

A UNION PUBLIC SERVICE COMMISSION ETC.

v.

ANGESH KUMAR & ORS. ETC.

(Civil Appeal Nos. 6159-6162 of 2013 etc.)

B FEBRUARY 20, 2018

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

Right to Information Act, 2005 –

C *ss. 3, 6, 8, 9 and 11 – Writ petition u/Art. 226 of Constitution*
– *Filed by unsuccessful candidates of the Civil Services*
(Preliminary) Examination – Seeking direction to Union Public
Service Commission (UPSC) to disclose the details of marks (raw
and scaled) awarded to them in the exam – Also sought information
in the form of cut-off marks for every subject, scaling methodology,
D *model answers, and complete result of all the candidates – Single*
Judge of High Court directed UPSC to provide the sought information
– *View of Single Judge affirmed by Division Bench – On appeal,*
held: Weighing the need for transparency and accountability on
the one hand and requirement of optimum use of fiscal resources
and confidentiality of sensitive information on the other, it is to be
E *held that the information sought with regard to marks in Civil*
Services Exam cannot be directed to be furnished mechanically –
Furnishing raw marks will cause problems, which will not be in
public interest – However, if a case is made out where the Court
finds that public interest requires furnishing of information, the
F *Court is certainly entitled to so require in a given fact situation – If*
rules or practice so require, certainly such rule or practice can be
enforced – In the present case, direction has been issued without
considering these parameters – The appeals and Special Leave
Petitions are disposed of.

G *Central Board of Secondary Education and Anr. v.*
Aditya Bandopadhyay and Ors. (2011) 8 SCC 497 :
[2011] 11 SCR 1028 ; Prashant Ramesh Chakkarwar
v. UPSC (2013) 12 SCC 489 – relied on.

Sanjay Singh v. U.P. Public Service Commission (2007)
3 SCC 720 : [2007] 1 SCR 235 ; U.P. Public Service

H

UNION PUBLIC SERVICE COMMISSION ETC. v. ANGESH KUMAR & ORS. ETC. 1077

Commission v. Subhash Chandra Dixit (2003) 12 SCC 701 : [2003] 5 Suppl. SCR 210 – referred to. A

Case Law Reference

[2011] 11 SCR 1028 **relied on** **Para 6**
(2013) 12 SCC 489 **relied on** **Para 8** B
[2007] 1 SCR 235 **referred to** **Para 9**
[2003] 5 Suppl SCR 210 **referred to** **Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6159-6162 of 2013. C

From the Judgment and Orders dated 13.07.2012 and 28.08.2012 of the High Court of Delhi at New Delhi in LPA No.229/2011 in W.P. © No.3316/2011 and in Review Petition No.486/2012 in L.P.A. No. 229/2011 and Review Petition No.484 in W.P. (C) in W.P. © No.3316/2011 respectively D

WITH

C.A.No.5924 of 2013, S.L.P(C) Nos.28817, 28801, 28811, 28816, 28805 of 2014 and S.L.P (C) No..... of 2018 (@ Diary No.15951 of 2017).

Tushar Mehta, ASG, Naresh Kaushik, Ms. Binu Tamta, Dhruv Tamta, Vardhman Kaushik, Omung Raj Gupta, Karan D. Baghel, Devik Singh, Manoj Joshi, Ms. Lalita Kaushik, Kumar Shashank, Advs for the Appellants. E

Petitioner-in-person.

Pinky Anand, ASG, M.K. Maroria, Ms. Madhvi Diwan, Ms. Saudamini Sharma, Ms. Rukmini Bobde, Renjith B. Marar, Lakshmi N. Raimal, Vishnu P., Anubhav Anand Pandey, Ms. Kirti Dua, Sumit Kumar Abhishek Chakraborty, Hemant Kumar, Nitin Singh, Sanjay Yadav, Vikrant Singh Bais, Gaichangpou Gangmei, Arjun D. Singh, S.K. Verma, Rameshwar Prasad Goyal, Munawwar Naseem, Vikrant Singh Bais, Pankaj Kumar, Jagdish Kumar Chawla, Gaurav Agrawal, Yash Pal Singh Dhingra, Advs for the Respondents. G

Rajesh Tiwari (Respondent-in-person).

