

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

**Present: Shri Sunil Kumar Misra  
State Chief Information Commissioner**

**Dated: 19<sup>th</sup> February, 2019**

**Second Appeal No.2965/2015**

Sanghamitra Gopal Das,  
C/o-Sabita Mohanty,  
Khaparapada,  
Behind P.W.D. Colony, Balasore,  
District-Balasore ..... Appellant

**- Vrs -**

(1)Public Information Officer,  
Fakir Mohan University,  
Vyasa Vihar (North Campus),  
District-Balasore

(2)First Appellate Authority  
Fakir Mohan University,  
Vyasa Vihar (North Campus),  
District-Balasore ..... Respondents

**Decision**

1. Appellant, Sanghamitra Gopal Das, is present. Sidhartha Pattanaik is also present to assist her. Sunil Kumar Padhi, PIO-cum-Reader in Economics, Fakir Mohan University, Balasore and Pratyush Ranjan Patnaik, Advocate for the respondents are also present.
2. Vide an application in Form-A dated 07.10.2015<sup>1</sup> submitted before the PIO, Fakir Mohan University, the appellant had requested the PIO to provide to her certain information regarding the candidates who had appeared for interview in May, 2015 for the post of Professor in the P.G. Department of Applied Physics and Ballistics in the Fakir Mohan University, Balasore. Information had been sought for

the period 01.01.2008 till date. The required information had been listed out in an annexure enclosed to the application in Form-A vide 15 points as under:-

- (A) API Scores Card [as submitted with the application for the above post (see 5a)].
- (B) Name of the scrutinizer of the API score, his/her affiliations, and signature of the scrutinizer on the API score.
- (C) Name of the verifier of the API score, his/her affiliations, and signature of the verifier on the API score.
- (D) Bio-data [as submitted with the application for the above post (see 5a)].
- (E) First page of all his/her publications (submitted with application) bearing title of article, names of the authors as appeared in the journal, journal name, volume, year, starting page – ending page, journal impact factor.
- (F) Position (Lecturer / Reader /Professor) at the time he/she had applied for the above post (see 5a).
- (G) Details of International conferences/workshops/seminars attended including year and month, duration, country, title of the paper presented (i.e. oral/poster/invited talk, indicate one), name of the person who presented it.
- (H) Details of national conferences/workshops/seminars attended including year and month, title of the paper presented (i.e. oral/poster/invited talk), name of the person who presented it, duration of the event.
- (I) Details of refresher course(s) attended including name of the sponsors, university/institution where the course was offered, year and month, title of the refresher course, duration of the course, and source of Registration fee.
- (J) Details about the book(s) published by each candidate, name of the publisher, copy of the page showing authors, year of publication, ISBN number.
- (K) Proceedings of the interview for the post of Professor in the Applied Physics & Ballistics Department, Fakir Mohan University, Balasore bearing the names and signatures of all the members of the Selection

Committee/Interview Board, Name(s) of the selected candidate(s) in order of merit.

(L) For each Ph.D student supervised by each candidate (see 5a) the following information is requested :

- (i) Names of the students, year of award of Ph.D degree, date of registration and date of submission of the thesis, date of Ph.D viva.
- (ii) Title of Ph.D thesis, name of guide and name of co-guide and their affiliations, department and university under which the registration was done, name of external examiner(s) and their affiliations.

(M) For each M.Phil student supervised by each candidate (see 5a) the following information is requested :

- (i) Names of the students, year of award of M.Phil degree.
- (ii) Title of M.Phil dissertation, name of guide and name of co-guide and their affiliation, department and university under which the registration was done, date of submission, date of M.Phil viva.

(N) Exact method adopted by F.M. University for calculating API score”.

**2.1** The PIO vide a letter dated 02.11.2015 informed the appellant that as she was not a candidate for the post of Physics, hence a third party, service matter of an employee could not be provided to her in view of the fiduciary relationship between the employee and the employer. The information sought would also disproportionately divert the resource of the public authority and would be detrimental to the preservation of the records in question. In this connection, the PIO referred to Sections 8(1)(e) & 7(9) of the RTI Act, 2005. However, he also informed

the appellant that the "exact method adopted by F.M. University in calculating API score can be found in the University website, which is as per UGC guideline, 2010 subsequently modified in 2013".

3. Aggrieved with the decision of the PIO, the appellant filed first appeal vide an appeal memo in Form-D dated 16.11.2015. The First Appellate Authority in a letter dated 27.11.2015 intimated to the appellant that the PIO had already sent a reply vide letter dated 02.11.2015.

3.1 The appellant thereafter filed the subject second appeal vide an appeal memo in Form-E dated 03.12.2015.

4. This case was earlier heard on five occasions. During the initial hearings, the PIO as well as the First Appellate Authority made their written submissions stating that part of the information, i.e. relating to method adopted for calculating API score, was collected from the Establishment Section of the University and sent to the appellant vide a letter dated 02.11.2015. However, the remaining information were not provided as the same were found to be in the nature of third party information and the concerned third party, Munesh Chandra Adhikari, also did not agree to disclosure of the information relating to him to the appellant. The PIO and the First Appellate Authority in their written submissions also strongly defended the stand taken by the PIO in the afore-mentioned letter.

4.1 The appellant on the other hand stated that she had sought information relating to her husband and, therefore, the required information ought not to have been denied.

4.2 The Commission considered the respective submissions and observed that even if it were to be assumed that the information related to a third party, the PIO in any case had not followed the procedure laid down in Section 11(1) relating to third party information. Munesh Chandra Adhikari had given his view in connection with another case. The Commission further observed that the PIO referred to "fiduciary relationship" in a blanket manner. Hence the Commission directed the PIO to make further submission in the matter and also to establish that the information

were in the nature of third party / personal information or involved fiduciary relationship. The appellant was also informed that the burden was on her to prove, inter alia, that the information sought by her had nexus with public interest or public activity.

