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W.P.No.22391 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.22391 of 2014 and
M.P.No.1 of 2014

Tamilnadu Public Service Commission,
Rep. By Secretary,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai – 600 003.

... Petitioner

Vs

1. The Tamilnadu Information Commission,
No.2, Thiyagaraya Road,
Teynampet,
Chennnai – 600 018.

2. Marusi.Paneerselvam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Case NO.2948/Ma.tha.aa/2013, dated 13.11.2013 of the first respondent and quash the same.

For Petitioner : Mr.R.Bharanidaran

For Respondents : Mr.Niranjan Rajagopalan (for R1)
Standing Counsel
No Appearance (for R2)



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ORDER

This Writ Petition is filed by the Tamil Nadu Public Service Commission (TNPSC/petitioner, in short) challenging an order passed by the Tamil Nadu Information Commission (Commission/R2 in short).

2.The TNPSC had conducted Group-I Service Examinations in July 2012 for 131 posts. The selection of candidates was to be on the basis of marks secured in the written examination that comprised of two papers, General Studies-I and General Studies-II. Each of the papers contained inter alia, two sections i.e., Part-A and Part-B.

3.According to the TNPSC, the valuation of the papers was done in a transparent and proper manner. They would aver that the papers were assigned dummy numbers and evaluated twice, by two different examiners.

4.The aggregated marks secured by the candidates in the double valuation by two independent examiners was sent for the selection process. Thus, the TNPSC has no details of the marks secured by the individual candidates and has in its possession only the aggregate marks secured by the candidates, on the basis of which the candidates were selected.



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5.R2, upon whom service is complete, and name printed in the cause list, has chosen not to appear. He was unsuccessful in the selection process and by letter dated 27.03.2013 sought information under the Right to Information Act, 2005 ('Act' in short), about the names and Register numbers of the candidates, who had secured full marks i.e., 75/75, in the examination conducted.

6.The break-up of the 75 marks sought is, 40 marks and 35 marks in General Studies-I and General Studies-II papers, that comprised multiple choice questions for which 1 mark had been awarded per question. The request of R2 for information came to be rejected by the petitioner by its memo dated 08.04.2013 relying upon the provisions of Section 8(1)(j) of Act.

7.An appeal had been preferred before R1/Commission on 29.04.2013. The matter appears to have been heard in detail by R1 before whom, the querist/Information seeker/R2 as well as the original Authority, that is, the Public Information Officer of the TNPSC, were heard.

8.The stand taken by TNPSC before R1 was that the raw data that was sought for by R2 is not immediately available as the basis of selection



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was only the aggregated marks that were furnished to it. Thus, while it would not be impossible to secure the raw data being the break-up of the marks specifically relating to the multiple choice sections of the paper, it would be cumbersome, to say the least.

9.The appeal had also been rejected on 29.05.2013 on the basis that the examination and valuation process was appropriate and as such, the details sought could not be provided. In further appeal by R2 before R1, an elaborate enquiry was conducted. The records of R1 were called for which reveal that R1 had engaged in the collation of data at its own initiative, in arriving at the conclusion that the data sought for by R2 must be supplied in larger public interest.

10.The trigger for seeking of information by R2 does not appear to be on a mere whim but based upon media reports to the effect that the question papers had been leaked prior to the conduct of the examination and this had prejudiced the interests of a large section of the aspirants.

11.The records did reveal that complaints had been filed not only by R2, by other candidates as well, both before the TNPSC as well as before the grievance cell of the Chief Minister's office and that media reports on



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the irregular processes and procedures, had been available from 2012 itself.

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While it would have been appropriate had the Commission referred to the basis on which it renders the findings on the aspect of public interest, the Commission proceeds on the basis that there had been no specific objection raised by TNPSC on the aspect of public interest itself.

12. The specific submissions of the Commission which are reiterated before the Court are that the provisions of the Act do not justify the passing of the impugned order and that the procuring of the raw data itself would be extremely cumbersome. Being a public authority, they would argue that they should not be put through processes that are unnecessary, to say the least and which also do not have any justification whatsoever.

