

**Case relating to RTI :****Parties :** T. Balaji Versus The Secretary Tamil Nadu Public Service Commission & Others**Court :** High Court of Judicature at Madras**Case No :** W.P. NOS.13132 to 13134 of 2009**Judges:** THE HONOURABLE MR. JUSTICE M.M. SUNDRESH**Appearing Advocates :** For the Petitioner: K.M. Vijayan, Senior Counsel, M/s. Fast Track Law Associates. For the Respondents: R1 & R3, G. Masilamani, Senior Counsel, K. Surendranath, Advocate, V. Saravanan, (TNPSC), Lita Srinivasan, Government Advocate.**Date of Judgment :** 02-09-2009**Head Note :-**

Constitution of India - Article 226 - Right to Information Act, 2005 - Section 19 – Service -Petitioners made applications pursuant to the notification issued by first respondent / Tamil Nadu Public Service Commission inviting applications from the eligible candidates for filling up 49 vacancies for the post of Motor Vehicle Inspector, Grade - II spreading over the period between 2001-2006 - petitioners made applications and appeared for the main written examination but petitioners names not included in the selection list - petitioners made representation to first respondent seeking revaluation of answer sheets and give copies of the answer sheets - first respondent sent a reply stating that, no candidate would be permitted to scrutinise the necessary answer sheets and given the copies of the answer sheets - request for revaluation cannot be considered and the request for re-totalling and re-examination would be done after the publication of the results – petitioners made applications in accordance with the provisions of the Right to Information Act, 2005 – since there was no prompt reply, the petitioners filed writ petitions – Respondent contended that entire selection process is absolutely fair.

Court held - In the absence of any legal right, the petitioners cannot prevent the public authorities from proceeding in accordance with law, based upon surmises and conjectures - a clear policy having been evolved by the respondents 1 and 3 in respect of the conduct of the selection process, this Hon'ble Court cannot interfere with the same -respondents 1 and 3 are bound to give a copy of the said answer sheet of a concerned person, of-course after the completion of the selection process - respondents being authorities having independent power deriving the source of power under Article 320(1) of the Constitution of India will have to confirm to the principle of transparency, accountability and fair play - right to get the information is a basic recognized right and the same is also a fundamental right - Right to Information Act, 2005 has been introduced in order to bring out the transparency and accountability in a decision making process - prayer sought for by the petitioners in so far as forbearing the respondents from proceeding with the selection process is hereby rejected - respondents are at liberty to proceed with the selection process - respondents are hereby directed to furnish the information sought for by the petitioners within a period of six weeks from the date of publication of the results to be announced in pursuant to the oral interview - writ petitions are disposed of.

**Cases Referred:**

University Of Calcutta And Others Vs. Pritam Roj [AIR 2009 Calcutta 97]

Maharashtra State Board Of Secondary And Higher Secondary Education And Another Vs. Paritosh Bhupesh Kurmarsheth [AIR 1984 SC 1543]

Dr.M.Vennila Vs. Tamil Nadu Public Service Commission [2006 (3) CTC 449]  
 Ramachandra Rexins Private Ltd., Vs. Customs, Excise And Gold (Control) Appellate  
 Tribunal, Chennai [(2009) 4 MLJ 417]  
 Andhra Pradesh Public Service Commission Vs. Baloji Badhavath And Others [(2009) 5 SCC 1]  
 Dr.A.R.Balamurugan Vs. Secretary To Government, Health And Family Welfare  
 Department [(2009) 5 MLJ 281]  
 The State Of Uttar Pradesh Vs. Raj Narain And Others [AIR 1975 SC 865]  
 S.P.Gupta And Others Vs. Union Of India And Others [AIR 1982 SC 149]  
 Secretary, Ministry Of Information And Broadcasting Vs. Cricket Association Of Bengal  
 And Another [AIR 1995 SC 1236]  
 D.Sivakumar And Another Vs. The Government Of Tamil Nadu And Others [(2009) 3 CTC 97]

**Judgment :-**

(Prayer In W.P.Nos.13132 To 13134 Of 2009: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents 1 and 3 from proceeding further with selection process by in any manner selecting, appointing the candidates called for oral interview pursuant to the written examination held on 29.07.2007 without providing the particulars sought by the petitioner in the petition dated 10.07.2009 under the Right to Information Act regarding the copy of the OMR answer sheet and the Mart Statement of the petitioner, marks secured by all candidates selected for the Oral Interview in the written examination held on 29.07.2007 for the post of Motor Vehicle Inspector, Grade - II in the Tamil Nadu Transport Subordinate Service for the year 2001-2006.)