**5.** In compliance of the directions thus issued, both the parties made further submissions during the subsequent hearings.

**5.1** The appellant in her written submission contended that the post of Professor happened to be a public position in a public institution; and, salary was also being paid by using public money. Therefore, information relating to the post could not be treated as personal and, on the contrary, had to be treated as public. It was further stated that the selection which was made would raise suspicion because the selected candidate had a degree of Ph.D. in Computer Science and not in Physics. The Public surely had a right to know as to how he could still be selected as Professor of Physics. Furthermore, earlier the C.A.G. (Comptroller & Auditor General) had raised objections on the appointment of the very same selected candidate as Reader in Physics on the very same ground that he did not have Ph.D. degree in Physics. It was also argued that publications etc. could not be considered as personal information because, as per U.G.C. guidelines, soft copies of M.Phil / Ph.D. theses were required to be posted in the specified web-site within 30 days. Submitting as above, the appellant strongly argued that all the information sought by her be disclosed.

**5.2** The PIO and the First Appellate Authority submitted that the matter related to recruitment made for the post of Professor in the Department of Physics and Ballistics in the Fakir Mohan University. Sidhartha Pattanaik, husband of the appellant, who was an applicant for the post did not turn up for the interview despite being called. Munesh Chandra Adhikari, another applicant, was selected. The appellant was seeking detailed information relating to the selected candidate and regarding the selection procedure more for personal interest than for public interest. It was also stated by the respondents that the other two candidates who were not

selected did not ask for any information, nor raised any question. This in itself would prove that personal interest was more pronounced than any public interest. It was also contended by the respondents that neither the appellant disclosed in her appeal memo nor brought to the notice of the Commission anything which would show that disclosure of the required information / documents was warranted in the larger public interest. On the contrary, disclosure of some of the information and documents was patently exempt under Section 8(1)(e) of the RTI Act since the University was holding these documents in a fiduciary capacity. In this connection, the definitions of "fiduciary capacity" and "fiduciary relationship" as appearing in the Law Lexicon were pressed into service. The respondents also referred to the decision of the Hon'ble Supreme Court in the case of Central Board of Secondary Education & Another vrs Aditya Bandopadhyay & Ors. Reliance was also placed on the judgement of the Hon'ble Supreme Court in the case of Girish Ramchandra Deshpande vrs CIC & Others. Submitting as above, the respondents argued that the information sought by the appellant were in the nature of third party information not warranting disclosure in the larger public interest.

**5.3** The respondents also submitted, as directed by the Commission, copies of some of the documents viz. proceedings of the meeting of the Selection Committee, "verification eligibility sheet" indicating the API score in the case of Munesh Chandra Adhikari; copy of his application form for appointment as Professor of Physics; copies of his bio-data and annexures thereto, details regarding Ph.D theses supervision and guidance; details of sponsored research projects undertaken & consultancy project work done; list of publications in National and International journals; details of books published; details of other academic and other activities; details of seminars, conferences, training courses etc attended in India and abroad; details of academic positions held etc.

**6.** At the time of the hearing on 29.08.2018, the submissions made by the respondents were considered. Copies of the decisions of the Hon'ble Courts as

well as extracts from the Law Lexicon containing the definitions of “fiduciary capacity” and “fiduciary relation” enclosed to the written submissions were also perused. The Commission noted that the respondents had not provided copies of their submissions / decisions and enclosures to the appellant. The Commission further noted that until then the arguments advanced by the appellant related to only one candidate, namely, Munesh Chandra Adhikary. No submission had been made by the appellant by way of stating what public interest would be sub-served by the disclosure of information relating to the other candidates. Moreover, the appellant had not made any submission regarding a few other information sought by her viz. relating to API score-card Scrutinizers and Verifiers; members of the Selection Committee; Ph.D and M.Phil students whose work had been supervised or guided by the candidates; guides and co-guides of the Ph.D theses and M.Phil dissertations submitted by these students etc. Hence, vide order dated 29.08.2018, while the respondents were directed to send copies of their written submissions and of the decisions relied upon by them to the appellant, the appellant was also given an opportunity to make her further written submission.

7. The appellant has not made any further submission. The PIO on the other hand has stated that, in compliance of the Commission’s direction, copies of the written submissions were initially sent to the appellant’s husband, Sidhartha Pattanaik, by registered post. However, the same was returned by the postal authorities with the remarks dated 09.02.2019: “left”. The PIO has also stated that subsequently he again sent copies of the written submissions to the Office of Sidhartha Pattanaik, appellant’s husband, through a messenger. However, the said messenger Laxman Maharana reported that although Sidhartha Pattnaik opened the envelope and read the contents, he returned the envelope and did not sign in the Peon Book.

7.1 The PIO has made a further submission during the course of the hearing today. He has stated that the appellant has not been provided with the

following information till date: (1) API scores, (2) Application form of Professor Munesh Chandra Adhikari, (3) Proceedings of the Selection Committee, (4) Ph.D. certificate, (5) Publication details, and, (6) details of conferences attended. He has also stated that he would be able to supply the information as available in the Establishment Section of F.M. University. The PIO has further requested that order may be issued so that the above information can be supplied to the appellant; and, further, as similar type of information have been sought by other applicants, an order from the Commission shall make the respondent's task easier.

8. The respective submissions have been considered. The respondents have raised certain general issues and have also advised certain substantive arguments in support of their actions. The appellant has also advanced certain counter-arguments. The same are examined herein below.