13.R2 is not present before the Court. The defence of R1 is to the effect that the provisions of the Act would support in full, the sum and substance of the impugned order.

14.The objections raised must be tested in the context of the scheme of the Act, specifically the definition of 'record' under Section 2(i), Section 3 defining Right to Information, Section 4 dealing with obligations of public authorities, Section 6, with requests for obtaining information,



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Section 8, with exemptions from the disclosure of information, Section 11, with third party information, Section 18, with the powers and functions of the Commission and Section 24 dealing with certain exceptions to the application of the Act.

15.R1 would argue that the scheme of the Act must be such that the rights and obligations of both the citizen, who is the seeker of information as well as public authorities, who are bound to be transparent in their functions, are balanced. In a case such as the present, where the information sought relates to third parties, the various provisions must be seen in consonance with the scheme of the Act, such that the delicate balance that is sought to be achieved under the Act is not disturbed or mutilated.

16.My attention is drawn to the judgments of the Hon'ble Supreme Court in the case of (i) *Central Board of Secondary Education and another v. Aditya Bandopadhyay and others* ((2011) 8 SCC 497) (ii) *Kerala Public Service Commission and others v. State Information Commission and another* ((2016) 3 SCC 417) (iii) *Union Public Service Commission and others v. Angesh Kumar and others* (2018 4 SCC 530)



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and (iv) *Central Public Information Officer, Supreme Court of India vs.*

Subhash Chandra Agarwal (2020 5 SCC 481), in this regard.

17. Heard learned counsel, perused the brief as well as the judgments cited at the bar. The querist/R2 is certainly an interested party in so far as his success or failure in the selection process is conditional/dependent upon the TNPSC having followed transparent and appropriate processes of selection in the examinations conducted.

18.To this end, I would hold that the action initiated by R2 in this regard cannot be faulted. In any event, it is also a settled position that one need hardly advert to the bonafides or otherwise of the complaint as the Act does not make it incumbent upon the authorities to look into the reasons as to why certain information has been sought, but rather and whether, the furnishing of the information is itself required on the application of the various provisions thereunder.

19. Coming to the nature of the information sought itself, while neither the query dated 27.03.2018 nor the subsequent appeals or orders reveal anything amiss in the process of selection by the Commission, the substratum of the impugned order that directs the Commission to furnish



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the information, is based on over-riding public interest that is present in this case.

20.The dimension of public interest becomes evident by virtue of the documents seen in the records of R1. There have been several complaints filed before the Chief Minister's Special Cell, Tamil Nadu by way of online petitions wherein aspirants to the same post as R2 herein, have referred to reports in newspapers in relation to the question paper leak relating to the examinations in question.

21.As an exception to the normal rule, in a case such as the present, media reports assume importance as they indicate overriding public impression that all is not well in the conduct of public service examinations.

22.It is in this context that I proceed to test the veracity or otherwise of the impugned order. R1 in the impugned order has considered the argument of TNPSC in the light of Section 8 of the Act, specifically Section 8(1)(e) and 8(1)(g).

23.As far as Section 8(1)(e) is concerned, the exemptions provided is in respect of information available to a person in a fiduciary capacity. In this context, three judgments of the Hon'ble Supreme Court that have been



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cited, assume importance. It is relevant to note that pending proceedings before R1, R2 has somewhat diluted his request for information and has restricted the same only to the I.D. numbers of the candidates, who have secured full marks in multiple choice questions, giving up and not pursuing the request for names of the candidates.

24.The judgment in the case of *Aditya Bandopadhyay, Kerala Public Service Commission* and *Angesh Kumar* (supra) deal with request for information in the context of examinations conducted, in the first case by the Central Board of Secondary Education, in the second by the Kerala Public Service Commission and in the third by the Union Public Service Commission.

25.In the first case, the Hon'ble Supreme Court was concerned with the request for the answer paper of the querist himself and in such a situation held that such a query was well founded in the light of the object and the provisions of the RTI Act.

26.In the case of *Kerala Public Service Commission*, the Hon'ble Supreme Court tested the application of the exemption under Section 8(1)(e). The information sought was of two sorts; firstly, as to the identity



of the examiner and secondly as regards the supply of answer sheets and details of interview marks to the information seeker.

