vs. N. Sugathan*** and other connected petitions and the judgment of the Supreme Court in appeal thereagainst reported as ***Union Public Service Commission Vs. Gourhari Kamila*** MANU/SC/0945/2013 and to another judgment of the DB of this Court in ***Union Public Service Commission Vs. R.K. Jain*** 196(2013)DLT 170.

16. I have considered the controversy.

17. The DB of this Court (speaking through the undersigned) in ***Union Public Service Commission Vs., N. Sugathan*** and other connected petitions (including ***Union Public Service Commission Vs. Gourhari Kamila***) held that when an applicant for a public post participates in a competitive process where his eligibility/suitability for the public post is weighed/compared vis-a-vis

other applicants and where the examining authority is required and expected to act objectively and to select the best and when such selection process remains subject to judicial review, there has to be an element of transparency therein and an applicant who has been overlooked or has remained unsuccessful is entitled to know the reasons which prevailed for preferring another over him. It was held that without such information the overlooked/unsuccessful applicant would not even be able to seek judicial review of the appointment/selection process and would not be able to point out any irregularity therein. It was thus held that an overlooked/unsuccessful applicant is entitled to details/particulars of the successful applicants. An exception was however carved out with respect to the information sought with respect to other overlooked/unsuccessful candidates. It was held that an applicant who has been eliminated and is satisfied with his elimination is entitled to object to the disclosure of the information submitted by him to the appointing/recruiting agency. It was clarified that the information submitted by an applicant for a public post, who is eliminated from the selection process, is in the hands of appointing/recruiting agency, a third party information and does not enter the public domain as long as he is so eliminated from the selection process.

18. Supreme Court in appeal against the aforesaid judgment reported in *Gourhari Kamila* supra, relying on *Central Board of Secondary Education Vs. Aditya Bandopadhyay* (2011) 8 SCC 497 laying down that though an examining body is not expected to give the information submitted by the examinee to anyone else but is bound to give the same to the examinee, held that the information submitted by others of their eligibility to UPSC could not be disclosed by UPSC to another without the necessity therefor in larger public interest being made out.

19. *Union Public Service Commission Vs. R.K. Jain* supra pertains to disciplinary orders and documents in the course of disciplinary proceedings, which were held to be personal information not disclosable to others.

20. I am however unable to see as to how the judgments aforesaid apply to the present controversy. The CIC vide order dated 11th January, 2013 has not directed the CPIO of the petitioner UPSC to disclose the information submitted by any of the applicants to the examination to the UPSC. What the CIC by the said order has directed is disclosure of the consolidated Reserve List of candidates by severing therefrom the marks awarded to those candidates who had not been recommended. The said list is not information submitted by any of the candidates to the petitioner UPSC but a list prepared by the petitioner

UPSC itself on the basis of the result of the examination/selection process held by it. The said information in my view would not fall in any of the exceptions under Section 8 of the RTI Act.

21. I am also of the view that the disclosure of such list is in larger public interest since the petitioner UPSC has been recommending candidates therefrom.

22. No merit is thus found in the challenge to the direction issued in the order dated 11th January, 2013 of the CIC and which was merely reiterated in the impugned order dated 1st August, 2014. The petition to this extent is dismissed. However as far as the petition impugns the order dated 1st August, 2014 directing issuance of show cause notice to the CPIO of the petitioner UPSC is concerned, reply to the show cause notice is stated to have been already submitted and the merits thereof are yet to be considered by the CIC. The petition to the said extent is disposed of by directing that if the petitioner UPSC is aggrieved from the order passed by the CIC in pursuance to the aforesaid show cause notice, would have remedies thereagainst.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 21, 2015

‘pp’ ..