
(2011) 02 CHH CK 0064
In the Chhattisgarh High Court
Case No : Writ Petition No. (C) 5843 of 2009

Kewal Singh Gautam

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Right to Information Act, 2005 — Section 2, 3, 8, 8(1), 8(1)

Citation : (2011) 02 CHH CK 0064

Hon'ble Judges : M.M. Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Shrivastava, J.—In these two petitions, questions which arise for determination and adjudication are common relating to petitioners" right to information under Right to Information Act, 2005 (hereinafter referred to as "the Act of 2005").

2. The factual background in these two petitions are quite similar. The relief prayed for in these petitions is that the orders passed by the Chief Information Commissioner, affirming the order of the Appellate Authority & Public Information Officer, he set aside and respondents be directed to provide certified copy of answer sheets of the petitioner. The individual facts in each of the petitions, giving rise to the litigation before this Court are summarized as below -

3. Writ petitioner- Kawal Singh Goutam in W.P. (C) No.5843/09, posted as Accountant in the office of Principal, Govt. High School Sukuldaihan, Rajnandgaon, appeared in the departmental examination conducted in the year 2007 by the Department of Treasury, Accounts & Pension. He secured a total of 255 marks in the examination. Though, in two subjects, he secured more than 64 marks, but in other 3 subjects, he was awarded marks lower than what he expected. On 12.6.2008, he made an application (Annexure P-3) to the designated Public Information Officer for supply of certified copies of assessed/

checked answer sheets of three subjects, by paying requisite charges, under right to information. In response to his application, the Public Information Officer, vide his letter dated 25.6.2008 (Annexure P-4) informed that the information, as sought by the petitioner, could not be supplied to him, by stating that supply of answer sheet of the petitioner is an information which relates to personal information, the disclosure of which, has no relationship to any public activity or interest. It was also stated that Central Information Commission has prohibited supply of answer sheets and the same is not in the larger public interest and, therefore, in view of the provision contained u/s 8(1) (e) of the Act of 2005, such information cannot be supplied. On an appeal preferred before the Appellate Authority under the provisions of the Act of 2005, the Appellate Authority referring to order passed by the Central Information Commission in the case of Shri Vivek Kumar Vs. Lok Sewa Ayog, New Delhi, dismissed the appeal by holding that conduct of examination is confidential proceeding and public interest does not warrant supply of answer sheet in view of the provision contained in Section 8 (1) (d) of the Act of 2005. Aggrieved by the order passed by the Appellate Authority, the petitioner finally preferred appeal before the Chhattisgarh Information Commission, which too, was dismissed vide order dated 28.2.2009, by the Chief Information Commission, by affirming the reasons for rejection with reference the provision contained in Section 8 (1) (e) and Section 8 (1) (j) the Act of 2005 contained in the order of the 1st Appellant Authority and Public Information Officer. In addition, it was also held that considering the sanctity of examination and that in the event of supply of copy of answer sheet, it may lead to chaos, the order passed by the 1st Appellate Authority and Public Information Officer was found just and proper. The Appellate Authority, however, sought to modify the order of dismissal of appeal after hearing the petitioner and modified its order allowing inspection of the answer sheets. The petitioner thereafter inspected the answer sheets. According to the petitioner, he discovered that his answer sheet were not properly checked and finding negligent attitude of the examiners, petitioner, desirous of challenging the valuation so done by the examiner, has now approached this Court for issuance of direction to respondents authority, for supply of certified copies of answer sheet of the petitioner in respect of the subjects as mentioned in his application under the right to information.

Writ petitioner - Dumeshwar Kumar in W.P. (C) No.5857/09, posted as Accounted in the office of Principal, Govt. Higher Secondary School Bhedikala, Rajnandgaon had also appeared in the departmental examination conducted in the year 2007 by the Department of Treasury, Accounts & Pension. He secured a total of 243 marks and not satisfied with the marks awarded to him in other three subjects, filed application for supply of assessed/checked answer sheets, by submitting an application under Right to Information Act before the Public Information Officer. His application was also rejected vide order dated 25.6.2008 on similar reasoning, taking recourse to provision provisions contained in Section 8 (1) (j) and 8 (1) (e) of the Act of 2005, whereupon this petitioner preferred an appeal,

which was also dismissed on similar grounds. Finally, on an appeal preferred before the Chhattisgarh Information Commission, vide order dated 28.2.2009, the Appellate Authority, dismissed the appeal on identical grounds as in the case of other petitioner, but later on modified its order by allowing inspection of answer sheets. As the petitioner in this case also desired to challenge the valuation done by the examiner in his case, by taking recourse to remedy in a Court of law, he has also prayed for issuance of direction for supply of checked/assessed answer sheets of his own.