27. While the Court viewed that the bar under Section 8(1)(e) would apply qua the identity of the examiner, they held that it was incumbent upon the authority to furnish the answer sheets and details of interview marks to the information seeker as a disclosure of such information will ensure fair play in competitive examination.

28. The discussion at paragraphs 8 and 9 are relevant in this context and extracted below:

'8. In the present case, PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, PSC and examiners stand in a principal-agent relationship. Here PSC in the shoes of a principal has entrusted the task of evaluating the answer papers to the examiners. Consequently, examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by PSC. As a result, a fiduciary relationship is established between PSC and the examiners. Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we do not see any logical reason as to how this will benefit him or the public at large. We would like to point out that the disclosure of the identity of examiners is in the least interest of the general public and also any attempt to reveal the examiner's identity will give rise to dire consequences. Therefore, in our considered opinion revealing



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examiner's identity will only lead to confusion and public unrest. Hence, we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.

9. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same State or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.'

29. The judgment in the case of *Agnesh Kumar* deals specifically with the necessity to balance the rights of the party in furnishing information.



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Appeals were preferred as against an order passed by the Delhi High Court.

The respondents were unsuccessful in the Civil Services Preliminary Examination for 2010 and had approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the raw and scaled marks awarded to them. The High Court had directed that the information sought be provided within 15 days and the view of the single Judge had been affirmed by the Division Bench as well.

30.The UPSC had carried the matter in further appeal before the Hon'ble Supreme Court. Their main contention was that the exclusion provided under Sections 8, 9 and 11 were not exhaustive and the parameters under the third recital to the preamble of the Act, extracted below, must also be taken note of.

Preamble

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed



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citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.'

31.The operation of the various statutory provisions read with Sections 3 and 6 of the Act, may lead on some occasions, to conflict with public interest including the efficient operation of the Government, optimum demands upon the skill and resources and preservation of confidentiality of sensitive information. It is only in certain given fact situations that the exclusive of right to information can be applied.

32.The Court considered the earlier judgment in the case of *Aditya Bandopadhyay* and concluded that while interpreting the scheme of the Act, a purposive interpretation reading in inherent limitations in Sections 3 and 6 is the correct approach. They opined that there must be a balance in



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the inherent right to information. This balance would necessitate public interest to be considered in tandem with private interest. In determining public interest, one must also take note of efficient working of the Government, its physical resources and the aspect of confidentiality.

33.The impugned orders were set aside and the writ petitions filed by the candidates came to be dismissed. However, the Court made it clear that its order would not debar the respondents from making out a case on the above parameters and approaching the appropriate forum, if so advised. In dealing with such matters, the need of the day is to have a balanced approach, taking note of the interests of all stake holders, the information seeker, the State and third parties.

34.It is not in doubt that the information sought forms part of the record of the Commission in so far as all data relating to the marks obtained by the candidates, whether raw or aggregated data, must necessarily be in the possession of the Commission. This is not disputed.

35. No doubt, this also flows from the statutory obligation of the public authority to maintain all its records in a manner which facilitates right to information under the Act. The submission of the Commission to



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the effect that procurement of raw data, being the breakup of the marks obtained in the multiple choice questions, would be cumbersome to be obtained, is thus rejected.

36. Information assumes many forms, some amenable to be being procured directly, others embedded and requiring to be culled out. However, the definition of the term 'information' under the Act is wide and thus there can be no fetters imposed on the procurement of the information to ensure transparency, subject to the discussion in the paragraphs supra.

37. The normal procedure followed in the marking of answer sheets is for the aggregated marks obtained by the candidate in different sections in the paper, to be tabulated in a facing sheet. The break-up of the marks would thus certainly be available as part of the records of the TNPSC.

38. Section 6 sets out the manner in which request may be made for obtaining information and sub-section (2) thereof, states that an applicant making a request for the information shall not be required to set out any reason for request, or any other personal details, except those that may be necessary for the purpose of contacting him.

39. Though this provision would enable just about any person to seek



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information and provides even for a bald request to be made, on balance, the authority must ensure that the query is bonafide and emanates from a genuine concern in regard to that issue.

