



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیری اسٹیٹسٹ کشمیر جموں ا
(Constituted under the Right to Information Act, 2009)

**Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937
Old Assembly Complex, Srinagar, 0194-2506660, 2506661**

www.jksic.nic.in

File No. SIC/CO/SA/472/2017

Decision No.SIC/CO/SA/472/2017/1004

Final Order

Appellant : **Smt. Maidah Begum, W/O Mohammad Nadeem Bhat, Advocate J&K High Court, Jammu.**

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

Date of Registration : **29.06.2017**

Date of Decision : **26.10.2017**

Briefly the facts of this appeal are that the appellant filed RTI application on 21.02.2017 with the Public Information Officer (PIO), J&K, PSC seeking the following information:-

- i. Please provide me answer key of Assistant Professor in Urdu discipline of written test held on 04.12.2016.
- ii. Please provide me photo copy of OMR of applicant of written test conducted by PSC on 04.12.2016 of Assistant Professor in Urdu discipline.

As she did not get reply within the stipulated time from the PIO, she filed First Appeal with First Appellate Authority (FAA) of PSC on 10.04.2017. FAA also failed to dispose of her 1st Appeal as a result she approached the Commission in 2nd Appeal with the request that PIO may be directed for providing her the requisite information sought through her

basic RTI application. Her 2nd appeal was finally admitted in the Commission on 29.06.2017 after deficiency was made up by her.

Time period for disposal of this 2nd appeal was also extended by another 60 days w.e.f 30.08.2017 in terms of powers vested in the SIC under Section 16 (11) of the J&K RTI Act,2009 to ensure continuation of hearings for final and judicious disposal of the appeal.

Proceedings before the Commission

The instant 2nd Appeal was listed for hearing before the Commission on 11.9.2017. The hearing was attended by Shri Ishtiyag Ahmad, PIO, JKPSC. Neither the appellant nor her authorized representative attended the hearing despite due notice. The Commission felt that the hearing of the appellant was desirable for adjudication of the matter and therefore the hearing was adjourned. The hearing was fixed on 13th of September, 2017.

The case came up for hearing on 13.09.2017. The hearing was attended by Shri Ishtiyag Ahmad, PIO,JKPSC. The appellant was represented by her counsel Mohd. Nadeem Bhat who was heard through video conferencing from Jammu office of the State Information Commission (SIC). During the hearing the PIO submitted a copy of Notification dated 14.03.2016 whereby Rule 12(B) of the J&K PSC conduct of examination/Rules, 2005 has been deleted. The representative/counsel of the appellant stated that the respondents have already written a letter dated 23.3.2017 to the appellant claiming voluminous nature of information as the reason for not providing the information and that the appellant was offered the inspection of records on 19.4.2017 i.e. of OMR sheet and Answer Key. He further submitted that appellant is now not interested in obtaining the copy of the OMR sheet but is interested in obtaining the copy of the Answer Key.

On enquiry, PIO admitted that such letter had actually been sent. He also accepted that in the counter statement submitted on 10.07.2017, he/PSC has stated that appellant had been offered to inspect the Answer

Key and the OMR sheet but instead of attending the PSC she chose to file First Appeal and later 2nd Appeal with the SIC.

The PIO has further stated in the counter statement that there is no provision for providing a copy of OMR Sheet and the Answer Key and that is why inspection of these documents was offered vide letter dated 23.3.2017. The PIO showed J&K PSC order of 14.03.2016 stating that Rule 12(B) of the J&K PSC (Conduct of Examination) Rules, 2005 had been deleted and that Answer Keys are now not provided or shown.

Both the parties were heard at length and record was also perused. The hearing was adjourned in view of the contradictory position taken by the PIO, PSC with the appellant at different points of time.

The case was again listed for hearing before the SIC on 13.10.2017. Shri Ghanshyam, Addl. Secretary Cum PIO, J&K PSC attended the hearing. The appellant did not appear. Representative of the appellant who attended the Jammu office of the SIC for hearing through video conferencing requested for adjournment of the appeal due to inability of appellant or her counsel in attending the hearing due to some unavoidable circumstances. The hearing was adjourned keeping in view the absence of the appellant and final hearing was fixed for 26.10.2017. On 26.10.2017, the appeal was listed for final hearing which was attended by Shri Ghanshyam Singh, PIO, J&KPSC. Appellant's counsel was heard through video conferencing from Jammu office of the Commission.

