

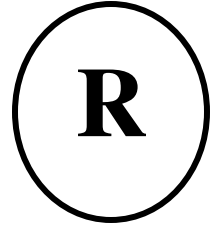
: 1 : W.P.NO.8676/2020 (GM-RES)

IN THE HIGH COURT OF KARNATAKA
BENGALURU

DATED THIS THE 26TH DAY OF AUGUST, 2020
BEFORE

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.8676/2020 (GM-RES)



Between:

The Karnataka Public Service Commission,
Udyoga Soudha, Bengaluru-560001,
Reptd. By its Secretary.

...Petitioner

(Sri. P.S.Rajagopal, Senior Counsel
For Sri. Reuben Jacob, Advocate for petitioner)

And:

1. Mr. Vinay Kumar Ramaiah,
S/o. M.Ramaiah,
Aged about 35 years,
Residing at #C-24, 1st cross,
8th Main, Vasanthnagar,
Bengaluru-560052.
2. Karnataka Information Commission,
No.336, 2nd Gate, 3rd Floor,
M.S.Building, Bengaluru-560001,
By its Commissioner.

...Respondents

(Sri. Kantharaja, Advocate a/w.
Sri. Ravi H.K, Advocates for C/R1;
Sri. Sharath Gowda, Advocate for R2)

: 2 : W.P.NO.8676/2020 (GM-RES)

This writ petition is filed under Articles 226 & 227 of Constitution of India praying to quash the Order dated 18.06.2020 in Case No.KIC 78 COM 2020 passed by the respondent No.2 Karnataka Information Commission vide Annexure-A and consequently dismiss the said Case No.KIC 78 COM 2020 filed by the respondent No.1.

This writ petition coming on for Preliminary Hearing in B-Group and having been heard and reserved for Orders on 23.07.2020, this day, the Court sitting at Dharwad Bench, through video conference pronounced the following:

ORDER

1. The petitioner i.e. The Karnataka Public Service Commission (for short 'KPSC') is before this Court seeking for a certiorari to quash the Order dated 18.06.2020 in Case No.KIC 78 COM 2020 passed by the respondent No.2.
2. Admit.
3. With the consent of both the counsels, the matter is taken up for final disposal.
4. Facts leading to the filing of the Writ Petition are as under:

- 4.1. By way of notification dated 12.05.2017 recruitment process for filling up of 428 posts of Gazetted Probationers (GP-2015 recruitment) was initiated by the petitioner in terms of the Karnataka Recruitment of Gazetted Probationers (Appointment by competitive examinations) Rules, 1997 ("GP Rules").
- 4.2. The respondent No.1 being one of the candidates had applied in pursuance of the said notification, on the basis of his performance he stood qualified for the main examination. Respondent No.1 therefore appeared for the main written examination with Registration No.54890.
- 4.3. On the process of selection being completed, the petitioner published the final selection list on 10.01.2020.

4.4. Subsequent to the said publication, the respondent No.1 filed an application under Right to Information Act, 2005 (for short 'RTI Act') on 16.01.2020 and sought for the following information:

"Please provide certified copies of the evaluated answer scripts of Gazetted probationer (GP) 2015 Mains examination pertaining to REG No.54890 (Candidate) of the following subjects with marks awarded to each question (1) General studies-1, (2) General studies -2, (3) General studies -3 (4) General studies -4, (5) Essay and (6) Anthropology Optional (Paper 1 and Paper 2)".

4.5. The Public Information Officer (for short 'PIO') of the petitioner by way of endorsement dated 14.02.2020 had informed respondent No.1 that in terms of the decision of the Apex Court in ***UPSC Vs. Angesh Kumar*** reported in **(2018) 4 SCC 530** the request seeking for answer script with marks awarded to each question cannot be acceded to and as such rejected the application

of the respondent No.1 by informing the respondent No.1 that shortly the details of the marks secured by each of the candidates subject wise would be published in the petitioner's website on a query basis, which could be verified by respondent No.1.

4.6. Aggrieved by the endorsement dated 14.02.2020, the respondent No.1 preferred an appeal before the first Appellate Authority of the petitioner on 28.02.2020.

4.7. On account of the lockdown imposed due to COVID-19, the first Appellate Authority could not dispose off the appeal within the prescribed time. However, by Order dated 01.06.2020, the first Appellate Authority dismissed the appeal preferred by the respondent No.1.

4.8. The petitioner contends that while the matter was pending before the first Appellate Authority,

the respondent No.1 had approached respondent No.2 Karnataka Information Commission (for short 'KIC') with a complaint in KIC 78 COM 2020 against the petitioner under Section 18(1) of the RTI Act.

4.9. On 18.03.2020, the petitioner had received a notice dated 16.03.2020 from the respondent No.2 regarding the said complaint calling upon the petitioner to appear before the respondent No.2 on 30.03.2020.