40. In this matter, R2 having admittedly participated in the examination, albeit unsuccessfully, is certainly entitled to seek information. Section 8 which provides for exemptions from the disclosure of information, contains two limbs/ The first category relates to information that is unconditionally barred, such as the information contained in clauses (a), (b) and (c), that deals with national interest or information that has been expressly forbidden to be shared by a Court of law, the disclosure of which would expose the authority to contempt.

41. The second is qualified information wherein the information made may be provided, subject to certain compliances to be effected by the authority. Both clauses (e) and (j) referred to by R1, would fall under this category. In the present case, there is no question of the bar of fiduciary relationship under Clause (e), since what R2 seeks is only the identity numbers of the candidates, who have secured full marks and in such an event, it is my considered view that no fiduciary relationship has been



created.

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42.As far as Clause (j) is concerned, it relates to personal information, the disclosure of which would have no relationship to public activity and interest or which would cause unwarranted invasion of the privacy of the individuals unless the public information officer or the appellate authority is satisfied that larger public interest justifies such disclosure.

43.It is the attempt of R1 to state that the information sought is not public information and thus would not come under Section 8(1)(j) at all. Thus, according to him, one need hardly advert to the second limb of Clause (j). I would not entirely agree since what has been originally sought are the names as well as identity numbers of the candidates.

44.Though the request has been whittled down later, and R2 has restricted the query to only the identity numbers, such numbers are themselves sought only as a stepping stone for further investigation into possible malpractices in the conduct of the examinations.

45.Thus, in my view, there is a personal element in the information sought and thus the examination of public interest would come into play.



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This aspect of the matter has been taken note of by the authority. The perusal of the files and the admitted circumstances in which the query has been raised, leave me in no doubt that larger public interest would necessitate the furnishing of information to enable investigation into possible malpractices.

46. Section 11 requires that where third party information has been supplied by the information officer, such third party must be issued notice. In the present case, this is yet to transpire as this Court has by order dated 20.08.2014 granted a stay of the impugned order passed by R1.

47. The impugned order also records the submission of the petitioner that due enquiry was on-going at the relevant point in time to the media reports and complaints about the alleged malpractices. A specific query was also put to learned counsel for the TNPSC as to the result of such enquiry but no response is forthcoming. This leaves me to believe that the petitioner has not accorded due and serious attention to the matter and has not proceeded further in this regard. For this reason, as well, I am of the view that larger public interest must be served, and will be served by furnishing of the information as sought for.



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48.The decision of the Full Bench of this Court in the case of *Vidya Devarajan and others v. Secretary, Tamil Nadu Public Service Commission* (2020 (2) CWC 97) has been cited by the parties. In this decision, the Full Bench has taken the view that the provisions of the RTI Act cannot be enforced as against the authorities till such time the entirety of the selection process is completed.

49.In my considered view, this case would have no bearing upon the decision in the present writ petition seeing as undisputedly the entirety of the selection process has been completed in this matter.

50.In light of my decision that the provisions of Section 8(1)(j) are seen to be applicable in this case, the necessity arises to issue notice to the third parties. Thus, while confirming the order of R1 the following directions are issued:

- (i) TNPSC will furnish the information sought for within a period of four (4) weeks from date of receipt of this order to R1.
- (ii) Upon receipt of the information as in point (i) above, R1 will issue notice to the third parties as well as R2 and take things forward in accordance with law.



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(iii) It is made clear that if R2 does not appear before the Commission, matters may be left to lie.

51. In light of the discussion as aforesaid, the impugned order is upheld and this writ petition is dismissed with the directions as above. No costs. Connected miscellaneous petition is closed.

21.12.2022

Index : Yes
Speaking Order
vs

To

1. The Board of Discipline,
Rep by its Presiding Officer,
ICAI Bhawan, Indraprastha Marg,
New Delhi - 110 002.
2. The Institute of Chartered Accountants of India,
Rep. by its Senior Executive Officer,
Disciplinary Directorate,
ICAI Bhawan, Indraprastha Marg,
New Delhi - 110 002.



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DR.ANITA SUMANTH,J.

VS

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