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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.3024 of 2018
and W.M.P.No.3696 of 2018

B.Suresh

...Petitioner

Vs

1.The State Chief Information Commissioner,
No.2, Thyagraya Road, Eldams Road Junction,
Chennai - 600 013.

2.The Appellate Authority Cum
Joint Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

3.The Public Information Officer Cum Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

... Respondents

Prayer Writ Petition filed under Section 226 of the Constitution of India, prayed for the issuance of Writ of Certiorarified Mandamus, calling for the records leading to the passing of the impugned order passed by the first respondent by order dated 31.05.2017 in S.A.-127/Maa.Tha.Aaa/2017 confirming the order passed by the second respondent vide No.5778/RID-3/2016 dated 27.12.2016, confirming the order passed by the third respondent in No.5778/RID3/ED-A1/2016, dated 02.11.2016 and quash the same and consequently direct the respondents to issue the answer sheets.

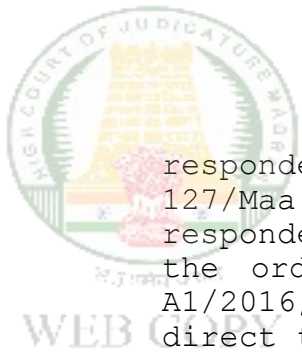
For Petitioner : Mrs.G.Djearany

For R1 : Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

For R2 & R3 : Mr.Karthik Rajan,
Standing Counsel

ORDER

This Writ Petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, calling for the records leading to the passing of the impugned order passed by the first



respondent by order dated 31.05.2017 in S.A.-127/Maa.Tha.Aaa/2017 confirming the order passed by the second respondent vide No.5778/RID-3/2016 dated 27.12.2016, confirming the order passed by the third respondent in No.5778/RID3/ED-A1/2016, dated 02.11.2016 and quash the same and consequently direct the respondents to issue the answer sheets.

2.The case of the Writ Petitioner is that he appeared for the examination conducted by the Tamilnadu Public Service Commission (in short TNPSC) on 26.08.2012, as per notification dated 25.06.2012, for filling up 17 vacancies in the post of Motor Vehicle Inspector Grade II. Thereafter, the petitioner was directed to produce attested copies of certificates and the same was also produced by him. Subsequent to that, the recruitment process was stalled for no reason and in the year 2015, a list of 42 selected candidates was published and in the said publication there were several anomalies, as such, the candidates category was not mentioned. Therefore, he made an application under RTI Act, to the third respondent seeking to furnish his answer sheet along with the answer sheets of 19 other selected candidates by the Tamil Nadu Public Service Commission for the examination held on 26.08.2012. However, the third respondent refused to furnish the same. Aggrieved over the same, the petitioner preferred an appeal before the second respondent and the second respondent also refused to furnish the information sought by the petitioner. Against which, the second appeal was preferred before the first respondent and the said appeal also came to be dismissed. Therefore, without any other option the petitioner approached this Court.

3.Per contra, the learned counsel appearing for the first respondent submitted that the petitioner is not entitled for informations sought by him. He is not only asking for his answer sheet but also the answer sheets of other candidates who appeared for the examination held on 26.08.2012, for which, the petitioner is not entitled as per Section 8(1)(j) of the Right to Information Act. The answer sheet of the petitioner was furnished to him on 26.02.2020 and 21.09.2020. Furthermore, the information sought by the petitioner does not come under the definition of "information" as defined in Clause No.2(f) of the Right to Information Act, 2005.

4.The learned Standing Counsel appearing for the respondents 2 and 3 reiterated the submission made by the learned counsel appearing for the first respondent and by referring the judgment of Hon'ble Supreme Court in the case of Union Public Service Commission vs. Gourhari Kamila reported in 2014 13 SCC 653, submitted that the plea of the petitioner cannot be entertained. Therefore, prayed for the dismissal of the writ petition.



5. Heard the learned counsel for the petitioner, the learned counsel appearing for the first respondent, the learned Standing Counsel for the respondents 2 and 3 and perused the materials available on record.