In view of the common issues raised in all the Writ Petitions having the same prayer with identical facts all the writ petitions have been taken up together and a common order is passed.

2.The first respondent / Tamil Nadu Public Service Commission issued a notification in Advertisement No.107 dated 25.07.2007 and invited applications from the eligible candidates for filling up 49 vacancies for the post of Motor Vehicle Inspector, Grade - II spreading over the period between 2001-2006.

3.In pursuant to the said notification, the petitioners herein have made applications and appeared for the main written examination held on 29.07.2007. Thereafter, the first respondent had published the list of candidates who have been selected for the oral test to be held on 15.07.2009. Having found the names of the petitioners not included in the selection list, the petitioners have preferred the present writ petitions alleging that there is no fairness in the selection process. The petitioners gave a representation to the first respondent on 06.07.2009 seeking the revaluation of the answer sheets written by the petitioners and to give copies of the answer sheets. The first respondent has sent a reply stating that as per the Tamil Nadu Public Service Commission letter dated 17.08.2009 and as well as the orders passed by the Hon'ble Supreme Court, no candidate would be permitted to scrutinise the necessary answer sheets and given the copies of the answer sheets. However if the Hon'ble Court orders in the pending writ petitions permits then the same can be considered. It has been further stated in the said letter that the marks of the candidates will be published in the website of the first respondent after the publication of the results, the request for revaluation cannot be considered and the request for re-totalling and re-examination would be done after the publication of the results. Thereafter, in accordance with the provisions of the Right to Information Act, 2005 an application was made by the petitioners on 10.07.2009 in the prescribed format seeking for the following particulars:

"A. Provide me the mark statements of all the Selected Candidates under Reference (ii)

B. Provide me the copy of my OMR Answer Sheet.

C. Provide my mark statement for the exam written by me on 29.07.2007 stated under Reference (ii).

D. Whether the Tamil Nadu Public Service Commission published the mark statement of all the candidates who appeared for the exam stated under Reference (ii)? If not state the reason and the law that prohibit such publication of mark statement.

E. Under what circumstances and reasons I was not selected for the Oral Interview?

F. What is the ratio of selection for the Oral Interview?

G. What are the measures adopted to ensure fairness while selecting candidates stated under Reference (ii)?

H. Is there any Quota system? If so provide the details of the candidates selected under different Quotas."

4. In view of no prompt reply from the respondents 1 and 3 and also in view of the urgency that the interview is proceeding further from 15.07.2009 onwards, the petitioners have moved this Hon'ble Court by filing these writ petitions on 13.07.2009 seeking the relief of Writ of Mandamus forbearing the respondents from proceeding further with selection process in pursuant to the written examination held on 29.07.2007 without providing the particulars sought for by the petitioners in their petitions dated 10.07.2009 under the Right to Information Act.

5. Counter affidavits have been filed by the respondents 1 and 3 stating that even though the examination was conducted on 29.07.2007, there was no progress in the selection in view of the pendency of the Court proceedings and the results of the list of selected candidates for the written examination was published in pursuant to the orders passed by the Hon'ble High Court on 25.03.2009.

6. It has been further stated that the entire selection process is absolutely fair and the respondents have evolved a perfect methodology in scanning the answer sheets immediately to avoid manipulation and the selection process is conducted with care and caution. It has been stated that the valuation procedure has been divided into two parts and each of them have been handled by two different Confidential Departments. The scanning of the OMR answer sheets is done in the Evaluation Department by using OMR scanners wherein the response shaded by the candidates alone are captured. After scanning, the scanned data is transferred to the confidential department in a Compact Disc. After transferring the scanned data, the fields in the OMR answer sheets such as Register No., Subject Code and Question Paper Booklet series alone are edited in ED section, in order to verify whether the candidates have committed any mistake while shading or omitted to shade these fields. After completing the said editing, the final data is again transferred to the Confidential Department for further process. The scanned data already transferred and the final data are compared to verify whether there are any deviations on the part of candidates' responses in answer sheets. The procedure of awarding of marks to the responses shaded by the candidates is done at the Confidential Department, based on matching of answer keys with the responses in data, transferred by the Evaluation Department. The utmost care is taken by the Commission, to avoid any untoward happenings. The above in-house mechanism of valuation will not be revealed to the public normally, since these matters are confidential in nature.