4.10. In view of the lockdown imposed, the hearing on 30.03.2020 was cancelled, subsequently, on 15.06.2020, the petitioner received an intimation dated 08.06.2020 that the hearing will take place on 18.06.2020.

4.11. However, by the time the matter was taken up on 18.06.2020, the first Appellate Authority had already passed an order on 01.06.2020 rejecting

the first appeal filed by the Respondent No.1. Be that as it may, the Respondent No.2 continued with the matter and on 18.06.2020, respondent No.2 passed the impugned Order at Annexure-A by directing the following:

(a) KIC by quoting Section 19(8)(a)(ii) of the RTI Act has appointed the Controller of Examinations, KPSC as Public Information Officer and Secretary KPSC as the First Appellate Authority.

(b) KIC has directed the Controller of Examinations to provide information sought by the Appellant therein (R-1 herein) free of cost.

5. Sri. P.S.Rajagopal, learned Senior Counsel instructed by Sri. Reuben Jacob, reiterating the contents of the writ petition submitted that:

- 5.1. As per the scheme of the examination set out in Schedule – II of the G.P.Rules as competitive examination consists of two stages i.e.

5.1.1. Preliminary Examination (Objective Type)
for selection of candidates for the main
examination and

5.1.2. main examination (written examination
and personality test) for selection of
candidates for various services and posts.

5.2. The Preliminary Examination consists of two
papers and based on the performance in
preliminary examination the candidates are
admitted for the main examination in the ratio of
1:20 (i.e. the number of candidates is 20 times
the vacancies notified for recruitment).

5.3. The main examination consists of a written
examination and a personality test. The written
examination consists of five compulsory papers
four optional papers for a total marks of 1750 as
under:

Compulsory Paper	Kannada	150 marks
	English	150 marks
Paper-I	Essay	250 marks
Papers II, II, IV and V	General Studies	250 marks for each paper
Papers VI and VII	One subject to be selected from the list of optional subjects. Each subject will have two papers	250 marks for each paper
Total marks for written examination excluding marks obtained in Kannada and English paper		1750

5.4. Based on the results of the main written examination, the candidates are called for the personality test in the ratio of 1:5 (i.e. five times the number of candidates as there are vacancies). The personality test is for a maximum of 200 marks.

5.5. The marks obtained in compulsory papers i.e. in the Kannada and English are only of qualifying nature and the marks obtained in these two

papers is not considered for the purpose of determining the merit for selection.

5.6. The main written examination is of conventional type. Valuation of the main examination papers is conducted by the KPSC by digital evaluation. All the papers are evaluated by two examiners and if the difference between the marks awarded by the two examiners is more than 15%, then the paper is sent for third evaluation and the marks awarded by the 3rd evaluation which is closest to the first two evaluators is taken into consideration as final marks.

5.7. In cases where the paper is not sent for third evaluation, the average of the marks awarded by the first two evaluators is taken into consideration as final marks.

5.8. It is the final marks secured by the candidates for each paper including the interview marks

which is available on the petitioner's website which can be accessed by the respective candidates by logging in using their user ID and Password.

5.9. It is therefore contended on the part of the petitioner that the marks secured by the candidate in each of the subjects in the main written examination as also in the personality test are available on the website.

5.10. The above being so, the petitioner is aggrieved by Order of respondent No.2 – KIC dated 18.06.2020 which had issued the direction as extracted hereinabove contending that respondent No.1 candidate could not have sought for disclosure of marks awarded to each question in each of the main written examinations in terms of the decision of the Apex Court in the Case of **Angesh Kumar** (supra). It is further contended that the PIO as

also the first Appellate Authority by relying upon the decision of Hon'ble Apex Court passed in **Angesh Kumar's Case** (supra), rejected the application filed by the petitioner and as such respondent, No.2-KIC could not have passed the above directions. It is further contended that the decision of the Apex Court in **Angesh Kumar's Case** (supra) is applicable to the present case also and the findings of the respondent No.2-KIC that the said decision is not applicable to the present facts, is erroneous.

5.11. Relying on the decision of **Prashant Ramesh Chakkarwar Vs. UPSC**, reported in **2013 (12) SCC 489**, it is submitted that, the disclosure of answer scripts would cause various problems as stated in the affidavit filed by the UPSC and extracted by the Apex Court in the said decision. The same is extracted hereunder:

(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) totaling 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 to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work, (d) the Additional Examiner's work having been found erratic by the Head Examiner, been rechecked entirely by another examiner, with or without the Head Examiner again rechecking this work.*

- (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 W.P.No.3683 of 2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh W.P. 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 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 recognize 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 Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.*
- (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 marks are awarded could itself be a give away in revealing the examiner's 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 the 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. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the paper-setter is also generally the Head 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”

5.12. The petitioner also has a grievance that despite the petitioner being represented by the advocate on record, KIC has been insisting for personal presence of the Officers of the petitioner which is coming in the way of discharging their regular day to day activities.

