

Union Public Service Commission vs Siddhartha Bishnoi on 10 September, 2024

Author: Sanjeev Narula

Bench: Sanjeev Narula

\$-14, 15 & 16

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 388/2016 & CM APPL. 1584/2016

UNION PUBLIC SERVICE COMMISSIONPet

Through:

Versus

SIDDHARTHA BISHNOI

Through:

+ W.P.(C) 8654/2016

SIDDHARTH RAJKONWAR

Through: Mr. Bhupender Pra
Advocate.

versus

UNION PUBLIC SERVICE COMMISSION

Through: Mr. Ravinder Agar

+ W.P.(C) 9305/2016 & CM APPL. 37474/2016

UNION PUBLIC SERVICE COMMISSION

SUNNY

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 10.09.2024

W.P.(C) 8654/2016

1. The short question involved in the present petition is whether a candidate is entitled to know their marks in all subjects, even if they have not succeeded in the qualifying subjects. To provide context for this legal question, the relevant facts are briefly outlined below.

2. The Petitioner, Mr. Siddharth Rajkonwar, appeared for Civil Services This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 10:09:17 (Main) Examination, 2014 and undertook the following papers: 1) Essay, 2) General Studies-I, 3)

General Studies-II, 4) General Studies- III 5) General Studies-IV 6) Sociology Paper-1 7) Sociology Paper-II; Additionally, he attempted the qualifying papers, namely Hindi (Paper-I) and English (Paper-II).

3. The Petitioner did not secure the required marks in the qualifying papers, specifically Hindi (Paper-I) and English (Paper-II). For reference, a copy of his result is reproduced below:

4. As noted above, the Petitioner did not achieve the minimum qualifying marks required in the mandatory qualifying papers, namely Hindi (Paper-I) and English (Paper-II), and therefore, his remaining papers were not evaluated. Aggrieved by this outcome, the Petitioner initially approached this Court in W.P No. 10399 of 2015. However, that petition was dismissed as withdrawn, granting the Petitioner the liberty to approach the Central This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 10:09:17 Administrative Tribunal¹. Subsequently, the Petitioner filed an Original Application [OA No. 4380 of 2015] before the CAT, seeking a direction to the Respondent to evaluate all his papers from the UPSC Civil Services Mains Examination, 2014, including the Essay, General Studies, and Optional Papers (Papers I, II, III, IV, V, VI, and VII), if they had not been already evaluated. Additionally, he sought a direction for the disclosure of his raw and scaled marks (if any scaling or moderation was employed) in all these papers. However, the CAT, through its order dated 8th December 2015, dismissed the Petition. A subsequent challenge to this decision, in W.P.(C) 2227/2016, was also dismissed by the Division Bench, vide order dated 18th March, 2016. The Bench however observed that the Petitioner was free to pursue his request for information through the mechanism provided under the Right to Information Act, 2005.²

5. Accordingly, the Petitioner filed an RTI application on 22nd March, 2016, requesting details of the marks he secured in the 2014 Civil Services Mains Examination for all the other papers, despite not qualifying in the mandatory subjects. The information sought by the Petitioner in the said RTI application is as follows:

"CAT"

"RTI Act"

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6. The Petitioner's request for information was denied by the Central Public Information Officer³ of the UPSC through a response dated 22nd April, 2016. The CPIO stated that the requested information did not fall within the ambit of 'information' as defined under Section 2(f) of the RTI Act. Moreover, it was clarified that the Civil Services Mains Examination, 2014 Rules do not permit

the disclosure of evaluation results for the papers on Essay, General Studies, and Optional subjects if the candidate has not This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 10:09:18 cleared the qualifying papers. Rather than pursuing the statutory remedies available under the RTI Act, such as filing an appeal with the Appellate Authority, the Petitioner chose to challenge the refusal directly by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs:

"a) Direct the Respondent to preserve the answer sheets and the record of marks of the Petitioner until this Writ Petition is disposed of by this Hon'ble Court.

b) Direct the Respondent to disclose to the Petitioner his raw and scaled marks as the case may be in all the Papers of the Civil Services Mains Examination 2014- PAPER I (Essay), PAPER II (GENERAL STUDIES I), PAPER III (GENERAL STUDIES II), PAPER IV (GENERAL STUDIES III), PAPER V (GENERAL STUDIES IV) PAPER VI (Optional subject-PAPER I), PAPER VII (Optional subject-PAPER II)

c) Direct the Respondent to file a detailed reply on Affidavit explaining "simultaneously evaluation" per the Exam Notification No 09/2014-CSP dated 31.05.2014 and the process and policy of record keeping and record retention of answer sheets and raw and scaled marks secured by all civil services aspirants that write the mains exam every year.

d) Award the cost of the Petition in favor of the Petitioner in due consideration of the fact that he is a student and not gainfully employed to bear the cost of litigation

e) Impose heavy costs on the Respondent for re-litigating a settled issue and in effect committing Contempt of this Hon'ble Court by defying the order dated 3.09.2008 passed by this Court in LPA No. 313 of 2007 titled UPSC v Shiv Shombhu and Ors, and Order dated 13.07.2012 passed in LPA No 229 of 2011 titled UPSC v Agnesh Kumar and Ors and WP(C) No 3316 of 2011 titled Durgesh Kumar Tripathi and Ors v UPSC, and Order dated 14.08.2014 in WP (C) No 880 of 2014 titled UPSC v Manoj Kumar Singh"

7. The primary question in this petition is whether a candidate is entitled to know their marks in optional subjects, even if they have not cleared the "CPIO"

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heavily on the judgement of this Court dated 13th July, 2012 passed in Union Public Service Commission and Ors v Angesh Kumar and Ors.⁴ contending that the Respondents herein are required to disclose the marks of all candidates, regardless of their success in the examination. However, this decision was subsequently appealed to the Supreme Court⁵, which clarified the legal position on the matter holding as under:

"6. In support of this submission, reliance has been placed on judgment of this Court in Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors. MANU/SC/0932/2011: (2011) 8 SCC 497 wherein this Court observed:

61. Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly.

