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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6362 OF 2013
(Arising out of SLP(C) No.16870/2012)

Union Public Service Commission ...Appellant

versus

Gourhari Kamila ...Respondent

WITH

CIVIL APPEAL NO. 6363 OF 2013
(Arising out of SLP(C) No.16871/2012)

CIVIL APPEAL NO. 6364 OF 2013
(Arising out of SLP(C) No.16872/2012)

CIVIL APPEAL NO. 6365 OF 2013
(Arising out of SLP(C) No.16873/2012)

O R D E R

Leave granted.

These appeals are directed against judgment dated 12.12.2011 of the Division Bench of the Delhi High Court whereby the letters patent appeals filed by appellant - Union Public Service Commission (for short, 'the Commission') questioning the correctness of the orders passed by the learned Single Judge were dismissed and the directions given by the Chief Information Commissioner (CIC) to the Commission to provide information to the respondents about the candidates who had competed with them in the selection was upheld.

For the sake of convenience we may notice the facts from the appeal arising out of SLP(C) No.16870/2012.

In response to advertisement No.13 issued by the Commission, the respondent applied for recruitment as Deputy Director (Ballistics) in Central Forensic Science Laboratory, Ballistic Division under the Directorate of Forensic Science, Ministry of Home Affairs. After the selection process was completed, the respondent submitted application dated 17.3.2010 under the Right to Information Act, 2005 (for short, 'the Act') for supply of following information/documents:

"1. What are the criteria for the short listing of the candidates?

2. How many candidates have been called for the interview?

3. Kindly provide the names of all the short listed candidates called for interview held on 16.3.2010.

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

6. Kindly provide the certified xerox copies of M.Sc. and B.Sc. degree certificates of all the candidates as per records available in the UPSC who are called for the interview held on 16.3.2010.

7. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Mathematics and the Degree in M.Sc. Mathematics are equivalent or not as per available records in the UPSC.

8. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Physics and the Degree in M.Sc. Physics are equivalent or not as per available records in the UPSC."

Deputy Secretary and Central Public Information Officer (CPIO) of the Commission send reply dated 16.4.2010, the relevant portions of which are reproduced below:

"Point 1 to 4: As the case is subjudice in Central Administrative Tribunal (Principal Bench), Hyderabad, hence the information cannot be provided.

Point 5 & 6: Photocopy of experience certificate and M.Sc. and B.Sc. degree certificates of called candidates cannot be given as the candidates have given their personal details to the Commission is a fiduciary relationship with expectation that this information will not be disclosed to others. Hence, disclosures of personal information of candidates held in a fiduciary capacity is exempted from disclosures under Section 8(l)(e) of the RTI Act, 2005. Further disclosures of these details to another candidate is not likely to serve any public interest of activity and hence is exempted under Section 8(1)(j) of the said Act.

Point 7 & 8: For copy of UGC Guidelines and Gazette notification, you may contact University Grant Commission, directly, as UGC is a distinct public authority."

The respondent challenged the aforesaid communication by filing an appeal under Section 19(1) of the Act, which was partly allowed by the Appellate Authority and a direction was given to the Commission to provide information sought by the respondent under point Nos. 1 to 3 of the application.

The order of the Appellate Authority did not satisfy the respondent, who filed further appeal under Section 19(3) of the Act. The CIC allowed the appeal and directed the Commission to supply the remaining information and the documents.

The Commission challenged the order of the CIC in Writ Petition Civil No. 3365/2011, which was summarily dismissed by the learned Single Judge of the High Court by making a cryptic observation that he is not inclined to interfere with the order of the CIC because the information asked for cannot be treated as exempted under Section 8(1)(e), (g) or (j) of the Act. The letters patent appeal filed by the Commission was dismissed by the Division Bench of the High Court.

Ms. Binu Tamta, learned counsel for the Commission, relied upon the

judgment in Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497 and argued that the CIC committed serious error by ordering supply of information and the documents relating to other candidates in violation of Section 8 of the Act which postulates exemption from disclosure of information made available to the Commission. She emphasised that relationship between the Commission and the candidates who applied for selection against the advertised post is based on trust and the Commission cannot be compelled to disclose the information and documents produced by the candidates more so because no public interest is involved in such disclosure. Ms. Tamta submitted that if view taken by the High Court is treated as correct, then it will become impossible for the Commission to function because lakhs of candidates submit their applications for different posts advertised by the Commission. She placed before the Court 62nd Annual Report of the Commission for the year 2011-12 to substantiate her statement.

We have considered the argument of the learned counsel and scrutinized the record. In furtherance of the liberty given by the Court on 01.03.2013, Ms. Neera Sharma, Under Secretary of the Commission filed affidavit dated 18.3.2013, paragraphs 2 and 3 of which read as under:

