

A BIHAR PUBLIC SERVICE COMMISSION
v.
SAIYED HUSSAIN ABBAS RIZWI & ANR.
(Civil Appeal No. 9052 of 2012)

B DECEMBER 13, 2012
[SWATANTER KUMAR AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

RIGHT TO INFORMATION ACT, 2005

C s. 2(h) – ‘Public authority’ – Held: Public Service Commission shall be a public authority within the scope of s.2(h).

D ss. 8(1)(g), and 11 – Disclosure of names and addresses of members of interview board constituted by State Public Service Commission – Held: If in the opinion of the authority concerned there is danger to life or possibility of danger to physical safety of members, the State Information Commission would be entitled to bring such case within the exemption of s. 8(1)(g) – Direction to furnish the names and addresses of the members of Interview Board would certainly be opposed to the very spirit of s. 8(1)(g) and would ex facie endanger their lives or physical safety – Further, such disclosure would serve no fruitful much less any public purpose – Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act – Therefore the Commission is not bound to disclose such information –
E
F
G Constitution of India, 1950 – Article 21.

ss.2(f) and 2(j)) – Expressions ‘information’, and ‘right to information’ – Explained.

H Respondent No. 1, claiming himself to be a public
1032

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1033
HUSSAIN ABBAS RIZWI**

spirited person, filed an application seeking certain information under the Right to Information Act, 2005 in connection with the selection of 'State Examiner of Questioned Documents' conducted by the State Public Service Commission. The Commission furnished information nearly to all the queries except the names, designations and addresses of the members of the Interview Board. The writ petition filed by respondent No. 1 was dismissed by the Single Judge of the High Court. But the Division Bench directed the Commission to provide the names of the members of the Interview Board while denying the disclosure of their addresses.

Allowing the appeal, the Court

HELD: 1. Public Service Commission is established under Art.315 of the Constitution of India and, as such, there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of s.2(h) of the Right to Information Act, 2005. [Para 14] [1043-B-C]

2.1. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Art.21 of the Constitution. The right to information has to be balanced with the right to privacy within the framework of law. Section 8 of the Right to Information Act gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the Information Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information

A Commission has to apply its mind whether it is a case of exemption within the provisions of the said section. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public
 B interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. [Para 11 – 13 and 23] [1042-A-C-F; 1046-G-H; 1047-A]

C *Namit Sharma v. Union of India* 2012 (8) SCALE 593 – referred to

Black's Law Dictionary (Eighth Edition) – referred to

2.2. The expression 'information' as defined in s. 2(f) is exhaustive in nature. The Legislature has given
 D meaning to the expression 'information' and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information u/s. 2(j) means the 'right to
 E information' accessible under the Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised
 F and information asked for should fall within the scope of 'information' and 'right to information' as defined under the Act. [Para 15] [1043-D-F]

2.3. If the information called for falls in any of the categories specified u/s. 8 or relates to the organizations
 G to which the Act itself does not apply in terms of s.24 of the Act, the public authority can take such stand before the Commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third party information,
 H the Commission is required to follow the procedure

BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1035
HUSSAIN ABBAS RIZWI

prescribed u/s. 11 of the Act. [Para 16] [1043-G-H; 1044-A]

2.4. Section 8(1)(e) carves out a protection in favour of a person who possesses information in his fiduciary relationship. In the instant case, the examining body (the Commission), is in no fiduciary relationship with the examiners (interviewers) or the candidate interviewed. Once the fiduciary relationship is not established, the obvious consequence is that the Commission cannot claim exemption as contemplated u/s. 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all. [para 22 and 26]

Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Crs. (2011) 8 SCC 497 – relied on

2.5. Section 8 opens with the *non obstante* language and is an exception to the furnishing of information as is required under the relevant provisions of the Act. In terms of s.8(1)(g), the public authority is not obliged to furnish any such 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 and security purposes. [Paras 21- 22]

