

**\*THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****+W.P. No.2635 OF 2019**

% 20-01-2023

# K. Ramesh

....petitioners

Vs.

\$ Telangana State Public Service Commissioner, rep. by its Secretary, Hyderabad and another

.... Respondents

!Counsel for the petitioner : J. Sudheer

Counsel for the Respondents : D. Balakishan Rao, SC for TSPSC

<Gist :

>Head Note:

? Cases referred:

1. (2018) 4 SCC 530
2. Civil Appeal No. 6454 of 2011 decided on 09.08.2011



IN THE HIGH COURT FOR THE STATE OF TELANGANA  
HYDERABAD

\* \* \* \*

WP. No.2635 OF 2019

Between:

K. Ramesh

....petitioners

Vs.

Telangana State Public Service Commissioner, rep. by its Secretary, Hyderabad and  
another

.... Respondents

**ORDER PRONOUNCED ON: 20.01.2023****THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : Yes

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**NAMAVARAPU RAJESHWAR RAO, J**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****W.P.No. 2635 OF 2019****ORDER:**

This Writ Petition is filed for the following relief:

*“a) to call for the records pertaining to notification 18/2011 dated 28.11.2011 and answer script of English paper of the petitioner and the standardized key to enable this Hon’ble Court to personally observe whether the petitioner’s English marks are correctly given or not, or in alternate to refer the matter to an independent expert and in the vent of he being qualified to evaluate the other answer scripts and if he is otherwise entitled to be called for further selection conduct separate interview and appoint him as per his merit and option, if need be by creating supernumerary post with effect from the date on which the other selected candidates were appointed with all consequential benefits*

*b) by holding the action of the respondents in not disclosing the marks of the petitioner’s written examination and finally disclosing that the petitioner is disqualified and delaying the while process under Right to Information Act and not even releasing/disclosing his own English answer script and the standardized key of English question paper and conducting the whole selection process in a very opaque and clandestine manner leading to denial of the petitioner’s right to get selected and appointed as illegal and unconstitutional; by issuing a Writ of Mandamus and pass...”*

2. Heard Sri. J. Sudheer, learned counsel appearing for the petitioner and Sri. D. Balakishan Rao, learned counsel appearing for the respondent No.1 Commission.

3. Brief facts of the case are that pursuant to the notification vide No.18/2011 dt.28.11.2011 issued by the 1<sup>st</sup> respondent calling for applications from eligible candidates to apply for the posts under Group-I services. The petitioner applied for the same and appeared for the preliminary examination conducted by the erstwhile Andhra Pradesh Public Service Commission and cleared the same. The petitioner appeared in the written/main examination conducted by the erstwhile Andhra Pradesh Public Service. However due to various reasons and the bifurcation of the erstwhile State of Andhra Pradesh, the written examination was conducted afresh by the Telangana State Public Service Commission from 14.09.2016 to 24.09.2016 and the petitioner appeared for the same.

3.1. The examination consists of six (6) papers, out of which, English paper is only a qualifying paper and the marks obtained therein is not considered for deciding the merit. The petitioner was not called for interview as his name was not found in the list of candidates called for interview in 2017 and the final list of selected candidates was released in November, 2017. Subsequently, the

petitioner applied for his marks within 2 months from the date of publication of final select list under Right to Information Act vide letter dt.10.01.2018 but he did not receive any reply. The petitioner, then approached the 1<sup>st</sup> respondent Commission and he was given a letter dt.27.01.2008 which contained the procedure to apply for written examination marks and was asked to submit another IPO for extra amount which the petitioner paid along with his application dated 22.02.2018.

3.2. The petitioner received a response from the 1<sup>st</sup> respondent on 21.03.2018 and was informed that he was not qualified in General English paper and as per para 11(e) of the notification No.18/2011, a disqualified candidate's marks cannot be disclosed. The petitioner submitted a representation to the respondent on 09.08.2018 requesting for standardized key answers of the English examination and also his answer script by enclosing relevant documents and necessary fee. As there was no response, the petitioner submitted a representation under RTI Act to the Appellate Authority i.e Public Information Officer of TSPSC on 04.01.2019 for the information which he requested in earlier

representation on 09.01.2018. The respondent Commission vide its proceedings dt.17.01.2019 stated that the Commission decided not to provide copies of the evaluated answer sheets to the candidates and stated that the standardized answer key is not in the compiled format, hence cannot be provided.

