

BEFORE THE HONOURABLE HIGH COURT OF KERALA

AT ERNAKULAM

W.P.(C) No. 6532 of 2006

Treesa Irish : Petitioners

Vs

Central Public Information Officer

And others

Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENTS IN THE

ABOVE CASE

I, Mervin Alexander, Son of Sri. Stephen Alexander, aged 44 years, employed as Director of postal Services (Headquarters), Kerala Postal Circle, Trivandrum-33 do hereby solemnly affirm and state as follows:

I am the 1st respondent in the above Writ Petition. I am conversant with the facts of the case. I am swearing to this affidavit for and on behalf of the other respondents as well for which I am duly authorized and competent.

2) The above writ petition is not maintainable either in law or on facts. All the averments made in the writ petition save those that are specifically admitted hereunder are incorrect and hence denied by this respondent.

3) It is respectfully submitted that the Exhibit P-2 application for information under the Right to Information Act 2005 was duly considered by the respondents and a reply was given to her vide Exhibit P-3. Her Exhibit P-4 appeal under section 19(1) of the Act was also duly considered and disposed of by the 2nd respondent vide Exhibit P-5 order. The applicant then had preferred Exhibit P-6 appeal to the 3rd respondent, which was also considered and disposed of, vide Exhibit P-8 order.

4) The limited issue in this case is whether the applicant as a candidate in

the departmental exam can be given access to the valued answer script under the Right to Information Act. The appellate decision of the 3rd respondent in Exhibit P-8 has to be seen in the light of section 8 (1) (E) and 8 (1) (J) of Right to Information Act in this regard. The 3rd respondent has held that in the case of evaluated answer papers the information available with public authority is in his fiduciary relationships, the disclosure of which is exempted under Section 8 (1) (E) of the Act. It is also held that the information sought is personal information not discloseble under section 8 (1) (E) of the Act. Section 8 (E) and (J) stipulate that such information has to be disclosed only if larger public interest warrants such disclosure. In the applicant's case no public interest is involved and hence it is submitted that she has no legally enforceable claim for a copy of the answer scripts.

5) It is respectfully submitted that the grievance of the petitioner is fully remedied by Rule 14 of Appendix 37 of Postal Manual Volume IV Part II (Appendices) as mentioned above. In the absence of any convincing grounds of suspicion with respect to valuation, attempts like the one being made by the applicant, without taking recourse to available facilities of re-totaling/re-verification of marks, will unsettle the age old and time tested procedures causing great administrative difficulties.

6) It is respectfully submitted that the averments of the petitioner in para 10 of the petition that Ext?- P-3, P-5 and P-8 are based on wrong understanding of the law and are perverse is not true. The decisions were arrived at by all the three respondents upon the due consideration of the Provisions under the Right to Information Act 2005 and the relevant Departmental Rules in the circumstances of the case.

7) It is respectfully submitted that the averments of the petitioner in Para A of the grounds that the impugned orders are illegal, arbitrary and unjust is without any basis. Further, this Hon'ble Court may kindly note that no Fundamental Right of the petitioner under Article

14, 19 and 21 of the Constitution of India has been violated.

8) It is respectfully submitted that the averments made by the petitioner in Para B of the grounds that 3rd respondent has a misunderstanding of the concept of fiduciary relationship is not correct and hence denied. It is respectfully submitted that the order rendered by the 3rd respondent is proper in the context and provisions of the Right to Information Act, 2005.

9) It is respectfully submitted that the averment of the petitioner that the inference of the 3rd respondent that evaluated answer sheets are personal information and its disclosure has no relation to any public activity or interest is not correct. The 3rd respondent has appropriately applied Section 8(1) (J) of the Right to Information Act, having found the prayer of the petitioner lacking in public interest and also Section 8(1) (E) on the ground of fiduciary relationship. The Act clearly says that disclosure of such disclosure, which is not the case here.

10) It is respectfully submitted that the" averment in Para E of the grounds that public interest is not a ground under Section 8 is not correct. Larger public interest has to warrant disclosure of information, which is otherwise exempted under section 8 of the Act.

11) It is respectfully submitted that the averments of the petitioner in Para F that existence of opportunity for re-totaling or re-verification are not effective alternatives to obtain information under the Act is denied. Upon an application from the petitioner, the answer papers would have been duly re-totaled and re-verified;

12) The ground raised by the petitioner in Para G & H of the grounds herein are denied as all that is mandated as procedure under the Act has been adhered to by the respondents in the appellate process in redressing the concerns of the petitioner.

13) It is respectfully submitted that the ground raised by the petitioner in Para I of

grounds regarding the forum and Constitution of the Central Information Commission is unsubstantiated. The respondents have followed all that is mandated under the Statute and the rules thereon.

14) It is respectfully submitted that the averment of the petitioner in Para J to agitate her rights before the appropriate legal forum on receipt of a copy of the valued answer sheet reflects her lack of faith in the Department. This Hon'ble Court may kindly note that the intent of the petitioner if granted would expose the examiners to the legal process in a situation that does not warrant an intrusion by the judicature particularly since the denial to provide answer sheets is secured under 8(1) (E) and 8(1) (J) of the Right to Information Act, 2005. Hence the petitioner is not entitled for any of the reliefs as sought for in the Writ Petition.

In the light of afore mentioned facts, law and inferences thereon this Hon'ble Court may kindly dismiss the petition.

All the facts stated above are true

Dated this the 3rd day of August 2006.

DEPONENT

Solemnly affirmed and signed before me by the deponent who is personally known to be on this the 3rd day of August, 2006 in my office at Trivandrum.

ATTESTING AUTHORITY

*True copy
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A. Sreedharan*