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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9648 OF 2021

Shri Onkar Dattatray Kalmankar

Age: 33 years, Occ : Student

Res. At - House No.14, Somwar Peth,

Solapur - 413 002

... Petitioner

Versus

1. Public Information Officer and Registrar, Having office at District and Session Court, Shivaji Nagar, Pune - 411 005
2. District Judge no.1 and First Appellate Authority, Having office at District and Session Court, Shivaji Nagar, Pune - 411 005
3. State Information Commission, Through its Commissioner, Pune Division, Pune, Having office at New Administrative Building, forth Floor, Council Hall, Pune - 1. ... Respondents

Dr. Uday P. Warunjikar a/w Mr Sumit Kate a/w Mr. Jenish Jain a/w Mr Dattaram Bile, Advocate for the Petitioner.

Mr Rajesh S. Datar, Advocate for Respondent Nos.1 and 2.

Ms S.D. Vyas, Addl. G.P a/w Mr A.A. Alaspurkar, AGP for the State.

CORAM

**M.S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON:

18 October 2024

PRONOUNCED ON:

11 November 2024

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The petitioner applied for recruitment to the post of Junior Clerk in the District Court at Pune in pursuance of an advertisement issued in March 2018. He participated in the recruitment process and secured 289th rank in the Marathi typing test and 250th in the English typing test.
4. The petitioner was invited to attend the interview, which he did attend. He claims that after the interview, a list of selected candidates was published, but the petitioner did not find any place in the said list. The petitioner inquired but claimed he was not informed about his non-selection.
5. The petitioner, therefore, applied on 20 February 2019 under the Right to Information Act, 2005 for the following information:
 - (i) The marks secured by the petitioner in the screening test, Marathi typing test, English typing test and interviews.
 - (ii) The marks secured by the candidates at serial nos.1 to 363 in the screening test, Marathi typing test, English typing test and interviews.

(iii) The criteria or the basis for selecting the selected candidates and other information in this regard with full details.

6. On 6 March 2019, the Public Information Officer declined to offer the petitioner any information on the ground that under Rule 13(e) of the Maharashtra District Courts Right to Information (Revised Rules), 2009, such information was “*confidential*”. The petitioner instituted a First Appeal before the First Appellate Authority on 2 April 2019. However, by order dated 24 May 2019, this appeal was dismissed by observing that the recruitment process of employees in a Court is confidential; therefore, the petitioner was not entitled to the information sought by him. In addition to Rule 13(e) of the Maharashtra District Courts Right to Information (Revised Rules), 2009, the First Appellate Authority invoked clause 19 of the instructions to candidates in the advertisement inviting applications for the recruitment process.

7. The petitioner then instituted a Second Appeal before the State Information Commissioner, Second Appeal No.3618/2019. Since the disposal of the Second Appeal was delayed, the petitioner instituted Writ Petition (Stamp) No.27165/2019. This was disposed of by an order dated 10 March 2021 directing the Second Appellate Authority to dispose of the petitioner’s Second Appeal on or before 30 April 2021. By order dated 27 April 2021, the Second Appellate Authority dismissed the petitioner’s Second Appeal. Hence, the petitioner has instituted this petition to challenge the orders dated 6 March 2019, 24 May 2019 and 27 April 2021 made by the PIO, the First and the Second Appellate Authorities.

8. During the pendency of the present petition, the petitioner was informed of the marks he had secured in the screening test, Marathi and English typing test, and interview. Therefore, the grievance on this core does not survive.

9. Dr Warunjikar, learned Counsel for the petitioner, however, submitted that the petitioner's being informed about the marks secured by him alone was not sufficient. He submitted that the petitioner was entitled to know the marks secured by other candidates so that the petitioner could assess his relative position compared to the other candidates. Dr Warunjikar submitted that the District Judge at Wardha had disclosed the marks obtained by all the candidates on the Notice Board for a similar recruitment process. He submitted that there was no justification for the Pune District Court not to adopt the same standards of transparency.

10. Dr Warunjikar submitted that there could be nothing confidential about the marks secured by candidates in the selection test. He submitted that the rules quoted by the PIO or the First and the Second Appellate Authorities were inapplicable or, in any event, grossly misconstrued. He submitted that even precedents on the subject were not appreciated and considered. Accordingly, Dr Warunjikar referred to some precedents we propose to consider in this judgment and order.

