

Delhi High Court

Union Public Service Commission vs Shiv Shambhu And Ors on 3 September, 2008

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 18, 2008

Date of decision: 3rd September, 2008

LPA No. 313 of 2007 and CM APPL. No. 6468/2007 03.09.2008

# UNION PUBLIC SERVICE COMMISSION ... Appellant ! Through: Mr. L. Nageshwar Rao, Senior

Advocate with Ms. Bintu

Tamta, Advocate.

versus

\$ SHIV SHAMBHU and ORS .... Respondents

Through : Mr. Aman Lekhi, Senior

Advocate with Mr. Sumit Kumar,

Mr. Rakesh Kumar and Mr.

Jaspreet, Advocates for R-1 to

R-4 and R-6 to R-22.

Mr. Prashant Bhushan with Mayank Misra, Advocates for R-23.

Mr. K.C. Mittal with Mr. Sumit Babbar, Advocates for the Central Information Commission

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment

Yes

2. To be referred to the Reporter or not Yes

3. Whether the judgment should be reported Yes in Digest

## JUDGMENT

Union Public Service Commission vs Shiv Shambhu And Ors on 3 September, 2008

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03.09.2008

:DR. S.MURALIDHAR

1. The Union Public Service Commission ( UPSC ) has in this appeal challenged the judgment dated 17th

April 2007 passed by the learned Single Judge of this Court dismissing its Writ Petition (C) No.17583 of

2006. The UPSC had filed the said writ petition seeking the quashing of an order dated 13th November 2006

passed by the Central Information Commission ( CIC ), New Delhi allowing the appeal filed by the

Respondents herein under Section 19 (3) of the Right to Information Act, 2005 ( RTI Act ).

2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No.1 to this

appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as Union Public Service Commission v. Shiv Shambhu and Ors.

3. The Respondents herein were candidates who had appeared in the Civil Services (Preliminary) Examination, 2006. The Civil Services Examination (CSE) - which is in two parts, a preliminary examination followed by a Main examination - is a competitive examination held every year by the UPSC, a constitutional authority under Article 320 of the Constitution of India. The successful candidates are, in the order of their merit, recruited to the Indian Administrative Service, Indian Foreign Service, Indian Police Service and non-technical Civil Services. Pursuant to the recommendations of the Kothari Committee in 1974-77, which was constituted by the central government, changes were introduced in the pattern of the CSE. This was followed by another review carried out by the Satish Chandra Committee in 1988-89 whereafter certain other changes were introduced. Importantly one of the recommendations made by the Kothari Committee was in regard to adopting of scaling of marks for different papers using appropriate statistical techniques.

4. The CSE preliminary examination has two objective type papers: a general studies paper of 50 marks and one optional subject of 300 marks. This serves as a screening test for the Civil Services (Main) Examination. On an average, around 400,000 candidates sit for the CSE preliminary examination every year. It is conducted at approximately 940 centres in 45 different cities in the country. For the optional paper of 300 marks in the preliminary examination, a candidate can choose one of the 23 subjects in various disciplines like Social Sciences, Physical Sciences, Life Sciences, Business Studies, Engineering, Medical Sciences etc. At the end

of the preliminary examination a short list of candidates, arranged in the order of merit, is prepared to the extent of 12 to 13 times the number of vacancies. Each year there is likely to be different cut off marks for each optional subject depending on the level of overall performance and the comparative level of difficulty in that subject.

5. As far as the present dispute is concerned, its genesis lay in the applications made by Respondents herein to the UPSC in August 2006 seeking the following information:

(a) copy of the cut off marks list for optional subject and General Studies. (b) separate cut-off marks for every subject and for General Studies by different categories such as General, OBC, SC, ST including copies of the relevant documents.

(c) details of the marks obtained by the candidate in the preliminary examination.

(d) the modal answers for each series of every subject. (e) the reason for retaking the examination for Public

Administration optional subject on 18th June 2006.

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6. The Central Public Information Officer ( CPIO ) of the UPSC declined to provide the information sought

under (a) to (d) above and gave the following reasons:

2. In this regard, I am to state that the information sought by you forms part of Commissions crucial secrets

and intellectual property under Section 8(1)(d) of the RTI Act, 2005. The information requested by you is in

the nature of secret documents under Section 8(2) of the RTI Act 2005 and there being no public interest

requiring its disclosure, it cannot be disclosed as the disclosure would harm the protected interests. I am to

further state that the disclosure of this information shall irreparably undermine the integrity, strength and

efficacy of the competitive public examination systems of paramount significant conducted by the UPSC.

3. I am to further invite your attention to para 8 (iv) of the Commission s Notice, which appeared in the

Special Supplement of Employment News dated 3rd December 2005 which is reproduced below:

Candidates are informed that as the Preliminary Examination is only a screening test, no marks sheets will be

supplied to successful or unsuccessful candidates and no correspondence will be entertained by the

Commission, in this regard.

