

Chattisgarh High Court  
Chattisgarh High Court  
Yogendra Chandraker vs State Information Commission ... on 3 August, 2010  
WRIT PETITION C No 3015 of 2008

Yogendra Chandraker

...Petitioners

Versus

State Information Commission & Others ...Respondents

! Shri Parag Kotecha Advocate for the petitioner

^ Shri P K Bhaduri Panel Lawyer for the State respondents 2 and 3

CORAM: Honble Shri Satish K Agnihotri J

Dated: 03/08/2010

: Judgement

O R D E R

Delivered on 03rd day of August 2010

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Heard.

1. Challenge in this petition is to the order dated

7.3.2008 (Annexure P/7) passed by the State Information

Commission, Raipur, in appeal filed by the petitioner

against the order dated 31/10/2007 (Annexure P/5) passed

by the State Public Information Appellate Authority.

2. The facts, in nutshell, as projected by the petitioner are that the petitioner made an application on 13.07.2007 (Annexure P/1) to the Inspector General of Police, Police Headquarter, Raipur, seeking for answer sheets of Constables who appeared in the departmental promotion examination (written) held on 29/4/2007. The same was referred to the Superintendent of Police, Mahasamund. The Superintendent of Police, by order dated 24/7/2007 declined to supply the information to the petitioner on the ground of exemption contained under the provisions of Section 8(1)(d) of the Right to Information Act, 2005 (in short "the Act, 2005"). Being aggrieved, the petitioner preferred a first appeal to the Inspector General of Police, Raipur Region, Raipur. The first appeal was also dismissed on the same ground holding that the answer sheets of other candidates are confidential and the same are exempted from disclosure under the provisions of Section 8(1)(d) of the Act, 2005. Thus, the order passed by the Superintendent of Police, Mahasamund was upheld and appeal was rejected. Thereagainst, the petitioner preferred second appeal before the respondent

No.1, the respondent No.1 having agreed with the conclusions and order passed by the Superintendent of Police, Mahasamund and the order in appeal passed by the Inspector General of Police, dismissed the second appeal, thus this petition.

3. Shri Kotecha, learned counsel appearing for the petitioner would submit that the information sought for by the petitioner has not been granted to him on the ground that under the provisions of section 8(1)(d) of the Act, 2005, the documents as required by him, cannot be granted. However, there is no such bar in providing certified copy of the answer sheets. The aforesaid provision is not at all attracted in this case. The respondents ought to have sought consent of the Constables i.e. third party for disclosing the information of their answer sheets.

4. Shri Kotecha, would further submits that the provisions of 8(1)(d) of the Act, 2005 is not applicable in the case on hand, as the answer sheets are not covered under the said provisions as it is not commercial confidence, trade secrets or intellectual property, and the disclosure of the same would also not harm the competitive position of the third party. Thus, refusal to submit information with regard to answer sheets of candidates appearing in the departmental promotion examination is not covered under any provisions of exemption clause as enshrined in section 8 of the Act, 2005.

5. Per contra, Shri Bhaduri, learned Panel Lawyer appearing for the State/respondent No. 2 and 3 would submit that the petitioner, on his own has come to a conclusion that some fraudulent activities have taken place in promotion of constables to Head Constable `A' without any basis. Under the provisions of section 8(1)(d) of the Act, 2005, the petitioner was rightly not given the copies of answer sheets of the constables who appeared in the written examination. Even otherwise, the provisions of section 8(1)(e) and (j) would also be attracted in this case and thus, the petitioner has rightly been denied any information.

6. Shri Bhaduri would further submit that the petitioner is a complete stranger to the conduct of the examination as he is an Advocate and has nothing to do with the examination being conducted for the Constables by the Department. It was also not an open examination but an

examination for promotion to the post of Head Constable

`A' wherein only the constables working in the department

were allowed to appear and not the general public.

7. Section 8(1)(d), (e) and (j) of the Act, 2005 reads as under:

“8. Exemption from disclosure of information. - (1) Notwithstanding anything contained in this Act, there shall be no obligation to given any citizen, -

xxx xxx xxx

xxx xxx xxx

(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.

xxx xxx xxx

(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 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.

xxx xxx xxx”

8. On perusal of the pleadings and documents, there is no quarrel that any person may make request in writing or through electronic means in English or Hindi to obtain information and the information request cannot be turned down on the ground that he was a stranger to the documents or he has not disclosed the reasons for the said information under provisions of Section 6 of the Act, 2006. In the case on hand, the petitioner being an Advocate has made a request for supply a copy of answer

sheets of 24 Constable, who had participated in the departmental promotion examination (written) held on 29/4/2007 for promotion to Head Constable &quot;A&quot;. The authorities below had held that the information sought by the applicant comes within the exemption clause under the provisions of Section 8 of the Act, 2005. Section 8 is a non-obstantive clause as it begins with the word &quot;Notwithstanding anything contained in this Act, there shall be no obligation to given any citizen,&quot; Under clause (d) of Section 8(1) of the Act, 2005. All the informations including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party are exempted from disclosure, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

9. The petitioner has sought disclosure of answer sheets of some of the constables which comes within the purview that the disclosure of the same would harm the competitive position of the third party interest. Thus, I do not found any illegality or irregularity in declining to disclose information i.e. supply of answer sheets of the constables to the petitioner.

10. The second contention of the learned counsel that under the provisions of Section 11, the State Public Information Officer, after having sought consent of such third party, may disclose information on record. In the case on hand, no consent of the third party was sought before declining the disclosure of the above stated information. On bare perusal of Section 11 of the Act, 2005 makes it clear that seeking consent of the third party would arise only in the event the Public Information Officer is satisfied that larger public interest warrants the disclosure of such information. In the instant case, the Public Information Officer including the respondent No.1 State Information Commission has not expressed its satisfaction in favour of disclosure on account of larger public interest. Thus, provisions of Section 11 of the Act, 2000 would not be applicable.

11. For the reasons mentioned hereinabove, there is no merit in the case, accordingly, the petition is dismissed.

12. There shall be no order as to costs.

JUDGE