



Jammu and Kashmir State Information Commission

(Constituted under The Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/CO/SA/491/2017

Decision No. SIC/CO/SA/491/2017/**1017**

Final Order:

Appellant : Ms. Sangeet Kumari Jamwal,
R/o H.No-290-A Gandhi Nagar, Jammu.

Respondent : FAA/PIO, J&K Public Service Commission (PSC).

Date of decision : **24-11-2017**

Decision : Appeal disposed of.

Brief Facts:

Briefly the facts of this 2nd appeal are that the appellant while exercising her right to information filed an RTI application dated 03-02-2017 with the Public Information Officer, (PIO) J&K Public Service Commission (PSC) seeking the following information:

- i. Please provide me an answer key of the screening test in the subject Education for the post of Assistant Professor Higher Education.
- ii. Please specify the mode of fixing the cut off i.e whether it was the percentile or percentage.
- iii. Please provide me information about the total marks obtained by me in the said examination.
- iv. Please also intimate me the detail of my serial number in merit list.
- v. Why was cut off of Business Administration given in points whereas of Education in round figures?
- vi. Why was cut off of ST and ALC not given when they were subjected to the written test?

- vii. Please provide me my answer booklet along with a copy of the answer key so that I am able to check if there are any discrepancies between given answers and answer key.
- viii. Please provide me the certified copy of my answer script/sheet.
- ix. Please clarify how many questions were out of prescribed syllabus. In case there were any, were the grace marks given? If not, state the reason for the same.
- x. Since the screening has to be subject oriented, were there any non-subject questions included? If yes, how many and why?
- xi. Further, please clarify if there is any discrepancy found in answer key of above mentioned screening test. In case if found any, will J&K Public Service Commission rectify the answer key as it has been done by your office in the case of screening test of EVS(10+2) in the past.
- xii. If not please state reasons for the same thereof.

In response the PIO vide his letter dated 11-03-2017 replied that J&K PSC is not providing the answer key or answer sheets however, the appellant can inspect the same.

Aggrieved by the response of the PIO the appellant preferred 1st appeal with First Appellate Authority (FAA) J&K PSC on 06-04-2017. The non-disposal of her 1st appeal constrained the appellant to approach the SIC in 2nd appeal which was received by the SIC on 25-07-2017. In the 2nd appeal before the SIC the appellant has demanded provision of the requisite information sought by her through her basic RTI application.

Proceedings before the State Information Commission(SIC):

The 2nd appeal came up for hearing before the State Information Commission (SIC) on 24-10-2017. The hearing was attended by Sh. Ghansham Singh, Public Information Officer (PIO) J&K PSC. However, the appellant did not appear despite due notice. The SIC enquired from the PIO whether information has been provided to the appellant to which he replied that

information has not been provided to the appellant however, she was offered inspection of the OMR Sheet. The PIO further informed that J&K PSC is not providing the Answer Key now because Rule 12(B) of the Jammu & Kashmir Public Service Commission (Conduct of Examination) Rules, 2005 that provided for showing the Answer Key has been deleted. He referred to the reply of the PIO dated 11-03-2017 in this regard. The record submitted by the PIO was perused.

The hearing in the case was adjourned in order to give an opportunity of being heard to the appellant as she was not present during the hearing. The PIO was directed to provide the information to the appellant in terms of her basic RTI application as per the record where J&K PSC has no objection. It was also decided that the issue regarding providing of information on Answer Key will be dealt in subsequent hearings.

The appeal was finally heard by the SIC on 24-11-2017. The hearing was attended by Sh. Ghansham Singh PIO, J&K PSC. The appellant was represented by her counsel, Sh. Sanjay Jamwal. The PIO again relied on the PSC notification dated 14-03-2016 whereby Rule 12(B) of J&K Public Service Commission (Conduct of Examination) Rules, 2005 which provided for showing answer key has been deleted. He showed reservations in the disclosure of Answer Key.

The SIC heard the PIO and the counsel for the appellant and perused the record pertaining to the appeal.

Decision:

The J&K RTI Act, 2009 is a statutory limb of the Fundamental Right of Freedom of Speech and Expression enshrined in the Article 19(1)(a) of the Constitution of India. "The Right of Information" as provided under the Act cannot be taken away except under the exemptions provided in sections 8 and 9 of the Act and in terms of authority vested in the PIO under the Act. Section 21 bars application of the Act to certain organizations.

The Act was enacted in order to ensure seamless access to information held by the Public Authorities and provide an effective framework for exercise of the right of information

embedded under Article 19 of the Constitution. The preamble of the Act provides for setting out of the practical regime of right to information for citizens to secure access to information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority.

The matter in hand for consideration of the State Information Commission (SIC) bears far reaching consequences as it involves larger Public Interest. It relates to the career prospects of thousand of candidates who appear for examination which in turn is related to their livelihood.

Article 16 of the Constitution provides for a fundamental Right of Equality of opportunity in the matters of Public Employment. Various recruitment bodies have been set up for the said purpose which are either constitutional or statutory. The J&K Public Service Commission being a constitutional body setup under section 128 of the Constitution of J&K has been given independence and autonomy in its affairs relating to recruitment for public services.