During the hearing the appellant's counsel reiterated his demand for copy of Answer Key. In response PIO again showed his reservation in furnishing the copy of Answer key. He relied on the PSC notification dated 14.03.2016 by virtue of which Rule 12(B) of the J&K PSC (Conducting of Examination) Rules, 2005 has been deleted.

Appellant submitted that Rules and procedures of J&K PSC cannot override the provisions of J&K RTI Act, 2009 as the later has an overriding effect over all other laws including State Official Secrets Act. Samvat. 1977 in terms of Section 19 of the Act. Again both parties were heard at length and record was also perused.

Decision

It is a fact that Section 19 of the J&K RTI Act, 2009 gives the RTI Act an overriding effect and states as under:

“ **Act to have overriding effect-** The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat.1977 (1) and any other law (2) for the time being in force or any instrument having effect by virtue of any law other than the Act”.

The J&K RTI Act itself enumerates the grounds and situations in which information may not be provided and these are enumerated as exemptions under Sections 8 & 9 of the Act.

Disclosure of Answer key after the result of the examination is announced doesn't seem to fall under any of the exemptions under Section 8 and certainly not under Section 9 which relates to copyright infringement.

Section 8(1)(e) exempts from disclosure of such ' 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'.

OMR Sheets and the Answer key cannot be said to be held in fiduciary capacity by the examination conducting authority like the J&K PSC **after the results of the examination have been finally announced.** Such fiduciary relationship can be said to exist before the results are announced. If the information pertaining to Answer scripts/OMR sheet and Answer key are continued to be held as secret and non-givable even after the results are out, then the aggrieved candidates will have nowhere to go to seek redressal. Allowing inspection or providing a copy thereof of own OMR sheet without the Answer key is meaningless as there will be no way for the examinee/information seeker to evaluate or cross check his own performance and the marks. Moreover, if the policy of non-disclosure of OMR sheet and Answer key even after the results are announced on grounds like deletion of Rule 12(B) is continued, then the paper setters and

the evaluators will also start feeling lack of accountability which situation is highly undesirable, against the transparency in the system and against the larger public interest.

Since the J&K PSC is invoking deletion of Rule 12(B) of the J&K PSC conduct of examination Rules, 2005 as the reason for non-disclosure of the OMR sheet and Answer key even after the results are announced, then the very deletion of such Rule appears to be violative of Section 19 of the J&K RTI Act, 2009.

The Hon'ble Supreme Court in a landmark judgment namely Civil Appeal No.6454 of 2011 CBSE & Anr. VS Aditya Bandopadhyay & Ors. has observed as under:-

"This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the `evaluation' (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no merit. The examining body entrusts the answer-books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer-book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer-books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words the examining body is the `principal' and the examiner is the agent entrusted with the work, that is, evaluation of answer- books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner. On the other hand, when an answer-book is entrusted to the examiner for the purpose of evaluation, for the period the answer-book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer-book or the result of evaluation of the answer-book to anyone other than the

examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copy-right or proprietary right, or confidentiality right in regard to the evaluation. Therefore it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner.

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

Keeping in view the Hon'ble Supreme Court judgment above and the intent of Section 19 of the J&K RTI Act, 2009 and in terms of powers vested in the State Information Commission (SIC) under Section 16 of the Act, the PIO, J&K PSC is directed to provide a copy each of the OMR sheet of the appellant Maidah Begum and the Answer Key to the appellant as expeditiously as possible within a maximum period of 30 days from the date of receipt of this order, if the results have been announced.

With these directions, this 2nd appeal filed before the State Information Commission is disposed of.

The copy of Order be provided to the parties free of cost.

Sd/-

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

(P.A. Ajay)

No: SIC/CO/SA/472/2017_____

Dated: . . .2017

Copy to:

1. Registrar, J&K State Information Commission for information and necessary action.
2. FAA/Secretary, J&K Public Service Commission for information and necessary action.
3. PIO/Sh. Ghanshayam, Additional Secretary, J&K Public Service Commission for information and necessary action.

4. PS to HCIC for information of the HCIC.
5. Appellant/Ms. Maidah Begum, W/o. Mohd. Nadeem Bhat, C/o. Mohd. Nadeem Bhat (Advocate), J&K High Court, Jammu for information.
6. Office file.

(Dr. Ghulam Mohi Ud Din)
Joint Registrar
J&K State Information Commission