# Haryana Public Service Commission and Another Vs State Information Commissioner and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Jan. 10, 2011

**Acts Referred:** Constitution of India, 1950 â€" Article 19, 226, 227
Right to Information Act, 2005 â€" Section 2, 3, 4, 6, 7

**Citation:** (2011) 161 PLR 370

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

## Judgement

Mehinder Singh Sullar, J.
As identical questions of law and facts are involved, therefore, I propose to dispose of above indicated writ

petitions vide this common order, in order to avoid the repetition. However, the relevant facts, which need a necessary mention for deciding the

core controversy involved in these petitions, have been extracted from CWP No. 9721 of 2010 titled as Haryana Public Service Commission and

Anr. v. State Information Commissioner Haryana and Anr. CWP No. 9721 of 2010, for ready reference.

2. The epitome of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is

that Petitioner-Haryana Public Service Commission (for brevity ""the Petitioner-HPSC"") invited the applications from the eligible candidates for the

recruitment of 184 posts of Haryana Civil Services (Executive Branch and Allied Services), 2009, vide Advertisement dated 04.01.2009. One

Wazir Singh Dalai (Respondent No. 2) applied for the indicated post and ultimately he appeared, but could not clear the preliminary examination

held on 26.04.2009 in this regard.

3. In the wake of application (Annexure P-1) dated 20.07.2009, Respondent No. 2 sought the (information) photo-copy of question booklet of

Zoology subject (optional), photo-copy of question booklet of General Studies (Preliminary Exams HCS-2009) (Executive Branch and Allied

Services) and photo-copy of response of paper setter/examiner, Zoology (optional), invoking the provisions of The Right to Information Act, 2005

(hereinafter to be referred as ""the Act""). The informations were denied to him by the State Public Information Officer-cum-Secretary (for brevity

the SPIO""), vide single line order dated 19.10.2009(Annexure P-2) on the ground of its confidentiality. The first appeal filed by him before the

First Appellate Authority (for short ""the FAA"") met with the same fate.

4. Aggrieved by the action of the SPIO and the FAA, Respondent No. 2 filed the second appeal, which ultimately came to be disposed of and the

following directions were issued by the State Information Commissioner (for brevity ""the SIC"") by virtue of impugned order dated

23.02.2010(Annexure P-10):

(a) The question paper and the Model Key Code as requested by Sh. Wazir Singh Dalai in respect of Zoology (optional), and General Studies

Preliminary Exam HCS-2009 (Executive Branch and Allied Services) will be provided to him by the Respondent.

(b) The State Information Commissioner rejected the request of the Appellant with regard to photo copies of the comments of the question setter

on the ground of safety and security of the individual.

5. Sequelly, aggrieved by the action of the SPIO and the FAA (in a similar matter), private Respondents, namely, Sudhir Kataria, Suman Balhara

and Saroj Bala in CWP No. 10304 of 2010, filed another appeal, which was allowed by the SIC, vide impugned order dated

14.01.2010(Annexure P-8). The operative part of which is, as under:

In view of the above, the following orders are passed:

(a) Haryana Public Service Commission may allow all candidates to retain question booklet (question paper) after completion of the time of the

paper.

(b) The Haryana Public Service Commission will make the model key (answer to question paper) public by displaying the same on the

HPSC/Govt. Website after the results of the examinations have been declared.

(c) The Haryana Public Service Commission will allow inspection/scrutiny of OMR Sheets (answer sheet) or answer booklets to any candidate

who desires to do so under proper supervision after the result of the examination has been declared/the selection process has been completed.

6. Instead of complying with the impugned directions, the Petitioners still did not feel satisfied and filed the instant writ petitions, invoking the

provisions of Articles 226/227 of the Constitution of India, challenging the impugned orders, Annexure P-10 (subject matter of CWP No. 9721 of

2010) and Annexure P-8 (subject matter of CWP No. 10304 of 2010). That is how, I am seized of the matter.

7. Having heard the learned Counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts

over the entire matter, to my mind, there is no merit in the instant writ petitions in this context.

8. However, ex-facie, the main cosmetic contentions of the learned Counsel for the Petitioners that the informations sought by the private

Respondents fall within the exemption clause of Section 8(e)(j) of the Act, the same cannot be supplied and since the SIC has no jurisdiction to

direct it (HPSC) to formulate the policy, so, the impugned orders deserve to be quashed, are neither tenable, nor the observations of the Hon''ble

Apex Court in cases Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth

and Others, and President Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr.2 (2007) 1 SCC 603, are at all applicable to

the facts of the present case, under the RTI Act.

9. Sequelly, in Paritosh Bhupesh Kurmarsheth''s case (supra), Maharashtra State Board formulated Regulation 104(3) with regard to the

evaluation of answer-sheets. While interpreting the validity of the Regulation, it was observed that Regulation 104(3) cannot held to be invalid on

the ground of violation of the rules of natural justice. The process of evaluation of answer papers or of subsequent verification of marks under

Clause (3) of Regulation 104 does not attract the principles of natural justice since no decision making process which brings about adverse evil

consequences to the examinees is involved. The principle of natural justice cannot be extended beyond reasonable and rational limits and cannot be

carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the

process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an

inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.