2.6. The interviewers hold the position of an 'agent' vis-a-vis the examining body which is the 'principal'. This relationship *per se* is not relatable to any of the exemption clauses but there are some clauses of exemption, the foundation of which is not a particular relationship like fiduciary relationship. Section 8(1)(g) can come into play with any kind of relationship. It concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life (b) physical safety of any person. The legislature, in its wisdom, has used two

A distinct expressions. They cannot be read or construed as being synonymous. 'Physical safety' is a restricted term while 'life' is a term of wide connotation. The expression 'life' also appears in Art. 21 of the Constitution and has been provided a wide meaning. The expression life u/s. 8(1)(g) the Act, thus, has to be understood in somewhat similar dimensions. If in the opinion of the authority concerned there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of s. 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of s.8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for law enforcement or security purposes'. Neither the language nor the object of the Section requires such an interpretation. The High Court though has referred to s. 8(1)(j) but it has, in fact, dealt with the language of s. 8(1)(g). The reasoning of the High Court, therefore, is neither clear in reference to provision of the Section nor in terms of the language thereof. [Para 27-28] [1052-A-C, F-H; 1053-A-C-G]

G 2.7. The consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are disclosed, would be: Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper

BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1037
HUSSAIN ABBAS RIZWI

effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidates has been permitted by the authorities as well as the High Court. There is no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would *ex facie* endanger their lives or physical safety and would certainly be opposed to the very spirit of s. 8(1)(g) of the Act. The Commission is not bound to disclose the information asked for by the applicant under Query No.1 of the application. The judgment of the High Court is set aside. [Para 29-31] [1053-H; 1054-A-C; 1056-C-D]

Case Law Reference:

2012 (8) SCALE 593 referred to Para 10
(2011) 8 SCC 497 referred to para 25

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9052 of 2012.

From the Judgment & Order dated 20.01.2011 of the High Court of Patna in LPA No. 102 of 2010.

Navin Prakash for the Appellant.

Mamta Tiwari, Pranav Vyas (for Fox Mandal & Co.) Anjan Chakraborty, Shekhar Kumar for the Respondent.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. Leave granted.

2. The Bihar Public Service Commission (for short, 'the Commission) published advertisement No.6 of 2000 dated 10th May, 2000 in the local papers of the State of Bihar declaring its intention to fill up the posts of 'State Examiner of Questioned Documents', in Police Laboratory in Crime Investigation

A Department, Government of Bihar, Patna. The advertisement, *inter alia*, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of *viva voce* test alone. The Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

C 3. One Saiyed Hussain Abbas Rizwi, respondent No.1 herein, claiming to be a public spirited citizen, filed an application before the Commission (appellant herein) under the Right to Information Act, 2005 (for short "the Act") on 16th December, 2008 seeking information in relation to eight queries. These queries concerned the interview which was held on 30th September, 2002 and 1st October, 2002 by the Commission with regard to the above advertisement. These queries, *inter alia*, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to M.Sc. during the selection process with the signatures of the members/officers and certified copy of the merit list. This application remained pending with the Public Information Officer of the Commission for a considerable time that led to filing of an appeal by respondent No.1 before the State Information Commission.

G When the appeal came up for hearing, the State Information Commission vide its order dated 30th April, 2009 had directed the Public Information Officer-cum-Officer on Special Duty of the Commission that the information sought for be made available and the case was fixed for 27th August, 2009 when the following order was passed :

H

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1039
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

"The applicant is present. A letter dated 12.08.2009 of the Public Information Officer, Bihar Public Service Commission, Patna has been received whereby the required paragraph-wise information which could be supplied, has been given to the applicant. Since the information which could be supplied has been given to the applicant, the proceedings of the case are closed."

4. At this stage, we may also notice that the Commission, vide its letter dated 12th August, 2009, had furnished the information nearly to all the queries of respondent No.1. It also stated that no written test had been conducted and that the name, designation and addresses of the members of the Interview Board could not be furnished as they were not required to be supplied in accordance with the provisions of Section 8(1)(g) of the Act.

