IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under and in terms of Section 34 of the Right to Information Act No. 12 of 2016 read together with Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/RTI/REV/05/2021
RTIC Appeal No: 2068/2020

Bank of Ceylon,
No.1, "BOC Square",
Bank of Ceylon Mawatha,
Colombo 01.

PETITIONER

-Vs-

1. Right to Information Commission,
   Room No. 203-204, BMICH Premises,
   Bauddhaloka Mawatha,
   Colombo 07.

2. S.M. Pasansani Anuradha,
   William Silva Mawatha,
   Batapola.

RESPONDENTS

Before: Hon. D.N. Samarakoon, J.

Counsel: Mr. Uditha Egalahewa, P.C., instructed by Ms. Tharushi Buddhadasa for the Petitioner.

Ms. Himalee Kularathna with Ms. Anuradha Silva for the 1st Respondent.

Mr. Chamara Nanayakkarawasam for the 2nd Respondent.

Argued on: 09.01.2024

Written submission tendered on: 29.01.2024 by petitioner and the 2nd Respondent.

Decided on: 12.02.2024

(A) Preliminary matters:

The Preamble to the Right to Information Act No. 16 of 2016 says,

> "AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.
>
> WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance".

Article 14A of the Constitution says,

"3

14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right held by:-

(a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law;

(b) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council;

(c) any local authority; and

(d) any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a), (b) or (c) of this paragraph.

(2) **No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court, protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence, or for maintaining the authority and impartiality of the judiciary.**

(3) In this Article, "citizen" includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens.

The 02nd respondent, **S. M. Pasansani Anuradha** applied for the post of Trainee Staff Assistant of the Bank of Ceylon, the petitioner on 28th November 2016. The

island wide competitive examination conducted by the Department of Examinations was held on 18th March 2017. 11,708 candidates were shortlisted. The petitioner was not among them. But she passed the examination. So, all candidates who passed were not shortlisted. She has not obtained sufficient marks under the District Merit List for her district is the Bank's position. 1045 candidates were selected for interviews from that district (Galle). Out of that 1045 a number of 64 were selected for appointment. Pasansani made an appeal to the Office of the Parliamentary Commissioner for Administration (Ombudsman). Having inquired from the Bank the Ombudsman informed Pasansani (what she has already been told either expressly or impliedly) that she did not reach the required district merit level for recruitment. On 16th September 2019 (nearly three years after her initial application) Pasansani wrote to the Right to Information Commission. She requested, the following information from the Information Officer,

(i) The mark sheets of applicants for the competitive examination published on the Bank's website on 13th November 2017,
(ii) The interview marks and the merit list of 11708 applicants who faced the interview,
(iii) Marks at the examination and marks given on the order of merit to all applicants from Galle District,
(iv) The list of applicants who have been recruited on district merit,
(v) The particulars of applicants within that district who failed to assume duties although selected
(vi) The dates on which successors were selected for such vacancies and their list

The Bank's Information Officer sent following responses in respect of each query,

(i) The results of the examination published on 13th November 2017 could be known in respect of a candidate, to that candidate only, limited to the information that he or she is successful at the examination or not,

(ii) The private information of candidates, will not be issued in terms of section 5(1)(a) of Right to Information Act No. 16 of 2016,

(iii) Same as in (ii),

(iv) Same as in (iii),

(v) We do not have such information,

(vi) Successors have not been recruited

Pasansani then requested for an additional information. If successors (for the vacancies created by those selected not accepting appointment) have not been appointed, how could 1700 vacancies be filled.

The Information Officer replied, that, as certain persons selected did not accept appointment, a number less than 1700 were appointed.

Pasansani appealed to the Right to Information Commission on 20th November 2020. The Commission on 06th October 2021 gave its order directing the Bank to provide the information. The Bank came before this Court in appeal on 25th November 2021.

(B) Preliminary Objections by Appellant (Bank) and Respondent (Pasansani):

(i) No valid order by the Right to Information Commission (raised for the Bank):

The learned President's Counsel for the Bank has taken up the position, that, there is no valid order made by the Right to Information Commission.

He refers to section 12(1) of the Right to Information Act, which says,

> "12. (1) **The Commission shall consist of five persons appointed by the President upon the recommendation of the Constitutional Council.** In making such recommendations, the Constitutional Council shall recommend one person nominated by each of the following organisations or categories of organisations:

(a) Bar Association of Sri Lanka which shall nominate an Attorney-at-Law of eminence or a Legal Academic in consultation with Attorneys -at-Law and Legal Academia;

(b) organizations of publishers, editors and media persons;

(c) other civil society organizations."