#### 8.1 General Issues :

As per the Respondents, the appellant has no connection with the information because she was herself not the candidate; and, her husband, Sidhartha Pattanaik, who was a candidate, did not attend the interview. Hence, she has no right to know about the selection process and particularly about the selected candidate. This technical issue needs to be decided first. The Right to Information Act, 2005 nowhere limits the right to information only to a citizen who has any stake in the information by way of being a beneficiary or an aggrieved party. No such condition or limitation has been prescribed in the Act. The Act has given right to information to a 'citizen' irrespective of whether or not he or she is connected with the information. Of course the above right, notwithstanding being of a fundamental nature, is still not un-circumscribed. The objectives of the Act as stated in the Preamble by themselves impose certain implied restrictions on the exercise of this right. The emphasis on "larger public interest" / "public interest" in some of the clauses of Section 8 as well as in Section 11 also give ample indications that the right has been vested in the citizen in order to enable the citizen to contribute to



promotion of transparency and accountability in the public sphere so that the larger good can be subserved. This in itself in a sense delineates the scope of "information" under the RTI Act, 2005. However, even while there are certain restrictions on the exercise of the right by virtue of the objectives and import of the Act and in view of Sections 8, 11 etc. it is nowhere laid down in the Act that the citizen seeking information must be having a direct stake or interest in it. Therefore, an applicant or appellant can not be denied information merely because he / she does not have a vested interest in the information. Hence the above general issue raised by the respondents has no merit and is rejected.

The second general issue raised by the respondents is that the appellant has sought information out of personal interest and personal vendetta; and, the information sought by her has no relation to any public activity or public interest. First coming to the allegation of personal interest or personal vendetta, the respondents have not adduced anything which would prove their allegation. Further, merely because a person does not have a direct stake or vested interest in the information sought, the same does not *ipso facto* indicate personal interest or personal motive. "Personal vendetta" is a still stronger allegation which has to be established. In the absence of any such proof, the allegation made by the respondents on this score has to be rejected.

## **8.2 Substantive arguments :**

The substantive arguments raised by the respondents are that the information sought by the appellant has no relation to any public activity or public interest; and, further, that the information sought by the appellant had been rightly denied by applying the provisions of the RTI Act, 2005.

Whether or not an information has relation to any public activity or public interest is an extremely relevant issue. For, as already observed, the RTI Act emphasises public interest. The objectives are also to promote accountability and

transparency in the public sphere. Therefore, whether or not an information has any relation to public activity or public interest needs to be examined.

The arguments advanced by the appellant in this matter have been already discussed in para 5.1 of this order. Briefly stated, the appellant contends that the post of Professor is a public post and, therefore, information relating to the said post has to be treated as public information. The appellant has also referred to an objection raised by the Audit on the appointment of the selected candidate as a Reader in Physics earlier. The contentions thus raised by the appellant need to be examined and commented upon before proceeding further.

The information sought relates to selection made for the post of Professor in the Sambalpur University which is a State University. It can not be disputed that the post of a Professor in a State University is a post created by and meant for a public institution. The post is also held by a person who has to cater to imparting education which is a public function. It also can not be denied that the person who becomes a Professor in such a University is paid either by the State or by use of public money unless the appointment has been made by an authority not being a public authority within the meaning of Section 2(h) which is not the case here. Therefore, the post of a Professor in a State University has to be held as a public post. Hence the subject matter of the information has to be broadly considered as relating to the public sphere.

Further, the appellant's contention that public interest is involved in the information sought by her has been noted. As per the appellant, appointment of the selected candidate had been questioned, on an earlier occasion, by none other than Audit which is another public authority. The appellant has argued that the objection thus raised by itself renders the selection of the said candidate as Professor of Physics, even while having a Ph.D degree in Computer Science, suspect. The appellant has not merely raised this contention, she has also submitted a copy of the Audit objection. In the Commission's considered view, when such a doubt has been raised which is also backed up by relevant material, it is necessary that the doubt

must be cleared to the extent warranted. For, a public authority questioning the appointment made to a public post does throw up an element of public interest. Hence, broadly speaking, the public interest criterion has to be said as fulfilled in the present case.

However, even where the subject matter to which the information relates can be broadly regarded as belonging to the public sphere and involving an element of public interest, each and every information available in the public sphere is not necessarily in the nature of public information. In an abstract sense, a public authority deals with the public at large i.e a class of people, a community or a group. But concretely, the "public" is but a compendium of the individual persons comprising it. The public authority deals with such individual persons as well. In the course of such dealing, the public authority collects or gets to have information relating to the individuals persons. Some such information may be personal in nature in the sense of relating to the concerned individuals and to none others. Some of the information may also be of a private nature in the sense of not merely relating to the concerned persons only but also not within the knowledge of others. These are also information which are not intended to be shared with others. Sometimes even the information which are neither personal nor private ( and therefore can be considered as public information) may have to be kept in secrecy or confidence either on account of the relationship of trust or confidence under which the information has been given or obtained, or, on account of the consequences which breach of secrecy would cause to the giver of the information, or to the public at large.

In view of what is stated here-in-above, it shall be useful to make a broad analysis of the nature of the specific information included in the general information sought by the appellant.

The specific information sought by the appellant have been already listed out in para 2. The required information can be classified into two categories. In the first category, there are information and documents submitted by the candidates

and relating to the candidates. There are also information relating to the process of selection. In the second category are information relating to the identity of certain persons.

First coming to the first category, most of the information and documents as sought by the appellant had been submitted by the candidates themselves. The public authority would not have come to have possession of these information and documents unless the same had been submitted by the candidates. The candidates had submitted such information and documents only for the purpose of selection and not for any other purpose, anticipated or otherwise. Therefore, a certain degree of confidentiality gets attached to these documents etc. submitted by the candidates. There is also an implied faith that these documents would not be disclosed.