4. In both the cases, the reasons which have been assigned and the provisions of the Act of 2005, taking recourse to which the application has been rejected and the grounds of which appeal has been rejected by 1st and 2nd Appellate Authority are also identical.

5. Learned counsel for the petitioners strenuously argued that the petitioners have been guaranteed right to information u/s 3 of the Act of 2005. The petitioner is entitled to information sought by them and the Public Information Officer was obliged under the law to supply them necessary information and also grant certified copies of the assessed/checked answer sheets of the petitioners in view of the statutory mandate contained in Section 3 of the Act of 2005. Further submission of learned counsel for the petitioners is that in so far as applicability of exemptions which have been carved-out u/s 8 (1) (e) & 8 (1) (j) of the Act of 2005, is concerned, the present is not at all a case of existence of any fiduciary relationship so as to exempt disclosure of information, as both the petitioners have not sought the disclosure of any information relating to a third party, but they have sought supply of certified copies of assessed/checked answer sheets of their own. The other submission of learned counsel for the petitioners is that even the exception carved-out u/s 8 (1) (j) of the Act of 2005 is also wrongly invoked under misconceived notion of law on the" part of Public Information Officer and the Appellate Authority, as it cannot be said to be a personal information, the disclosure of which has no relation to any public activity or interest, as has been stated by the authorities. Learned counsel for the petitioners argued that even in respect of cases covered by clauses (e) & (j) of Section 8 (1) of the Act of 2008, there is no absolute bar against disclosure of information when larger public interest warrants disclosure of such information, It is the submission of learned counsel for the petitioners that the supply of answer sheets of the petitioners is necessary for the petitioners to demonstrate, in appropriate proceedings, the illegality and arbitrariness, negligence, fallacy and careless attitude of the examiners/ checkers while evaluating performance of the petitioner in the examination of the concerned subjects. In support of their contention and prayer made in the petition, learned counsel for the petitioners relied upon the judgment of the Calcutta High Court in the case of Pritam Rooj Vs. University of Calcutta and Others, which was affirmed in appeal by a Division Bench of that Court reported in University of Calcutta and Others Vs. Pritam Rooj, . Reliance is also placed on the decisions in the case of Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, ; State Bank of India Vs.

6. On the other hand, learned counsel for the respondents in both the cases, argued that petitioners' claim for supply of certified copies of their answer sheets in the concerned subjects is untenable in law, in view of the exceptions carved-out u/s 8 (1) (e) & 8 (1) (j) of the Act of 2005, which are squarely attracted. He submits that Public Information Officer and the Appellate Authority have rightly rejected petitioners' application. He further submits that even though, application of the petitioners in the two writ petitions for supply of certified copies of their respective answer sheets has been rejected, which has been upheld by the 2nd Appellate Authority, the petitioners, in each of the cases, were in fact allowed inspection of their answer sheets. In his submission, inspection by the petitioners of their respective answer sheets under the order of the 2nd Appellate Authority satisfies the requirement of law and after inspection, there is no further obligation under the law, on the respondents, to supply their answer sheets.

7. In order to appreciate the submissions made by learned counsel for the respective parties and adjudicate the controversy involved in this petition, it would be extremely relevant to examine the statutory scheme of the Right to Information Act, 2005, both in its preamble as also various provisions relevant for the purposes of the present case.