7. It is further submitted that the writ petitions are liable to be dismissed since the averments are based upon surmises and conjectures. The respondents would conduct the oral test and thereafter, the marks of the written examination as well as the oral test would be published on the last date of the oral test in the website and the Notice Board of the Commission. After the final results are published, the marks of the candidates who are not been summoned for the oral test would be published. It is stated that the marks are not published earlier in order to maintain the secrecy in the oral test and also in order to prevent a candidate from attempting to influence the members. After the evaluation of the written marks they will be kept in a secret cover in a safe custody with the Controller of Examinations. After the oral test is over, both the marks will be totaled and ranking will be given as per the same.

8. It has been further averred in the counter affidavit that the respondents 1 to 3 are empowered to evolve their own process by virtue of the power conferred on them under Article 320(1) of the Constitution of India. The petitioners having participated in the selection process cannot question the same. A reading of the instructions to the candidates in paragraph 22(b) would clearly show that the marks obtained by the candidate will be placed in the notice board and the same will also be available in the website. Further, the Union Public Service Commission has stated that the necessary answer sheets need not be shown to the candidates. Therefore, it is prayed by the respondents 1 to 3 that the writ petitions will have to be dismissed.

9. Shri.K.M.Vijayan, learned senior counsel for the petitioners submitted that the right given under Right to Information Act, 2005 cannot be taken away by the instructions issued by the respondents. According to the learned senior counsel when the prospectus is unconstitutional having instructions by way of conditions contrary to the provisions of the Right to Information Act, 2005 the same cannot be put against the petitioners.

10. Shri.K.M.Vijayan, learned senior counsel for the petitioners further submitted that the relief sought for under the Right to Information Act, 2005 would prevail over the policy decision of the respondents. The petitioners have filed the writ petitions at the appropriate time since they have filed the writ petitions only after coming to know that their names have not been found in the selected list. Further, it cannot be said that the petitioners will have to file an appeal as provided under Section 19 of the Right to Information Act, 2005. Since, the petitioners application dated 10.07.2009 in the prescribed format has not been decided by the respondents 1 and 3 so far. Hence, Mr.K.M.Vijayan, learned senior counsel for the petitioners prayed that the writ petitions will have to be allowed as sought for. The learned counsel further submitted that in any case this Hon'ble Court can direct the respondents to furnish the information sought for by the petitioners.

11. The learned senior counsel for the petitioners has relied upon the judgment reported in Air 2009 Calcutta 97 [University Of Calcutta And Others Vs. Pritam Roj] wherein the Division Bench of the Hon'ble High Court has held the answer script written by a candidate would come into the definition of word 'information' and under those circumstances, such a candidate is eligible for a copy of the same. The learned counsel has also relied upon the unreported judgment of the Delhi High Court In W.P.(C) No.3114/2007 Dated 03.12.2007 [Bhagat Singh Vs. Chief Information Commissioner And Others] wherein the learned single Judge of the Delhi High Court has held that Section 8(1)(j) of the Right to Information Act, 2005 would not be pressed against the request for furnishing the information sought in the absence of any pending investigation.

12. Shri.G.Masilamani, learned senior counsel for the respondents 1 and 3 submitted that the prayer as sought for cannot be maintained in law and facts. According to the learned senior counsel, if the petitioners grievance is that to get the information sought for under Right to Information Act, 2005 then the petitioners will have to file an appeal. Further, the contention

that the petitioners application dated 10.07.2009 is also pending will have to be rejected since there is no difference between the earlier representation made on 06.07.2009 which was rejected on 13.07.2009 and the subsequent representation. Moreover, a reading of Section 19 of the Right to Information Act, 2005 would show that even when no orders are passed by the respondents, an appeal would lie to the appropriate authority. According to the learned senior counsel the policy decision evolved by the respondents 1 and 3 in exercise of the power conferred under Article 320(1) of the Constitution of India cannot be interfered on the ground that the petitioners grievance under the Right to Information Act, 2005 has not been complied with.