5. Aggrieved from the said order of the Information Commission dated 27th August, 2009, respondent No.1 challenged the same by filing a writ before the High Court of Judicature at Patna. The matter came up for hearing before a learned Judge of that Court, who, vide judgment dated 27th November, 2009 made the following observations and dismissed the writ petition :

"If information with regard to them is disclosed, the secrecy and the authenticity of the process itself may be jeopardized apart from that information would be an unwarranted invasion into privacy of the individual. Restricting giving this information has a larger public purpose behind it. It is to maintain purity of the process of selection. Thus, in view of specific provision in Section 8(1)(j), in my view, the information could not be demanded as matter of right. The designated authority in that organization also did not consider it right to divulge the information in larger public interest, as provided in the said provision."

A 6. Feeling aggrieved, respondent No.1 challenged the judgment of the learned Single Judge before the Division Bench of that Court by filing a letters patent appeal being LPA No.102 of 2010. The Division Bench, amongst others, noticed the following contentions :

B (i) that third party interest was involved in providing the information asked for and, therefore, could properly be denied in terms of Section 2(n) read with Sections 8(1)(j) and 11 of the Act.

C (ii) that respondent No.1 (the applicant) was a mere busybody and not a candidate himself and was attempting to meddle with the affairs of the Commission needlessly.

D 7. The Division Bench took the view that the provisions of Section 8(1)(j) were not attracted in the facts of the case in hand inasmuch as this provision had application in respect of law enforcement agency and for security purposes. Since no such consideration arose with respect to the affairs of the Commission and its function was in public domain, reliance on
E the said provision for denying the information sought for was not tenable in law. Thus, the Court in its order dated 20th January, 2011 accepted the appeal, set aside the order of the learned Single Judge and directed the Commission to communicate the information sought for to respondent No.1.
F The Court directed the Commission to provide the names of the members of the Interview Board, while denying the disclosure of and providing photocopies of the papers containing the signatures and addresses of the members of the Interview Board.

G 8. The Commission challenging the legality and correctness of the said judgment has filed the present appeal by way of special leave.

H 9. The question that arises for consideration in the present case is as to whether the Commission was duty bound to

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1041
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

disclose the names of the members of the Interview Board to any person including the examinee. Further, when the Commission could take up the plea of exemption from disclosure of information as contemplated under Section 8 of the Act in this regard.

A

10. Firstly, we must examine the purpose and scheme of this Act. For this purpose, suffice would it be to refer to the judgment of this Court in the case of *Namit Sharma v. Union of India* [2012 (8) SCALE 593], wherein this Court has held as under :

B

“27. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root level and an attitude of secrecy within the Civil Services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.”

C

D

E

F

11. The scheme of the Act contemplates 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. It was aimed at providing free access to information with the object of making governance more transparent and accountable. Another right of a citizen

G

H

A protected under the Constitution is the right to privacy. This right is enshrined within the spirit of Article 21 of the Constitution. Thus, the right to information has to be balanced with the right to privacy within the framework of law.

B 12. Where Section 3 of the Act grants right to citizens to have access to information, there Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed information. Once an application seeking information is made, the same has to be dealt with as per
C Sections 6 and 7 of the Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the Act. Section 8 is one of the most important provisions of the Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the
D information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law.
E In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section.

F 13. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for
G disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.
H

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1043
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

14. Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression 'public authority' has been given an exhaustive definition under section 2(h) of the Act as the Legislature has used the word 'means' which is an expression of wide connotation. Thus, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.

15. Section 2(f) again is exhaustive in nature. The Legislature has given meaning to the expression 'information' and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the 'right to information' accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of 'information' and 'right to information' as defined under the Act.

16. Thus, what has to be seen is whether the information sought for in exercise of right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organizations to which the Act itself does not apply in terms of section 24 of the Act, the public authority can take such stand before the

A commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third party information, the Commission is required to follow the procedure prescribed under Section 11 of the Act.

