

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10010 OF 2015

Vidya Devarajan

... Petitioner in
W.P.No.10010 of 2015

vs

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003

... Respondent in
WP.No.10010 of 2015

Prayer:-

W.P.No.10010 of 2015 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to issue the evaluated answer sheets and marks of the petitioner.

For petitioner in : Petitioner-in-person
W.P.No.10010/2015 (No appearance)

For respondent : Ms.CNG.Niraimathi
Standing Counsel

COMMON ORDER

(Order of the Court was made by T.S. SIVAGNANAM,J.,)

Doubting the correctness of the decision of the Division Bench in W.A.No.1656 of 2014, dated 06.02.2015 (The Director (JIPMER) Jawaharlal Institute of Postgraduate Medical Examination and Research and another vs Dr.A. Aiamperumal and another) and W.P.No.7997 of 2015 dated 26.03.2015 (S. Sujatha vs Tamil Nadu Public Service Commission, rep by its Under

Secretary, Chennai), the Division Bench in W.P.No.10010 of 2015, by order dated 15.04.2015, directed the matter to be placed before the Hon'ble Chief Justice to be referred to a Larger Bench of this Court to answer the following issue:-

"Whether the candidates, who had participated in the written examinations, as part of the recruitment process and who have not been called for viva voce, are entitled to receive the answer sheets and the marks before completion of the entire selection process for such recruitment".

2. Another Writ Petition in W.P.No.3166 of 2020 is tagged along with this reference wherein the prayer is more or less identical.

3. The petitioner in W.P.No.10010 of 2015 is Ms.Vidya Devarajan, who had appeared as petitioner in person before the Division Bench. However, she is not present today before this Court.

4. Ms.C.N.G.Niraimathi, learned Standing Counsel appearing for the Tamil Nadu Public Service Commission (TNPSC) circulated a letter dated 17.02.2020, expressing her difficulty in appearing before this Bench owing to ill health. Nevertheless, the learned Standing Counsel is before us to make submissions. In the letter dated 17.02.2020, the learned Standing Counsel has stated that she has received information that the petitioner Ms.Vidya Devarajan has left for United States and is not interested in pursuing the matter. However, since the question has been referred to the Larger Bench for an answer, we propose to consider the same.

5. The petitioner upon completion of her L.L.B Degree in the year 2011, enrolled as an Advocate before the Bar Council of Tamil Nadu and Pondicherry on 02.05.2012. Thereafter, she was practicing as an Advocate before various courts including this Court. TNPSC published Notification No.15/2014 dated 26.08.2014, for recruitment of 162 Civil Judges in Tamil Nadu State Judicial Service. The petitioner applied under the fresher's category, as she was yet to complete three years of practice.

6. The petitioner appeared for the examination held on 01.11.2014 and 02.11.2014 consisting of four (4) papers. However, when the results were published on 21.02.2015, the petitioner's registration number did not find place in the list of candidates, who are declared eligible to participate in the main examination. The petitioner submitted an application under Right to Information Act (RTI Act) on 23.02.2015 requesting the marks secured by her to be disclosed and copies of evaluated answer sheets for all the four papers be supplied. According to

the petitioner, this would provide transparency in the selection process and if there are any flaws in the listed marks, it can be easily rectified and justice would be rendered. With these facts, the petitioner has filed W.P.No.10010 of 2015 for issuance of a writ of mandamus directing the respondent to issue the evaluated answer sheets and furnish the marks secured.

7. When the matter was heard by the Division Bench, the petitioner pressed into service the decision of the Division Bench in W.P.No.7997 of 2015 (S. Sujatha vs Tamil Nadu Public Service Commissioner, rep by its Under Secretary, Chennai). In the said case, the prayer sought for was to direct the TNPSC to provide four evaluated answer papers of the petitioner therein and the key answer sheet.