The above however can not be said of documents relating to the selection process viz. selection proceedings, merit lists etc. which were not supplied by the candidates but got generated during the selection process.

The persons regarding whom information have been sought are external examiners of the Ph.D theses submitted by the candidates; Ph.D and M.Phil students whose works were guided / supervised by the candidates; guides and co-guides of such students; persons associated with the selection process such as API score-card verifiers and scrutinizers, members of the selection committee etc. In short, the information regarding these persons relate to their identities. In common parlance, when an information relates to the identity of the person, it can be prima facie inferred that the information is of a personal nature. This in itself should spell caution. For, the concerned person himself or herself might not intend that his identity be known to others. For example, when an external examiner is selected for evaluating the thesis of a Ph.D scholar, the selection is made in confidence. Even the candidate or the guide does not get to know about the examiner. There is also a tacit understanding that details relating to the examiner would not be disclosed.

Same is the case with the persons who participate in the selection process. Information relating to them are confidential in the sense that these persons are appointed confidentially and their names are not made public. There is also an implicit understanding that such engagement / assignment would not be made public.

As can be seen from the above, most of information sought by the appellant (barring a few documents generated during the selection process) would not have come into the possession of the public authority but for the fact that the same were supplied by the candidates themselves, and, moreover, part of the information relate to the identity of other persons. Hence the respondents' argument that no public interest or public activity would be subserved by the disclosure of these information needs to be subjected to scrutiny by applying the yardsticks of law. This exercise now brings us to an examination of the provisions of the RTI Act, 2005 which were earlier invoked by the PIO and the First Appellate Authority for declining to disclose most of the information sought by the appellant; and the provisions which were pressed into service later, i.e., during the course of the subject proceedings.

### **8.3 Relevant provisions of the RTI Act.**

As already noted, the PIO had earlier denied most of the information (except relating to the method adopted by the University for calculating API score) by referring to Section 7(9) and Section 8(1)(e) of the RTI Act, 2005. It was held by him that as an Employee was under fiduciary relationship with the Employer, information relating to him and available with the Employer could not be disclosed; and, moreover, disclosure of the information would result in disproportionate diversion of the resources of the public authority and would be detrimental to the preservation of the records in question.

Later, during the course of the proceedings before this Commission, the First Appellate Authority additionally referred to Section 8(1)(j) of the Act. Such

reference was made in a written submission dated 09.08.2017. Still later, in a further written submission dated 18.01.2018, the First Appellate Authority referred to Section 11(1) relating to third party information and stated that Professor Munish Chandra Adhikary who was selected for the post of Professor had, *in a similar case earlier*, categorically denied supply of copies of personal materials. The First Appellate Authority also enclosed to the said written submission copy of a letter dated 14.09.2017 of Professor Munish Chandra Adhikary who did not agree to disclosure of information relating to his service as well as other personal matters on the ground that information was not required for any public interest or activity, hence should not be furnished to the applicant.

Thus, as the foregoing would show, earlier both the PIO and the First Appellate Authority had denied most of the information by involving Sections 8(1)(e) & 7(9) and no reference had been made by them either to Section 8(1)(j) or to Section 11(1). These were pressed into service only later i.e. before this Commission.

In any case, it is necessary to examine the applicability or otherwise of these various provisions of the Act invoked by the respondents in order to find out if the information sought by the appellant fall within the ambit of the said provisions and, therefore, are ordinarily exempt from disclosure. If such exemption is ordinarily available, then the next step would be to consider if the larger public interest still warrants disclosure of such information.

**Section 7(9)** – Sub-Section (9) of Section 7 provides that “**an information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question**”. A perusal of the information sought by the appellant would show that she had not asked for information in any specified form. Therefore, Section 7(9) is not applicable.

**Section 8(1)(e)** – Section 8(1)(e) provides that there shall be no obligation to give any citizen “**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**”.

“Fiduciary relationship” has been defined in the Blacks’ Law Dictionary, 7<sup>th</sup> Edition (1999), as “a relationship under which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship”. Examples are: relationships between Trustee-Beneficiary, Doctor-Patient, Guardian-Ward, Agent-Principal and Attorney-Client. In the dictionary of Law by L.B., Curzon, “fiduciary” has been given the meaning of “involving trust and confidence”. In the Law Lexicon, “fiduciary capacity” has been given the meaning of a capacity in which a person transacts business or handles money or property, not being his own, nor for his benefit, but for the benefit of another person; a capacity by virtue of which he stands in relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The examples cited are technical or express trusts, Offices such as Attorney of Law, Director of a Corporation, a Public Officer; or relations as those of Guardian, Executor or broker.

If the above meanings of “fiduciary relationship” and “fiduciary capacity” are examined, the salient feature is: one person acting for the benefit of another person in trust and confidence and whose right he has to protect and whose interest he has to preserve. What follows as a logical corollary is that any document relating to a beneficiary which is in the possession of a fiduciary is held in trust and confidence and, therefore, has to be maintained confidentially and can not be shared save as otherwise provided under the law.

Having thus noted the salient feature of “fiduciary relationship”, it is necessary to examine the applicability of Section 8(1)(e) to the subject case specifically in relation to the two separate categories of information sought by the appellant. As already noted, while the first category relates to documents supplied by

the candidates, information relating to the candidates and others, and the selection process; the second category relates to the identity of certain persons.