At the relevant time, the Members of the Commission were as follows,

1. Mr. Mahinda Gammanpila - Chairman
2. Justice Rohini Walgama Rtd. - Commissioner
3. Kishali Pinto Jayawardena Attorney at Law – Commissioner
4. S. G. Punchihewa - Commissioner
5. Dr. Selvi Thiruchandran – Commissioner

But when making the impugned order Dr. Selvi Thiruchandran was not present. Only Nos. 01 to 04 has signed.

As the section says, "The Commission shall consist of five persons..." it is argued, that, the order is not valid.

However, the Bank also accepts, that, there is a provision in the schedule to the Act which says that the quorum for any meeting shall be three members.

The said schedule is titled "SCHEDULE [Section 12(8)] PROVISIONS RELATING TO MEMBERS OF THE COMMISSION".

Section (7)(b) of the schedule says,

"(b) The quorum for any meeting of the Commission shall be three

Members."

The position of the Bank is, that, the quorum specifically relates to administrative functions (the day to day management and operation) but for its quasi judicial functions all Members shall participate.

The Bank relies upon the cases,

(i) **Jayasinghe and others vs. R. S. Jayaratne, Secretary, Ministry of Public Administration and others (1999) 2 SLR 385.** It was decided in that case,

"The view that the function of the Commission upon a reference under section 12 is not simply to record evidence is supported by another consideration. Section "2 of the Act establishes the Commission as a body corporate, which "shall" consist of five members. It would appear that the Commission must act through all its members, because the Act makes provision neither for a quorum nor for the delegation of the powers of the Commission to one or more of its members; section 7 only enables the Commission to act notwithstanding a vacancy or a defect in the appointment of a member. The purpose of a reference under section 12 was thus to enable this Court to obtain the benefit of the collective wisdom of all the members of the Commission, and not just its notes of Investigation[1]." (page 393) [It was about a matter that the court referred to the Human Rights Commission to obtain its views]

(ii) **Paskaralingam by his Attorney at Law vs. P. R. P. Perera and others (1998) 2 SLR 169.** It was said in that case,

"What is repugnant to the principles of natural justice is that only two out of the three Commissioners who held the inquiry chose to express their views. Such a report cannot, in my view, be considered a report of the Commission, as contemplated by law[2]." (page 189) [It was a case about a Special Presidential Commission of Inquiry]

However Wijetunge J., at page 188 said, that, in **Wijerama vs. Paul 76 N.L.R 241** the then Court of Appeal has observed, that,

[1] Mark D. H. Fernando J., with Gunasekera J. and Weerasekera J.

[2] Judgment of Wijetunge J. It contains judgment of G. P. S. de Silva, Chief Justice and Gunasekera J.

"…the phenomenon of one judge acting on evidence taken before another is not one wholly repugnant to our law, and our legislators have themselves recognised (see eg. sections 88 of the Courts Ordinance and 292 of the Criminal Procedure Code) the acceptability of decisions reached in that way".

Further, it is argued, that, even though the Human Rights Commission of Sri Lanka Act No. 21 of 1996 does not provide for a quorum, or for the delegation of the powers of the Commission, the Right to Information Act has specific provision for delegation. Sections (5)(a) and (5)(b) of the schedule says,

"(5) (a) Where a member of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President may on the recommendation of the Constitutional Council, appoint another person to act in place of such member during his or her absence.

(b) Where the Chairperson of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President shall appoint another member of the Commission, to act in place of such Chairperson during his or her absence."

The position of Pasansani appearing through her learned counsel was, that, in terms of section 12(8) of the Act the provisions of the schedule to the Act shall apply in respect of the members of the Commission and the conduct of its meetings.

Section 12(8) says,

"(8) The provisions of the Schedule to this Act shall apply to and in respect of the members of the Commission and the conduct of its meetings".

In regard to Paskaralingam's case, it is submitted, that, it was a matter under the Special Presidential Commission of Inquiry Law No. 07 of 1978 and three commissioners heard the matter but only two of them signed the order (the late Justice Frederick Ninian Dimitri Jayasuriya was absent due to ill health).