8. The preamble to the Act of 2005 declares that the Act is passed because "democracy" requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Section 3 of the Act of 2005, importantly, reads -

3. Right to Information- Subject to the provisions of this Act, all citizens shall have the right to information.

Though the Act restricted rights of information to citizens, as expressly stated in the aforesaid provision, it is noteworthy that an applicant, seeking information, is not required to give any reasons why he/she needs such information, except certain necessary details pertaining to his own particulars. Section 2 (f) of the Act defines "Information". The word "information" engulfs, in its wide amplitude, almost all known form of information, which is evident from a bare reading of the said provision, extracted below: -

2 (f) "information" means 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 and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; Public Authority, which is obliged to provide information, has been defined u/s 2 (h) of the Act of 2005, as below:

2(h) "public authority" means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any

(i) body owned, controlled or substantially financed;

(ii) non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government:

Another important provision is the definition of term "right to information", as defined u/s 2 (j) of the Act of 2005, which means the right to information accessible under the Act which is held by or under the control of any public authority and includes right to inspect, take notice, certified copies etc., as enumerated in clauses (i) to (iv) thereof.

9. Section 8 of the Act of 2005, which starts with a non-obstante clause, expressly and exhaustively provides for exemptions from disclosure of information in its various clauses. Out of as many as 8 matters enumerated in clauses (a), (b), (c), (d), (e), (f), (g) & (h), clause (e) & (j) which are relevant for the purposes of the present case and in respect of which it is stated that notwithstanding anything contained in the Act there shall be no obligation to give any specific information, are extracted below:

8 (1) (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; (j) information which relates to personal information the disclosure of which has not 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.

10. Clause (e) of sub-section (1) of Section 8 of the Act of 2005 relates to information available to a person in his fiduciary relationship. The provision of the Act declares that there shall be no obligation to give information of such a nature unless the competent authority holding information in fiduciary capacity, is satisfied that the larger public interest warrants the disclosure of such information;

11. Fiduciary relationship is one where a party stands in a relationship of trust to

another party. The said relationship gives rise to an obligation to protect the interest of other party. Present is not a case where the petitioners are seeking disclosure of an information with regard to the valuation done by the examiner in respect of any other departmental candidate who appeared in the examination. The petitioners are only seeking disclosure of information which would also include supply of certified copies of the answer sheet of their own. It is neither the case of the respondents nor any material has been placed before this Court either in the form of any provision having the force of law applicable in the matter of departmental examination or any other agreement between the examiner and the public authority that the work of examination done by the examiner shall be kept secret and confidential and will not be open to scrutiny by any other person including the examiners. In almost similar situation, where an examinee sought inspection of his answer sheet in an university examination, replying to the plea of fiduciary relationship seeking exemption from disclosure of information by taking recourse to provision contained in Section 8(1) (e) of the Act of 2005, Division Bench of the High Court of Calcutta in the case of University of Calcutta (*supra*), held as under:

The plea of fiduciary relationship, advanced by the CBSE has not impressed us. Fiduciary relationship is not to be equated with privacy and confidentiality. It is one where a party stands in a relationship of trust to another party and is generally obliged to protect the interest of the other party. While entrusting an examiner with the work of assessment/evaluation of an answer script there is no agreement between the examiner and the public authority that the work performed by the examiner shall be kept close to the chest of the public authority and shall be immune from scrutiny/ inspection by anyone. At least nothing in this respect has been placed before us. Since the RTI Act has been enacted to promote transparency and accountability in the working of every public authority and for containing corruption, even if there be such a clause in the agreement between the examiner and the public authority the same would be contrary to public policy and thus void. We have no hesitation to hold that even if there be any agreement between the public authority and the examiner that the assessment/evaluation made by the latter would be withheld on the ground that it is confidential and an assurance is given in this respect, the same cannot be used as a shield to counter a request from an examinee to have access to his assessed/evaluated answer scripts and the RTI Act would obviously override such assurance. Having regard to our understanding of the meaning of the word "fiduciary", there is little scope to hold that the etchings/markings made on answer scripts by an examiner are held in trust by the public authority immune from disclosure under the RTI Act. We find no force in the contention which, accordingly, stands overruled.

12. In the case of Dr. Mrs. Anson Sebastian (*supra*), where a Scientist working with the Institution applied to the Information Officer for getting information pertaining to certain documents relating to domestic enquiry against an employee and also for getting entries in the confidential reports of many other

employees, repelling the argument that the Institution is not obliged to disclose information on account of it holding information in fiduciary capacity, it was held that Section 8 (1) (e) of the Act of 2005 has no application as it deals with information available with the person in his fiduciary relationship with another and the provision applies to the relationship that exists between a patient and a doctor, a lawyer and a client etc. It was held that the provision contained in Section 8 (1) (e) of the Act will have no application in relation to information sought by an employee about other co-employees of the same employer.