5.13. The petitioner having appointed a Public Information Officer (PIO), the respondent No.2 had no power to remove the existing PIO and appoint another Officer as PIO.

5.14. Section 19(8)(a)(ii) of the RTI Act would come into play only when there was no Central/State Public Information Officer appointed. Respondent No.2 would have no jurisdiction to appoint the PIO when there is already PIO appointed by the petitioner. It is on this basis that the petitioner is

before this Court seeking for quashing the orders passed by the respondent No.2-KIC.

6. On service of notice, respondent No.1 has entered appearance and filed objections. Sri. Karntharaja, learned counsel, instructed by Sri. Ravi H.K, while reiterating the contents of the Statement of objections submits that:

6.1. Respondent No.1 does not dispute the notification or applicability of G.P.Rules, the dates on which the exams were held, etc.,

6.2. The 'Digital Evaluation and on Screen Marking' methodology used by the petitioner is supplied and maintained by a private technology vendor.

6.3. Though the main written examination was conducted from 16.12.2017 to 23.12.2017, after a lapse of more than a year, i.e., on 28.01.2018, the results of the main written examination were

announced by shortlisting the eligible candidates at the ratio of 1:5 to undergo personality test.

6.4. The personality tests/interviews were commenced from 02.08.2019 and the provisional selection list was published on 23.12.2019 subsequent thereto, final selection list of the candidates was published only on 10.01.2020.

6.5. Respondent No.1 had performed very well in the mains examination as also in the personality test. He had attended all the questions and had written relevant pointwise answers, flow charts, diagrams were given, he had quoted authors and case studies in his answer scripts, etc., Despite which he was not selected in the provisional list.

6.6. Hence, respondent No.1 has filed his objections on 30.12.2019 to the said provisional list. Without considering the said objections of the respondent No.1, the final list was issued by the

petitioner confirming the provisional list, and as such, Respondent No.1 remained un-selected.

6.7. The respondent No.1 and other candidates have challenged the same in W.P.No.4432/2020 expressing doubts and concerns about the digital evaluation and on-screen marking system. The said writ petition is pending wherein this Court has observed that the final selection is subject to the outcome of that writ petition.

6.8. The respondent No.1 being confident about his good performance had applied under RTI Act for certified copies of the answer scripts as also marks awarded to each question for the subjects answered by the respondent No.1. The information sought by the respondent No.1 is in accordance with Section 6(1), 6(2), 6(3) of RTI Act and falls well within the definition under Section 2 (f) of RTI Act, 2005 and as such it is

submitted that, the petitioner and or its PIO are required to furnish the said information.

6.9. It is alleged that on earlier occasions the copies of the answer scripts marking have been provided under RTI Act by the petitioner to the candidates who appeared for GP 2008, GP 2010, GP 2011 and GP 2014.

6.10. The decision by the Hon'ble Apex Court in **Angesh Kumar's Case** (supra) does not cast a blanket bar on issuing information to the candidates. The said decision has been misconstrued and misinterpreted by the petitioner's PIO as also by the first Appellate Authority.

6.11. The PIO has not considered the decision of the Apex Court in **Mradul Mishra Vs. Chairman, Uttar Pradesh Public Service Commission, Allahabad** passed in **Civil Appeal**

No.6723/2018 dated 16.07.2018, wherein it is categorically held that any candidate who has appeared for any examination is entitled to a copy of the evaluated marks sheet. The petitioner wishes to know the marks awarded to each question and not for the entire subject since it is only if he gets to know the marks to each question/answer that the petitioner would be in a position to decide on the future course of action.

6.12.As regards the reliance made by Sri. P.S.Rajagopal, Senior Counsel on **Prashant Ramesh Chakkarwar (surpa)**, he submits that, the so called problems relied upon by Sri. P.S.Rajagopal is only an extract of the counter affidavit filed on behalf of the Commission explaining the methodology of conducting the examination and evaluation of answer scripts as seen from paragraph No.12 of the said decision.

The extracting of the Statement in the counter affidavit would not in any manner amount to the Apex Court approving of or agreeing to the so-called problems. In fact at paragraph No.13 of the said Judgment, the Apex Court has confirmed the Judgment of the High Court by non suiting of the petitioners on the ground of non impleadment of the selected candidates. He further submitted that, in terms of paragraph No.15 & 16 of the said Judgment, the Apex Court dismissed the plea of the petitioners on the ground that there was no material placed by the petitioner in that case to substantiate the grievance set up by the petitioners therein. He submitted that, at no place is the extract from the counter affidavit made use of by the Apex Court for the dismissal of the claim of the petitioners in that case as such the mere extraction of the contentions of the counter

affidavit by the Apex Court cannot be a ground for rejection of an application filed by the RTI Act, for furnishing of the evaluated answerscript.