11. Mr Datar, learned counsel for the first and second respondent, defended the impugned orders based on the reasoning reflected therein. He pointed out that the information sought by the petitioner was exempted from disclosure under Section 8(j) and Section 11 of the RTI Act 2005. Mr Datar submitted that the information was correctly denied, having regard to Rule 13(e) of the Maharashtra District Courts Right to Information (Revised

Rules), 2009 and clause 19 of the instructions issued to the candidates incorporated in the advertisement inviting applications for recruitment.

12. Mr Datar submitted that the petitioner had earlier sought information only regarding the marks obtained by him and other candidates and the selection criteria. However, in the appeal stages, the petitioner also sought information about the interviewers' names. He submitted that this was impermissible.

13. Mr Datar submitted that the criteria for selection were already advertised and, in any event, discernible from the recruitment rules available in the public domain. Accordingly, no case was made out for furnishing such information. Mr Datar submitted that the information sought by the petitioner was vague and the petitioner was embarking upon a fishing expedition.

14. Mr Datar submitted that the information about the marks obtained by the petitioner had already been disclosed to the petitioner without prejudice. The petitioner's insistence upon disclosure of marks of other candidates involved a breach of their privacy, and such information constitutes third-party information. Mr Datar submitted that the District Court at Wardha had disclosed the marks of all the candidates on the notice board, but the same was done without considering the rules and instructions as applicable. He, therefore, submitted that such an instance could not be regarded as a precedent.

15. Mr Datar also relied upon certain precedents that shall be considered during this judgment and order.

16. Based upon the above submissions, Mr Datar urged the dismissal of this petition.

17. The learned Additional Government Pleader adopted the submissions made by Mr Datar and stood by the impugned orders based on the reasoning reflected therein.

18. The rival contentions now fall for our determination.

19. At the outset, we must clarify two or three aspects of this matter,

20. Based on instructions, the learned Counsel for the parties submitted that they have no objection to this Bench taking up this petition, even after it was disclosed that one of us is a member of the Administrative Committee.

21. By his application dated 20 February 2019, the petitioner had applied for information on the three aspects referred to in paragraph 5 above. However, in the appeal against the PIO's rejection order dated 6 March 2019, the petitioner sought the names of his interviewers. We agree with Mr. Datar that this was not permissible. Therefore, we do not propose to deal with the petitioner's request to furnish the names of his interviewers.

22. During the pendency of this petition, the petitioner has already been furnished the marks he secured in the screening test, Marathi and English typing tests, and the interview. Therefore, this part of the petitioner's grievance stands fully redressed.

23. Regarding the selection criteria, we are satisfied that they were already reflected in the departmental recruitment rules and the instructions given to the candidates. Details of eligibility, age, and selection criteria are already disclosed in the instructions dated 28 March 2018. Therefore, we agree with Mr Datar that

there was no obligation to furnish any additional information about the criteria or about the names of the interviewers.

24. The only issue that survives for consideration is the denial of information about the marks obtained by other candidates listed from serial nos.1 to 363 in the screening test, Marathi and English typing tests, and the interviewers.

25. Mr Datar mainly submitted that the information about the marks obtained by other candidates was exempted from disclosure under Section 8(1)(j) of the RTI Act.

26. Section 8(1)(j) of the RTI Act reads as follows:

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

(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.”

27. In this case, we are concerned with a selection process for the post of Junior Clerk in the District Court at Pune. Essentially, this is a process by which applications were invited from all eligible candidates by issuing a public advertisement. In that sense, this public process must be transparent and above board. The marks obtained by the candidates in such a selection process cannot ordinarily be held to be “*personal information, the disclosure of which has no relationship to any public activity or interest*”. Furnishing such information would also not cause an unwarranted invasion of the individual's privacy.

28. The legislature has not exempted all personal information under Section 8(1)(j) but only such personal information, the disclosure of which has no relationship to any public activity or interest. Since the selection process for Junior Clerks at the District Court in Pune was essentially a public activity which commenced with public advertisement inviting applications from eligible candidates, we do not think that the disclosure of marks obtained by the candidates participating in such a process would amount to personal information, the disclosure of which has no relationship to any public activity or interest. Given that such selection processes must be transparent and above board, it would be in the public interest to disclose such information rather than withhold it and allow any doubts about the process (however unjustified such doubts may be) to linger.

29. Similarly, in the context of a public examination for selection to a public post, we are doubtful whether the disclosure of marks obtained by the candidates would amount to any unwarranted invasion of the privacy of such candidates. The legislature has advisedly used the expression “*unwarranted*”. Therefore, not any and every invasion of an individual's privacy is exempted from disclosure. Only what is exempted from disclosure is “*unwarranted invasion*”. Even here, the disclosure can be ordered where the PIO or the appellate authorities are satisfied that the “*larger public interest justifies the disclosure of such information*”. The proviso is also significant since it provides that the information which cannot be denied to the Parliament or the State Legislature will not be denied to any person.

