

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

WRIT PETITION No. 13090 of 2022

Between:-

**ADVOCATE UNION FOR DEMOCRACY
AND SOCIAL JUSTICE THROUGH ITS
SECRETARY R.G. VERMA**

....PETITIONER

***(BY SHRI RAMESHWAR SINGH THAKUR, SHRI V.P. SHAH
AND SHRI UDAY KUMAR – ADVOCATES)***

AND

**HIGH COURT OF MADHYA PRADESH
THROUGH ITS REGISTRAR GENERAL,
HIGH COURT CAMPUS, PRINCIPAL SEAT
AT JABALPUR (M.P.)**

.....RESPONDENT

*(RESPONDENT BY SHRI ADITYA ADHIKARI – SENIOR
ADVOCATE WITH SHRI EZAZ SIDDIQUI - ADVOCATE)*

Reserved on : 25.07.2022

Passed on : 02.09.2022

Per : Justice Sheel Nagu :

ORDER

This public interest litigation is filed by a society registered under the M.P. Society Registrickaran Adhinyam, 1973 comprising of members, who are practicing lawyers.

1.1 The relief sought is as follows :

- (i) To direct the respondent, to make available on internet/wave site of the High Court of M.P., the answer-books of main written examination of all candidates appeared in the Main Exam of Civil Judge and ADJ, to provide excess to every citizen of India under Sub-section 2 & 3 of Section 4 of The Right to Information Act, 2005.

- (ii) To declare null and void obstacle clause, if any, in any advertisement, circular, order or direction, that is abridging right to information provided to every citizen of India by virtue of RTI Act.
- (iii) Any other relief which deems fit and proper looking to facts and circumstances of the case may also be granted to make transparency in selection process in the interest of democracy.”

2. The public cause allegedly raised is that for achieving the ultimate goal of transparency in the process of selection and appointment to the post of Civil Judge (Entry Level) and District Judge (Entry Level), the answer copies written by all the candidates be made available on website of the High Court, with further prayer to declare null and void clause (पॉच) खण्ड – “स” of the advertisement dated 21.12.2021 issued by High Court for appointment to the post of Civil Judge (Entry Level) Prelims Examination – 2021 which restricts supply of answer copies to only the candidate concerned who apply for the same and not all and sundry.

3. Shri V.P. Shah and Shri Uday Kumar, learned counsel for petitioner submit that the Right to Information Act, 2005 (for short ‘**RTI Act**’) is promulgated to instill transparency and accountability in the working of every public authority (including High Court) to enable citizens to have free access to information under the control of public authority. It is submitted that RTI Act is a manifestation of the right to information which is recognized as a concomitant of right to freedom of speech and expression under Article 19(1)(a). Learned counsel has relied upon the decisions of Apex Court in **Central Board of Secondary Education and another Vs. Aditya Bandopadhyay and others**

(2011) 8 SCC 497 (para 40, 41 & 42), **Union Public Service Commission and others Vs. Angesh Kumar and others, (2018) 4 SCC 530** and **Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal, (2020) 5 SCC 481** (para 47, 48, 58, 64 & 107).

3.1 Learned counsel for petitioner also submits that making available all the answer copies of all the candidates who appeared in the said examination on the website of the High Court will not offend the exemption clause u/S. 8 of the RTI Act. It is further urged that this would not only enhance transparency but would also be academically enriching for prospective candidates who may appear in the subsequent examinations to be held in future.

3.2 Petitioner further submits that in view of first proviso to Section 8(1), the answer copies which can very well be summoned by the Parliament or State Legislature, cannot be denied to be put in public domain.

4. *Per contra*, Shri Aditya Adhikari, learned senior counsel appearing on behalf of respondent/High Court submits that though a return has not yet been filed on behalf of respondent but on instructions learned senior counsel submits that it would neither be in public interest nor in the interest of academics that all the answer copies are uploaded on the High Court website. Shri Adhikari contends that the information contained in a particular answer copy is privy to the particular candidate who writes that answer copy and thus cannot be made public in view of bar contained in Section 8(1) (j) of RTI Act. Shri Adhikari also submits that disclosure of contents of the answer sheets of a particular candidate to everyone shall cause invasion into the privacy of that particular candidate. Shri Adhikari further submits that no larger public interest would be served in

disclosing said answer sheets to everyone. Shri Adhikari urges that the decision of Apex Court in **Central Board of Secondary Education** (supra) dealt with the rights of a particular candidate to be supplied with his particular answer copy and, therefore, it is urged that the ratio of the said judgment cannot be stretched to include the right of the entire world to know about the contents of the answer copy of a particular candidate in a particular examination. Shri Adhikari lastly submits that in the case of **Union Public Service Commission** (supra), the information sought and provided was to the candidate concerned about his/her answer sheets/ and not to anyone and everyone.