7. The appeal to the Appellate Authority of the UPSC was rejected by an order dated 20th October 2006. In

the said order it was, inter alia, explained by the Appellate Authority as under:

10.1 . The undersigned notes that CS (P) is a highly competitive examination which caters to the requirement

of recruitment of civil servants of wide spectrum of background. Keeping in view the peculiar nature of

examination, the candidates are allowed an option to select any one optional subject out of 23 options for the

examination. Therefore, the process of evaluation of performance of candidates in such varied subjects

involves designing a meticulous system of balancing the degree of difficulty of individual subjects so as to

evenly evaluate the performance of the candidates. This process has been designed by the Commission after

years of expertise and consultation with the subject experts. The disclosure of individual scores of candidates

along with the keys of questions papers would have wider implications to the extent of derailing the entire

structure and process of Civil Services Examination. Further, the sharing of complex intricacies on evaluation

of performance in various optional subjects would seriously endanger the process of secrecy and

confidentiality of the Civil services Examination.

8. In the order passed by the Appellate Authority the following further justification was offered:

10.3 The issue regarding procedure/ methodology to be followed by Public Service Commissions in

conducting its examinations has been extensively deliberated upon by the Hon ble Supreme Court in the Civil

Appeal No. 8609 of 2003. In arriving at the decision of not to share the information solicited by the applicant,

reliance has been placed by the Authority on the observations as reproduced below by the Hon ble Supreme

Court in the Civil Appeal mentioned above.

In that view of the matter, we do not think that the application of scaling formula to the examinations in

question was either arbitrary or illegal. The selection of the candidates was done in a better way. Moreover,

this formula was adopted by the Uttar Pradesh Public Service Commission (U.P.P.S.C.) after an expert study

and in such matters, the Court cannot sit in judgment and interfere with the same unless it is proved that it was

an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the rules.

Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them.

9. Aggrieved by the order of the Appellate Authority the Respondents filed an appeal before the CIC. After

discussing the provisions of the RTI Act, the CIC concluded that the question papers prepared by the subject

experts for the UPSC were original literary works and that as such the copyright therein vested in the UPSC

and further that under Section 8(1) (d) RTI Act, the CIC could order that it should not be disclosed. However,

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under the same provision the competent authority was empowered to make the disclosure of the material if it

was satisfied that larger public interest so warranted. Accordingly, the CIC directed as under:

i) The UPSC shall, within two weeks from the date of this order, disclose the marks assigned to each of the

applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Option Papers; and

ii) The UPSC, within two weeks from the date of this order, shall also disclose the cut-off marks fixed in

respect of the General Studies paper and in respect of each of the Option Papers and if no such cut-off marks

are there, it shall disclose the subject-wise marks assigned to short-listed candidates;

and iii) The UPSC shall

examine and consider under Section 8 (1) (d) of the RTI Act the disclosure of the scaling system as it involves

larger public interest in providing a level playing field for all aspirants and shall place the matter before the

Competent Authority within one month from the date of this order. This will also cover the issue of disclosure

of model answers, which we recommend should in any case be made public from time to time. In doing so, it

shall duly take into account the provisions of Section 9 of the RTI Act.

10. Aggrieved by the order of the Appellate Authority the UPSC filed W.P. (C) No.17583 of 2006 in this

Court. The UPSC submitted before the learned Single Judge that since the optional subject was not common

to all the candidates and could be one of the 23 offered, a methodology has to be developed to make the marks

obtained in the different subjects comparable across candidates. This necessitated deployment of the

methodology of scaling of marks. A certain scientific formula was used for scaling of the marks and as such

the cut off was implemented subsequent to the examination. According to the UPSC if the cut off marks, the individual marks and the key answers to the questions were disclosed, it would enable unscrupulous candidates to reverse engineer and arrive at the scaling system which was a carefully guarded secret. According to the UPSC this would undermine the very object of selecting the best candidate. It was further argued before the learned Single Judge that the disclosure of the cut off marks or the scaling method would enable short cut techniques by coaching institutes which would reduce the examination process to the level of mere surmising rather than being a test of substantive knowledge. The UPSC also provided the learned Single Judge information concerning the screening methodology in a sealed cover.

11. Learned counsel for the Respondents submitted before the learned Single Judge that there was nothing secret about the scaling method since it had already been disclosed by the UPSC in an affidavit dated 20th March 2007 filed by it before the Supreme Court in SLP (Civil) No. 23723 of 2002 (Union Public Service Commission v. Satish Chandra Dixit). In the said affidavit the UPSC had explained that the scaling system followed by the Uttar Pradesh PSC was a linear method known as the Standard Deviation method whereas what was followed by the UPSC was the Normalized Equi-percentile method.

12. After going through the contents of the sealed cover the learned Single Judge found that the scaling methodology deployed by the UPSC stood already disclosed in its counter affidavit filed in the Supreme Court. The learned Single Judge rejected the argument that if the information was revealed a large number of dummy candidates would be made to take the examination by unscrupulous coaching institutes which would result in the alteration of scaling of marks in certain specific subjects, thereby depriving meritorious students in other papers from qualifying. The learned Single Judge held: 22 The sealed marks, employing the methodology revealed by the UPSC before the Supreme Court, is clearly dependent upon the number of candidates. This is inherent in the formula employed itself. However, what the UPSC seems to ignore is that the cut-off mark itself would change. The scaling methodology adopted by them, which seeks at normalizing the distribution curve, would take care of the abnormalities (skewness) caused by the dummy candidates, if

any.