13. Next, it is urged that in the present case on hand there is no challenge to the policy decision of the respondents 1 and 3. It is also to be seen that the writ petitioners are estopped in view of the specific clause provided under 22(b) of the instructions to the candidates. The prospectus and instructions are having the force of law and hence, the petitioners cannot maintain the present writ petitions. The respondents 1 and 3 have evolved a policy decision of not disclosing the marks after the written examination and the reasons behind the same cannot be questioned. The Hon'ble Supreme Court of India has also held that in the absence of any rules answer sheets cannot be given.

14. Shri. G.Masilamani, learned senior counsel for the respondents has relied upon the judgment reported In Air 1984 Sc 1543 [Maharashtra State Board Of Secondary And Higher Secondary Education And Another Vs. Paritosh Bhupesh Kurmarsheth] in support of his contention that the judicial review of the Hon'ble Court against the policy decision is rather limited and also the non furnishing of the answer sheets would not amount to violation of principles of natural justice. The learned senior counsel for the respondents also replied upon the unreported judgment in W.P.C.No.12583/2006 [Sunil Kumar Rai Vs. Union Of India And Others] DATED 31.08.2006 wherein the High Court of Delhi has taken a view that in the absence of any rule a candidate need not be given the answer sheet. The learned counsel has also relied upon the judgment reported in 2006 (3) Ctc 449 [Dr.M.Vennila Vs. Tamil Nadu Public Service Commission] to submit that the prospectus is having the force of law along with the instructions contained therein and hence one who has written the examination cannot be allowed to challenge the same.

15. It is also urged that the information sought for cannot be given since the same would come under the categories of exemption as provided under Section 8(1) of the Right to Information Act, 2005. A particular reference has been made to Section 8(1)(d) and (e) of the said Act contending that there is a fiduciary capacity in which the information is held and the public interest does not require the furnishing of such information.

16. I have heard the arguments of the learned senior counsels appearing for both sides as well as the learned Government Pleader appearing for the second respondent.

17. The petitioners herein have filed the writ petitions on the ground that without providing the information as required by them under the Right to Information Act, 2005 the selection process shall not be proceeded with. A reading of the said prayer especially forbearing the respondents from proceeding with the selection process would make it clear that the same is not maintainable and misconceived. The said prayer would amount to a prayer for prohibition prohibiting a statutory authority from proceeding in accordance with law. In the absence of any legal right, the petitioners cannot prevent the public authorities from proceeding in accordance with law, based upon surmises and conjectures.

18. It is also to be noted that an official act is presumed to be correct until and unless the contrary is proved. In the judgment reported In (2009) 4 Mj 417 [Ramachandra Rexins Private Ltd., Vs.

Customs, Excise And Gold (Control) Appellate Tribunal, Chennai], the Hon'ble Division Bench has taken a view that there is always a presumption in favour of the official act done in such a capacity and the party who allege any irregularity has to prove the same. Therefore, this Court under such a situation cannot exercise its discretionary power under Article 226 of the Constitution of India. The petitioners right to get an information under Right to Information Act, 2005 is one thing and without the information furnished by the respondents they cannot be allowed to proceed with as against their own procedure based upon their policy decision is another. The petitioners may have a legal right to get an information under the Right to Information Act, 2005 but they do not have a legal right to postpone the process of selection till the information is received. In other words, the petitioners cannot contend that until and unless they are allowed to have the information the further process cannot be allowed to go on. In the present case, the petitioners rights have not been crystalized in so far as the selection is concerned. Therefore, they have to get the information and thereafter, challenge the selection provided the information obtained would be sufficient enough for them to approach the appropriate forum.