5. To appreciate the contentions of learned counsel for rival parties, it would be appropriate to reproduce the relevant clause (पॉच) खण्ड – “स” in the advertisement and Section 8 of the RTI Act.

(पॉच) खण्ड – “स”

“पॉच सूचना के अधिकार के तहत जानकारी :-

आंनलाइन प्रारंभिक परीक्षा के परिणाम की घोषणा के उपरांत 03 माह की अवधि तक आवेदक के प्राप्तांक तथा उत्तर पुस्तिका (रिस्पांस शीट) म.प्र. उच्च न्यायालय की वेबसाइट (www.mphc.gov.in) पर उपलब्ध कराये जायेंगे, जिन्हें आवेदक ऑनलाइन आवेदन पत्र भरते समय सेवा प्रदाता द्वारा प्रदान किये गये क्रेडेशियल्स अंकित कर देख व उसका प्रिंट प्राप्त कर सकेगा । तत्पश्चात उत्तर पुस्तिका (रिस्पांस 'शीट) परिरक्षित नहीं रखी जाएगी ।

आवेदक अपनी स्वयं की मुख्य परीक्षा की उत्तर पुस्तिकाओं (Answer Books) की सत्यापित प्रतिलिपि या उससे संबंधित जानकारी म.प्र. उच्च न्यायालय के आर.टी.आई. अनुभाग से विहित शुल्क अदा कर “सूचना के अधिकार” के अंतर्गत चयन प्रक्रिया पूर्ण होने के पश्चात अर्थात चयनित आवेदकों की अनुशंसा विधि विभाग को

प्रेषित किये जाने के उपरांत प्राप्त कर सकेंगे । अंतिम परिणाम की घोषणा से पहले मुख्य लिखित परीक्षा हेतु आर.टी.आई. आवेदन पर विचार नहीं किया जाएगा ।”

(emphasis supplied)

Section 8 of Right to Information Act, 2005

“8. Exemption from disclosure of information.— (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

- (a) *information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
- (b) *information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
- (c) *information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
- (d) *information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*
- (e) *information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
- (f) *information received in confidence from foreign government;*
- (g) *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 or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) 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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

6. Considering the aforesaid submissions of the counsel for rival parties and after having gone through various decisions of the Apex Court and as well as relevant statutory provisions of the 2005 Act, this Court is of the considered view that challenge to the advertisement in question prohibiting supply of answer sheets to all and sundry, has to fall for reasons infra :

(i) The issue as to whether the contents of an answer-sheet should be disclosed not only to the candidate concerned but also to the public at large is no more *res integra* in view of decision of the Apex Court in **Central Board of Secondary Education** (supra). Relevant paragraph of aforesaid decision is reproduced below for ready reference and convenience:-

“45. One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If *A* entrusts a document or an article to *B* to be processed, on completion of processing, *B* is not expected to give the document or article to anyone else but is bound to give the same to *A* who entrusted the document or article to *B* for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an

exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.”

(emphasis supplied)

It is profitable to refer to another paragraph 67 of the decision of Apex Court in **Central Board of Secondary Education** (supra) where the Apex Court has emphasized and warned against the possible misuse of the provisions of Right to Information Act. Relevant paragraph 67 of the said decision is reproduced below :

“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.”

Pertinently in the aforesaid case, the grievance was raised by the candidate concerned of non-supply of his/her answer sheet. While adjudicating

the said case, the Apex Court made certain relevant observations which are germane to the issue involved herein where disclosure of an answer sheet in public domain is sought.

(ii) The contents of an answer sheet written by a particular candidate contains information privy and personal to the said candidate and, therefore, any disclosure of the same to the public at large can be permitted only when the candidate concerned has no objection. Not otherwise.

(iii) The disclosure of contents of an answer sheet of a candidate in public domain will invite number of complications which include intrusion into the privacy of the candidate concerned, the examining body being compelled to indulge in innumerable applications thereby opening pandora's box which may be difficult to control and manage, etc.

(iv) That disclosure of answer sheets in public domain is susceptible to the danger of coaching institutes collecting copies from candidates (after perhaps encouraging/inducing the candidate to apply for answer copies under the RTI).

(v) That answer copy contains information personal to the candidate which cannot be disclosed without consent of the candidate concerned or the public interest outways the personal interest, which is not the case herein.

6.1 Free access to information in public domain is ostensibly an attractive proposition but is not viable in view of the aforesaid complications. The complications and difficulties with the said proposition of the petitioner would

jeopardize the working of the examining body and therefore would be against the public interest and counter-productive.

6.2 The disadvantages of disclosure of contents of answer sheets in public domain far out number the advantages.

6.3. In view of above, no case for interference is made out.

7. Accordingly, the present petition stands **dismissed** with no order as to costs.

(SHEEL NAGU)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

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