6.13. The information which has been sought for by the petitioner is neither confidential nor sensitive inasmuch as the information sought for is that relating to the petitioner and not any third party.

6.14. The respondent No.1 though had approached the first Appellate Authority, the said Authority did not dispose off the appeal within the given time frame and as such left with no other alternative, the respondent No.1 had to approach respondent No.2-KIC to do justice.

6.15. The PIO who has been appointed is not a competent authority inasmuch as the PIO is a Section Officer who has no knowledge of the nuances of the law applicable to the facts of the situation, the PIO has not considered the

implications of the judgements cited before him. The order of rejection by the PIO is a bland one without any basis. There are no grounds made out for the rejection except for citing **Angesh Kumar's Case**.

6.16. He supported the decision of the KIC by stating that it is only on account of the lapse on the part of the petitioner and the PIO that respondent No.2 had passed the impugned Order and directed the petitioner to furnish the details sought for.

6.17. He relies upon the subsequent decision of the Apex Court in **Mradul Mishra Vs. Chairman, U.P.Public Service Commission, Allahabad and Ors**, in **Civil Appeal No.6723/2018** so as to distinguish the decision in **Angesh Kumar's Case** (supra) and to contend that in terms of **Mradul Mishra's Case** (supra) a candidate was permitted to inspect the answer sheets.

6.18. The decision in **Angesh Kumar's Case** is not applicable for the reason that, in **Angesh Kumar's Case**, the information which had been sought for was the cutoff marks for every subject, disclosure of marks (raw and scaled), scaling methodology, model answers as also results of all candidates. It is in this background that the Apex Court has held that furnishing of such information would incur usage of physical and fiscal resources would amount to breach of confidentiality, would result to disclosure of sensitive information and as such the same could not be done to all and application for injunction was rejected.

6.19. Shri Kantharaj, Learned Advocate, relied on the decision in **Central Board of Education and another Vs. Aditya Bandopadhyay and others** reported in **(2011) 8 SCC 497** to contend that when a candidate applies under RTI

Act, seeking copy of his own answer script it is the bounden duty on the part of the Board to provide such information.

6.20. **Aditya Bandopadhyay's Case** has imposed a restriction on only grant of information of third parties and not as regards the information of the person applying. Relying on the said decisions, he submitted that, the decision of **Angesh Kumar's Case** is not applicable to the application filed by the petitioner.

6.21. It is further submitted that, it is not mere appointment of a PIO, but the PIO also has to be qualified to discharge the role of the PIO. In the present Case, it is contended that a Section Officer has been appointed as PIO who would be unable to appreciate the nuances of the law and or apply the law to a particular case. It is contended that, the Section Officer would not be in a position to understand the legal nuances and

apply the decisions of the Apex Court thereby resulting in injustice being caused to the applicants. It is for this reason it is contended that, the respondent No.2 invoked the provision of Section 19(8)(a)(ii) of the RTI Act and appointed Smt. Divya Prabhu, IAS, Controller of Examination KPSC as a Public Information Officer of the petitioner. Such an appointment it is contended is within the purview of the second respondent and such an appointment has been made taking into consideration the fact that, in various matters the orders passed by the then PIO (Section Officer) was challenged before the second respondent.

6.22. It is on this basis it was submitted that the application as filed by the respondent No.1 was properly allowed, as also the appointment of a new PIO by the 2nd respondent was defended by the 1st Respondent.

7. Heard Sri.P.S.Rajagopal, learned Senior Counsel instructed by Sri. Reuben Jacob learned counsel for the petitioner, Sri. Kantharaja, learned Senior Counsel instructed by Sri. Ravi H.K., learned counsel for caveator/respondent No.1 and perused the papers.

8. The points that arise for determination in the present writ petition are as under:

- (i) Whether a candidate who has appeared for the examination conducted by Public Service Commission can as a matter of right under the Right to Information Act, seek for copies of his evaluated answer scripts depicting the marks awarded?**
- (ii) Whether any condition/s precedent are to be satisfied, by an applicant, in order to seek for furnishing of evaluated and marked answer scripts?**
- (iii) Whether the exceptions carved out in the decision of the Apex Court in Angesh Kumar's Case is applicable in the present Case?**
- (iv) Whether the Information Commission acting under Section 19(8)(a)(ii) of the Right to Information Act, 2005 can remove/dismiss the Public Information Officer already appointed by the Public Service Commissions and appoint another**

Public Information Officer in place of such removed person?

(v) Are there any qualification prescribed under the Right to Information Act for a person to be appointed as a Public Information Officer?