> "2. That this Hon'ble Court vide order dated 1.3.2013 was pleased to grant three weeks' time to the petitioner to produce a statement containing the details of various examinations and the number of candidates who applied and/or appeared in the written examination and/or interviewed. In response thereto it is submitted that during the year 2011-12 the Commission conducted following examinations:
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> For Civil Services/Posts
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> a. Civil Services (Preliminary) Examination, 2011 (CSP)
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> b. Civil Services (Main) Examination, 2011 (CSM)
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> c. Indian Forest Service Examination, 2011 (IFo.S)
>
> d. Engineering Services Examination, 2011 (ESE)
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> e. Indian Economic Service/Indian Statistical Service Examination, 2011 (IES/ISS)
>
> f. Geologists' Examination, 2011 (GEOL)
>
> g. Special Class Railways Apprentices' Examination, 2011 (SCRA)
>
> h. Special Class Railways Apprentices' Examination, 2011 (SCRA)
>
> i. Central Police Forces (Assistant Commandants) Examination, 2011 (CPF)
>
> j. Central Industrial Security Force (Assistant Commandants) Limited Departmental Competitive Examination, 2010 & 2011 (CISF).
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> For Defence Services
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> a. Two examinations for National Defence Academy and naval Academy (NDA & NA) - National Defence Academy and Naval Academy Examination (I), 2011 and National Defence Academy and Naval Academy Examination (II), 2011.
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> b. Two examinations for Combined Defence Services (CDS) - Combined Defence Services Examination (II), 2011 and Combined Defence Services Examination (I), 2012.
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> 3. That in case of recruitment by examination during the year 2011-2012 the number of applications received by Union Public Service Commission (UPSC) was 21,02,131 and the number of candidate who appeared in the examination was 9,59,269. The number of candidates interviewed in 2011-2012 was 9938. 6863 candidates were recommended

for appointment during the said period."

Chapter 3 of the Annual Report of the Commission shows that during the years 2009-10, 2010-11 and 2011-12 lakhs of applications were received for various examinations conducted by the Commission. The particulars of these examinations and the figures of the applications are given below:

Exam	2009-10	2010-11	2011-12
Civil			
1. CS(P)	409110	547698	499120
2. CS(M)	11894	12271	11837
3. IFoS	43262	59530	67168
4. ESE	139751	157649	191869
5. IES/ISS	6989	7525	9799
6. SOLCE	-	2321	-
7. CMS	33420	33875	-
8. GEOL	4919	5262	6037
9. CPF	111261	135268	162393
10. CISF, LDCE	659	-	729
11. SCRA	135539	165038	197759
			190165
Total Civil	896804	1126437	1336876
Defence			
1. NDA & NA (I)	277290	374497	317489
2. NDA & NA(II)	150514	193264	211082
3. CDS(II)	89604	99017	100043
4. CDS (I)	86575	99815	136641
Total Defence	603983	766593	765255
Grand Total	1500787	1893030	2102131

In Aditya Bandopadhyay's case, this Court considered the question whether examining bodies, like, CBSE are entitled to seek exemption under Section 8(1)(e) of the Act. After analysing the provisions of the Act, the Court observed:

> "There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-`-vis another partner and an employer vis-`-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.
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> In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary-a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company

with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 in the following manner:

> "11. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.
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> 12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-`-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.
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> 13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer...."

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

We may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be

liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

(emphasis supplied)

By applying the ratio of the aforesaid judgment, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent at point Nos. 4 and 5 and the High Court committed an error by approving his order.

We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest. Therefore, the present case is not covered by the exception carved out in Section 8(1)(e) of the Act.

Before concluding, we may observe that in the appeal arising out of SLP (C) No.16871/2012, respondent Naresh Kumar was a candidate for the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory. He asked information about other three candidates who had competed with him and the nature of interviews. The appeal filed by him under Section 19(3) was allowed by the CIC without assigning reasons. The writ petition filed by the Commission was dismissed by the learned Single Judge by recording a cryptic order and the letters patent appeal was dismissed by the Division Bench. In the appeal arising out of SLP (C) No.16872/2012, respondent Udaya Kumara was a candidate for the post of Deputy Government counsel in the Department of Legal Affairs, Ministry of Law and Justice. He sought information regarding all other candidates and orders similar to those passed in the other two cases were passed in his case as well. In the appeal arising out of SLP (C) No.16873/2012, respondent N. Sugathan (retired Biologist) sough information on various issues including the candidates recommended for appointment on the posts of Senior Instructor (Fishery Biology) and Senior Instructor (Craft and Gear) in the Central Institute of Fisheries, Nautical and Engineering Training. In his case also, similar orders were passed by the CIC, the learned Single Judge and the Division Bench of the High Court. Therefore, what we have observed qua the case of Gourhari Kamila would equally apply to the remaining three cases.

In the result, the appeals are allowed, the impugned judgment and the orders passed by the learned Single Judge and the CIC are set aside.

.....J.
[G.S. SINGHVI]

.....J.
[V. GOPALA GOWDA]

NEW DELHI;
AUGUST 06, 2013.

ITEM NO.26 COURT NO.2 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16870/2012
(From the judgement and order dated 12/12/2011 in LPA No.803/2011 of The HIGH COURT OF DELHI AT N. DELHI)

U.P.S.C. Petitioner(s)

VERSUS

GOURHARI KAMILA Respondent(s)
(With prayer for interim relief and office report)
WITH
SLP(C) NO. 16871 of 2012
(With prayer for interim relief and office report)
SLP(C) NO. 16872 of 2012
(With appln(s) for permission to file reply to the rejoinder and with prayer for interim relief and office report) SLP(C) NO. 16873 of 2012

(With prayer for interim relief and office report)
(for final disposal)

Date: 06/08/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Ms. Binu Tamta,Adv.

For Respondent(s) None

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(Parveen Kr.Chawla)		(Usha Sharma)
Court Master		Court Master

[signed order is placed on the file]

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