19. In the present case on hand, the petitioners have taken a policy decision not to publish the marks after the written examination. They have also taken the policy decision to proceed with the oral test and publish the results thereafter. As rightly contended by the learned senior counsel Shri.G.Masilamani, the wisdom of the respondents 1 and 3 in evolving the process by exercising the power conferred on them under Article 320(1) of the Constitution of India cannot be questioned by the petitioners more so on the ground that the respondents have not furnished the information as required under the Right to Information Act, 2005. It is further to be seen in the present case that the said policy decision has not been challenged by the petitioners. It is well settled principal of law, the provisions of the enactments will have to be given a harmonious construction and it cannot be presumed that they are in conflict with each other.

20. Therefore, the said policy decision which is based upon the application of mind and reasoning cannot be challenged by the petitioners indirectly on the ground that till they get the required documents the selection cannot be go on. If the request of the petitioners is granted then the same would go against the policy decision of the respondents 1 and 3.

21. The petitioners are aware of the rules and regulations as contained in the prospectus and the instructions given to the candidates. In this connection, it is useful to refer the paragraph 22(b) of the instructions given to the candidates which is as follows:

"22(b). Posts for which selection is made on the basis of Written Examination and Oral Test.

Where the selection is made on the basis of both, Main Written Examination/Written Examination and Oral Test, the Main Written Examination/Written Examination will precede the Oral Test. If the number of vacancies notified/reserved to be filled up for any one or more of the reservation groups (viz. Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes or General Turn) is five and above, the number of candidates to be admitted to the Oral Test shall be two times the number of vacancies for which recruitment has to be made against those reservation groups based on the marks obtained by the candidates at the Main Written Examination or Written Examination, as the case may be. Similarly, if the number of vacancies in any one or more of the remaining reservation groups for the same recruitment is four and below, the number of candidates to be admitted to the Oral Test from those particular reservation groups(s) shall be three times the number of vacancies for which recruitment has to be made against those reservation group(s). In respect of the posts, the total cadre strength of which is one only and for which the rule of reservation of appointments does not apply, the number of candidates to be admitted to the Oral Test on the basis of the marks

obtained at the Written Examination will be three. The final selection will be made on the basis of the total marks obtained by the candidates at the Main Written Examination or Written Examination, as the case may be, and Oral Test taken together subject to the rule of reservation of appointments wherever it applies. Appearance in all the papers at the Main Written Examination/Written Examination and for Oral Test is compulsory. The candidates who have not appeared for any of the subjects in the Main Written Examination/Written Examination will not be considered for selection even if they secure the minimum qualifying marks for selection.

The marks obtained by the candidates appearing for the Oral Test, both in the Written Examination as well as in the Oral Test will be placed in the Notice Board in the Office of the Tamil Nadu Public Service Commission in the evening either on the last day fixed for Oral Test or one the succeeding working day. The same will also be made available on the Internet in the Commission's Website [www.tnpsc.org](http://www.tnpsc.org)."

Similarly, paragraph 19 of the said instructions is extracted herein:

"19.Communication with the Tamil Nadu Public Service Commission

i. Any communication intended for the Commission must be made in writing and addressed only to the Secretary, Tamil Nadu Public Service Commission, Omanthoorar Government Estate, Anna Salai, Chennai - 600 002.

ii. If a reply is sought it must be accompanied by an envelope affixed with sufficient Postage Stamps with the address to which the reply is to be sent.

iii. Communications asking for reasons for non-selection and request for exemption from age limit or other qualifications will receive no attention.

iv. The Commission will receive communications only from candidates. Communications in the name of pleader or agent will receive no attention.

v. Requests for furnishing causes of failure in written exam or for non-selection on the results of the written exam / oral test or for revaluation of answer books will not be complied with.

vi. Details of marks of all candidates who appeared for the main written exam / oral test will be available in the Commission's Website [www.tnpsc.org](http://www.tnpsc.org).

Vii. Candidates asking for details of marks after finalisation of selection should send a crossed Account Payee demand draft for Rs.10/- (Rupees Ten only) in favour of the Secretary, Tamil Nadu Public Service Commission."

22. A reading of the above said provisions would show that the request for furnishing cost of failure in the written examination or non selection for the written examination or for re-valuation will not be complied with. It also shows that the details of the marks will be available in the website and all the marks of the candidates will be given after the finalisation of the selection process. Therefore, in view of the above said provisions which are having the force of law, the petitioners cannot seek the information sought for by them during the process of selection. The petitioners are bound by the prospectus and the instructions which are having the force of law.