9. **Point No. (i):** *Whether a candidate who has appeared for the examination conducted by Public Service Commission can as a matter of right under the Right to Information Act, seek for copies of his evaluated answer scripts depicting the marks awarded?*

9.1. Having regard to the decision of the Apex Court in ***Aditya Bandopadhyay's Case*** (supra) it is seen that where an application had been made to the Central Board of Secondary Education, the Apex Court has held that it was the right of the candidate to seek for inspection of the evaluated answer books of such candidate, subject however to the condition that the names of evaluators had to be severed from such answer books.

9.2. It was held that a candidate would be entitled to inspection as also copies of the said evaluated

answer books. This being so, since the evaluated answer book is information within the purview of the RTI Act and the dissemination of the same would promote transparency and accountability as also it would be the right of the candidate to know the evaluation done of his answer script. The Apex Court at paragraph No.66 thereof has held as under:

"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 necessary information under clause 9(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.,)".

9.3. The Apex Court in ***Institute of Companies Secretaries of India Vs. Paras Jain*** reported in **2019 SCC Online SC 764** at paragraph Nos.10, 11 & 12 has held as under:

"10. Thus it is clear that the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the Appellant.

11. We are cognizant of the fact that guidelines of the Appellant, framed by its statutory council, are to govern the modalities of its day-to-day concerns and to effectuate smooth functioning of its responsibilities under the Company Secretaries Act, 1980. The guidelines of the Appellant may provide for much more than what is provided under the Right to Information Act, such as re-evaluation, re-totaling of answer scripts.

12. Be that as it may, Guideline no.3 of the Appellant does not take away from Rule 4, the Right to Information (Regulation of Fees and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. In our opinion, the existence of these two avenues is not mutually exclusive and it is

up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the Appellant, then the Appellant is at liberty to charge the candidates as per its guidelines."

9.4. The Apex Court in ***Mradul Mishra's Case*** (***supra***) has formulated the following question at paragraph No.3 i.e.

"The only question that has arisen in this appeal is whether the Appellant is entitled to see the answer sheets of the examination in which he participated, the examination having been conducted by the Respondents"

9.5. The Apex Court has answered the same at paragraph Nos.14 and 15 as under:

14. In our opinion, permitting a candidate to inspect the answer sheet does not involve any public interest nor does it affect the efficient operation of the Government. There are issues of confidentiality and disclosure of sensitive information that may arise, but those have already been taken care of in the Case of Aditya Bandopadhyay

where it has categorically been held that the identity of the examiner cannot be disclosed for reasons of confidentiality.

15. That being the position, we have no doubt that the Appellant is entitled to inspect the answer sheets. Accordingly, we direct the Respondent-U.P. Public Service Commission to fix the date, time and place where the Appellant can come and inspect the answer sheet within four weeks."

9.6. It is in the background of the above decisions, that the present matter would have to be considered.

9.7. It would also be profitable to refer to and extract some of the relevant provisions applicable to the present case.

9.8. Section 2(f) of the RTI Act defines the term "**information**" as under:

*"2(f). "**information**" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a*

public authority under any other law for the time being in force.”

9.9. Section 2(h) defines the term “**public authority**” as under:

*2(h). “**public authority**” means any authority or body or institution of self-government established or constituted:*

- (a) By or under the Constitution;*
- (b) By any other law made by Parliament;*
- (c) By any other law made by State Legislature;*
- (d) By notification issued or Order made by the appropriate Government, and includes any-*
 - (i) Body owned, controlled or substantially financed,*
 - (ii) Non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government”*

9.10. Section 2(i) defines the term “**record**” as under:

*2(i). “**record**” includes-*

- (i) Any document, manuscript and file;*
- (ii) Any microfilm, microfiche and facsimile copy of a document;*
- (iii) Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and*
- (iv) Any other material produced by a computer or any other device;”*

9.11. Section 2(j) defines the term "**the right to information**" as under:

2(j). "**right to information**" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- (i) Inspection of work, documents, records,
- (ii) Taking notes, extracts, or certified copies of documents or records,
- (iii) Taking certified samples of material;
- (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other devices."

9.12. In terms of Section 3 of the RTI Act, all citizens have a right to information in terms of Section 2(j), the term information being defined under Section 2(f) to include inspection of work, documents, records, etc., the terms record having been defined in section 2(i).

9.13. The request for information has to be made in terms of Section 6 to the PIO of a public

authority as defined under Section 2(h) which is reproduced hereunder:

"6. Request for obtaining information:-

(1) *A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to –*

- (a) *The Central Public Information Officer or State Public Information Officer, as the Case may be, of the concerned public Authority;*
- (b) *The Central Assistant Public Information Officer or State Assistant Public Information Officer, as the Case may be, Specifying the particulars of the information sought by him or her:*

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the Case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

- (2) *An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.*
- (3) *Where an application is made to a public authority requesting for an information,-*
- (i) which is held by another public authority; or*
 - (ii) the subject matter of which is more closely connected with the functions of another public authority,*

The public Authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public Authority and inform the applicant immediately about such transfer.