On behalf of Pasansani, it is submitted, that, the Special Presidential Commission of Inquiry Law did not provide for a quorum.

In respect of Jayasinghe's case, it is submitted, that, whereas it was a case in which the Supreme Court during the course of a fundamental rights application referred the matter to the Human Rights Commission, the Human Rights Commission Act provided, that, the commission shall consist of five members and it did not provide for a quorum. The Supreme Court, in Jayasinghe's case has said as follows,

> **"It would appear that the Commission must act through all its members, because the Act makes provision neither for a quorum nor for the delegation of the powers of the Commission to one or more of its members;..."**

Hence it appears to this Court, that, whereas the Special Presidential Commission of Inquiry Act and the Human Right Commission Act did not provide for a quorum, the Right to Information Act provided so. It also appears, that, the Right to Information Act provides for acting appointments in section 5(a) and (b). Although it is not alleged in this case, that, there was an acting appointment for Dr. Selvi Thiruchandran, it is also not said, that, she was absent due to ill health, absence from Sri Lanka or for any other cause. In any event, this Court is of the view, that the quorum of 03 members provided is not only for administrative functions but for judicial or quasi judicial functions too. In the absence of such differentiation of functions in the Act this Court will be reading into the provisions of the Act, which this Court cannot do, if it is decided, that, quorum of 03 members is only for the administrative functions, but not for judicial or quasi judicial functions.

Hence this Court decides, that, an order signed by 03 members or more is a valid order. The order in question in this case has been signed by 04 members and hence it is valid.

(ii)The Bank's appeal is out of time (raised for Pasansani):

The next question is one raised for and on behalf of Pasansani, that, the Bank's appeal to this Court is out of time.

Section 34(1) of the Act says,

> "34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority".

It is submitted, that, on the basis, that, it received the order in question on 25.10.2021, the Bank has appealed. The petition of the Bank to this Court is dated 25.11.2021.

It is further submitted, that, however, as evident from P.12 the order was made on 27.07.2021 at the hearing of the appeal and the Deputy General Manager of the Bank was present in person.

There is no denial by the Bank that when the order was made on 27.07.2021 it was present before the commission. The section says,

> "…may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated…"

This is not and at least not only a case in which the order was not communicated verbally in the presence of the parties, but sent in writing only. The section says "communicated." Communication is fundamentally by one person to another where both are physically present at the same place and time. If they are not present at the same place, (but same time) the communication could be over the telephone or the internet. When the place and time both do not coincide for the

two persons the communication can be by way of a writing. Furthermore, the word "communication" if there is no qualification to that word means in so far as time is concerned, the first time it was done. Hence the communication in this case is on 27.07.2021 and the Bank should have come before this Court in appeal at least by 27.08.2021.

It was said by Millet L. J., in **Petch vs. Gurney (Inspector of Taxes) [1994] 3 All E R 731** that,

> "Unless the court is given a power to extend the time, or some other and final mandatory time limit can be spelled out of the statute, a time limit cannot be relaxed without being dispensed with altogether and it cannot be dispensed with altogether unless the substantive requirement itself can be dispensed with."

Although it was a tax case, the principle that unless the legislature has given the court the power to extend the time it cannot do it is a universal rule.

In the 163 year old case of **Liverpool Borough Bank vs. Turner**, on 21st of July 1860 Vice Chancellor Sir W. Page Wood said, among other things, that,

> "An analogous difficulty presents itself here in the question whether the Merchant Shipping Act 1854 having omitted the prohibitory words "otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity", is to be considered as mandatory or merely directory with respect to the mode which it prescribes for carrying contracts into effect; **because, if the Legislature enacts that a transaction must be carried out in a particular way, the words that otherwise it shall be invalid at law and in equity are mere surplusage**[3]". (page 707)

[3] **excessive or nonessential matter**

However, in the case of **PETITIONER: WILLIE (WILLIAM) SLANEY Vs. RESPONDENT: THE STATE OF MADHYA PRADESH. DATE OF JUDGMENT: 31/10/1955**[4], in the Supreme Court of India, in which case too the case of Howard vs. Boddington was referred to (the Bench comprised of Justices BOSE, VIVIAN, AIYAR, N. CHANDRASEKHARA DAS, SUDHI RANJAN JAGANNADHADAS, B. IMAM, SYED JAFFER) the court said,

