

(2014) 05 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2032/2014 with Stay Application No. 2026/2014
and Civil Writ Petition No. 2623/2014 with Stay Application No.
2565/2014

Mukesh Kumari

APPELLANT

Vs

The Rajasthan Public Service Commission
 Shiv Dayal
Meena and Another Vs The State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 19
Right to Information Act, 2005 — Section 2(f), 2(i), 27, 28, 3

Citation : (2015) 1 RCR(Civil) 747 : (2015) 1 RLW 57

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sanjeev Prakash Sharma, Senior Counsel, Shri Gaurav Sharma, Shri Umesh Vyas, Shri Ram Pratap Saini, Shri Satyendra Meena, Shri Vigyan Shah, Shri R.K. Kasana, Shri Manish Kumar Sharma, Shri Mahendra Sharma, Shri Samay Singh, Shri Rajesh Chaturvedi, Shri Amit Jindal, Shri Tarun Choudhary, Shri Sandeep Saxena, Shri Kartar Singh Fauzdar, Shri Sanjay Mehla, Ms. Shikha Parnami, Shri Sanjay Sharma, Shri Vijay Pathak, Shri Yogendra Jain and Shri Rajendra Sharma, Advocate for the Appellant; Inderjeet Singh, Additional Advocate General, Shri B.L. Awasthi, Additional Government Counsel, Shri S.N. Kumawat, Shri Rajdeepak Rastogi and Shri M.F. Baig, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—All these writ petitions have been filed by petitioners, who appeared in the recruitment for the post of Rajasthan Administrative Service and Rajasthan Tehsildar Service Combined Competitive Examination, 2012, pursuant to advertisement dated 06.02.2012, seeking a direction to the respondent Rajasthan Public Service Commission (for short, "the RPSC") to allow them inspection of answer books of compulsory paper and option paper of RAS main examination, 2012, and supply photo copies thereof.

2. Shri Sanjeev Prakash Sharma, learned Senior Counsel, who has led the argument on behalf of petitioners, in support of the case, relied on a judgment of the Supreme Court in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, , and submitted that the petitioners have a right to inspect their evaluated answer books and take certified copies thereof, because answer books, answer-sheets/OMR sheets are documents and record in terms of Sections 2(f) and 2(i) of the Right to Information Act and therefore constitute "information" in the meaning of that Act. Right to information is a facet of freedom of speech and expression under Article 19 of the Constitution of India, subject to reasonable restrictions. Learned Senior Counsel for petitioners in this connection has referred to paras 45 to 47 of the said judgment.

3. Shri Sanjeev Prakash Sharma, learned Senior Counsel, submitted that the respondent RPSC itself has issued a notification dated 22.08.2013 purported to have been issued under Sections 27 and 28 of the Right to Information Act, prescribing the fee for supply of copy of answer key (objective type exam), inspection of answer sheet (OMR objective type), inspection of answer copy (written descriptive type), copy of response sheet (OMR objective), copy of result (only of candidate's own result) within a stipulated time limit and as per format determined by Commission, copy of other document (if permissible). It is argued that this notification has been especially issued for RAS Main Examination in view of large number of applications filed by unsuccessful candidates to inspect the copies and answer-books. Learned Senior Counsel submitted that this notification has been issued by the RPSC much after delivery of Division Bench judgment of this Court in Shanu Goyal Vs. State of Rajasthan and Others-D.B. Civil Writ Petition No. 11708/2013, on 08.07.2013. The respondent RPSC cannot therefore now refuse to give effect to its own notification. Besides, the aforesaid Division Bench judgment sought to be relied by the respondent RPSC, arose out of competitive examination for recruitment to Rajasthan Judicial Service and would not be applicable to the present case.

4. Learned Senior Counsel argued that the Division Bench has in Shanu Goyal, supra, not correctly appreciated the law, as it has misread the judgment of the Supreme Court in The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Others, . Learned Senior Counsel referring to paras 16, 31 and 39 of the report, argued that therein it was held by the Supreme Court that information relating to intellectual property i.e. question papers, solutions/model answers and instructions, in regard to any particular examination, cannot be disclosed before examination is held, as it would harm competitive position of innumerable third parties taking examination. Learned Senior Counsel, therefore, submitted that now when the main examination of RAS has taken place, there is no harm in providing copy of answer-books or permitting their inspection, to the petitioners. Learned Senior Counsel further argued that since the petitioners are being declared unsuccessful in the RAS Main examination, therefore, they would not be required to appear before the interview board. There is thus no question of any prejudice being caused to the process of examination or secrecy being

compromised. Learned Senior Counsel therefore prayed that the writ petitions be allowed.