13. As regards the likely misuse of this information by the coaching institutes, the learned Single Judge observed:

23. It is important to note that prior to the examination, the cut-off mark would not be known. Nor would it be known to any of the coaching institutes as to how many candidates are going to appear in each of the optional

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papers. Apart from this, it would also not be known to anybody as to what the performance of any candidate

would be in each of the papers. It is, therefore, unfathomable that the coaching institutes would be able to

undermine the system of examination by disclosure of the cut-off mark of the previous and the actual marks of

the candidates of the previous year when the marks obtained in any year by different candidates is

independent of the marks obtained by candidates in any other year. The examination for each year is entirely

independent of the examinations of the other years. So, the data of one year would have no bearing on the data

for the next year. The question papers would be different; the candidates would be different; the composition

of the number of candidates taking each of the optional papers would be different. The cut-off mark would not

be known prior to the examination and, therefore, revealing the data sought by the respondents 2 to 24 in the

present case would, in my view, have no bearing on the sanctity of the examination system.

14. By the impugned judgment the learned Single Judge declined to interfere with the directions given by CIC

except that direction (ii) issued by the CIC was modified to the extent that the cut off marks for the combined

total of raw General Studies marks and scaled optional paper marks was not required to be disclosed.

Direction (iii) was modified to the extent that UPSC would be required to disclose the model answers.

15. We have heard the submissions of Mr. L. Nageshwar Rao, learned Senior Advocate appearing for the

UPSC, Mr. Aman Lekhi, learned Senior Advocate for the respondents 1 to 22 and Mr. Prashant Bhushan,

learned counsel for the respondent No.22 (these numbers of the Respondents stand changed in view of the

deletion of the CIC as a party respondent).

16. Mr. Rao, learned Senior Advocate reiterated the submissions made on behalf of the UPSC before the learned Single Judge. We were also given in a sealed cover containing three confidential notes describing the details of the Scheme of the Civil Services (Preliminary) Examination, the scaling methodology used by the UPSC and a note explaining how the disclosure of the individual marks, cut-off marks and solution keys in respect of the Civil Services (Preliminary) Examination can lead to deciphering of the scaling formulation thus undermining the efficacy of the system.

17. At the outset we wish to observe that a perusal of the documents submitted by the UPSC in a sealed cover, are not of such a nature that can be characterised as secret, or of a type the disclosure of which would not be in public interest. As regards the scaling methodology, as already been pointed out by the learned Single Judge, this is no different from what already stands disclosed by the UPSC to the Supreme Court in its counter affidavit filed in SLP (C) No. 23723 of 2002 and is therefore in the public domain. As regards the apprehension expressed by the UPSC that the scaling formulation could be deciphered first once the cut-off marks and solution keys in respect of individual subject disclosed, we fail to understand how if such information is deciphered in relation to the examination that has already been conducted, somehow it would enable the manipulation of the results of a preliminary examination to be held in future.

18. The central thrust of the argument of Mr. Rao was that armed with the information relating to the 2006 Preliminary Examination, coaching institutes across the country would somehow able to anticipate the subjects in which, if dummy candidates are fielded, there could be a skewing of the results. According to him, the UPSC apprehends that in a particular subject, by getting a large number of dummy candidates to perform badly, the working of scaling methodology which is already known would result in an unfair advantage to candidates opting for that paper. As a corollary it would result in severe prejudice and an unintended disadvantage to a meritorious students opting for other subjects.

19. This argument has only to be stated to be rejected. It is really impossible to imagine how the coaching institutes can somehow anticipate the levels of difficulty in a particular subject in a future examination and

plant dummy candidates in that subject or in other subjects. Considering that 400,000 students sit for the CSE preliminary examination all over the country every year, this would perhaps require a large scale operation by coaching institutes all over the country and that again presumes that they will somehow correctly predict what the overall performance of the candidates in any particular subject. Then again, this is only a preliminary Union Public Service Commission vs Shiv Shambhu And Ors on 3 September, 2008 Indian Kanon - <http://indiankanon.org/doc/1565937/> 5 examination at the end of which a shortlist of candidates 10 to 12 times the number of advertised posts is drawn up for the Main examination. It is nobody's case that the results of the main examination are somehow affected in that process. Further still, this Court is unable to understand the apprehension of the UPSC that by disclosing the working of the scaling methodology for the preliminary examination, merit can get compromised and candidates with less merit would be selected. The whole purpose of having three levels of examination i.e. preliminary examination, main examination and then interview, is to ensure that only meritorious candidates are selected for government service. We are of the view that the apprehension expressed by the UPSC is not well-founded.

20. We find no merit in this appeal and affirm the impugned order dated 17th April 2007 passed by the learned Single Judge. The stay order granted by this Court on 21st May 2007 is stand vacated.

21. The appeal and application are dismissed. S. MURALIDHAR, J.  
CHIEF JUSTICE

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