30. Mr Datar relied on *Central Public Information Officer, Supreme Court of India V/s. Subhash Chandra Agarwal*¹ (para 70) to submit that the Hon'ble Supreme Court had already held that personal records, including names, addresses, physical, mental, and psychological status, marks obtained, modes, and answer sheets, are all treated as personal information. He submitted that the Hon'ble Supreme Court has already held that such personal information is protected from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied.

31. This landmark decision holds that the office of the Chief Justice of India is a public authority under the RTI Act. Justice Sanjiv Khanna, who penned the lead opinion, held that transparency does not undermine judicial independence. Judicial independence and accountability go hand in hand, and disclosure is a facet of public interest. The majority opinion also holds that the motive of the information seeker is not a relevant consideration, given the provisions in section 6(2) of the RTI Act. However, the purpose may be relevant to determining public interest in the context of the RTI Act.

32. In *Subhash Chandra Agarwal* (supra), the RTI applicant had sought information on the declaration of assets by Supreme Court Judges apart from copies of complete files/papers, including correspondence exchanged between constitutional authorities relating to appointments of some Judges of the Hon'ble Supreme Court of India. The decisions' observations must be construed in the context of the controversy involved. Therefore, reading stray

¹ (2020) 5 SCC 481

sentences outside the context may not properly construe the ratio decidendi of a binding precedent.

33. In the precise context of Section 8(1) of the Right To Information Act, Dr. D.Y. Chandrachud, J. (as His Lordship then was), in his concurring and supplementing judgment, held that by expressly enumerating the circumstances in which the disclosure of information may be restricted on the grounds of certain identified harms, the RTI Act *negates the notion that information may be withheld on the grounds of confidentiality simpliciter*. A harm under clause (1) of Section 8 must be identified and invoked to justify the non-disclosure of a document requested under the RTI Act. It was noted that clauses (d), (e), (I) and (j) to sub-section (1) of Section 8 provide with qualified exemption from disclosure.

34. The observations in paragraph 70, which were relied upon by Mr Datar, refer primarily to personal records, including name, address, physical, mental, and psychological status, marks obtained, grades, and answer sheets, all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc., are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc., are personal information. Such personal information is protected from unwarranted invasion of privacy, and conditional access is available when the stipulation of larger public interest is satisfied. This list is illustrative and not exhaustive. The observations in this paragraph must be considered in tandem with the other observations in the same decision, bearing in mind the context in

which they were made. Besides, the larger public interest aspect cannot be ignored.

35. The Court has explained that public interest in access to information refers to something that is in the interest of public welfare to know. Public welfare is widely different from what is of interest to the public. “*Something which is of interest to the public*” and “*something which is in the public interest*” are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such public interest in private matters would repudiate and directly traverse the protection of privacy.

36. The Court held that factors that weigh in favour of public interest are specific to each unique case. Where the disclosure of documents casts a light on the adequate performance of public authorities and any mala fide actions or wrongdoings by public figures, facilitating the broader goal of accountability, a public interest exists in favour of disclosure. Information concerning the accountability of officials, public expenditure, the performance of public duties, the handling of complaints, the existence of any wrongdoing by a public official, inefficiency in public administration and unfairness in public administration all possess public interest value, their relative strength to be determined on a case by case basis; Where the disclosure of information would promote the aims and objectives of the RTI Act, there exists a public interest in disclosing such information.

37. Thus, if the decision in *Subhash Chandra Agarwal* (supra) is read in its entirety and not by just picking some stray sentences dehors the entire context, we are satisfied that the objection based

on the expression under Section 8(1)(j) of the RTI Act ought not to prevail. The confidence in the selection process would be boosted by disclosing the marks obtained by all the candidates in the written test and interviews. Transparency and accountability in a public recruitment process would be promoted. The disclosure of marks in a public recruitment process cannot be said to be purely personal information, the disclosure of which has no relationship to any public activity or interest or which would cause an unwarranted invasion of the privacy of the individual. In any event, the larger public interest justifies the disclosure of such information. Such disclosure would promote transparency and accountability and dispel the lingering doubts about wrongdoings in the public recruitment process. Such disclosures would strengthen the recruitment process by boosting public confidence in it.

