
(2019) 08 JH CK 0155

In the Jharkhand High Court

Case No : Writ Petition (c) No. 2004 Of 2017 & Writ Petition (c) No.2004 Of 2017

Ramkandey Mishra

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Right To Information Act, 2005 — Section 6, 7, 8, 8(1)(d), 8(1)(g), 11, 11(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0155

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Mahadev Thakur, Sanjay Piprawal, Akahs Bhushan

Final Decision : Dismissed

Judgement

1. This writ petition is filed against the order under Article 226 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 25.11.2016 passed in appeal no. 822 of 2015 by the State Information Commission, Ranchi, Jharkhand, by which, the information has been refused to be supplied information pertaining to the other candidates who have participated in the Primary Untrained Teacher Recruitment Examination, 2002-03.

2. It is the case of the petitioner as has been pleaded in the writ petition that he has participated in the process of selection for consideration of his candidature of selection as untrained teacher, in which, he has been declared to be unsuccessful candidate and thereafter he has made an application under the provision of Section 6 of the Right to Information Act, 2005, seeking therein information of the successful candidates under the unreserved category (General) along with the other candidates who have secured maximum and minimum marks, as also the marks secured by a candidate bearing Roll No. 180906103 (Annexure-1), the Public Information Officer vide communication dated 22.09.2014 (Annexure-1/1), has not furnished the information on the pretext that the same is not available in the office of the Commissioner, however, information pertaining

to the Clause No. 2 has been furnished showing therein that the said candidate has secured 63 marks.

3. The petitioner being aggrieved with the non-supply of the information as sought for, has approached before the First Appellate Authority, who has closed the proceeding on the ground that the information permissible to be supplied, has been supplied which prompted the petitioner to approach before the Second Appellate Authority who has declined to interfere with the orders passed by the Public Information Officer (First Appellate Authority), against which, the present instant writ petition has been filed.

4. Learned counsel for the petitioner has submitted that under the Right to Information Act, 2005 the petitioner is having statutory right to get information and accordingly he has made an application but the information has not been furnished and therefore, there is violation of the duty as has been casted upon the authorities under the provision of Right to Information Act, 2005.

He further submits that only rider in not furnishing the information sought for is Section 8 which contains the provision for exception from disclosure of application and so far as the third party information is concerned, the provision has been made under Section 11 of the Act, 2005 and therefore it is not the third party information, which cannot be supplied by the State authorities, if requisition under the provision of Right to Information Act, 2005.

5. Mr. Sanjay Piprawal, learned Sr. S.C.-I appearing for the State Information Commission, has submitted by negating the claim of the petitioner that the nature of information sought for by the petitioner since is of third party and therefore, the question of applicability of the provision of Section 11 would only come if the authority casted duty under the Act, 2005 will intend to disclose any information, then, the other requirement i.e., seeking consent of the said third party would come into play but since the authorities have shown no intention to furnish the information, therefore, there is no question of issuing any notice to the third party seeking their concern and therefore, the information being in the nature of third party information, the same cannot be furnished to the petitioner.

So far as the ground taken by the petitioner pertaining to the provision of exemption from disclosure of application as provided under Section 8 as has been pleaded by the writ petitioner at paragraph 7 to the writ petition regarding non-applicability of the provision of Section 8 (1)(d) and 8(1) (g) is concerned, it has been submitted that the Section 8 is not applicable at all in the present case on account of the nature of prayer as has been sought for by the petitioner.

6. Having heard the learned counsel for the parties and on appreciation of their rival submissions, this Court before entering into the legality and propriety of the impugned order deem it fit and proper to refer some relevant provisions which is important for the present case.

Section 6 of the Right to Information Act, 2005 contains a provision conferring

power upon the person to make a request for information and on such request the same would be disposed of in terms of Section 7 thereof.

Section 8 contains the provision for exemption from disclosure of information and Section 11 (1) pertains to the third party information, therefore, the provision of Section 8 and 11 issues involved in this case needs to refer which reads hereunder as:-

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.

11. Third party information.-

(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

It is evident from the provision of Section 8 is pertaining to exemption from disclosure of information wherefrom it transpires that the information is not to be furnished in case the information pertains to the details furnished under Section 8 of the Act, 2005, and Section 11 pertains to the third party information.

7. The contention of the petitioner to the effect that the information which has been sought for, is not coming under the fold of the exception from disclosure of the information as stipulated under Section 8 of the Act, 2005 cannot be described but the question herein is about the third party information and therefore, there is no question of applicability of Section 8 of the Act, 2005 for the reason that even if information which has been sought for by the petitioner is not coming under the exception clause as referred under Section 8 of the Act, 2005 it is not that the information pertaining to third party would not be furnished and therefore, the legislature is very pertinent in this regard by inserting a provision under Section 11 which deals with the information pertaining to the third party, admittedly herein the petitioner is seeking information of the third party i.e. entire merit list of the general category candidate (unreserved) by showing therein the maximum and minimum marks obtained by the candidate.

Therefore, this Court is of the considered view that the information sought for by the petitioner even though is not come under the exception as provided under Section 8 of the Act, 2005 the information can be provided pertaining to Section 11 of the Act which provides that where a public information Officer either Central or the State intends to disclose any information which relates to the third party, the due notice would be issued to the said third party in writing informing as to whether he intends to disclose the information or not.

Therefore, the aforesaid information is to be read out in two parts first is that the Public Information Officer, if intends to furnish the information the second part i.e. issuance of notice to the third party would have to be resorted but vice versa if the Public Information Officer does not intend to furnish the information there is no question to issue notice to the third party.

8. The question of furnishing the details about the marks of one or the other candidates, participated in the process of selection fell for consideration before the Hon'ble Apex Court in Civil Appeal No.6159-6162 of 2013 dated 20.02.2018

wherein at Paragraph 10 which has been held that the balance is to be made in between the transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of substantive information or the other, the said paragraph reads hereunder as:-

"Weighing the need for transparency and accountability on the one hand and retirement 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 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 can be enforced. In the present case, direction has been issued without considering these parameters."

The Hon'ble Apex Court while dealing with the said issues in the aforesaid case was testing the order passed by the Central Information Commission who has supplied the details of marks of one or the other candidate by the Union Public Service Commission and laying down therein the aforesaid ratio has been referred above.

9. This Court by following the aforesaid ratio laid down therein is of the view that the facts of the instant case is also of the similar to that of the same case since herein also the petitioner is seeking the marks of one or the other successful candidates under the general category also furnishing the maximum and minimum marks obtained by the candidates and as such the same being the information pertaining to third party and when it has not been supplied by the authorities in exercise of power conferred under the Right to Information Act, 2005 it cannot be said to suffer any infirmity.

10. This Court, therefore, is of the view that the order passed by the appellate authority is not in such a nature warranting any interference by this Court under Article 226 of the Constitution of India by issuing writ of certiorari accordingly, this writ petition fails and is dismissed.