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

9.14. The manner in which the RTI Act is structured indicates that all information available with the concerned public authority is required to be made available if an application for the same is made under the RTI Act, subject however to just exceptions/exemptions prescribed under Section 8 of the RTI Act.

9.15. In the event of a request being made by the 3rd party for information which has been treated as confidential by the person having ownership or control over the information, no disclosure could be made without notice to such owner of the information.

9.16. Admittedly, in the present Case the information which has been requested for by the respondent No.1 as can be seen from the application dated 16.01.2020, produced at Annexure-B to the writ petition is "please provide certified copies of the evaluated answer scripts of Gazetted Probationer

(GP) 2015 Mains examination pertaining to REG
No.54890 (Candidate) of the following subjects
with marks awarded to each question:

General studies -1,
General studies -2,
General studies -3,
General studies -4,
Essay,
Anthropology (Optional Paper 1 & Paper 2)

9.17. From the above it is clear that what is sought for
is only the marks of the applicant who is a
candidate. The applicant has only sought for
copies of the evaluated answer scripts submitted
by the applicant with marks awarded to each
question. The petitioner has not sought for any
information belonging to any third party nor has
the petitioner sought for any information which
could be treated to come under the
exceptions/exemptions as prescribed and
detailed under Section 8 of the RTI Act.

9.18.The information sought for belonging to the applicant applying the decision in ***Aditya Bandopadhyay's Case, Paras Jain's Case and Mradul Misra's Case***, I am of the considered opinion that the petitioner is entitled to inspection of the said answer script.

9.19.However, here the request is not merely for inspection, but for furnishing of certified copies. Sri. P.S.Rajagopal, during the course of his arguments, submitted that the petitioner and others had filed a Public Interest Litigation in W.P.No.4432/2020, whereunder there are allegations made as regards the manner and nature of evaluation, the practices being followed by the 1st respondent being contrary to law, etc., Sri.P.S.Rajagopal submitted that if required, the entire records would be produced in W.P.No.4432/2020.

9.20. In ***Angesh Kumar's Case***, it has been stated that due regard has to be had to the fiscal impact of such an application, as also to confidentiality in terms of the information having been sought of various other students, on this basis the same came to be rejected by the Apex Court.

9.21. In the present Case what is sought for by the 1st respondent is his own answer scripts, he is ready to make payment of the amounts demanded by the PIO in respect of furnishing of such documents, the said documents are available with the Petitioner and as submitted would be produced in the writ petition if so called for. I see no reason as to why the 1st Respondent should not be furnished with copies of his evaluated answer scripts, if the same can be produced in court in W.P.No.4432/2020. The 1st respondent would have to be provided with the

information as sought for in order to enable the 1st respondent to support the contentions raised in W.P.No.4432/2020. The merits of the matter as also whether the 1st respondent would be able to establish his contentions and or allegation made would be determined in W.P.No.4432/2020.

9.22.The Apex Court in ***Mrudal Mishra's case (Supra)*** permitted inspection of evaluated answer scripts in similar exams. The exceptions and conditions imposed in ***Angesh Kumar's Case*** by the Hon'ble Apex Court would not be attracted to the present Case and in this I am in agreement with the submission made by Sri. Kantharaja, learned counsel for the respondent No.1.

9.23.As such, I answer point No.1 by holding that a candidate who has appeared for the examination conducted by the Public Service Commission can

seek for copies of his evaluated answer script depicting the marks allotted to each question, so long as they satisfy the parameters laid down in **Angesh Kumar's case** and the information sought for does not come within the exemption/exception of Section 8 of the RTI Act.

10. **Point No.(ii)**: *Whether any condition/s precedent are to be satisfied, by an applicant, in order to seek for furnishing of evaluated and marked answer script?*

10.1. In order to comply with the decisions rendered by the Apex Court in **Aditya Bandopadhyay's Case, Paras Jain's Case and Angesh Kumar's Case** an applicant seeking for obtaining copies of evaluated marks and/or answer scripts would be required to comply with the following:

10.1.1. The applicant has to satisfy the parameters laid down in the Angesh Kumar's case i.e.,

10.1.2. The applicant has to be a candidate in the exam,

10.1.3. The applicant can only seek for his own answer scripts,

10.1.4. The applicant is required to make an application in the prescribed form,

10.1.5. The applicant is required to make payment of the due amounts for furnishing of the information pertaining to his evaluated and marked answer scripts.

10.1.6. The information sought for should not come within the exceptions/exemptions under Section 8 of the RTI Act.

10.2. Once the above are satisfied the PIO of the 1st respondent would be required to make available the information sought for.