Caveator-in-person. H

A The following Order of the Court was delivered :

ORDER

Civil Appeal No(s).6159-6162 of 2013 :

1. We have heard learned counsel for the parties and perused the record.
- B 2. These appeals have been preferred against judgment and Order dated 13.7.2012 in LPA NO.229 of 2011 in W.P.(C)NO.3316 of 2011, 28.08.2012 in Review Petition NO.486 of 2012 in LPA NO.229/2011 and Review Petition NO.484 of 2012 in W.P.(C) NO.3316/2011 of the High Court of Delhi at New Delhi.
- C 3. The respondents-writ petitioners were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. They approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination 2010. The information in the form of cut-off marks for every subject, scaling methodology, model answers and complete result of all candidates were also sought. Learned Single Judge directed that the information sought be provided within fifteen days. The said view of the Single Judge has been affirmed by the Division Bench of the High Court.
- D 4. The main contention in support of these appeals is that the High Court has not correctly appreciated the scheme of the Right to Information Act, 2005 (the Act) and the binding decisions of this Court.
- E 5. It is submitted that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein. The exclusion by Sections 8, 9 and 11 is not exhaustive and parameters under third recital of the preamble of the Act can also be taken into account. Where information is likely to conflict with other public interest, including efficient operation of the Government, optimum use of fiscal resources and preservation of confidentiality of some sensitive information, exclusion of right or information can be applied in a given fact situation.
- F 6. In support of this submission, reliance has been placed on judgment of this Court in Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors., (2011) 8 SCC 497 wherein this Court observed :
- G
- H

“61. Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

66. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands

A
B
C
D
E
F
G
H

- A of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information [that is, information other than those enumerated in Sections 4(1)(b) and (c) of the Act], equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of Governments, etc.).
- B
- C 67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.”
- D
- E
- F (emphasis added)
- G 7. Thus, it is clear that in interpreting the scheme of the Act, this Court has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act. While balancing the right to information, public interest including efficient working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be
- H balanced and can be a guiding factor to deal with a given situation *de*

hors Sections 8,9 and 11. The High Court has not applied the said parameters. A

8. The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in *Prashant Ramesh Chakkarwar v. UPSC*¹. From the counter affidavit in the said case, following extract was referred to : B

“(B) *Problems in showing evaluated answer books to candidates.*—(i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called ‘raw marks’ which would have negative implications for the integrity of the examination system, as detailed in Section (C) below. C

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (b) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter’s check of the former’s work, (d) the Additional Examiner’s work having been found erratic by the Head Examiner, been rechecked entirely by another examiner, with or without the Head Examiner again rechecking this work. D E

(iii) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate’s mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in *Gaurav Gupta v. UPSC* dated 6.7.2012(Del.)) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation. F G

¹(2013) 12 SCC 489

- A (iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.
- B
- C (v) With the disclosure of evaluated answer books, the danger of coaching institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the RTI Act) is real, with all its attendant implications.
- D (vi) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.
- E
- F (vii) Some of the optional papers have very low candidature (sometimes only one), especially the literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and examiners in some of these low-candidature papers is known to be limited. Any such possibility of the examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the
- G
- H

examination system and for the security and safety of the examiner. A
The matter is compounded by the fact that we have publicly stated
in different contexts earlier that the paper-setter is also generally
the Head Examiner.

(viii) UPSC is now able to get some of the best teachers and B
scholars in the country to be associated in its evaluation work. An
important reason for this is no doubt the assurance of their
anonymity, for which the Commission goes to great lengths. Once
disclosure of answer books starts and the inevitable challenges
(including litigation) from disappointed candidates starts, it is only
a matter of time before these examiners who would be called C
upon to explain their assessment/award, decline to accept further
assignments from the Commission. A resultant corollary would
be that examiners who then accept this assignment would be sorely
tempted to play safe in their marking, neither awarding outstanding
marks nor very low marks, even where these are deserved.
Mediocrity would reign supreme and not only the prestige, but the D
very integrity of the system would be compromised markedly.”

9. This Court thereafter approved the method of moderation
adopted by the UPSC relying upon earlier judgment in Sanjay Singh v.
U.P. Public Service Commission, (2007) 3 SCC 720 and U.P. Public
Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701. E

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

11. In view of the above, the impugned order(s) is set aside and
the writ petitions filed by the writ petitioners are dismissed. This order H

A will not debar the respondents from making out a case on above parameters and approach the appropriate forum, if so advised.

12. The appeals are accordingly disposed of.

Civil Appeal No. 5924 of 2013:

B 1. In view of judgment rendered today in Civil Appeal No(s).6159-6162 of 2013, the impugned order is set aside. The appeal stands disposed of in the same terms.

SLP(C) No. 28817/2014, SLP(C) No. 28801/2014, SLP(C) No. 28811/2014 SLP(C) No. 28816/2014, SLP(C) No. 28805/2014, SLP(C)

C NO..... of 2018 (arising out of Diary No(s). 15951/2017) :

1. Delay condoned.

2. In view of judgment rendered in Civil Appeal Nos.6159-6162 of 2013, these special leave petitions are disposed of in the same terms.