

KERALA PUBLIC SERVICE COMMISSION & ORS.

.v.

THE STATE INFORMATION COMMISSION & ANR.

(Civil Appeal Nos. 823-854 of 2016)

FEBRUARY 04, 2016

[M.Y. EQBAL AND ARUN MISHRA, JJ.]

Right to information: Public Service Commission – Examinee is entitled to supply of scanned copies of his answer sheet of the written test, tabulation sheet containing interview marks and other information – However, examinee is not entitled to get the disclosure of names of the examiner who has evaluated the answer sheet since relationship between the PSC and the Examiners is fiduciary in nature and any information shared between them is not liable to be disclosed – Service law – Recruitment examination.

Partly allowing the appeals, the Court

HELD: The PSC has taken upon itself appointment of the examiners to evaluate the answer papers and as such, the PSC and examiners stand in a principal-agent relationship. Here, the 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 the PSC. As a result, a fiduciary relationship is established between the 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 there is no logical reason as to how this will benefit him or the public at large. 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

- A** 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
- B** 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 disclosure of name of the examiners in every exam is allowed, the
- C** 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. [Paras 9, 10]
- D** [417-B-D; E-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 823-854 of 2016

- E** From the Judgment and Order dated 09.03.2011 of the High Court of Kerala at Ernakulam in W. P(C) Nos. 33620/2009-V, 33718/2010-L, 3585/2008-B, 15363/2008-D, 15424/2008-J, 22386/2008-M, 6177/2010-V, 9250/2010-E, 25779/2010-V, 23839/2010-D, 32772/2010-V, 12032/2009-Y, 12160/2009-L, 34585/2007-P, 33620/2009-V, 35723/2008-C, 22398/2008-N, 22230/2007-U, 6355/2010-T, 22231/2007-V, 3577/2008-A, 12312/2007-N, 23458/2008-P, 37772/2008-V, 11876/2009-D, 23539/2008-B, 11687/2009-E, 33616/2009-V, 11042/2010-E, 2207/2008-K, 10971/2010-V, & 5978/2010-V, 35840/2008-N
- F**

WITH

C. A. NO. 855 OF 2016

- G** V. Giri, Vipin Nair, P. B. Suresh, Vinod Nair, Rahul Srivastava, Mohammed Sadique T. A., (For M/s. Temple Law Firm), Shrish Kumar Misra, Piyush Dwivedi for the Appellants.

G. M. Kawoosa, N. Ganpathy, M. Ajay, Ramesh Babu M. R., B. R. Mohan Kumar, Mrs. Anjani Aiyagari, M. V. Rama, Ram Lal Roy, D. P. Chaturvedi, Ravi Panwar, (For S. N. Bhat) for the Respondents.

- H** The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

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2. In these two appeals the short question which needs consideration is as to whether the Division Bench of the Kerala High Court by impugned judgment has rightly held that the respondents are entitled not only to get information with regard to the scan copies of their answer sheet, tabulation-sheet containing interview marks but also entitled to know the names of the examiners who have evaluated the answer sheet.

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3. The information sought for by the respondents were denied by the State Public Information Officer and the Appellate Authority. However, the State Information Commission allowed the second appeal and held that there is no fiduciary relationship in case of answer scripts. Further, the interview marks cannot be considered as personal information, since the public authority had already decided to publish them.

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4. Both the High Courts of Kerala and Allahabad have taken the view, following the earlier decisions of this Court that no fiduciary relationship exists between the appellants and the respondents and, therefore, the information sought for have to be supplied to them.

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5. We have heard learned counsel for the parties and have gone through the impugned judgments passed by the Division Bench of the High Court of Kerala at Ernakulam and Allahabad.

E

6. So far as the information sought for by the respondents with regard to the supply of scanned copies of his answer-sheet of the written test, copy of the tabulation sheet and other information, we are of the opinion that the view taken in the impugned judgment with regard to the disclosure of these information, do not suffer from error of law and the same is fully justified. However, the view of the Kerala High Court is that the information seekers are also entitled to get the disclosure of names of examiners who have evaluated the answer-sheet.

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7. The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them cannot be sustained in law. The Kerala High Court while observing held:-

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“16. What, if any, is the fiduciary relationship of the PSC qua the examinees? Performance audit of constitutional institutions would only strengthen the confidence of the citizenry in such institutions.

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A The PSC is a constitutional institution. To stand above board, is
one of its own prime requirements. There is nothing that should
deter disclosure of the contents of the materials that the examinees
provide as part of their performance in the competition for being
selected to public service. The confidence that may be reposed
B by the examinees in the institution of the PSC does not inspire the
acceptability of a fiduciary relationship that should kindle the
exclusion of information in relation to the evaluation or other details
relating to the examination. Once the evaluation is over and results
are declared, no more secrecy is called for. Dissemination of
such information would only add to the credibility of the PSC, in
C the constitutional conspectus in which it is placed. A particular
examinee would therefore be entitled to access to information in
relation to that person's answer scripts. As regards others,
information in relation to answer scripts may fall within the pale
of "third party information" in terms of section 11 of the RTI Act.
D This only means that such information cannot be accessed except
in conformity with the provisions contained in section 11. It does
not, in any manner, provide for any immunity from access.

17. We shall now examine the next contention of PSC that there
is a fiduciary relationship between it and the examiners and as a
consequence, it is eligible to claim protection from disclosure,
E except with the sanction of the competent authority, as regards
the identity of the examiners as also the materials that were
subjected to the examination. We have already approved TREESA
and the different precedents and commentaries relied on therein
as regards the concept of fiduciary relationship. We are in full
F agreement with the law laid by the Division Bench of this Court in
Centre of Earth Science Studies (supra), that S.8 (1)(e) deals
with information available with the person in his fiduciary
relationship with another; that information under this head is nothing
but information in trust, which, but for the relationship would not
have been conveyed or known to the person concerned. What is
G it that the PSC holds in trust for the examiners? Nothing. At the
best, it could be pointed out that the identity of the examiners has
to be insulated from public gaze, having regard to issues relating
to vulnerability and exposure to corruption if the identities of the
examiners are disclosed in advance. But, at any rate, such issues
would go to oblivion after the conclusion of the evaluation of the
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answer scripts and the publication of the results. Therefore, it would not be in public interest to hold that there could be a continued secrecy even as regards the identity of the examiners. Access to such information, including as to the identity of the examiners, after the examination and evaluation process are over, cannot be shielded off under any law or avowed principle of privacy.”

8. We do not find any substance in the reasoning given by the Kerala High Court on the question of disclosure of names of the examiners.

9. In the present case, the PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, the PSC and examiners stand in a principal-agent relationship. Here the 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 the PSC. As a result, a fiduciary relationship is established between the 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 don't 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 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.

10. 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

- A 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
- B 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.

- C 11. We, therefore, allow these appeals in part and modify the judgment only to the extent that the respondents-applicants are not entitled to the disclosure of names of the examiners as sought for by them.

Devika Gujral

Appeals partly allowed.