23. As rightly submitted by Shri.G.Masilamani, learned senior counsel for the respondents 1 and 3, the ratio laid down by the Division Bench in the judgment reported in 2006 (3) Ctc 449 [Dr.M.Vennila Vs. Tamil Nadu Public Service Commission] is squarely applicable to the facts on hand. The Division Bench has observed in paragraph 25 of the judgment is as follows:

"25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification/relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large."

24. Therefore, this Court is of the opinion that inasmuch as a clear policy having been evolved by the respondents 1 and 3 in respect of the conduct of the selection process, this Hon'ble Court cannot interfere with the same. If the petitioners request for furnishing the particulars sought for by them is allowed before the selection process is over the same would stand against the policy decision of the respondents 1 and 3.

25. In the judgment reported in (2009) 5 Scc 1 [Andhra Pradesh Public Service Commission Vs. Balaji Badhavath And Others] the Hon'ble Supreme Court was pleased to hold that unless the procedure adopted by the authority is held to be arbitrary or against the known principles of fair play, the same cannot be interfered with. The said Division Bench of the Hon'ble High Court has followed the recent judgment reported in (2009) 5 Mj 281 [Dr.A.R.Balamurugan Vs. Secretary To Government, Health And Family Welfare Department] to the effect that a person who participated in the selection process cannot claim that the same is arbitrary. Further, it is seen that when the Government evolves a policy, the judicial review is very limited in the sense that the Court cannot go into the merits and demerits of the said decision.

26. However, a perusal of the instructions issued in instruction no.19 would clearly show that what cannot be asked for is the cause of rejection, non-selection and also the request for re-valuation. It also shows that the marks will be published after the finalisation of the selection process either in the Notice Board or in the website, which shall also be given a demand. Therefore, it has to be seen that the instructions and the prospectus are to be construed only for the purpose of the finalisation of the process of selection. Hence, once the said process is over it cannot be said that the documents and informations sought for by the petitioners under the Right to Information Act, 2005 cannot be considered. It is further seen that even the respondents are publishing the marks after the process is over. Hence, in the absence of any rational or acceptable reasons for not furnishing the mark sheets and the other information sought for it cannot be said that in view of the prospectus and the instructions the same cannot be given.

27. In the present case, this Court has to examine the grievance of the petitioners who filed the writ petitions. The petitioners wanted the mark sheets of all the candidates who have written the main written examination including that of the petitioners and they want the copy of their own OMR answer sheets. The other informations sought for by the petitioners are either available in the instructions themselves or explained in the counter affidavit filed by the respondents 1 and 3. Since the respondents 1 and 3 both in the instructions as well as the counter affidavit have clearly stated that marks of all the candidates would be published in the last day evening of the oral test, this Court is of the opinion that the said request of the petitioners need not be considered by this Court particularly in view of the observation made earlier that the petitioners

are not entitled to get any information till the selection process is over. Therefore, the only issue to be decided in the present case is the petitioners are entitled to get their own OMR answer sheets along with the other factual information or not after the selection process is over.

28. In so far as the other information are concerned, this Court is of the opinion that there cannot be any impediment for the respondents 1 and 3 to provide the same after the completion of the process. It is an admitted fact that the said answer sheet is nothing but a shaded one done by a candidate. It is also seen from the counter affidavit filed by the respondents 1 and 3 there is a clear method adopted by the use of technology for computing the marks. Therefore, there is very little work for the human mind involving any process of evaluation or correction as in the normal evaluation of an answer sheet.

29. What the petitioners want is a copy of their own mark sheets. There is no question of secrecy to be maintained in furnishing a copy of the same. Moreover, when the respondents 1 and 3 are providing the mark sheet of a concerned person, this Court finds that there cannot be any impediment or reasonable objection for not providing a copy of the said answer sheet. Therefore, this Court is of the opinion that the respondents 1 and 3 are bound to give a copy of the said answer sheet of a concerned person, of-course after the completion of the selection process.