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6. Upon hearing, it appears that the petitioner participated in the examination conducted by the Tamil Nadu Public Service Commission for filling up the post of Motor Vehicle Inspector of Police Grade II on 26.08.2012 and the result was released in the year 2015, wherein, it was declared that 42 candidates were selected for the said post. Since the petitioner had suspicion in result and the selection process, he made an application under RTI, for the purpose of getting the answer sheets of the candidates who participated for the examination held on 26.08.2012. Since the respondents rejected the request of the petitioner, he approached this Court.

7. The interesting question crept herein is, whether the petitioner is entitled to get the answer sheets of the other candidates who appeared for the examination along with him on 26.08.2012? The submissions of the learned counsel appearing for the respondents is that, as per Clause 2(f) of the Right to Information Act, the request of the petitioner does not come under the definition of "information". For better appreciation Clause 2(f) of the Act is extracted hereunder:

"(f) "information" means any material in any form, including records, documents, memos, e-mails, opinion, advices, press release, circulars, orders, logbooks, contracts, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force"

8. On perusal of the above definition, it is clear that the information which can be accessed by the public authority can only be made available to the petitioner. In the present case, the answer sheets are the property of the examinee which shall always be under the safe custody of TNPSC till the prescribed time limit mentioned in the Rules/Regulations/Guidelines of the TNPSC, except to the examiner this cannot be made available for public. It is clearly a private information, at any costs, it cannot be considered as a information made available to the public. As rightly contended by the learned counsel appearing for the first respondent the particular document can be transmitted only between the examiner and the examinee.



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9. The Hon'ble Supreme Court in the case of Union Public Service Commission vs. Gourhari Kamila reported in 2014 13 SCC 653, has held as follows:

"9, In Aditya Bandopadhyay case this Court considered the question whether examining bodies, like CBSE are entitled to seek exemption under Section 8(1)(e) of the Act. After analysing the provisions of the Act, the Court observed: (SCC pp. 525-27, paras 40-41 & 43-45)

"40. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-a-vis another partner and an employer vis-a-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with



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reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

* * *

43. This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to 'service' to a consumer, in *Bihar School Examination Board v. Suresh*



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Prasad Sinha in the following manner: (SCC p. 487, paras 11-13)

'11. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-a-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. ... The fact that in the course of conduct of the examination, or evaluation of



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answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer....'

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

44. We may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship". This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.

45. One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated



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answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

10.By applying the ratio of the aforesaid judgment in Aditya case, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent at Points 4 and 5 and the High Court committed an error by approving his order. We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest. Therefore, the present case is not (sic) covered by the exception carved out in Section 8(1)(e) of the Act."

10.By applying the ratio laid down by the Hon'ble Supreme Court in the above judgment, this Court is of the considered view that the petitioner is not entitled to get a copy of the answer sheet of the other candidates except the copy of the answer sheet of the petitioner. In the present case, the petitioner, apart from his answer sheet, has also sought for answer sheets of 19 other selected candidates. However, as submitted by the learned counsel appearing for the respondents, at the request of the petitioner, the respondents furnished the copy of the answer sheet of the petitioner on two occasions ie., on 26.02.2020 and 21.09.2020. Therefore, in the present case, the petitioner is not entitled for the relief as sought in the



present writ petition. Hence, the present Writ Petition is liable to be dismissed.

11. In the result, this Writ Petition is dismissed. No Costs. Connected miscellaneous petition is closed.

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Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To:

1. The State Chief Information Commissioner,
No.2, Thyagraya Road, Eldams Road Junction,
Chennai - 600 013.

2. The Appellate Authority Cum
Joint Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

3. The Public Information Officer Cum Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

+1 cc to Mrs.G.Djearany, Advocate Sr.NO. 6691
+1 cc to Government Pleader Sr.NO. 6887 & 6894

W.P.No.3024 of 2018

kk(CO)

A.SK(07/03/2022)