> "After all, in our considering whether the defect is illegal or merely irregular, we shall have to take into account several factors, such as the form and the language of the mandatory provisions, the scheme and the object to be achieved, the nature of the violation, etc. Dealing with the question whether a provision in a statute is mandatory or directory, Lord Penzance observed in Howard v. Bodington [1877] 2 P D. 203. "There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end". These words can be applied mutatis mutandis to cases where there is no charge at all. The gravity of the defect will have to be considered to determine if it falls within one class or the other. Is it a mere unimportant mistake in procedure or is it substantial and vital? The answer will depend largely on the facts and circumstances of each case. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an

[4] 792.pdf (sci.gov.in)

irregularity and prejudice by way of failure of justice will have to be established".

In addition section 34(2) of Right to Information Act says,

> "(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, **the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply** in respect of every appeal made under subsection (1) of this section".

If the procedure is that of revision, then it affects the substance too. As Justice Dr. A. R. B. Amerasinghe said in **FERNANDO v. SYBIL FERNANDO AND OTHERS, 1997,** 1997 - Volume 3 ,Page No – 1,

> "…It was no exaggeration for Sir Maurice Amos **(A Day in Court at Home and Abroad,** (1926) Cambridge Law Journal 340) to claim that "Procedure lies at the heart of the law". The Evershed Committee in its final report on Supreme Court Practice and Procedure (1953) Cmd. 8878 para. I observed that "the shape and development of the substantive law of England have always been, and, we think, always will be, strongly influenced by matters of procedure." The Committee cited the celebrated aphorism of **Sir Henry Maine** that" **substantive law has at first the look of being gradually secreted in the interstices of procedure**."

As THOMAS O. MAIN[5] wrote in his article THE PROCEDURAL FOUNDATION

OF SUBSTANTIVE LAW July 2009,

> "As Professor John Hart Ely observed, —[w]e were all brought up on sophisticated talk about the fluidity of the line between substance and procedure. Some other characterizations of the state of the doctrine are

[5] Associate Dean for Faculty Scholarship and Professor of Law, University of the Pacific McGeorge School of Law. tmain@pacific.edu.

less forgiving. Professor Risinger has suggested that ―organized confusion is the official doctrine. My personal favorite is counsel offered by Professor Herbert Goodrich in his 1927 Handbook on the Conflict of Laws: ―[T]he distinction is made by courts, and the lawyer must figure it out as best he can. The line between substance and procedure is often described with unflattering adjectives such as ―vague,―unpredictable, ―imprecise, ―amorphous, ―unresolvable, ―unclear, ―chameleon-like, ―murky, ―blurry, ―hazy, and ―superbly fuzzy".

Therefore this is not only an appeal but also an application for revision. There is no inordinate delay by the Bank which will prejudice the rights of citizen Pasansani. Hence exercising not only the appellate power of this Court, but also the revisionary powers of it, this Court will consider the merits of the appeal.

(C) The substantive objection of the Bank to release the information:

The main substantive objection of the Bank to comply with the order of the Right to Information Commission is based on sections 5(1)(a) and 5(1)(l) of the Act which read as follows,

"5. (1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where

(a) **the information 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 larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

.....

(l) disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution;"

The Bank accepts, that, this objection was not taken before the commission, but maintains that it could be taken up before this Court for the first time, as it is a question of law. The written submissions on behalf of Pasansini too says, that, this position was not taken up by the Bank before the commission. There is nothing that prevents the Bank from taking up that position before this Court for first time as it is a question of law.

Now, the following is what Pasansini requested,

(i) The mark sheets of applicants for the competitive examination published on the Bank's website on 13th November 2017,
(ii) The interview marks and the merit list of 11708 applicants who faced the interview,
(iii) Marks at the examination and marks given on the order of merit to all applicants from Galle District,
(iv) The list of applicants who have been recruited on district merit,
(v) The particulars of applicants within that district who failed to assume duties although selected
(vi) The dates on which successors were selected for such vacancies and their list

Section 5(1)(a) has several parts. They are,

(a) The information relates to personal information:

Does the above contain personal information? The answer is "yes." The marks obtained by each candidate is their personal information. But is it only

"personal" information? If the "merits list" is a product, it uses the ingredient of marks obtained by each and every candidate who sat the examination.

The next part is,

(b) The disclosure of which has no relationship to any public activity or interest:

Is it not in the interest of public, that, public examinations, upon the results of which citizens are recruited to occupations on merit must be honest, upright and transparent? The answer is "yes."