Coming to the documents and other information (not being information impinging on the identity of certain persons) supplied by the candidates or even otherwise available with the public authority, one could do no better than quote from the judgement of the Hon'ble Supreme Court in the case of Bihar Public Information Commission vrs Saiyed Hussain Abbas Rizwi & Another. In the said case, the Hon'ble Supreme Court had observed as under in the specific context of sharing of information relating to appointments:

"Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision *simpliciter* between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India".

In view of the above judgement of the Hon'ble Supreme Court, the documents given by the candidates but for which the information would not have come into the possession of the public authority will have to be broadly considered



as held by the public authority in a fiduciary capacity. Consequently, as per the provisions of Section 8(1)(e), such documents and information can not be normally disclosed unless the competent authority is satisfied that larger public interest warrants disclosure of such information.

However, as already stated, the information sought also include documents and information which have not been supplied by the candidates but which, nonetheless, relate to the candidates and others as well as information regarding the selection process. Needless to say, such information can not come within the ambit of "fiduciary relationship". Consequently, Section 8(1)(e) will not apply to these information.

Now we come to the applicability of Section 8(1)(e) to the persons regarding whom information has been sought. These persons include guides and co-guides of the Ph.D scholars and M.Phil students; external examiners of Ph.D theses, and, persons who participated in the selection process such as API score verifiers and scrutinizers, members of the selection committee etc. Boardly, such persons can be placed in two categories viz. examiners, scrutinizers, verifiers, evaluators and selectors in one category; and, others such as guides, co-guides and supervisors who are not involved in any examination, scrutiny, verification and evaluation or selection in the other category.

Coming to the persons in the first category, it shall be pertinent to refer to a few judgements of the Hon'ble Supreme Court.

In the case of the **Central Board of Secondary Education and Another Vrs Aditya Bandopadhyay & Ors. [(2011) 8 SCC 497]** (hereinafter referred to as the CBSE case). In this case, the Hon'ble Supreme Court considered, inter alia, whether or not the relationship between the examining body and the examinees [with reference to the evaluated answer-books which came into the custody of the examining body] on the one hand, and the Examining Body / Board

and the examiners on the other could be considered as 'fiduciary' so as to bring in Section 8(1)(e). As regards the relationship between the examining body and the examinees, the Hon'ble Supreme Court held that while in a philosophical and a very wide sense the examining body could be said to act in a fiduciary capacity with reference to the students who participated in an examination, in the normal and well-recognized sense in which the words "information available to a person in his fiduciary relationship" have been used under Section 8(1)(e), "we do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer-books, which come into the custody of the examining body". As regards the relationship between the examining body and the examiners, the Hon'ble Supreme Court relied on / referred to their earlier decision in the case of **Bihar School Examination Board vrs Suresh Prasad Sinha** wherein it had been held as under :

"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, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner".

The reasoning adopted in the above judgement of the Hon'ble Supreme Court was followed by the Apex Court in the case of **Bihar Public Service Commission vrs Saiyed Hussain Abbas Rizwi & Anr.** The Hon'ble Court held that "We would have no hesitation in holding that in the present case the examining body (Commission) is in no fiduciary relationship with the examinee

(interviewers) or the candidate interviewed". The Hon'ble Court proceeded to observe that "once the fiduciary relationship is not established, the obvious consequence is that the Commission can not claim exemption as contemplated under Section 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all".

In this case, the State Information Commission had earlier upheld denial of disclosure of information relating to the Members of the Interview Board on the ground that the same were not required to be disclosed in view of the provisions of Section 8(1)(g) of the Act. The Single Bench of the Hon'ble High Court dismissed the writ petition of the petitioner by relying on Section 8(1)(j). Before the Division Bench of the Hon'ble Bihar High Court, the Bihar Public Service Commission contested the reliance placed by the Single Bench on Section 8(1)(j). The Bihar Public Service Commission also pressed into service Section 11 of the Act. The Division Bench took the view that Section 8(1)(j) was not attracted on the facts of the case. The Division Bench also rejected the application of Section 8(1)(g) on the ground that the said section applied only with reference to law enforcement for security purposes and did not have general application.

When the matter came up before the Hon'ble Supreme Court, the Commission did not press Section 8(1)(j). Instead, exemption was claimed under Sections 8(1)(e) and 8(1)(g). As already noted, the Hon'ble Supreme Court held against the applicability of Section 8(1)(e). However, as regards Section 8(1)(g), the Hon'ble Supreme Court disagreed with the decision of the Division Bench of the Hon'ble High Court. It was held that the Hon'ble High Court had erred in construing the applicability of Section 8(1)(g) narrowly. This section has two categories. Disclosure of information which would endanger the life or physical safety of any person is one category; and, identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The Hon'ble Supreme Court observed that the High Court was

not justified in limiting the application of section 8(1)(g) only to the expression "for law enforcement or security purposes" used in the second category. Having thus disagreed, the Hon'ble Supreme Court proceeded to examine if disclosure of the identity of the examiners could be considered as exempt under Section 8(1)(g). The Hon'ble Supreme Court attached great importance to Section 8(1)(g) because the expression "life" appearing in this Section (and) which also appears in Article 21 of the Constitution has a very wide meaning and, therefore, has to be considered liberally. **"If in the opinion of the concerned authority, there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act"**.

Then the Hon'ble Supreme Court posed the following question:

"Now the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed".

The Hon'ble Court answered the above question as under:

"Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act".

In deciding thus, the Hon'ble Supreme Court referred with endorsement to their earlier decision in the CBSE case wherein it had been held as under:

“When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutinizer, coordinator and head examiner who deal with the answer book.”

“The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutinizer / coordinator/head examiner. The information as to the names or particulars of the examiners / coordinators / scrutinizers / head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners / coordinators / scrutinizers / head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners / coordinators / scrutinizers / head examiners or which may disclose their identity with reference to signature or

initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act”.