4. Learned counsel for the petitioner contended that the Public Service Commission decided not to disclose any candidate's written examination marks to avoid discrepancies and litigation, which is not good in the true spirit of the education and employment system. He also contended that if the list of disqualified candidates was given, one would know as to what category they fall under whether invalid, ineligible or disqualified with regard to rule 11(e) of the notification and argued that the petitioner cannot fall under the first two categories as he appeared for the main examination on multiple occasions and with regard to disqualification, nothing was communicated to the petitioner either in particular or a general notification releasing the disqualified candidates.

4.1 Learned counsel for the petitioner further contended that the petitioner was informed that he is not qualified in General English paper and as per para No.11 (e) of the notification 18/2011, a disqualified candidate's marks cannot be disclosed. He further contended that non-disclosure of the written test marks would lead to any amount of suspicion and possibility of mischief and arbitrariness and that there is no good reason as to why the marks should not be disclosed to the candidates and that the petitioner in all probabilities could not have not qualified in English paper which minimum marks to qualify for SC category is 45 marks. Accordingly, prayed to allow the Writ Petition.

5. On the other hand, the learned standing counsel appearing for the respondent Commission filed counter denying the allegations leveled in the Writ Petition and contended that the petitioner did not qualify in the English paper and the same was informed to him vide letter No.148/RTI/2017 dt.22.03.2018 with the reason that he did not qualify due to insufficient marks, as such, in the light of para No.11(e) of the notification, *“Invalid, disqualified, ineligible candidates will not be issued any memorandum of marks and fees*



*paid by such candidates, if any, will be forfeited to Government account, without any correspondence in this regard.”*

5.1. The counsel for the respondent further contended that the 1<sup>st</sup> respondent Commission decided not to provide the answer script and key of the English paper as the valuation process involves several stages with three tier valuation by the subject Experts having fiduciary relationship with the Commission and the marks will only be posted on the detachable OMR sheets which are considered to be Raw marks with barcode identification but not on the written sheets and the OMR sheets contain the raw marks awarded by different examiners and final marks will be calculated basing on the marks scored in different valuations and supply of these sheets will reveal the identity of evaluators and the answer keys are prepared by the examiner in his own hand writing attested by his signature which may reveal the identity of the examiner. As such, the key was not provided.

5.2. The counsel for the respondent vehemently contended that the process of valuation is three tier and the services of experts possessing domain knowledge and having fiduciary relationship

with the Commission were utilized by the Commission and each paper is verified by the different evaluators in awarding marks and after the evaluation, the scripts are scrutinized by the officials to check for mistakes in totaling or in posting marks awarded by the Examiner, as such, there is no scope of occurring any mistakes. He also contended that the information sought by the petitioner is highly confidential and even the cut off marks cannot be furnished as the information relates to third party information and hence, disclosure of the same is exempted under section 8(1)(e) and 8(1)(j) of the RTI Act. Accordingly prayed to dismiss the Writ Petition.

6. Perused the record.

7. Both counsel relied on the judgment of the Hon'ble Supreme Court in **UPSC vs. Angesh Kumar**<sup>1</sup> and the relevant paragraphs are extracted as hereunder:

*“7. The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in Prashant Ramesh Chakkarwar v. UPSC [Prashant Ramesh Chakkarwar v. UPSC, (2013) 12 SCC 489 : (2013) 3 SCC (L&S) 187] . From the counter-affidavit in the said case, the following extract was referred to: (SCC pp. 497-98, para 12)*

*“12. ... ‘6. ... (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*

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<sup>1</sup> (2018) 4 SCC 530

*the so-called "raw marks" which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.*

*(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (b) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself 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 Gaurav Gupta v. UPSC [Gaurav Gupta v. UPSC, 2012 SCC OnLine Del 6463] dated 6-7-2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.*

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

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

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

*"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."*

8. Learned counsel for the petitioner strenuously contended that the case of the petitioner falls within the ambit of public

interest and that a case has been made out for the intervention of this Court to direct the respondent to provide the English paper answer script of the petitioner and the standardized key for the purpose of referring the matter to an independent Expert to analyse whether the petitioner is qualified or not in the English paper, and further submitted that the provisions section 8(1)(e) and 8(1)(j) of the Right to Information Act are no way attracted to this case.

9. On the other hand, learned counsel for the respondent contended that the petitioner is not entitled to the relief as prayed as the matter is not of public interest and that the system of operation of the Commission will be at stake giving room for other candidates to knock the doors of this Court unwarrantedly.