38. Recently, in **Tej Prakash Pathak and ors. V. Rajasthan High Court** (Civil appeal No. 2634 of 2013), the Hon'ble Supreme Court stressed transparency in the public recruitment process. In **The Institute of Chartered Accountants of India v. Shaunak H. Sarya** (2011-8-SCC 497), the Hon'ble Supreme Court highlighted the RTI's objective of ensuring transparency and accountability and urged examining bodies to adapt to the new disclosure regime. Thus, the trend under the new RTI regime is to disclose information that would maintain trust in the recruitment process without unduly compromising the privacy of any candidate. A distinction must be made between sensitive personal information like medical details, etc., and information intrinsically linked to the marks obtained, qualifications, experience of the candidates, etc.

39. Regarding the objection based on Section 11 of the RTI Act, we note that the same relates to or has been supplied by a third

party and has been treated as confidential. Here, though the marks obtained by any candidate in the selection process may relate to such candidate, it cannot be said that the candidate has supplied such information and has been treated as confidential by the candidate. The proviso to Section 11, in any event, allows disclosure if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such a third party. Proviso does not apply in the case of trade and commercial secrets protected by law. Here, we are not concerned with trade or commercial secrets protected by law. Therefore, the objection based on Section 11, which was incidentally not even raised by the PIO or other authorities under the Act, would not apply.

40. In *Central Board of Secondary Education and Anr. V/s. Aditya Bandopadhyay and Ors.*², the Hon'ble Supreme Court held that an examinee in a public examination has a right to inspect his answer books or take certified copies thereof. The Court also held that there is no fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body. The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialised Examining Bodies may simply subject candidates to a verification process by an examination to find out whether such a person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted

² (2011) 8 SCC 497

with public functions, must act fairly, reasonably, uniformly and consistently for the public good and in the public interest. The court clarified that the examining bodies are not in a fiduciary relationship with the examinees but are responsible for protecting the identity of the examiners.

41. In *Chief Information Commissioner V/s. High Court of Gujarat and Anr.*³, the Hon'ble Supreme Court explained that Section 8(1)(j) excludes disclosure of personal information, the disclosure of which: - (i) has no relationship to any public activity or interest or (ii) would cause unwarranted invasion of the privacy of the individual. However, in both cases, the Central Public Information Officer or the appellate authority may order disclosure of such information if they are satisfied that the larger public interest justifies disclosure. This would imply that personal information which has some relationship to any public activity or interest may be liable to be disclosed. An invasion of privacy may be justified if the larger public interest so warrants.

42. The Court also held that information on the administrative side of the High Court, viz. appointments, transfers, and postings of the judicial officers, staff members of the High Court and the district judiciary, disciplinary action taken against the judicial officers and staff members, and such other information relating to the administrative work can be accrued under the Rules framed by various High Courts or under Rules framed by the High Courts under the RTI Act.

43. Mr Datar, as also the authorities under the RTI Act, relied on Rule 13(e) of the Maharashtra District Court RTI (Revised) Rules,

³ (2020) 4 SCC 702

2009. These rules have been framed in exercising powers conferred by Section 28 of the RTI Act, 2005.

44. Rule 13 is concerned with exemption from disclosure of information. This rule provides that the information specified under Section 8 of the RTI Act shall not be disclosed and made available, and, in particular, the following information shall not be disclosed:-

(a) ...

(b) ...

(c) ...

(d) ...

(e) *Any information affecting the confidentiality of any examination conducted by the Bombay High Court including for the Maharashtra Judicial Service and Maharashtra Higher Judicial Service. The question of confidentiality shall be decided by the Competent Authority whose decision shall be final;*

(f) ...

(g) ...

(h) ...

Note - In so far as decisions which are taken administratively or quasi judicially, information therefor, shall be available only to the affected persons.

45. Rule 13(e) refers to “*any information affecting the confidentiality of any examination conducted by*” This would include the names of examiners, paper setters, details of the printing press where papers are printed, the places where the question papers and other examination apparatus are to be kept, the movement of such documents, apparatus, details of the staff involved in the process, etc. All this is only illustrative. However, the provision stresses on the information that affects the “*confidentiality of any examination*”. Confidentiality of any

examination is vital to protect its integrity. No party can insist on the disclosure of any information denting such confidentiality or compromising the integrity of the examination itself.

46. However, once the examination is concluded and a candidate wishes to know the marks obtained by him or by other candidates in such examination, we do not think that such information will affect the confidentiality of the examination already held. Therefore, based upon Rule 13(e), the information regarding the marks obtained by the petitioner or by the other candidates who answered such an examination could not have been denied to the petitioner. By disclosing such information to the petitioner, the confidentiality of the examination that had already been concluded would not be affected. Such disclosure would lend assurance to the plea that the markings were above board.