After discussing as above, the Hon'ble Supreme Court held in the case of Bihar Public Service Commission vrs Saiyed Hussain Abbas Rizwi & Anr. as under:

“The above reasoning of the Bench (in the CBSE case) squarely applies in the present case as well. The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons can not be ruled out. On the other hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose”.

While deciding as above, the Hon'ble Supreme Court also disapproved of the earlier view of the Hon'ble High Court in the judgement under appeal on the issue of bias. The view of the Hon'ble High Court was that the element of bias could be traced and would be crystallized only if the names and addresses of the examiners / interviewers were furnished.

The Hon'ble Supreme court held that the above view of the Hon'ble High Court was “without any substance”.

“The element of bias can be hardly co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defense. We are unable to accept this reasoning of the Hon'ble High Court. Suffice it to note that the reasoning of the High Court is not in conformity with the principles stated by this Court in the CBSE case. The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under query No.1 of the application. Transparency in such cases is related to the process where selection is based on collective wisdom and

collective marks. Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act”.

Thus, as can be seen from the above, the Hon'ble Supreme Court in the cited judgements ruled out the applicability of Section 8(1)(e). Yet non-disclosure of information relating to the examiners, coordinators, scrutinizers etc. was confirmed by referring to Section 8(1)(g). It was also held that a State Information Commission can invoke section 8(1)(g) wherever there is a possibility of danger to life or physical safety.

In this context, it is also necessary to refer a later decision of the Hon'ble Supreme Court in the case of **Kerala Public Service Commission and others vrs the State Information Commission and Another** (arising out of SLP © Nos. 15919-15950 of 2011). The Hon'ble Kerala High Court had earlier considered the Public Service Commission's claim that there was a fiduciary relationship between it and the Examiners, and as a consequence, it was eligible to claim protection from disclosure, except with the sanction of the competent authority, as regards the identity of the examiners as also the materials that were subjected to examination. The Hon'ble High Court fully agreed with the law laid by the Division Bench of the said Court in an earlier case i.e Centre of Earth Assignment Studies V. Anson Sebastian, 2010 (2) KLT, wherein it was held that Section 8(1)(e) deals with information available with the person in his fiduciary relationship with another; and “information under this head is nothing but information in trust which, but for the relationship would not have been conveyed or known to the person concerned.” Then the Hon'ble High Court posed a question: “what is that the PSC holds in trust for the examiners’? And the Hon'ble Court answered: “Nothing. At the best it could be pointed out that the identity of the examiners has to be insulated from public gaze, having regard to issues relatable to vulnerability and exposure to corruption if the identities of the examiners are disclosed in advance. But, at any rate such issue

would go to oblivion after the conclusion of the evaluation of the answer scripts and the publication of results. Therefore, it would not be in public interest to hold that there could be a continued secrecy even as regards the identity of the examiners. Access to such information, including as to the identity of the examiners, after the examination and evaluation processes are over, can not be shied off under any law or avowed principle of privacy”.

The Hon’ble Supreme Court disagreed with the above view taken by the Hon’ble Kerala High Court. To quote from their judgement:

“The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them can not be sustained in law”.....

The Hon’ble Supreme Court explained the reasons for their disagreement. It was held that the relationship between the PSC and the Examiners was that of a ‘principal’ and an ‘agent’. Hence there was a fiduciary relationship between them. Therefore, any information shared between them was not liable to be disclosed.

The Hon’ble Court further observed as under :

“Furthermore, the information seeker has no role to play in this and we do not see any logical reason as to how this will benefit him or the public at large. We would like to point out that the disclosure of the identity of the Examiners is in the least interest of the general public and also any attempt to reveal the examiner’s identity will give rise to dire consequences. Therefore, in our considered opinion, revealing the examiner’s identity will only lead to confusion and public unrest .....

“the request of the information seeker about the details of the person who had examined / checked the paper can not and shall not be provided to the information seeker as the relationship between the public authority i.e Service Commissions and the Examiner is totally within fiduciary relationship”.



“The Commission has reposed trust on the examiners that they will check the examination papers with utmost care, honesty and impartiality and, similarly, the Examiners have faith that they will not be facing any unfortunate consequence for doing their job properly. If we allow disclosing the name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam”.

Holding thus, the Hon'ble Supreme Court held that the applicants were not entitled to disclosure of the names of the examiners as sought by them.

The foregoing discussion of the judgements shows that while in the earlier judgements of the Hon'ble Supreme Court it had been held that no fiduciary relationship, in the normal sense as distinguished from the philosophical sense, existed between the examination boards and the examiners / interviewers; in the later judgment in the case of Kerala Public Service Commission the Hon'ble Supreme Court was categorical about the existence of such a relationship. However, it is also noted that the Hon'ble Supreme Court have been emphatic in all the cases decided by them that disclosure of the names of the examiners would not be in public interest and, moreover, such disclosure is exempt in view of the provisions of Section 8(1)(g). Therefore, to sum up, the Apex Court of the Country have consistently held against disclosure of the names of and other information relating to the examiners, interviewers etc.

The above decisions are applicable to the information sought by the appellant as regards the examiners, scrutinizers, selectors etc.