5. Shri S.N. Kumawat, Shri R.D. Rastogi and Shri M.F. Baig, learned counsel for the respondent RPSC, referred to the notification dated 31.07.2012 issued by the Government of Rajasthan in its Department of Personnel (A-Gr. II), promulgating the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive examination) (Amendment) Rules, 2012, which amended the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive examination) Rules, 1999. The amended Rules came into force from the date of notification. Learned Counsel argued that as per Schedule-III appended to the Rules of 2012, the scheme of examination for State (R.A.S. etc.) and Subordinate (R.T.S. etc.) Services Combined Competitive examination, consists of two successive stages, namely, (i) Preliminary Examination, and (ii) Main Examination, followed by personality and viva-voce examination. The process of examination cannot thus be said to be complete, unless the personality and viva-voce examination of all the candidates have taken place. Till then, neither the answer books can be shown to the candidates appearing in the examination nor can copy thereof be supplied to them. Doing so would amount to compromising the secrecy and sanctity of the examination. Learned counsel in this connection has relied on judgment of the Supreme Court in the Chartered Accountants of India Vs. Shaunak H. Satya and Others, supra, and argued that therein it was held by the Supreme Court that information relating to intellectual property, question papers, solutions/model answers and instructions, in regard to any particular examination, cannot be disclosed before the examination is held, as it would harm competitive position of innumerable third parties taking examination. It is therefore argued that the answer-sheets can be shown to the candidates only when complete process of examination is over and results have been declared.

6. Shri S.N. Kumawat, learned counsel for the respondent RPSC, has relied on judgment of the Supreme Court in Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Another, , wherein the Supreme Court upheld the refusal to disclose the name and address of the members of the interview board as the disclosure of names and addresses of the members of the Interview Board would prima-facie endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board and, on the other, such disclosure would serve no fruitful, much less any public purpose. Learned counsel, in support of his argument, also relied on a judgment of a coordinate bench of this Court in Rajasthan Public Service Commission Vs. Ms. Pooja Meena and Another-S.B. Civil Writ Petition No. 2461/2011, decided on 07.12.2011

7. Shri R.D. Rastogi, learned counsel for the respondent RPSC has argued that a balance has to be struck between transparency of the process and confidentiality

of the examination. The notification, relied on by the petitioners, has to be read harmoniously consistent therewith. Even if the notification has been issued after division bench judgment of this court in Shanu Goyal, *supra*, it does not provide that answer-sheet/answer-book shall be furnished/supplied/shown during the currency of examination process.

8. Shri M.F. Baig, learned counsel for respondent RPSC, has opposed the writ petition and submitted that the Supreme Court in Prashant Ramesh Chakkarwar Vs. Union Public Service Commission and Others, , held that the High Court was justified in non-suiting petitioners on the ground of non-impleadment of candidates selected in civil services mains examination, while challenging method of moderation adopted by the UPSC, and thereby refusing to permit the applicants to carry out the inspection of the answer books in the Court. In doing so, the Supreme Court accepted the argument of the UPSC that there would arise number of problems in showing the answer-books to the candidates as detailed out in their counter-affidavit, which has been reproduced in para 12 of the report.

9. I have given my anxious consideration to rival submissions and perused the material on record.

10. No doubt, the answer books, once they are evaluated by the examiner appointed by the examining body, becomes the "record" containing the information of the examiner, in terms of Section 2(i) of the Right to Information Act, therefore is also an information in terms of Section 2(f) of the Act. According to Section 3 of the Act, subject to the provisions of the said Act, all the citizen have right to information. The object of the Act is to enable the citizen to fight against corruption prevalent in the Government departments, which is why they have been provided access to information regarding functioning of every public authority. The Supreme Court in CBSE Vs. Aditya Bandopadhyay, *supra*, has held that there is no question of breach of confidentiality, privacy, secrecy or trust in furnishing the copy of an answer book. The real issue is not in regard to the answer book but in regard to the marks awarded on the evaluation of the answer book. What the examinee actually wants to know is the break-up of marks given to him, and that how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Since the examining body does not hold the evaluated answer books in fiduciary relationship, the exemption u/s 8(1)(e) of the RTI Act would not be available to it with regard thereto.