13. In the present case, the argument advanced that disclosure of information is exempted in view of the provision contained in Section 8 (1) (e) of the Act of 2005, therefore, appears to be clearly misconceived in law and is liable to be rejected.

14. In for far as the other reason for rejection of the application, invoking the provision contained in Section 8 (1) (j) of the Act of 2005, that the information sought relates to personal information, the disclosure of which has no relationship to any public activity or interest or would cause unwarranted invasion of the privacy of the individual is concerned, the same is equally misconceived in law and deserves rejection. In a case where such personal information has relationship to any public activity or interest, exemption could not be claimed. In the present case, the petitioner has sought supply of certified copy of answer sheets written by they themselves. None of the petitioners in the two writ petitions have sought any personal information relating to any third party or personal information either of the examiner or the person who has conducted examination or any other candidate who appeared in the examination. Moreover, this Court has no hesitation in saying that the conduct of examination in the present case by the departmental agency for the purposes of promotion from lower rank to higher rank in Govt. department, are not private activities, but in public domain. Therefore, where a candidate asked for information regarding his own performance in a departmental competitive examination and in that connection demands copy of his own answer sheets which are assessed/ evaluated by the examiner, without asking for any personal information of any other person concerning with the process and conduct of examination, provision of Section 8 (1) (j) of the Act of 2005 are not at all attracted. It also cannot be said that said disclosure of information would cause unwarranted invasion of the privacy of some individual. There are no factual foundations laid in the pleading of the respondents nor borne-out from the records of the case. The checking and evaluation of answer sheet by an examiner and the marks given by him upon assessment of performance has nothing to do with the privacy of either the examiner or those who are responsible for conducting the examination. In the case of Dr. Mrs. Anson Sebastian (*supra*), where one employee sought information pertaining to documents relating to domestic enquiry against another employee and also for getting entries in confidential report of six other employees of the appellant, repelling the claim of exemption u/s 8 (1) (j) of the Act of 2005, the Division Bench of High Court of Kerala held that provision of

Section 8 (1) (j) are not attracted. It was held that the confidential reports of employees managed by the employer cannot be treated to be records pertaining to personal information of an employee, disclosure of which can be said to be exempted u/s 8 (1) (j) of the Act. The case of the petitioners in the two petitions in hand, stands on a much better footing. Therefore, I am of the considered opinion that the rejection of petitioners application for supply of certified copies of their assessed/evaluated answer sheet is illegal as no exemption could be claimed u/s 8 (1) (e) and Section 8 (1) (j) of the Act of 2005.

15. The submission of learned counsel for the respondents that as the petitioners have been allowed inspection of their answer sheet, there is no further obligation to provide certified copies of the answer sheet, is liable to be rejected in view of the provision contained in Section 3 of the Act of 2005 and the definition of the words "right to information" u/s 2 (j) of the Act. Section 3 of the Act of 2005 clearly states that subject to the provisions of the Act, all citizens shall have right to information. What "right to information" is meant, for the purposes of the Act, is crystal clear from its definition under clause (j), which is extracted as below:

(2) (j) "right to information" 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 -

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

16. Therefore, right to information would include right to take certified copies of documents or records and mere inspection does not discharge the respondents of their obligation nor can it be said that the petitioner has been given complete information. Present is not a case where the petitioners, after inspection of their answer sheet, felt satisfied. The application of the petitioners clearly shows that they demanded certified copies of their answer sheet in concerned subjects. Therefore, the petitioners right to information includes right to take certified copies of the answer sheets also, which cannot be denied by the respondents.

17. The identical issue relating to supply of information in relation to answer in answer sheets, came up for consideration before the High Court of Calcutta in the case of Pritam Roj (supra), wherein an examinee had prayed that he be granted inspection of his answer papers. The petition was allowed. The order having been challenged in appeal before the Division Bench, the Division Bench dismissed the appeal. The order passed by the learned Single Judge was affirmed (University of Calcutta and Others Vs. Pritam Roj,). The facts of the present case are identical.

18. In the result, the petition is allowed. The respondents are directed to supply certified copies of the evaluated/assessed answer sheets of the respective petitioners to them, on payment of necessary charges, if not already paid. Copy of this order be placed on record in the connected matter (Writ Petition (C) No.5857 of 2009) also.