What emerges from the foregoing discussion regarding the applicability of Section 8(1)(e) to the case at hand is as follows :

- (i) Documents and information submitted by the candidates for the purpose of the selection shall come within the ambit of fiduciary relationship and, therefore, can not be disclosed unless disclosure is warranted in larger public interest.
- (ii) The other documents and information not submitted by the candidates but are available with the public authority can not be treated as falling within the ambit of fiduciary relationship and, therefore, the disclosure thereof can not be denied by invoking Section 8(1)(e). However, it will have to be seen if such information can come under Section 8(1)(j) or Section 11 which have been pressed into service by the respondents during the course of the subject proceedings.
- (iii) Information regarding the identity of persons such as examiners, scrutinizers, interviewers, selectors and evaluators can not be disclosed either because of Section 8(1)(e) or because of Section 8(1)(g).
- (iv) Information relating to persons other than examiners, scrutinizers, evaluators and selectors can not come within the ambit of Section 8(1)(e). In such cases, as in the cases of information not supplied by the candidates and yet available with the public authority, applicability of the other Sections such as 8(1)(j) and 11 may have to be considered.

#### **Section 8(1)(j)**

Section 8(1)(j) deals with **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.**

As our discussion regarding applicability of Section 8(1)(e) has shown, Section 8(1)(j) may apply to the other information available with the public authority (not being information provided by the candidates) and information relating to the other persons (not being information relating to examiners, scrutinizers, verifiers, selectors and evaluators). A perusal of the information sought by the appellant as well as of the submissions made by the respondents also indicates that a part of the bio-data of the candidates (containing personal information such as passport no, bank account details, permanent address; and any other confidential information including relating to research work under process, etc.) can be considered as information disclosure of which would cause invasion of the privacy of the individual. Excepting the above, Section 8(1)(j) can not be said to be applicable to the other information including regarding persons such as guides, co-guides and supervisors. This is because the other information such as copies of the API score-sheet and selection proceedings sans the identity of the scrutinizers, verifiers and selectors; and, copy of the merit list can not be considered as information of a personal or fiduciary nature. Similarly, information relating to guides, co-guides and supervisors of Ph.D and M.Phil students as well as the names of such Ph.D and M.Phil students are already in the domain of the concerned university(ies) and disclosure thereof can not be considered as amounting to invasion of privacy.

#### **Section 11 (1)**

Section 11 applies to information **which relates to or has been supplied by a third party and has been treated as confidential by that third party** (bold and underlining supplied).

In order that any information can be brought within the ambit of Section 11(1) of the Act, it is not sufficient that the information relates to or has been supplied by a third party. It is also a pre-requisite that such information has been treated as confidential by that third party. These two pre-requisites must be cumulatively fulfilled because of the conjunction "and" which has been explicitly used in Section 11(1).

In the present case, the respondents have treated the candidates as third parties. Therefore, it is necessary to examine if the information relating to or supplied by the candidates could be regarded as information coming within the fold of Section 11(1).

As already noted in the context of Section 8(1)(e), the information and documents supplied by the candidates are generally required to be maintained by the public authority confidentially. However, viewed in the context of Section 11 (1), it has to be seen whether or not the candidates had treated the documents as confidential. Confidentiality is not a mere matter of intent. It should be express. The supplier of the documents has to specifically state that the same be kept as confidential. Nothing has been submitted by the respondents to show that any such request had been made by the candidates who had appeared for the interview. In fact, even in the request made by the selected candidate, i.e. Munish Chandra Adhikari, which had incidentally been made in connection with another case and not the present case, he had only referred to absence of public interest and had not stated that the documents had been intended by him to be kept as confidential. Therefore, even while holding that the documents are confidential, it has to be stated that the respondents have not demonstrated that the same can be treated as third party documents within the meaning of Section 11(1).

Even as regards the other persons to whom the information sought by the appellant relate, the respondents have not made any submission whatsoever to show that such information are in the nature of third party information. It is already seen that the respondents have referred to Section 11(1) only in the context of Munesh Chandra Adhikari and the not others. Therefore, the discussion regarding the applicability of Section 11(1) to the present case need not be carried further.

Having discussed the applicability of the statutory provisions relied upon and referred to by the respondents, it is also necessary to discuss the applicability of a few other provisions viz. Section 8(1)(g) and Section 8(1)(d).

Section 8(1)(g) has to be considered in view of the decision of the Hon'ble Supreme Court in the case of Bihar Public Service Commission vrs Saiyed Hussain Abbas Rizwi & Anr. that the State Information Commission is entitled to bring certain cases within the exemption of Section 8(1)(g) of the Act. Section 8(1)(d) needs to be examined because while referring to disclosure of publications / theses etc., the respondents have referred, among other things, to intellectual property right of the candidate. Evidently, they had Section 8(1)(d) in mind even though the said section was not quoted.

### **Section 8(1)(g)**

First coming to Section 8(1)(g), even while contending that disclosure of the names of the API score-sheet scrutinizers etc would rule out the possibility of bias in selection, the appellant has not accused either the scrutinizers or the selectors of bias. As already noted, her only contention has been that Munesh Chandra Adhikary should not have been selected as Professor of Physics as he had a Ph.D Degree in Computer Science and not in Physics. When no material has been submitted or relied upon to indicate bias, there is no reason why the names of the examiners, scrutinizers, verifiers, selectors etc should be disclosed. The Commission is also of the considered view that disclosure of their names would unnecessarily expose them and render them vulnerable. Further, as we have already seen, the Hon'ble Supreme Court observed in the case of Bihar Public Service Commission vrs Sayed Hussain Abass Rizwi and Another that transparency is related to the process and not to the identity of the persons who participate in the process. For the above reasons, the Commission is of the view that information relating to the identities of these persons would fall within the ambit of Section 8(1)(g) of the Act.

### **Section 8(1)(d)**

As already noted, Section 8(1)(d) relates to information regarding intellectual property etc. If any information is in the nature of intellectual property, the

same cannot be disclosed unless the competent authority is satisfied that larger public interest warrants disclosure.