B 17. Before the High Court, reliance had been placed upon Section 8(1)(j) and Section 11 of the Act. On facts, the controversy in the present case falls within a very narrow compass. Most of the details asked for by the applicant have already been furnished. The dispute between the parties
 C related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board.

D 18. On behalf of the Commission, reliance was placed upon Section 8(1)(j) and Section 11 of the Act to contend that disclosure of the names would endanger the life of the members of the interview board and such disclosure would also cause unwarranted invasion of the privacy of the interviewers. Further, it was contended that this information related to third
 E party interest. The expression 'third party' has been defined in Section 2(n) of the Act to mean a person other than the citizen making a request for information and includes a public authority. For these reasons, they were entitled to the exemption contemplated under Section 8(1)(j) and were not liable to
 F disclose the required information. It is also contended on behalf of the Commission that the Commission was entitled to exemption under Sections 8(1)(e) and 8(1)(g) read together.

G 19. On the contrary, the submission on behalf of the applicant was that it is an information which the applicant is entitled to receive. The Commission was not entitled to any exemption under any of the provisions of Section 8, and therefore, was obliged to disclose the said information to the applicant.

H 20. In the present case, we are not concerned with the

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1045
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

correctness or otherwise of the method adopted for selection of the candidates. Thus, the fact that no written examination was held and the selections were made purely on the basis of *viva voce*, one of the options given in the advertisement itself, does not arise for our consideration. We have to deal only with the plea as to whether the information asked for by the applicant should be directed to be disclosed by the Commission or whether the Commission is entitled to the exemption under the stated provisions of Section 8 of the Act.

21. Section 8 opens with the *non obstante* language and is an exception to the furnishing of information as is required under the relevant provisions of the Act. During the course of the hearing, it was not pressed before us that the Commission is entitled to the exemption in terms of Section 8(1)(j) of the Act. In view of this, we do not propose to discuss this issue any further nor would we deal with the correctness or otherwise of the impugned judgment of the High Court in that behalf.

22. Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In terms of Section 8(1)(g), the public authority is not obliged to furnish any such 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 and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is obliterated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The

A term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. This aspect has been discussed in some detail in the judgment of this Court in the case of *Central Board of Secondary Education (supra)*. Section 8(1)(e), therefore, carves out a protection in favour of a person who possesses information in his fiduciary relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction.

Another very significant provision of the Act is 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

23. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest'

BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1047
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]

must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar v. Kameshwar Singh* (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)].

24. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these

A rights emerge from the constitutional values under the Constitution of India.

B 25. First of all, the Court has to decide whether in the facts of the present case, the Commission holds any fiduciary relationship with the examinee or the interviewers. Discussion on this question need not detain us any further as it stands fully answered by a judgment of this Court in the case of *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors.* [(2011) 8 SCC 497] wherein the Court held as under :

C “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-à-vis another partner and an employer vis-à-vis employee. D 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, E 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 F employee's conduct or acts are found to be prejudicial to the employer.

G 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 reference to the future generation while preserving the environment. But the words “information available to a person in his

H

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1049
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

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.

42. The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialised examining bodies may simply subject the candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.

43. This Court has explained the role of an examining body

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

B "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.

C
D
E
F
G
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-à-vis other examinees. The process is not, therefore, avilment 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 avilment of any service, but the charge paid for the privilege of participation in the examination.

H 13. ... The fact that in the course of conduct of the

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1051
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

examination, or evaluation of 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....”

A
B

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.

C

XXX XXX XXX

49. The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the “principal” and the examiner is the “agent” entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner.”

D
E
F

(emphasis supplied)

26. We, with respect, would follow the above reasoning of the Bench and, thus, would have no hesitation in holding that in the present case, the examining body (the Commission), is in no fiduciary relationship with the examinee (interviewers) or the candidate interviewed. Once the fiduciary relationship is not established, the obvious consequence is that the Commission cannot claim exemption as contemplated under Section 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all.