This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests Union Public Service Commission and Ors. v. Angesh Kumar and Ors 2018 (186) AIC 261 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 10:09:18 essential for the fulfilment and preservation of democratic ideals.

62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

66. The right to information is a cherished right.

Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the manupatra 145 A 60 necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and In discouraging corruption. But in regard to other information [that is, information other than those enumerated in Sections 4(1)(b) and (c) of the Act], equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of Governments, etc.).

67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to This is a digitally signed order.

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7. Thus, it is clear that in interpreting the scheme of the Act, this Court has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act. While balancing the right to information, public interest including efficient working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be balanced and can be a guiding factor to deal with a given situation de hors Sections 8, 9 and 11. The High Court has not applied the said parameters.

8. The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in Prashant Ramesh Chakkarwar v. UPSC MANU/SC/0347/2013: (2013) 12 SCC 489. From the counter affidavit in the said case, following extract was referred to:

(B) Problems in showing evaluated answer books to candidates.--(i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in

Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (b) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself This is a digitally signed order.

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(iii) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in Gaurav Gupta v. UPSC dated 6.7.2012 (Del.)) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging Improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, Including through litigation.

(v) With the disclosure of evaluated answer books, the danger of coaching Institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners and the This is a digitally signed order.

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(vii) Some of the optional papers have very low candidature (sometimes only one), especially the literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way the marks are awarded could itself be marks awarded are in revealing the a give away identity. If the masking falters at any stage, then the examiner's Identity is pitilessly exposed. The 'catchment area' of candidates and examiners in some of these low-

candidature papers is known to be limited. Any such possibility of examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the examination system and for the security and safety of the examiner.

(viii) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks, even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly.

9. This Court thereafter approved the method of moderation adopted by the UPSC relying upon earlier judgment in *Sanjay Singh v. U.P. Public Service Commission*, MANU/SC/0563/2007: (2007) 3 SCC 720 and *U.P. Public Service Commission v. Subhash Chandra Dixit*, MANU/SC/0878/2003: (2003) 12 SCC 701.

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10. Weighing the need for transparency and accountability on the one hand and requirement 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."

[Emphasis supplied]

8. The Supreme Court has emphasised the importance of balancing the need for transparency and accountability with considerations such as the optimal use of fiscal resources and maintaining the confidentiality of sensitive information. It explicitly states that information regarding marks in the Civil Services Examination cannot be mandated for disclosure as a matter of routine. The Court acknowledges that the nature of competitive examinations, such as the Civil Services Exam, differs from that of other academic bodies. As such, revealing raw marks could create complications and may not always serve the public interest.

9. It is thus evident that the relief sought by the Petitioner cannot be granted as the legal principle applied in *UPSC v Agnesh Kumar and Ors.*,⁶ directly applies to the present case. In the said case, the Supreme Court dealt with a similar plea of unsuccessful candidates in the Civil Services Preliminary Examination of 2010, who had sought disclosure of their detailed marks (both raw and scaled) awarded in the examination. Although the factual context in the present case differs slightly--in that the present 2018 (186) AIC 261 This is a digitally signed order.

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10. The Supreme Court has indeed observed that, in exceptional cases where public interest necessitates the disclosure of information, a court may direct the furnishing of such information. However, this discretion is not to be exercised mechanically or routinely. In the present case, the Petitioner's claim is premised purely on personal rights and lacks a demonstrated 'public interest' element that would justify overriding the principles established by the Supreme Court. Given that the Supreme Court has already settled the question regarding the non-disclosure of marks in the Civil Services Examination, particularly when the disclosure could potentially harm the integrity of the examination process or is not in public interest, this Court finds that there is no compelling reason to grant the relief sought by the Petitioner.

11. Accordingly, the present petition is dismissed.

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12. The Union Public Service Commission, through the aforementioned petitions, seeks to challenge orders dated 6th January, 2016⁷ and 22nd July, 2014⁸ passed by Central Information Commission⁹ directing disclosure of the information, whereby an RTI application filed by the information seekers was allowed, in respect of scores pertaining to non-compulsory papers.¹⁰ Similar to the connected matter (W.P.(C) 11609/2024), in these cases, also, the applicants/ information seekers, could not be successful in clearing the qualifying papers, and accordingly the CPIO, UPSC, refused to provide the scores with regards to rest of the papers.

13. In light of the aforementioned decision in W.P.(C) 11609/2024, in the opinion of the Court, the Impugned orders cannot sustain in view of the decision of the Supreme Court in Union Public Service Commission and Ors. v. Angesh Kumar and Ors.¹¹

14. Accordingly, the instant writ petitions are allowed and the Impugned orders dated 6th January, 2016¹² and 22nd July, 2014 of the CIC passed in the respective matters, are set aside.

15. With the above directions, the present writ petitions are allowed and disposed of along with the pending applications.

SANJEEV NARULA, J SEPTEMBER 10, 2024/as In CIC/CC/A/2014/901000-SB In CIC/DS/A/2013/002150/RM "CIC"

"Impugned Orders"

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