8. The Division Bench followed its earlier order in W.P.No.5791 of 2015 and W.P.(MD)No.17268 of 2014, dated 20.03.2015 and disposed of the writ petition directing the TNPSC to furnish copies of answer books and the key answers to the petitioner within a time frame. In W.P.No.5791 of 2015 and W.P.(MD)No.17268 of 2014, the prayer was more or less identical except seeking for a consequential relief to quash the order of rejection and direct the TNPSC to declare the petitioner therein as fully eligible to apply for the post of Civil Judge.

9. TNPSC resisted the prayer sought for, primarily by placing reliance on the decision of the Hon'ble Supreme Court in the case of Central Board of Secondary Education and another vs Aditya Bandopadhyay and others, (2011) 8 SCC 497 and submitted that till the viva voce is conducted and the process of selection is over, no candidate is entitled to get copies of the answer books, as it would affect the purity of the process of selection and the entire selection process would be hampered.

10. The Division Bench allowed the writ petition by its order dated 20.03.2015. The reason assigned is that, merely because the qualifying examination does not comprise of a two tier process, first in the form of a written examination and the next in the form of a viva voce, it cannot be contended that the fundamental premise, on which, the Hon'ble Supreme Court decided the case of Aditya Bandopadhyay (supra) would stand on a different footing. The Division Bench further observed that to hold that the petitioner should wait till the outcome of the viva voce, would be to allow things to go uncontrolled; merely because the copies of the answer books are given to the petitioner, he is not going to gain any knowledge of the marks secured by the other candidates. Therefore, the contention of TNPSC that the purity of the process would stand jeopardized was rejected.

11. TNPSC also referred to Instruction No.24 of the instructions to candidates appearing for the examination and submitted that in terms of the said instruction, request from candidate for furnishing the causes of their failure will not be complied with.

12. This contention of the TNPSC was rejected by observing that Instruction No.24 has nothing to do with the request of the petitioner to furnish copies of her answer books. Accordingly, direction was issued to issue copies of answer books and key answer notwithstanding the fact that the interview has not commenced.

13. TNPSC filed Special Leave Petition before the Apex Court in SLP (C) No.11420 of 2015, challenging the order of the Division Bench dated 20.03.2015 in W.P.No.5791 of 2015. The Hon'ble Supreme Court by order dated 20.04.2015, granted stay of the order of the Division Bench. Before the Hon'ble Supreme Court, the TNPSC contended that the order impugned was contrary to the law laid down in Aditya Bandopadhyay (supra) wherein, it has been held that indiscriminate and impractical claim for disclosure of all and sundry information will be counter-productive to the conduct of examination.

14. Further, it was contended that the respondent therein was not a successful candidate in the written examination to be short listed to the next stage of the selection process and therefore, not entitled for perusal of his answer papers even before the completion of the selection process. Further, the final stage of the selection process was yet to commence and any order, which will enable the candidate to know his marks which is kept secret to ensure purity and confidentiality in the conduct of the oral test, would hamper the selection process in toto. It was submitted that the papers will be made available after the selection list is drawn and that TNPSC is not willing to divulge the mark of any candidate, who took his/her written examination till the completion of the oral test only in order to conduct a free and unbiased oral test. During the pendency of the Special Leave Petition, the selection process was completed and the TNPSC thought fit to withdraw the Special Leave Petition.

15. The question to be considered is as to whether the reasons assigned by the Division Bench for rejecting the objections raised by the TNPSC was proper.

16. W.P.No.3611 of 2020 has also been tagged with W.P.No.10010 of 2015. In W.P.No.3611 of 2020, the petitioner seeks for issuance of a writ of certiorarified mandamus to call for the records in respect of publication of list of candidates

provisionally selected for the written examinations for the post of civil judge, published on 31.01.2020 in respect of Notification No.25/2019 (Civil Judge in the State of Tamil Nadu) dated 09.09.2019 and set aside the same and further direct the respondent to issue results of preliminary examination for Notification No.25/2019. The petitioner in W.P.No.3611 of 2020 is one Mr. K. Visu, who had applied for the post of Civil Judge pursuant to the Notification dated 11.07.2018 and cleared the preliminary exam, however, did not pass the main examination. Subsequently, the petitioner had applied for the said post pursuant to Notification No.25/2019 dated 09.09.2019 and he participated in the preliminary examination and was unsuccessful.