G
H

A 27. In *CBSE case* (supra), this Court had clearly stated the view that an examiner who examines the answer sheets holds the relationship of principal and agent with the examining body. Applying the same principle, it has to be held that the interviewers hold the position of an 'agent' vis-a-vis the examining body which is the 'principal'. This relationship *per se* is not relatable to any of the exemption clauses but there are some clauses of exemption, the foundation of which is not a particular relationship like fiduciary relationship. Clause 8(1)(g) can come into play with any kind of relationship. It requires that where the disclosure of information 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, the information need not be provided. The High Court has rejected the application of Section 8(1)(g) on the ground that it applies only with regard to law enforcement or security purposes and does not have general application. This reasoning of the High Court is contrary to the very language of Section 8(1)(g). Section 8(1)(g) has various clauses in itself.

E 28. Now, let us examine the provisions of Section 8(1)(g) with greater emphasis on the expressions that are relevant to the present case. This section concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life (b) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression 'life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to *inter alia* include within its ambit the right to live with dignity, right to

BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1053
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]

shelter, right to basic needs and even the right to reputation. The expression life under section 8(1)(g) the Act, thus, has to be understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation. It would not further the cause of this section. Section 8 attempts to provide exemptions and once the language of the Section is unambiguous and squarely deals with every situation, there is no occasion for the Court to frustrate the very object of the Section. It will amount to misconstruing the provisions of the Act. The High Court though has referred to Section 8(1)(j) but has, in fact, dealt with the language of Section 8(1)(g). The reasoning of the High Court, therefore, is neither clear in reference to provision of the Section nor in terms of the language thereof.

29. Now, the ancillary question that arises is as to the

A

B

C

D

E

F

G

H

A consequences that the interviewers or the members of the
 interview board would be exposed to in the event their names
 and addresses or individual marks given by them are directed
 to be disclosed. Firstly, the members of the Board are likely to
 be exposed to danger to their lives or physical safety. Secondly,
 B it will hamper effective performance and discharge of their
 duties as examiners. This is the information available with the
 examining body in confidence with the interviewers. Declaration
 of collective marks to the candidate is one thing and that, in
 fact, has been permitted by the authorities as well as the High
 C Court. We see no error of jurisdiction or reasoning in this
 regard. But direction to furnish the names and addresses of the
 interviewers would certainly be opposed to the very spirit of
 Section 8(1)(g) of the Act. *CBSE case (supra)* has given
 sufficient reasoning in this regard and at this stage, we may
 refer to paragraphs 52 and 53 of the said judgment which read
 D as under :

“52. When an examining body engages the services of an
 examiner to evaluate the answer books, the examining
 body expects the examiner not to disclose the information
 E regarding evaluation to anyone other than the examining
 body. Similarly the examiner also expects that his name
 and particulars would not be disclosed to the candidates
 whose answer books are evaluated by him. In the event
 of such information being made known, a disgruntled
 F examinee who is not satisfied with the evaluation of the
 answer books, may act to the prejudice of the examiner
 by attempting to endanger his physical safety. Further, any
 apprehension on the part of the examiner that there may
 be danger to his physical safety, if his identity becomes
 G known to the examinees, may come in the way of effective
 discharge of his duties. The above applies not only to the
 examiner, but also to the scrutiniser, co-ordinator and head
 examiner who deal with the answer book.

H 53. The answer book usually contains not only the signature

**BIHAR PUBLIC SERVICE COMMISSION v. SAIYED 1055
HUSSAIN ABBAS RIZWI [SWATANTER KUMAR, J.]**

and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act.”

A

B

C

D

E

F

G

H

30. The above reasoning of the Bench squarely applies to the present case as well. 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 co-related 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

- A as a defence. We are unable to accept this reasoning of the High Court. Suffice it to note that the reasoning of the High Court is not in conformity with the principles stated by this Court in the *CBSE* case (supra). The transparency that is expected to be maintained in such process would not take within its ambit
- B the disclosure of the information called for under query No.1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either
- C to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

31. For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and hold that the Commission is not bound to disclose the information asked
- D for by the applicant under Query No.1 of the application.

R.P.

Appeal allowed.