30. In order to appreciate the arguments made by the learned senior counsels of both sides one has to see the provisions of the Right to Information Act, 2005 the definition of Section 2(e) of the said Act is extracted herein:

"2(e) "competent authority" means-(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution;"

Similarly, the definition of Section 2(j) of the said Act is extracted herein:

"2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

31. A reading of the above said provisions would amply make it clear that an answer sheet is a document coming under the said definitions. Therefore, the respondents 1 and 3 cannot deny the same. Section 8 of the said Act speaks about the exemption from disclosure of the information. The same is also extracted for better appreciation.

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

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

32. A perusal of the said provision would throw light of the fact that an information cannot be withheld by a public authority except the same is covered under Section 8(1) of the said Act. Shri.G.Masilamani, learned senior counsel for the respondents 1 and 3 has relied upon Section 8(1)(d) and (e) of the said Act. Section 8(1)(d) speaks about the information such as involving commercial confidence, trade secrets or intellectual property. It further states that the

disclosure of the said information would harm the competitive position of a third party. This Court is of the opinion that by no stretch of imagination the said Section can be made applicable since what the petitioners want is their own document which they have written. Likewise, Section 8(1)(e) speaks about the information available to a person in his fiduciary relationship. A person defined therein is in the present case are respondents 1 and 3. In law they can be holding the information in the fiduciary capacity as against the petitioners or the examiner. They cannot be a fiduciary for the petitioners since it is petitioners who themselves want their own document. If one accepts for argument sake that the document belongs to the respondents 1 and 3 even then the same has to be given in view of their decision to publish the marks. The fiduciary capacity also cannot be applied from the point of examiner since the examiner has got no role to play in a system which involves shading where more technology rather than a assessment by an examiner is adopted.

33. The definition of fiduciary capacity has been defined in the dictionary as follows:

1. of a trust, trustee; or trusteeship;
2. held or given in trust;
3. depending for its value on public confidence or securities.

Black's Law Dictionary defines fiduciary as

1. One who owes to another duty of good faith trust, confidence and candor;
2. One who must exercise a high standard of care in managing another's money or property.

The said definition fiduciary would certainly not applicable to the present case since the informations sought for by the petitioners are not held by the respondents 1 and 3 in a fiduciary capacity. As observed earlier without knowing the information sought for the petitioners will not be in a position to know about their rights which would be based upon the facts that would emerge from the information to be given by the respondents 1 and 3.

34. In a recent judgment, the High Court Of Kerala, Kochhi Bench In The Matter Of Canara Bank Vs. Central Information Commission And Others, has held as follows:

"The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with the its employees within the above meanings. Those information involved herein cannot be said to be held in trust by the Bank on behalf of its employees and therefore cannot be exempted under this subsection. In fact, without knowing this information, one employee cannot know his rights vis-a-vis other employees. In this connection, it has to be noted that one of the information requested for is transfer guidelines pertaining; to clerical staff. Any member of the staff of the bank is, as of right, entitled to know what are those guidelines, even apart from the Right to Information Act. Therefore, the information requested for by the 2nd respondent enumerated above cannot be denied to the second respondent relying on section 8 (1) (e). Further these information have necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the Bank and to contain corruption so as to hold the Bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the Act, as proclaimed in the preamble to the Act."

Therefore, this Court is of the opinion that the respondents 1 and 3 cannot take advantage of Section 8(1)(e) of the Right to Information Act since the same is not applicable to the present case.

35. Shri.G. Masilamani, learned senior counsel for the respondents 1 and 3 has also submitted that the petitioners will have to approach the Appellate Authority as provided under Section 19 of the Right to Information Act, 2005. This Court is of the view that the power under Article 226 of the Constitution of India can be and shall be exercised in appropriate cases where driving a party to another forum would lead to depriving once own right. The delay that would be caused

to a party will also to be seen since there is an urgency in seeking the relief because only based upon the said document, the petitioners will be in a position to know as to whether they can stake a claim for the

purpose they sought for. Moreover as observed earlier, this Court is also of the opinion that driving a party to file an appeal is unnecessary since an issue has been raised in the writ petition and arguments have been advanced by the parties. Even though the relief sought for in the writ petition is slightly different, inasmuch as the basis on which the writ petition has been filed is to get the required information, this Court is of the opinion that the interest of justice would require the information sought for by the petitioners will have to be granted. Therefore, this Court is of the opinion that the question of availing the alternative remedy has to be decided based upon the facts and circumstances of each case and the facts of the present case would not warrant the issue raised to be decided by the Appellate Authority constituted under the Right to Information Act, 2005.