For example, if we take (iii) above, "**Marks at the examination and marks given on the order of merit to all applicants from Galle District**," is something that a concerned citizen has a right now recognized by the Constitution to know.

So although at least some information are personal, it cannot be said, that, the disclosure of them has no relationship to any public activity or interest.

The next part is,

(c) Or which would cause unwarranted invasion of the privacy of the individual:

When merit list prepared upon individual marks determine the answer to the question who should be in and who should be out, can one say that the "invasion" of the privacy is unwarranted? It appears, that, the answer should be "no."

But this must be analysed further. What is in (c) above is subject to the next part that is in (d).

(d) Unless the larger public interest justifies the disclosure of such information:

The citizen concerned in this case is one of the public. She represents the public and its larger interest.

The next part of the above section (e) or the person concerned has consented in writing to such disclosure does not apply in this case.

(D) The larger question of balancing between the right to privacy and the larger public interest:

The propositions in (c) and (d) above taken together refer to the larger question of balancing between the right to privacy and the larger public interest.

The origin of the mid 18th century word "**Panopticon**" is from "all" + Greek optikon, neuter of optikos 'optic'. It means "a circular prison with cells arranged around a central well, from which prisoners could at all times be observed."

The idea is attributed to the philosopher **Jeremy Bentham**. But according to Philip Schofield, professor of the History of Legal and Political Thought and the Director of the Bentham Project at UCL (University College London), it was originally the idea of Bentham's brother Samuel who was working in Russia on the estate in Kirchev. As he had a relatively unskilled workforce, he sat himself in the middle of the factory and arranged his workforce in a circle around his central desk so he could keep an eye on what everyone was doing. Bentham went to visit his brother in 1780s and decided that the concept could be extended to prisons, schools and hospitals.

Despite Bentham persuading the prime minister, William Pitt the Younger to fund a panopticon National Penitentiary, it could not be accomplished during Bentham's life time.

The French philosopher **Michel Foucault** in his book **Discipline and Punish 1975** revitalised the idea of the panopticon. He describes the prisoner of a panopticon as being at the receiving end of asymmetrical surveillance:

> "He is seen, but he does not see; he is an object of information, never a subject in communication[6]."

As a consequence, the inmate polices himself for fear of punishment.

[6] What does the panopticon mean in the age of digital surveillance? | Technology | The Guardian

According to Schofield "The principle is central inspection." As there is Closed Circuit Television (CCTV) the round building is no longer a must.

Hence the Right to Information Act brings the state into the receiving end of asymmetrical surveillance and the citizens are placed in the central well of the "panopticon." The state is the unskilled workers in 1870 Russia and the citizen is Bentham's brother. The state now has to police itself for fear of punishment which it faces on adverse public opinion.

But Bentham, the founder of utilitarianism and a leading advocate of the separation of church and state, freedom of expression and individual right, did not want the panopticon to be a tool of oppression. This led him to develop, later in his life, a type of **anti panopticon** – where a minister sits an exposed room and surrounded by the members of the public who listen and ask questions[7].

This is the opposite of the "surveillance state" of Michel Foucault's Discipline and Punish. The roles have been exchanged. The observer has become the observed. This is based on the simple propagation of light[8], a law in physics. As Bentham's brother observed his workers, they could observe him. This was not the case in every penitentiary built according to panopticon model[9]. But an Act on Right to Information on this theory must make the state, the government and the public bodies police themselves on the peril of being exposed.

It is said,

> "Communities can play an active role in promoting good governance, because public opinion provides some of the incentives needed to make

[7] The philosopher Jeremy Bentham famously requested in his will that his body be dissected and put on public display. This came to pass, and his skeleton now sits in a glass case at University College London, adorned with a wax head, waistcoat and jacket and sat on a wooden stool, staring out at students from its glass case. What does the panopticon mean in the age of digital surveillance? | Technology | The Guardian

[8] ආලෝකයේ සරල රැකීය ප්‍රචාරණය

[9] The first prison that adopted the model was Presidio Modelo complex in Cuba, infamous for corruption and cruelty, now abandoned.

egotistical politicians serve our collective interest. The threat of being discovered and exposed should, in principle, scare the corrupt or inept. In his essay 'On Packing', Bentham argued that libel laws work against the public interest because they prevent corruption being held up to public view. These criticisms have particular resonance in Britain given the exploitation of the country's famously tough libel laws to protect commercial interests. Specialist media lawyers such as Carter-Ruck have recently used super injunctions to stifle public criticism of their corporate clients. The paperwork for these injunctions (proceedings for which often take place in secret) are anonymous, so that no researcher going through court records could ever learn of what happened[10]."

