

(2010) 02 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (C) No. 176 (AP) of 2007

Arunachal Pradesh Public Service Commission

APPELLANT

Vs

The Arunachal Pradesh Information Commission and Another

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 19, 226
Right to Information Act, 2005 — Section 20, 4, 8, 8(1)

Citation : (2010) 2 GLD 171

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : Nani Tagia, ISC, appSC, for the Appellant; S. Tapin and A.K. Singh for respondent Nos. 1 and 2 and S. Tapin, N. Achung, P. Bui and K. Tayeng, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Arunachal Pradesh Public Service Commission (for short, "APPSC") feeling irritated by the decision passed by the Arunachal Pradesh Information Commission rendered in case No. APIC/14/02 on 26.4.2007 directing them to allow the applicant/Respondent No. 2 for perusal of his answer script of Mathematics paper where the appeared in the test conducted to select candidate for appointment in the post of Inspector (Tax & Excise), has approached this Court by filing this writ petition.

2. I have heard Mr. N. Tagia, learned Standing Counsel for the APPSC and Mr. T. Partin, learned Counsel appearing for Respondent No. 1. None appears on behalf of Respondent No. 2/applicant at the time of hearing.

3. The applicant/respondent No. 2 appeared in a competitive examination being an aspirant for the post of Inspector (Tax & Excise) conducted by the APPSC. The respondent No. 2 not being satisfied with the evaluation of his answer script in Mathematics paper, he applied for perusal and inspection of the answer script by filing necessary statutory application in Form-A under the Right to Information

Act (hereinafter referred to as the "Act") to the Public Information Officer of the Commission complying with the necessary requirements. Vide communication dated 9.2.2007, the Public Information Officer of the Commission refused his prayer. Being aggrieved, the applicant filed an appeal on 30.3.2007 before the Chief Information Commissioner of the State Information Commission constituted under the Act. The appellate authority after hearing the parties, vide impugned judgment and order dated 26.4.2007 allowed the appeal and directed the APPSC to allow the applicant for perusal of his Mathematics answer script as prayed for, within a period of 1 month. The said decision is challenged by the APPSC in this writ petition.

4. Mr. N. Tagia, learned Standing Counsel for the APPSC contends that the disclosure of answer script in question so examined by the specific examiner appointed by the Commission constituted a fiduciary relationship and in the event of disclosing the same to the applicant, it would be violative of such relationship that exists between the Commission and the related examiner which attracts the exemption contained in Section 8(1)(e) of the Act and such fiduciary relationship is required to be maintained for larger public interest. It is also contended by the learned Standing Counsel that the information sought for being the personal information about the performance of the applicant, there is no involvement of any public interest and as such the Commission has no obligation to allow the applicant to peruse the answer script, u/s 8(1)(j) of the Act.

Learned Standing Counsel press into service the decision of the Apex Court rendered in *Maharashtra Board of Higher Secondary Education Council v. Paritosh* : AIR 1984 SC 1534, and some other unreported decisions rendered by the Kerala State Commission and by the Central Information Commission, and such other commission, but the text of the judgments have not produced before the Court.

Referring to the aforesaid decisions, learned Standing Counsel contends that in the event of allowing the prayer of the applicant there would be delay in attaining the finality of the examination process and it will be against the norms of public policy. It is further contended that the APPSC is guided and regulated by the Arunachal Pradesh Public Service Commission (Limitations and Functions) Regulation, 1988 and in the matter of conducting the competitive examination, the regulation do not contain any such provisions for supply/inspection of the answer script to a candidate. It is further contended that the impugned judgment not having disclosed the nature of public interest involved in the matter, the same is a cryptic one without disclosing the mind of the authority and accordingly the same is liable to be interfered with.

5. Mr. T. Partin, learned Counsel appearing for the respondent/the State Information Commission, per contra contends that the applicant has got existing right to receive the "information" within the meaning of Clause 2(j) of the Act and the APPSC being a public authority and State within the meaning of Article 12 of the Constitution of India has got an obligation u/s 4 of the Act to provide

such information to the applicant by allowing him to peruse the answer script and by refusing to do so, the APPSC has violated the provisions of the Act and also has violated the existing right of the applicant. It is also contended that on earlier occasion such inspection of answer script in respect of Civil Service Examination conducted by the APPSC in the year 2002 was allowed to one Dr. Takin Gammy and as such the APPSC is not permitted to take a different stand in case of applicant.

6. The Right to Information Act, 2005 was enacted by the Parliament in order to ensure greater and more effective excess to information repealing the Freedom of Information Act, 2002 which was holding the filed till then. The preamble of the Act reads as follows:

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and their instrumentalities accountable to the governed;

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

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

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

Section 2(f) of the Act defines "information" as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, which can be excess by a public authority under any law for the time being in force.

Section 2(h) defines "public authority".

Section 2(j) defines "right to information" which also includes inspection of all documents and records.

Section 4 of the Act makes it obligatory upon the public authority for maintaining necessary records.