17. As noted above, the petitioner in W.P.No.10010 of 2015 has left to United States and she is not interested in pursuing the matter. Therefore, we would be well justified in closing the said writ petition and by answering the reference as follows.

18. In our considered view, the issue which has been referred for being answered by the Full Bench is no longer res integra and has been answered by the Hon'ble Supreme Court in the case of Union Public Service Commission and Others vs Angesh Kumar and Others reported in (2018) 4 SCC 530. In the said appeal, the respondents were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. They approached High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks awarded to them in the Civil Services (Preliminary) Examination, 2010. The learned Single Judge directed that the information sought be provided within fifteen days. This view was affirmed by the Division Bench of the High Court.

19. The appeal by UPSC was on the ground that the High Court has not correctly appreciated the scheme of the Right to Information Act, 2005 (the Act) and the binding decisions of the Apex Court. It was submitted that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein; the exclusion by Sections 8, 9 and 11 is not exhaustive and parameters under third recital of the Preamble of the Act can also be taken into account; where information is likely to conflict with other public interest, including efficient operation of the Government, optimum use of fiscal resources and preservation of confidentiality of some sensitive information, exclusion of right to information can be applied in a given fact situation.

20. UPSC placed reliance on Aditya Bandopadhyay (supra) wherein, it was pointed out that in interpreting the scheme of

the Act, the Court, has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the third recital in the Preamble to the Act. Further the Court noted the decision of the Hon'ble Supreme Court in the case of Prashant Ramesh Chakkarwar vs UPSC, (2013) 12 SCC 489, wherein, the problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded and in paragraph 9, it is observed as follows:

"9. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters."

21. As per the above decision of the Hon'ble Supreme Court, furnishing of marks will cause problems as pleaded by the UPSC and further more, considering the confidentiality of sensitive information on the other, the marks in Civil Services Exam cannot be directed to be furnished mechanically.

22. Before us as well as before the Division Bench and the Hon'ble Supreme Court, TNPSC had taken a specific stand that till viva voce is conducted and the process of selection is over, no candidate is entitled to get copies of answer books. If a direction is issued for production of copy of answer book, it will hamper the purity of the selection process and if every candidate seeks copies of the answer books even before the commencement of viva voce, the entire selection process may be derailed.

23. Though the Division Bench in its judgement dated 20.03.2015 noted this argument, it has not given a specific finding as to how the stand taken by TNPSC is not justified. The Division Bench observed that merely because the copies of the answer books are given to the petitioner, he is not going to

gain any knowledge of the marks secured by the other candidates. In our considered view, that would not be a proper answer especially when, selection is to the post of Civil Judge.

24. The instructions to candidates form part of the application for selection to the post of Civil Judge. The instructions are in the nature of rules of selection akin to conditions in a prospectus. The candidates have accepted the conditions and participated in the selection process. The instructions to candidates clearly bar information being divulged as regards causes of their failure in their test, that too, before the completion of the selection process. Therefore, the petitioner is estopped from arguing contrary to the instructions. To ensure purity in the oral test and unbiased the evaluation, marks secured by the candidate in the written examination should not be disclosed till the completion of the selection process.

25. Instruction No.24 is a clear bar for the candidates to seek for disclosure of marks and evaluated answer sheet before selection process is completed.

26. In the light of the above, the question referred to us is answered by following the decision in Angesh Kumar (supra) and it is held that the candidates who had participated in the written examination as a part of the recruitment process and who have not been called for viva voce are not entitled to receive the answer sheets and the marks before completion of the entire selection process for such recruitment. Accordingly, W.P.No.10010 of 2015 is closed and W.P.No.3611 of 2020 is directed to be listed before the appropriate Bench. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sr/abr

To

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003

Copy To

The Section Officer,
Writ Section,
High Court, Madras-104.

W.P.No.10010 of 2015

PM(CO)
CS/13/03/2020