11. **Point No.(iii):** *Whether the exceptions carved out in the decision of the Apex Court in **Angesh Kumar's Case** are applicable in the present Case?*

11.1.As discussed in detail herein above, the decision of the Apex Court in Angesh Kumar's Case references to an embargo as regard providing confidential information of a candidate to third parties, information as regards the persons who have corrected the answer scripts, etc.,

11.2.In the present Case what the petitioner is seeking for is, his own evaluated answer script. He has not sought for any information relating to any third party or any confidential information, but has sought for information only pertaining to himself. Thus, I am of the considered opinion that the embargo in the decision of the Apex Court in Angesh Kumar's would not be applicable to the present Case, since the applicatrion filed

by the first respondent satisfies the parameters laid down in Angesh Kumar case.

11.3. Freedom of Information being a fundamental right as also human right any person would be entitled to apply for and receive information especially pertaining to himself which is held by any public authority. The reasons for requesting such information may be myriad. Whatever the reasons may be when a particular information sought for is relating to the person applying for such information, the authorities concerned cannot refuse the furnishing of such information.

11.4. Be that as it may, the Apex Court in **Angesh Kumar's case** at paragraph Nos.9 & 10 has observed as under:

"9. 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.

10. *In view of the above, the impugned order(s) is set aside and the writ petitions filed by the writ petitioners are dismissed. This order will not debar the respondents from making out a case on the above parameters and approach the appropriate forum, if so advised."*

11.5. Thus, even as per the decision in **Angesh Kumar's case**, whenever the applicant fulfills the parameters he could always apply for and be provided with the information sought for. In the present case what has been sought for is the personal information of the applicant and not of a third party.

11.6. Respondent No.1 and several others have already challenged the conduct of examination and evaluation in a writ petition which is pending before this court. According to Mr Kantharaja Learned Advocate for Respondent No.1 the copies of the evaluated answer scripts are required for the purposes of analysis and submissions to be made in the pending Writ Petition, which cannot be so made without receiving a copy of the same.

11.7. In the above circumstances, I'm of the considered opinion that the disclosure of information as sought for by the Respondent No.1 is in the public interest so as to maintain the transparency of the examination and evaluation. The Application has filed would come within the exception stated in **Angesh Kumar's case**.

11.8. It is however, required that while issuing copies of the answer scripts and or the information sought for by the petitioner certain safeguards are to be followed namely identity of the examiner is not to be revealed and is to be masked.

12. **Point No. (iv):** *Whether the Information Commission acting under Section 19(8)(a)(ii) of the Right to Information Act, 2005 can remove/dismiss the Public Information Officer already appointed by the Public Service Commissions and appoint another Public Information Officer in place of such removed person?*

12.1. Sri. Kantharaja, learned counsel for respondent No.1 by relying on Section 19(8)(a)(ii) of the RTI Act submitted that the action taken by the 2nd respondent in replacing existing PIO by one appointed by 2nd respondent is proper and valid. This appointment has been assailed by the petitioner before this Court. Section 19(8)(a)(ii) is reproduced hereunder for easy reference:

"19(1) xxxx
 (2) xxxx
 (3) xxxx
 (4) xxxx
 (5) xxxx
 (6) xxxx
 (7) xxxx

(8) *In its decision, the Central Information Commission or State Information Commission, as the Case may be, has the power to,-*

(a) *require the public Authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-*

- (i) xxxx
- (ii) *by appointing a Central Public Information Officer or State Public Information Officer, as the Case may be;"*

12.2. A perusal of the same would indicate that the Central Information Commission or the State Information Commission has the power to require any public authority to take any such steps as may be necessary to secure compliance with the provision of the Act including by requiring the appointing of a Central Public Information Officer or State Public Information

officer as the Case may be. It is on this basis, that Sri. Kantharaja, submitted that the replacement of the existing Public Information Officer since he did not have the due qualifications by a person who was suitably qualified is proper and valid.

12.3. A perusal of Section 19(8)(a)(ii) indicates that this appointment contemplated is of appointment of the Central Public Information Officer or State Public Information Officer. This does not in any manner speak of the Public Information Officer of a Public Authority like the petitioner. Thus, Section 19(8)(a)(ii) would not come to the rescue of the 2nd respondent for replacement of the Public Information Officer already appointed. Though the 2nd respondent may have superintendence power over the actions of any Public Information Officer, the same would not extend to the removal of an already appointed

Information Officer and/or appointment of any other person as a Public Information Officer. Even in terms of Section 19(8), it is only a direction that could be issued by the Central Information Commission or by the State Information Commission as the Case may be requiring the Public Authority to appoint a Public Information Officer if no such person has already been appointed. Once, the person has been appointed, there is nothing which has been provided under Section 19 of the RTI Act enabling removal of such person by the 2nd respondent.

12.4. Under the scheme of the Act as it exists as on today it is also not for the 2nd respondent to ascertain as regards the education or other qualification of a person appointed as a PIO. The 2nd respondent only exercises supervisory

jurisdiction over the actions taken by the Public Information Officer and nothing else.