**8.4** The foregoing discussion regarding applicability of the various statutory provisions relied on by the respondents leads to the following inferences:

- (1) Section 7(9) is not applicable.
- (2) Section 8(1)(e) would apply to the documents submitted by the candidates. Therefore, such documents / information can not be disclosed unless larger public interest warrants such disclosure.
- (3) Information regarding the identity of persons such as examiners, scrutinizers, verifiers and selectors will be exempt either under Section 8(1)(e) or Section 8(1)(g).
- (4) Section 8(1)(e) shall not apply to persons other than examiners, scrutinizers, verifiers, selectors etc.
- (5) Section 8(1)(j) shall apply only to a part of the bio-data of the candidates which contain personal and confidential information.
- (6) Copies of API score-sheets and selection proceedings without the identity of the scrutinizers, verifiers and Members; copy of the selection merit list, and, information relating to guides, Co-guides etc. can not be considered as exempt either under Section 8(1)(e) or under Section 8(1)(j).
- (7) Section 8(1)(d) would apply to disclosure of intellectual property right, if any. Therefore, such information can not be disclosed unless larger public interest warrants such disclosure.
- (8) Section 11 (1) has not been demonstrated as applicable to the facts of the case.

As per the inferences drawn herein-above, certain information are not disclosable at all viz. relating to examiners, scrutinizers, verifiers, selectors etc.

Certain other information do not attract any of the exemption provisions viz. copies of the API score-sheets, merit list and selection proceedings without the names of the scrutinizers, verifiers and Members; information relating to guides, co-guides etc. Disclosure of the remaining information is contingent upon public interest, i.e. whether or not the larger public interest warrants disclosure. Copies of documents / information supplied by the candidates with an implied faith that the same shall be kept as confidential; copies of bio-data to the extent the same contain information of a personal or confidential nature, information regarding publications involving intellectual property right etc. come under this category. It is therefore necessary to see if and to what extent the above remaining information falling in the third category can be disclosed on the ground that public interest warrants such disclosure.

**8.5** The appellant's contention regarding involvement of public interest in the disclosure of the information sought by her has been already noted. It has also been held earlier in this order that the public interest criterion is broadly fulfilled in as much as doubts have been raised regarding the appointment of the selected candidate. However, it has also been noted that the appellant has raised such doubts only with regard to the selected candidate, Munesh Chandra Adhikari; and not to the others. With regard to the other candidates, it has been merely stated that they had Ph.D Degree in Physics. However, no document has been submitted in support of the above claim, It has also not been stated by the appellant as to what public interest would be sub-served by the disclosure of the information relating to the other candidates which, as already mentioned, had been given by them to the public authority in confidence and with implied faith. That is why an opportunity in this matter had been given to the appellant vide order dated 29.08.2018. However, the said opportunity has not been availed. In these circumstances, the Commission is of the considered view that the exception in Section 8(1)(e) can apply, as far as applicable, only to the documents and information relating to the selected candidate i.e. Munesh Chandra Adhikari. The exception to Section 8(1)(e) shall not apply to the other candidates.

It has been earlier observed that personal and confidential information included in the bio-data can not be disclosed unless larger public interest warrants disclosure. The only material ground raised by the appellant by way of justifying involvement of public interest is that Munesh Chandra Adhikari got selected as Professor of Physics and Ballistics although he had a Ph.D. Degree in Computer Science. The ground thus raised does not even remotely relate to personal and confidential information included in the bio-data of Munesh Chandra Adhikari. Therefore, it has to be held that the exception to Section 8(1)(e) or 8(1)(j) shall not apply to such personal and confidential information.

Similarly, as the material submitted by the appellant mainly relates to the Ph.D Degree of the selected candidate, the Commission cannot comprehend what public interest would be sub-served by the disclosure of the information, if any, which has to do with the intellectual property right, if any, of the selected candidate. Hence the exemption in Section 8(1)(d) shall apply to such information.

**9.** In the light of the foregoing, the issues involved in this appeal are decided as under:

- (i) Copies of documents submitted by the selected candidate, Munesh Chandra Adhikari, other than personal and confidential information contained in his bio-data and information having bearing on his intellectual property right, if any, shall be disclosed as held in possession or under control.
- (ii) The exceptions mentioned in (i) above shall not be disclosed.
- (iii) Copies of documents submitted by the other candidates shall not be disclosed.
- (iv) Copies of information regarding identity of certain persons viz. external examiners, API score-sheet verifiers, scrutinizers and members of the



Selection Committee (i.e. persons involved in examination, verification, scrutinization, interview and selection) shall not be disclosed.

- (v) Information submitted by the selected candidate and which relate to persons not associated with any examination, evaluation, selection or interview viz. guides, co-guides and supervisor etc shall be disclosed.
- (vi) The other information sought by the appellant and which had not been submitted by the candidates but are available with the public authority in a non-fiduciary capacity viz. API score-cards, copies of selection proceedings, copy of final merit list etc. shall be disclosed subject to (vii) below.
- (vii) Wherever the information and / or documents which have been held as disclosable contain the names and signatures of the persons associated with examination, scrutinization, verification and selection, copies of such information or documents shall be provided after severing / protecting their names and signatures as per Section 10 of the RTI Act, 2005.

**9.1** The respondents shall carry out the above directions within 15 days from the date of receipt of this order under intimation to this Commission. Information as per this order shall be sent to the appellant by Registered Post.

**10.** With the above observations and direction, the subject appeal is partly allowed and stands disposed of.

**Pronounced in open proceedings**

Given under the hand and seal of the Commission this day, the 19<sup>th</sup> February, 2019.

**State Chief Information Commissioner  
19.02.2019**