The Right to Information has been guaranteed by the Act to all citizens of the country. The Act can be aptly described as statutory recognition of the segments of right to information emanated from Article 19(a) of the Constitution of India in statutory form.

Under the Act the transparency in the administrative functions of the various organs of the Government has been sought to be made available to the public.

Whether in the matter of public administration be it in the form of adjudication of right of citizens or in the matter of infrastructure building of the State, or otherwise transparency of the actions of the public authority has become an order of the day. The very objective of the Act is to allow the citizen to scrutiny the Governmental action within the parameter of the Act to ensure accountability and transparency in Governmental functions. However, Section 8 of the Act provides certain restrictions in the form of exemption.

7. In the light of the broad scope of the Act now let me examine whether the stand of the APPSC as raised during the course of argument resisting the order passed by the State Information Commission is sustainable within the touch stone of the provisions of the Act vis-a-vis the APPSC regulations.

8. The exemption clause as reflected in Section 8(1)(a) and (j) of the Act which are pressed in to service by the APPSC are as follows:

Section 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;

...

(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.

9. The fiduciary relationship has not been defined under the Act. The term "fiduciary" in Jowitt's Dictionary of English Law, 2nd Edition, Vol. 1, page 788, is defined as follows:

Fiduciary: One who holds anything in trust. A person is said to stand in a fiduciary relation to another when he has right and powers which he is bound to exercise for the benefit of that other. Hence he is not allowed to derive any profit or advantage from the relation between them, except with the knowledge and consent of the other person. Such is the relation between trustee and cestui que trust, solicitor and client, principal and agent, and generally wherever from the position of two persons, one of them reposes confidence in the other. Promoters and directors also stand in a fiduciary relation to their companies.

10. Black's Law Dictionary, 7th Edition, page-640, defines the term "fiduciary" and "fiduciary relationship" as follows:

Fiduciary: 1. One who owes to another the duties of good faith, trust, confidence and candor (the corporate officer is a fiduciary to the shareholders). 2. One who

must exercise a high standard of care in managing another's money or property (the beneficiary sued the fiduciary for investing in speculative security).

Fiduciary relationship: A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships-such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client-require the highest duty of care. Fiduciary relationship use, arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

11. Meaning of fiduciary relationship disclose that such relationship exist when one person place trust or confidence to another in a particular matter. In the instant case after doing away the duty of examination of the answer script, the examiner has returned the answer script to the APPSC. It is also not the case of the APPSC that the name of such examiner is mentioned somewhere in the answer script exposing to the applicant nor the applicant has sought for information to disclose the name of the examiner. In such a situation it is not understood as to how fiduciary relationship between the APPSC and the examiner would be violated in the event of allowing the appellant to peruse the answer script. It is also not the case of the APPSC that the examiner who inspected the answer script is still in the list of examiner i.e. regular examiner of the subject in question for the APPSC.

12. There might be some fiduciary relationship between the examiner and the APPSC but in the absence of the necessary terms of engagement of the examiner and no materials to that effect having been placed before the Court by APPSC, it is difficult to hold the existence of such a relationship. Even if there exists such a relationship, allowing to peruse the answer script to the applicant it would not violate any such relationship justifying refusal of the prayer of the applicant u/s 8(1)(e) of the Act.

13. The applicant appeared in an examination conducted by the APPSC being an applicant for appointment in a public post. The examination conducted by the APPSC for the said post has got involvement of public element. The applicant upon perusal of the evaluated answer script may find sufficient reason to raise further objection contending that the selection for the public post was not made in a proper and fair manner. That apart, it might also provide scope to rectify himself by knowing his deficiencies, if any. The information sought to be received by the applicant, in such a situation, is not personal information but the element of public interest is deeply rooted in it.

14. The regulations of the APPSC no doubt allow such right of perusal of answer

script by an examine but the regulation also does not provide that such prayer, if made, is required to be refused on any count. The rights of the applicant to receive the information and the circumstances under which such information is to be supplied has been provided in the RTI Act and the said right is not permitted to be denied or violated taking resort to non-inclusion of such right in regulation of the APPSC. Suffice it to say the APPSC is guided by its regulation framed for the purpose conducting selection of candidates, whereas the RTI Act provides a definite and specific right to the applicant.

15. The decision in Maharashtra's case (supra) relied on by the APPSC was rendered before enactment of RTI Act, when there was no such statutory recognition of right to information by a citizen. After coming into force of the Act, in the event a citizen can satisfy the requirement of the Act, the information sought for should be supplied to him. In this connection I am also fortified with a decision of Division Bench of this Court rendered in WP (C) No. 2054/2009 and other similar matters, disposed of on 6.11.2009 wherein such direction for supply of answer scripts was given to the Assam Public Service Commission.

16. In view of what has been discussed and observed above, the petitioner/ APPSC has failed to make out a case justifying interference with the impugned decision rendered by the Arunachal Pradesh Information Commission, in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

17. In the result, the writ petition stands dismissed being devoid of merit. No costs.