

**(2015) 03 MAD CK 0255**

**In the Madras High Court**

**Case No :** Writ Petition No. 5795 of 2015 and M.P. No. 1 of 2015 and WP(MD) No. 17628 of 2014 and M.P. Nos. 1 and 2 of 2014

R.M. Thandayuthapani

APPELLANT

Vs

The Secretary, Tamil Nadu Public Service Commission

RESPONDENT

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**Date of Decision :** 20-03-2015

**Acts Referred:**

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

**Citation :** (2015) 03 MAD CK 0255

**Hon'ble Judges :** P.R. Shivakumar, J.; V. Ramasubramanian, J.

**Bench :** Division Bench

**Advocate :** C.N.G. Niraimathi, Advocates for the Respondent

**Final Decision :** Allowed

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**Judgement**

V. Ramasubramanian, J.—In response to a Notification bearing No. 15/2014 issued on 26.8.2014 by the Tamil Nadu Public Service Commission (hereinafter called the TNPSC), for recruitment to 162 posts of Civil Judges in the Tamil Nadu State Judicial Service, the petitioner in these writ petitions submitted an application on-line. But, his candidature was rejected, on the ground that he did not have experience for a period of three years as a practitioner in law.

2. Therefore, the petitioner filed a writ petition in W.P.(MD) No. 17628 of 2014 on the file of the Madurai Bench of this Court. However, the said writ petition was transferred to the file of this Court and by an order passed on 31.10.2014, the petitioner was permitted to write the examinations held on 1st and 2nd November 2014. In accordance with the said order, the petitioner wrote all the four papers. However, when the TNPSC published a list of candidates on 20.2.2015, listing out the registration number of persons, who were short-listed in the written examination for certificate verification, the petitioner found that his registration number did not find a place. Hence, the petitioner filed an application under the Right to Information Act on 25.2.2015, seeking copies of the answer sheets in all the four papers along with the key answers in all the four papers.

Since the same were not given to him, the petitioner came up with the second writ petition in W.P. No. 5791 of 2015 praying for the issue of a Writ of Mandamus to direct the respondent to furnish copies of his answer papers along with key answers in all the four papers.

3. Heard Mr. R.M. Thandayuthapani - the petitioner appearing in person and Ms. C.N.G. Niraimathi, learned counsel appearing for the respondent.

4. At the outset, it is stated by the respondent that on principle, the respondent cannot have any objection for providing copies of answer books and key answers in view of the decision of the Supreme Court in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, . But, the objection of the learned counsel for the respondent is that till viva voce is conducted and the process of selection is over, no candidate is entitled to get copies of answer books. According to the learned counsel, in all cases where this Court or the Supreme Court had issued directions for the production of the copies of the answer books, the results had already been declared and therefore, the second writ petition is premature.

5. The learned counsel for the respondent further contends that the purity of the process of selection will get hampered, if every candidate seeks copies of the answer books even before the commencement of the viva voce.

6. We have carefully considered the above submissions.

7. The attempt made by the learned counsel for the respondent to distinguish the case on hand from cases where the Supreme Court or this Court had issued directions for providing the copies of the answer books cannot really be appreciated. There are two types of examinations. One is a qualifying examination and another is a competitive examination. In Aditya Bandopadhyay, the objection taken was that the answer books of a candidate were exempted in terms of Section 8(1)(g) of the Right to Information Act. But, the Supreme Court, after taking note of the entire scheme of the Act, rejected the said argument holding that an examinee seeks copies of answer books for the purpose of getting two different informations. The first information is to see the answers written by him and the second is to know the marks/assessment made by the examiner.

8. Merely because the qualifying examination does not comprise of a two tier process, first in the form of a written examination and the next in the form of a viva voce, it cannot be contended that the fundamental premise, on which the Supreme Court decided the case of Aditya Bandopadhyay, would stand on a different footing.

9. In paragraph 37 of the decision, the Supreme Court pointed out that the right to information is a cherished right. The Court pointed out that information and right to information are intended to be formidable tools in the hands of responsible citizens to avoid corruption and to bring in transparency and

accountability.

10. In the case on hand, the petitioner has written the papers as part of the written examination for selection of Civil Judges. It is only those, who are short-listed in the written examination, as per the Procedural Rules of the TNPSC, who are called for interview. To say that the petitioner should wait till the outcome of the viva voce, would be to allow the things to go uncontrolled. Merely because the copies of the answer books are given to the petitioner, he is not going to gain any knowledge of the marks secured by the other candidates. Therefore, the contention that the purity of the process would stand jeopardized cannot be appreciated.

11. Admittedly, the marks secured by all the candidates, who wrote the examination, have not been declared so far. The petitioner himself does not know the marks secured by him. By giving him the copies of the answer book, he will only be furnished with the information relating to the marks secured by him. Since he is not short-listed for interview, he cannot in any way hamper the process of viva voce. He does not know the marks secured by the other candidates. Therefore, we see no justification for the TNPSC to reject the request.

12. Drawing our attention to the instructions issued to candidates by the TNPSC, it is contended by the learned counsel for the respondent that the petitioner does not have a right to seek revaluation.

13. But, we do not know how that contention has any bearing upon the case on hand. The petitioner is not seeking revaluation. Instruction No. 24 reads as follows :

"Requests from candidates for furnishing the causes of their failure in the test or for revaluation of their answer books will not be complied with. However, the Commission reserves to itself the right to get any answer book revalued if in its opinion there are sufficient and valid grounds to do so." The above instruction has nothing to do with the request of the petitioner to furnish copies of his answer books.

14. Therefore, we are of the considered view that the petitioner is entitled to copies of the answer books and the key answer, notwithstanding the fact that the interview has not commenced so far.

15. In so far as the first writ petition is concerned, the petitioner has produced a certificate from the Principal District Judge, Madurai to the effect that he has been practising for four years. He has produced his enrolment certificate, which shows that he was enrolled on 31.3.2010. But unfortunately, in the column relating to post qualification work experience, he has indicated the date of joining a law firm. This has led to a misconception that he had an experience only for two years and eight months.

16. We cannot resist from recording one lacuna in the application form. There is no column in the application form for indicating the date of enrolment of a

candidate. There is also no specific column, asking a candidate to give the details of the number of years of standing at the bar and the courts, in which, the candidate had practised as an advocate. Instead, the service column as provided in the application form reads as follows :

"Post Qualification Work Experience (Start from present employer) :

The expression "employer" in the aforesaid column, as though a professional is in an employment, has led to the candidate filling up a wrong detail. Therefore, the rejection of his candidature is also not proper.

17. In view of the above, the writ petitions are allowed to the following effect :

"(i) The petitioner shall be treated as a person eligible to participate in the process of selection;

(ii) The respondent shall furnish copies of answer books and the key answers to the petitioner within a week without anything more; and

(iii) The TNPSC may take note of the above observations for modifying the application form."

No costs. Consequently, the above MPs are closed.