12.5.A perusal of the Order passed by the 2nd respondent also does not indicate as to why the Public Information officer already appointed was removed by the 2nd respondent and as also what are the special qualifications for the appointment of the persons so appointed by the 2nd respondent. There was in fact no prayer before the 2nd respondent for removal of the existing Public Information Officer.

12.6.Thus looked at from any angle it was impermissible for the 2nd respondent to have removed the existing Public Information Officer and or appoint another Public Information Officer in place of such removed person.

13. **Point No.(v):** *Are there any qualification prescribed under the Right to Information Act for a person to be appointed as a Public Information Officer?*

13.1. The appointment of Public Information Officer is required to be made in terms of Section 5 of the Freedom of Information Act, 2002 (for short 'F.I.Act'). The said Section is reproduced hereunder:

5. Appointment of Public Information Officers;-

1. *Every public Authority shall for the purposes of this Act, appoint one or more officers as Public Information Officers,*
2. *Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information.*
3. *The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.*
4. *Any Officer whose assistance has been sought under sub-Section (3), shall render all assistance to the Public Information Officer seeking his assistance.*

13.2. In terms of sub-Section (1) Section 5 of the F.I.Act, however, public Authority is to appoint one or more officers as Public Information Officer for the purpose of the said public Authority. The said Public Information Officer is vested with the duty and responsibility of receiving requests for information, dealing with such requests and disposal of the same by either providing the information sought for or rejecting the request.

13.3. Though the said Public Information Officer discharges a very important role, neither the F.I.Act nor the RTI Act lay down any qualification, educational or otherwise for a person to be appointed as a Public Information Officer.

13.4. In the above background as the law exists as of now there is no qualification prescribed for the appointment of Public Information Officer and as

such a public authority may appoint anyone to be a Public Information Officer.

13.5. Though the contention of Sri. Kantharaja, learned counsel for the respondent No.1 deserves consideration as regards the qualification of a Public Information Officer and the ability of the said Public Information Officer to appreciate the applicable law, interpret the same if necessary and thereafter pass an order of acceptance or rejection of an application for information, the said contention would have to be considered as per the existing applicable law.

13.6. It is rather incongruous that a Section Officer has been appointed as a PIO and is asked to interpret the decisions rendered by the Apex Court and apply the same to any fact situation. This anomaly would have to be considered for rectification by the legislature in its wisdom.

13.7. Much of the litigation which arises under RTI Act or the F.I.Act is as regards furnishing or non-furnishing of the information commences from a decision taken by a PIO, as such, it would be advisable that a competent person with some kind of legal background is appointed as a PIO.

13.8. In the above background, I am of the considered opinion that as the law stands as on today, there being no qualification prescribed under the RTI Act or F.I.Act, the public Authority concerned can appoint anyone as the Public Information Officer of that Authority. Consequently, the appointment having been made by the Public Authority, the Information Commission cannot seek to remove such a person appointed and or appoint any other person or Authority as a PIO. The powers of appointment or removal are solely vested with the public Authority, where the PIO is to be appointed.

14. The findings are summarized as under:

14.1. A candidate who has appeared for examination conducted by a public service commission can seek for copies of his own evaluated answer scripts along with the marks allotted to each question.

14.2. An applicant cannot seek for copies of evaluated answer scripts of any other person apart from himself/herself.

14.3. In order to make such an application, the applicant has to satisfy the parameters laid down by the **Angesh Kumar's**.

14.4. For seeking any such information, the application has to be made in the prescribed format and the prescribed fees are required to be paid.

- 14.5. The Information Commission Central or State in the event of no public Information Officer being appointed can direct the public authority to take such steps as may be necessary for appointment of a public Information Officer.
- 14.6. The Information Commission, Central or State cannot appoint a Public Information Officer of its own accord in the event of the direction not being followed.
- 14.7. The Information Commission - State or Central has no power to remove or dismiss a public Information Officer already appointed by any public Authority for that organization.
- 14.8. As per the scheme of RTI Act, 2005 or the Freedom of Information Act, 2002, there is no qualifications prescribed for a Public Information Officer.

14.9. It is the discretion of the authority to appoint a competent person as a Public Information Officer.

14.10. Taking into account that the Public Information Officer would be dealing with legal submissions where under the decisions of the High Court and even the Apex Court could be placed before the Public Information Officer for consideration in a manner of speaking the Public Information Officer would be discharging quasi judicial functions while accepting or rejecting the application for information. This aspect may be taken into consideration by the Legislature in its wisdom to formulate the requirements of qualification, if any, for the appointment of a person as a Public Information Officer.

: 62 : W.P.NO.8676/2020 (GM-RES)

The writ petition is accordingly partly allowed.

The parties to bear their respective costs.

Sd/-
JUDGE

*Svh/-