10. Likewise, in D. Suvankar and another''s case (supra), in the High School Certificate Examination 2004, conducted by the Appellant-Board,

the Respondent was declared to have passed in first division securing 654 marks out of 750. When the Respondent made a representation, the

answer scripts were verified and it was found that the marks awarded in one paper were wrongly shown as 35, though, the Respondent had really

secured 65 marks. It was pointed out that the mistake occurred due to wrong entry made in the computer. The error was rectified and a fresh

mark sheet was issued. The Appellant-Board constituted a committee pursuant to the direction given in Bismaya Mohanty and Others Vs. Board

of Secondary Education, Orissa and Others, . Therein, the High Court had directed that the answer sheet of the students, who had secured more

than particular number of marks were to be reexamined by the committee of three examiners to avoid the possibility of injustice on account of

marginal variation in marks.

11. On the peculiar facts and in the circumstances of that case, it was ruled as under:

It has also to be ensured that the examiners who make the evaluation of answer papers are really equipped for the job. The paramount

consideration in such cases is the ability of the examiner. The Board has bounden duty to select such persons as examiners who have the capacity,

capability to make evaluation. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show

even an apprehension about lack of fair assessment. It is true that evaluation of two persons cannot be equal on golden scales, but wide variation

would affect credibility of the system of evaluation. If for the same answer one candidate gets higher marks than another that would be arbitrary.

One thing which cannot be lost sight of is the marginal difference of marks which decide the placement of candidates in the merit list. Care should

be taken to see that the examiners who have been appointed for a particular subject belong to the same faculty. The evaluation should be done by

an examiner who is well equipped in the subject. That would rule out the chance of variation or improper evaluation. Board authorities should

ensure that anomalous situations as pointed out above do not occur. Additional steps should be taken for assessing the capacity of a teacher

before he is appointed as an examiner. For this purpose, the Board may constitute a body of experts to interview the persons who intend to be

appointed as examiners. This process is certainly time-consuming but it would further the ends for which the examinations are held. The Chief

Examiner is supposed to act as a safety valve in the matter of proper assessment. The scope for interference in matters of evaluation of answer

papers is very limited. For compelling reasons and apparent infirmity in evaluation, the court steps in.

12. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the Petitioners, rather

support the case of the private Respondents in the instant controversy, under the RTI Act.

13. What is not disputed here is that the Petitioner has already supplied the copies of question papers to the Respondents and have only challenged

the supply of information in regard to Model Key Code in the first case and other impugned directions in the second case.

14. At the very outset, the basic purpose, aims and objects of the Act, have to be kept into focus, while deciding the instant writ petitions. It is not

a matter of dispute that the Act was enacted in order to ensure transparency in the system, smoother and deep access to information and to

provide an effective framework for effecting the right to information, recognised under Article 19 of the Constitution of India.

15. Such, thus, being the position on record, now the sole question that arises for consideration in these writ petitions is whether providing

information of Model Key Code and other impugned indicated directions fall within the exemption clause, as envisaged u/s 8(e)(j) of the Act or

not?

16. Having regard to the rival contentions of the learned Counsel for the parties, to me, the information relatable to Model Key Code etc. sought

by the private Respondents, do not squarely fall within the ambit of exemption clause, as enumerated u/s 8(e)(j) of the Act, which postulates as

under:

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(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) xx xx xx

(g) xx xx xx

(h) xx xx xx

(i) xx xx xx

(j) Information which relates to personal information the disclosure of which has not 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.

17. Similarly, the word ""Information"" has been defined u/s 2(f) of the Act to mean 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 and word ""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.

18. Section 2(j) of the Act defines, ""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; and (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 device.

19. Sequelly, Section 3 of the Act postulates that subject to the provisions of this Act, all citizens shall have the right to information and obligations

of public authorities to maintain all its record is listed in Section 4 of the Act. Every person is entitled to information, as per procedure prescribed

u/s 6 of the Act, which will be disposed of by the competent authorities u/s 7 of the Act.

20. Likewise, Proviso to Section 8 of the Act envisaged that the information, which cannot be denied to the Parliament or the State Legislature,

shall not be denied to any person.

21. A co-joint reading of the aforesaid provisions would reveal, only that information is exempted, 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 authorities are satisfied that the

larger public interest justifies the disclosure of such information. That means, as all the essential ingredients of exemption clause are totally lacking,

therefore, the Petitioners cannot claim exemption of information of Model Key Code, which has direct relationship with the conduct of examination

for public employment and cannot possibly be termed as unwarranted invasion of the privacy of any person. Therefore, to my mind, the

information sought by the Respondents with regard to the Model Key Code, cannot possibly be termed to be exempted information, as escalated

u/s 8(e)(j) of the Act, as urged on behalf of the Petitioner.

22. Again, the next argument of the learned Counsel that the SIC cannot direct the Petitioner-HPSC to formulate the policy in the impugned order

(Annexure P-8) (subject matter of CWP No. 10304 of 2010), is not only devoid of merit but misplaced as well.

23. Section 4 of the Act mandates that every public authority shall maintain all its records duly catalogued and published within one hundred and

twenty days from the enactment of this Act, all the particulars and in the manner, contemplated under this Section. For the purpose of supplying the

information u/s 6 and disposal of request, as per procedure contained in Section 7 of the Act.

24. Meaning thereby, the directions contained in the impugned order (Annexure P-8) are squarely in consonance with the provisions of the Act

and the contrary arguments of the learned Counsel for the Petitioners ""stricto sensu"" deserve to be and are hereby repelled under the present set of

circumstances of the case. If the arguments of the learned Counsel for the Petitioners are accepted as such, then no information/direction is

permissible, which would certainly nullify and negative the aims and objects of the Act.

25. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

26. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petitions are hereby dismissed in the obtaining circumstances of

the case.