47. Similarly, clause 19 of the instructions issued to the candidates on 28 March 2018 could never have been invoked to deny the petitioner the information regarding his marks or the marks obtained by other candidates who answered the examination along with him. Clause 19 of the instructions dated 28 March 2018, relied upon by Mr Datar, reads as follows:

“19. No enquiry in relation to any application shall be entertained by Office of any District Courts or Taluka Courts. Only enquiries on technical aspects till the link of detailed advertisement is disabled can be made (not by e-mail) on following phone numbers of Computer Section, Bombay High Court, during office hours.

Phone Nos.:- 1) 022 - 22676751

2) 022-20820359”

48. The above clause has nothing to do with the information applied for by the petitioner under the RTI. The above clause cannot detract from the rights granted to any persons under the RTI Act or even dilute the rights granted to any person under the RTI Act. Based on Clause 19 above, the information about the petitioner's marks or the marks obtained by other candidates could not have been denied. Incidentally, this was not even the clause referred to by the PIO or the First and the Second Appellate Authorities for rejecting the information sought by the Petitioner.

49. In his additional affidavit dated 3 December 2022, the petitioner pointed out that one Mr Vishwajeet Tayade sought information regarding marks in the written examination, typing examination, and oral interviews from the District and Sessions Court at Wardha regarding recruitment to the post of Junior Clerks. He has pleaded that such information was supplied to Mr Tayade, and further, all the candidates' marks were displayed on the website, thus ensuring complete transparency. Dr Warunjikar contended that there was no reason for not adopting similar openness regarding the recruitment process of Junior Clerks in the District Court at Pune.

50. Mr Datar, on instructions, did not dispute the averments in the petitioner's additional affidavit dated 3 December 2022. However, he submitted that the District Authorities at Wardha had not considered the provisions of Section 8(1)(j) or Section 11 of the RTI Act. He submitted that the District Authorities also did not consider the effect of Rule 13(e) of the Maharashtra District Courts Right to Information (Revised Rules), 2009 and instructions no.19 in the advertisement inviting applications for the post of Junior Clerk. He, therefore, submitted that the Wardha disclosure would not be cited as a precedent, and based upon the same, there was

no scope for directing the adoption of a similar approach to the Pune recruitment process.

51. Since we have found that the disclosure of the marks obtained by the candidates in the written test, typing test and interviewers did not constitute any exempted information or did not affect the confidentiality of the exam so conducted, we must say that the approach of the District authorities in Wardha contributed to the promotion of transparency which should typically be promoted in matters of public recruitment. Withholding such information unnecessarily allows doubts, however unreasonable, to linger, which is not very healthy in promoting transparency and accountability in the working of public authorities and public recruitment processes. Regarding RTI, it is repeatedly asserted that sunlight is the best disinfectant.

52. Therefore, though the Wardha disclosure may not be binding precedents, we still think there was nothing wrong with the District Authorities at Wardha making such disclosures. By making such disclosures, the district authorities at Wardha cannot be said to have breached or acted in ignorance of the provisions in Section 8(1)(j) and Section 11 of the RTI Act or Rule 13(e) of the Maharashtra District Courts Right to Information (Revised Rules) 2009 or instructions no.19 issued to the candidates in the advertisement inviting applications for recruitment to the post of Junior Clerk.

53. Regarding the selection criteria, we are satisfied that such criteria are already reflected in the departmental recruitment rules and the instructions given to the candidates. Details of eligibility, age, and selection criteria are already disclosed in the instructions dated 28 March 2018. The petitioner, aggrieved by his non-

selection, possibly wished to probe deeper and ascertain what was in the selectors' minds, notably when they marked the candidates in the interview test. This is perhaps the petitioner's intention because, in the appeal memo, the petitioner slipped in additional information regarding the interviewers' names, even though such information was never sought in the original application seeking information. Therefore, we agree with Mr Datar that there was no obligation to provide additional information about the criteria or the interviewers' names.

54. For all the above reasons, we partly allow this petition and set aside the impugned orders to the extent that they denied the petitioner disclosure of marks secured by him and the candidates from 1 to 363 in the written/screening test, Marathi and English typing test, and interview for the recruitment process for Junior Clerk at Pune District Court.

55. Further, We Direct the concerned respondents to furnish the petitioner with the marks obtained by candidates 1 to 363 in the written/screening test, Marathi and English typing test, and interview for the recruitment process for Junior Clerk at Pune District Court within six weeks of the Petitioner depositing the necessary costs with the PIO.

56. The Rule is made partly absolute in the above terms without any cost order. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)