Thousands of candidates appear in various examinations conducted by the PSC annually which places the onerous responsibility on the said constitutional body to exercise highest degree of care and caution while maintaining transparency to retain the trust of these thousand of candidates.

In the instant matter, the appellant who had filed RTI application inter-alia seeking copies of her OMR sheet and Answer key of the examination in which she appeared has been denied information by the PIO, J&K PSC on the ground of its internal mechanism stating that the Rules of PSC do not allow for the same.

The matter before consideration of the SIC is that "whether information pertaining to OMR sheets and Answer key can be denied once the examination has been conducted".

The State Information Commission (SIC) observes that after the examination is conducted and results declared, the OMR and answer key for the same is the "information held" by the J&K PSC and not exempted from disclosure under any of the provisions of the RTI Act.

There is no public interest in the retention of OMR sheet and Answer key as secret or confidential after the results are declared. Even when the information is protected under some provision of section 8(1), it has to be disclosed under section 8(2) on finding public interest in the disclosure.

Section 8(2) of J&K RTI Act, 2009 reads as:

"Notwithstanding anything in the State Official Act, Samvat 1977 or 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".

There is certainly a public interest in the disclosure of OMR sheet and Answer Key after the examination and results which outweighs the so called protected interest if any in keeping the OMR sheet and Answer key secret and confidential. The PIO argued that the Rule 12(B) of the PSC's (Conduct of Examination) Rules, which provided for disclosure of Answer key has been deleted by the J&K PSC themselves and therefore, Answer Key cannot be disclosed at any stage.

The Hon'ble Supreme Court of India has made it very clear in its judgment in the Institute of Chattered Accounts of India Vs Shamuk H Satya and ors AIR 2011 SC 3336:

"it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers before the date of such examination. But the position will be different once the examinations are held. Disclosure of the question paper, model answers and instructions in regard to any particular examination would not harm the competitive position of third party once the examination is held."

Yet in another landmark judgment namely Civil Appeal No.6454 of 2011 CBSE & Anr. VS Aditya Bandopadhyay & Ors. has observed as under:-

"This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the 'evaluation' (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no

merit. The examining body entrusts the answer-books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer-book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer-books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words the examining body is the `principal' and the examiner is the agent entrusted with the work, that is, evaluation of answer- books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner. On the other hand, when an answer-book is entrusted to the examiner for the purpose of evaluation, for the period the answer-book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer-book or the result of evaluation of the answer-book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copy-right or proprietary right, or confidentiality right in regard to the evaluation. Therefore it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner.

We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees”.

Further, section 19 of the J&K RTI Act, 2009 expressly provides that the provision of the Act shall have effect notwithstanding anything inconsistent there with contained in the official secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act.

In other words, where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Section 19 of the J&K RTI Act was a conscious choice of the legislature to safe guard the citizens fundamental Right to Information. Deletion of Rule 12(B) of the PSC's (Conduct of Examination)Rules runs counter to Section 19 of the RTI Act.

In view of the above, the State Information Commission (SIC) holds that the appellant has a clear right to get the copy of her OMR sheet and Answer key after the examination is over and result announced. Such disclosure would help her to know where she stands and would help her to prepare for examination in future in a better way. Rather this type of information should have been uploaded on the official web-site of the J&K PSC in terms of section 4(1)(d) of the Act as the said section casts an obligation on every public authority to provide reasons for its administrative or quasi judicial decision to affected persons. An Answer Key should be kept in public domain after the examination is over and results declared for promoting transparency in the examination system. The J&K PSC/Public Authority should even consider placing the Answer Key in public domain immediately after the examination is conducted and completed but should certainly place it in public domain after the results are declared. This will go a long way in strengthening transparency in the J&K PSC

system and help to remove nagging doubts in the mind of candidates prompting them to file RTI applications before the PSC.

The State Information Commission (SIC) therefore, directs the Public Information Officer (PIO), J&K PSC to provide all the information sought by the appellant in her basic RTI application and held by the J&K PSC and available on its record, as expeditiously as possible within a maximum of 30 days from the date of receipt of this order.

The 2nd appeal is disposed of subject to the above directions.

Copy of the order be provided free of cost to the parties.

-sd/-

(Khurshid A. Ganai) **IAS Retd.,**
Chief Information Commissioner,
J&K State Information Commission.
/imi/

No. SIC/CO/SA/491/2017
/2017.

Dated: /

Copy to the:

1. First Appellate Authority (FAA) J&K Public Service Commission for information.
2. Public Information Officer (PIO), J&K Public Service Commission for information and compliance.
3. PS to CIC for information of HCIC.
4. Ms. Sangeet Kumari Jmwal, R/o H.No-290-A, Gandhi Nagar, Jammu.
5. Guard file.

(Dr. Ghulam Mohi-ud-din)
Joint Registrar,
J&K State Information Commission.