And also,

"**The idea is that this transparency holds power to account, because the most dangerous people in society can be rulers. It is important that they, as well as prisoners, workers and children, feel watched**[11]".

The next sub section 5(1)(l) on which the Bank relies has the following element,

(f)disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution:

"The Times of India" on 30th November 2008[12] reported about a Delhi High Court case in which it was said, that, marks obtained by successful candidates in examinations conducted by government body constitutes a public document.

Although the above newspaper report does not mention the reference to the case, it is found, that, in **Union Public Service Commission vs Shiv Shambhu on 3**

[10] Sinister interests: Bentham's warning about politicians | UCL News - UCL – University College London
[11] What does the panopticon mean in the age of digital surveillance? | Technology | The Guardian
[12] Marks of candidates in public exam is public document: HC | India News - Times of India (indiatimes.com)

September, 2008 the High Court of Delhi comprising of Justice S. Muralidhar and the Chief Justice (judgment authored by Muralidhar J.) said,

> "17. At the outset we wish to observe that a perusal of the documents submitted by the UPSC in a sealed cover, are not of such a nature that can be characterised as secret, or of a type the disclosure of which would not be in public interest. As regards the scaling methodology, as already been pointed out by the learned Single Judge, this is no different from what already stands disclosed by the UPSC to the Supreme Court in its counter affidavit filed in SLP (C) No. 23723 of 2002 and is therefore in the public domain. As regards the apprehension expressed by the UPSC that the scaling formulation could be deciphered first once the cut-off marks and solution keys in respect of individual subject disclosed, we fail to understand how if such information is deciphered in relation to the examination that has already been conducted, somehow it would enable the manipulation of the results of a preliminary examination to be held in future.
>
> 18. The central thrust of the argument of Mr. Rao was that armed with the information relating to the 2006 Preliminary Examination, coaching institutes across the country would somehow able to anticipate the subjects in which, if dummy candidates are fielded, there could be a skewing of the results. According to him, the UPSC apprehends that in a particular subject, by getting a large number of dummy candidates to perform badly, the working of scaling methodology which is already known would result in an unfair advantage to candidates opting for that paper. As a corollary it would result in severe prejudice and an unintended disadvantage to a meritorious students opting for other subjects.
>
> 19. This argument has only to be stated to be rejected. It is really impossible to imagine how the coaching institutes can somehow anticipate the levels

of difficulty in a particular subject in a future examination and plant dummy candidates in that subject or in other subjects. Considering that 400,000 students sit for the CSE preliminary examination all over the country every year, this would perhaps require a large scale operation by coaching institutes all over the country and that again presumes that they will somehow correctly predict what the overall performance of the candidates in any particular subject. Then again, this is only a preliminary examination at the end of which a shortlist of candidates 10 to 12 times the number of advertised posts is drawn up for the Main examination. It is nobody"s case that the results of the main examination are somehow affected in that process. Further still, this Court is unable to understand the apprehension of the UPSC that by disclosing the working of the scaling methodology for the preliminary examination, merit can get compromised and candidates with less merit would be selected. The whole purpose of having three levels of examination i.e. preliminary examination, main examination and then interview, is to ensure that only meritorious candidates are selected for government service. We are of the view that the apprehension expressed by the UPSC is not well-founded."

So even where it was argued for the Public Authority concerned that the coaching institutions can get to know the mechanism of the process of selection and plant dummy candidates to affect the quality of the merits list adversely, the particulars of the examination containing individual marks and merit list was considered to be a public document.

What the Delhi High Court said in the above case addresses the concern in section 5(1)(l) which is, "disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution".

As per paragraph 41 of the written submissions filed on behalf of Pasansini the order made by the Right to Information Commission (relevant parts) is reproduced. This Court observes, that, the Commission in its wisdom had ordered a structured manner of disclosure of information.

In the circumstances, the objection by the Bank to release the information ordered to be released have no merit and the appeal (which also could be considered an application for revision) is dismissed.

There is no order on costs.

Judge of the Court of Appeal.