11. The same two-Judge bench of the Supreme Court, which rendered the decision in CBSE Vs. Aditya Bandopadhyay, *supra*, later had the occasion to deal with the same subject in ICAI Vs. Shaunak H. Satya, *supra*, again in the context of demand of the examinee for information regarding marks in his answer book, the instructions issued to the examiners and model answers supplied to them and number of times the marks of any candidates was revised etc. The Supreme

Court, in paras 15, 16 and 17 of the report, held as under:-

15. Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption. For example, any information which is exempted from disclosure u/s 8, is liable to be disclosed if the application is made in regard to the occurrence or event which took place or occurred or happened twenty years prior to the date of the request, vide section 8(3) of the RTI Act. In other words, information which was exempted from disclosure, if an application is made within twenty years of the occurrence, may not be exempted if the application is made after twenty years.

16. Similarly, if information relating to the intellectual property, that is the question papers, solutions/model answers and instructions, in regard to any particular examination conducted by the appellant cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. Therefore it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held.

17. In fact the question papers are disclosed to everyone at the time of examination. The appellant voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination. Therefore section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answer scripts is completed, as at that stage they will not harm the competitive position of any third party. We therefore reject the contention of the appellant that if an information is exempt at any given point of time, it continues to be exempt for all time to come.

12. Clearly, the Supreme Court in ICAI Vs. Shaunak H. Satya, supra, held that the examining bodies should change their old mindsets and tune themselves to the new regime of disclosure of maximum information. Public authorities should realize that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. As the examining bodies and the examination processes have not been exempted by the Parliament in the RTI Act, the examining bodies will have to gear themselves to comply with the provisions of the RTI Act. The Supreme Court further held that the competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interest, which include efficient operation of public authorities and

the preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

13. Aforesaid judgment was followed by the Division Bench of this Court in Shanu Goyal, *supra*, in a matter wherein similar demand was made by the candidate, who had appeared in the Rajasthan Judicial Service examination, and was declared fail for not having been able to secure minimum qualifying marks. The scheme of examination in RJS recruitment also contained preliminary examination followed by main examination, which, apart from written, also consisted of viva-voce and personality examination. She had demanded for copy of question papers, booklets and answer booklets at the stage when the interviews had yet not taken place. Relying on the judgment of the Supreme Court in ICAI Vs. Shaunak H. Satya, *supra*, the Division Bench held as under:-

In view of the emphatic enunciation and the legal proposition as above, we are of the unhesitant opinion that considering the nature of the ongoing selection process as stipulated by the Rules and the bearing of the results of the written examination on the eventual selection of the candidates, the request of the petitioner, as made in the instant petition, ought not to be entertained at this stage. This request, we construe, if allowed, would undermine the confidentiality of the exercise underway, apart from affecting the third party rights. Besides, the very basis of the relief sought for by the petitioner is speculative i.e. her perception that her performance has not been correctly evaluated for which there is no tangible basis for this Court to act upon.

14. Indisputably, information under the RTI Act can be sought at different stages or at different points of time. What is exempted for disclosure at one point of time, may cease to be exempted at a later point of time depending upon the nature of examination. The examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions at the stage before the examination is held, as it would harm the competitive position of innumerable third parties taking the said examination. The position will be different, once the examination is held. At that stage, the discloser of any such information would not harm the competitive position of any third party. The ratio of the aforesaid judgment of the Supreme Court in ICAI Vs. Shaunak H. Satya, as also of Division Bench of this Court in Shanu Goyal, thus squarely apply to the facts of the present case as herein also the scheme of the examination, as has been argued, consists of two phases, namely, preliminary examination and main examination. And in this case too, main examination comprises of both written examination as well as personality and viva-voce examination. Unless all these stages are over, the process of examination cannot be said to be complete. At the present stage, when the process of examination is still going on, disclosure of information may not be conducive to the secrecy and sanctity of the process of examination.

15. In view of the above, the writ petitions fail and are hereby dismissed. It would, however, be open to the petitioners to reiterate their request once the

process of examination with the declaration of final result is over.

16. This also disposes of stay applications.