10. The petitioner filed a reply affidavit taking the stand that he is interested only in seeing his answer script and the key but is not concerned with the marks or answer scripts of other candidates much less the re-counting of his marks. The petitioner himself on the other hand seeks relief from this Court to send his English paper answer script and key to an independent Examiner/Expert for valuation of his paper and in the event he is qualified, to

evaluate all the papers for the purpose of selection/interview if qualified. The stand taken by the petitioner in his affidavit is different to that of his reply affidavit.

11. Learned counsel for the respondent vehemently contended that the Hon'ble Supreme Court made it clear in the above discussed judgment that the raw marks may be provided only in cases of public interest and the respondent has established that the marks which are scribed on the OMR sheet against the answer scripts are raw marks and cannot be disclosed and the relief which the petitioner seeks, if granted, opens irrational doors for many candidates to resort to the same approach which is impermissible and submitted that the information sought by the petitioner is exempted under Section 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005.

12. It is necessary to extract the above stated sections of the Right to Information Act, 2005 which reads as follows:

**8. Exemption from disclosure of information.—**

*(j) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or*

*economic interests of the State, relation with foreign State or lead to incitement of an offence;*

*(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*

*(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*

*(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

***(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;***

*(f) information received in confidence from foreign Government;*

*(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*

*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

*(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: 8 Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*

***(j) information which 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 Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:***

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

13. At this juncture, the counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in **Central Board of**

**Secondary Education & Anr. Vs. Aditya Bandopadhyay &**

**Ors.**<sup>2</sup> And the relevant portion of which is as follows:

*“18. In these cases, the High Court has rightly denied the prayer for reevaluation of answer-books sought by the candidates in view of the bar contained in the rules and regulations of the examining bodies. It is also not a relief available under the RTI Act. Therefore the question whether reevaluation should be permitted or not, does not arise for our consideration. What arises for consideration is the question whether the examinee is entitled to inspect his evaluated answer-books or take certified copies thereof. This right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them 27 and entitles them to have access to the answer-books as ‘information’ and inspect them and take certified copies thereof. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in Maharashtra State Board (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.*

*19. Section 8(1) enumerates the categories of information which are exempted from disclosure under the provisions of the RTI Act. The 28 examining bodies rely upon clause (e) of section 8(1) which provides that there shall be no obligation on any public authority to give any citizen, information available to it in its fiduciary relationship. This exemption is subject to the condition that if the competent authority (as defined in section 2(e) of RTI Act) is satisfied that the larger public interest warrants the disclosure of such information, the information will have to be disclosed. Therefore the question is whether the examining body holds the evaluated answer-books in its fiduciary relationship.*

*27. 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 39*

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<sup>2</sup> Civil Appeal No. 6454 of 2011 decided on 09.08.2011.



*available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.”*

14. Applying the above observations of the Hon'ble Supreme Court to the facts of the case before this Court, the plea taken by the 1<sup>st</sup> respondent Commission that the information i.e the answer script and the standardized key falls within the ambit of Section 8(1)(e) and 8(1)(j) of the Right to Information Act miserably fails and the petitioner is entitled to receive a copy of his answer script and copy of the standardized key of the English paper. However, the question of evaluation or sending the petitioner's answer script to an independent expert to evaluate his examination does not arise in view of the above decisions.

15. As the petitioner himself stated that he is interested only in seeing his answer script and the key but is not concerned with the marks or answer scripts of other candidates, much less the re-counting of his marks, and in view of the terms of the notification of the 1<sup>st</sup> respondent Commission and the settled law, the petitioner is not entitled to have his English paper answer script evaluated or be sent to an independent Expert for any purpose.

16. In view of the foregoing discussion, this Writ Petition can be disposed of by directing the petitioner, if he is interested in seeing his answer script and standardized key of the English paper, submit a fresh representation to the 1<sup>st</sup> respondent within a period of two (02) weeks from the date of receipt of copy of the order and upon such representation, the 1<sup>st</sup> respondent Commission shall forthwith provide a photocopy of the answer script of the petitioner along with photocopy of standardized key of the English paper to him without disclosing the identity of the Examiner as per rules within a period of four (04) weeks from the date of receipt of a copy of this order.

17. Accordingly with the above observation, the Writ Petition is disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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**NAMAVARAPU RAJESHWAR RAO, J**

***20<sup>th</sup> day of January, 2023***

BDR