36. However, a reading of the representation made by the petitioners as well as the averments made in the affidavit filed in support of the writ petition would show that the petitioners have not sought for the answer sheets of all the selected candidates in the main entrance examination. What is sought for is only the mark sheets of the selected candidates and not the answer sheets. Therefore, this Court is of the opinion that under those circumstances there is no necessity to go into the said question as to whether the petitioners are entitled to get the answer sheets of the selected candidates or not. Incidentally the question of applicability of Section 8(1)(e) in so far as the Answer Sheets of the other candidates are concerned also need not be gone into.

37. The respondents 1 to 3 being an authorities having independent power deriving the source of power under Article 320(1) of the Constitution of India will have to confirm to the principle of transparency, accountability and fair play. The right to get the information in a democratic society is a basic and natural right. The right to get the information is a part in the freedom of speech and expression as contained in Article 19 (1)(a) of the Constitution of India. Therefore, the right to get the information is a fundamental right. The disclosure of the information by the public authority is a rule and the secrecy is an exemption. That is the reason why the Right to Information Act, 2005 provides for specific clause regarding exemption. The public interest also demands that such information will have to be furnished in order to maintain the transparency. In the judgment reported in Air 1975 Sc 865 [The State Of Uttar Pradesh Vs. Raj Narain And Others], the Hon'ble Supreme Court has observed as follows:

"37. Counsel on behalf of the election petitioner put in the forefront that it was for the Court to decide whether the disclosure and production of documents by the State would cause prejudice to public interest or whether non-disclosure of documents would cause harm to the interest of the subject and to the public interest that justice should be done between litigating parties. This submission was amplified by counsel for the election petitioner by submitting that it had to be found out at what stage and in what manner privilege was to be claimed and in what circumstances the Court could look into the document to determine the validity of the claim to privilege raised under Section 123. The other contention on behalf of the election petitioner was that if a part of the document was made public by lawful custodian of the document the question was whether the document could still be regarded as an unpublished document. It was also said if there was a long document and if parts thereof were noxious and therefore privileged whether the innocuous part could still be brought on the record of the litigation."

Similarly, the judgment reported in Air 1982 Sc 149 [S.P.Gupta And Others Vs. Union Of India And Others], the Hon'ble Supreme Court has observed as follows:

"64. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and

not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies; so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government an attitude and habit of mind. But this important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government."

38.The Apex Court in the judgment reported in Air 1995 Sc 1236 [Secretary, Ministry Of Information And Broadcasting Vs. Cricket Association Of Bengal And Another] is held as follows:

"39.Aggrieved by the orders of the learned single Judge aforementioned, the Union of India and other governmental agencies filed a writ appeal (along with an application for stay) which came up for orders on November 12, 1993 before a Division Bench of the Calcutta High Court. It was submitted by the learned counsel for the Union of India that though the Doordarshan is very much keen to telecast the matches, the CAB has really created problems by entering into an agreement with TWI. He submitted that under Section 4 of the Telegraph Act, 1885, the Central Government has the exclusive privilege of establishing, maintaining and working telegraph and that the definition of the expression "telegraph" includes telecast. He submitted that neither CAB nor TWI have obtained any licence or permission as contemplated by the proviso to Section 4(1) of the Indian Telegraph Act and, therefore, TWI cannot telecast the matches from any place in Indian territory. After referring to the rival contentions of the parties and the correspondence that passed between them, the Division Bench observed that there were two dimensions to the problem arising before them, viz., (1) the right to telecast by Doordarshan within India and (2) right of TWI to telecast outside India for viewers outside India. Having regard to the urgency of the matter and without going into the merits of the rival contentions, and keeping in view the interest of millions of viewers, the Division Bench observed: "we record, as Doordarshan is inclined to telecast the matches for the Indian viewers on receipt of Rs.5 lakhs per match and to enjoy the exclusive right of signalling within the country being the host broadcaster, we direct the CAB to pay immediately a sum of Rs.5 lakhs per match for this purpose and the collection of revenue on account of sponsorship or otherwise in respect of 28 minutes which is available for commercial purpose be realised by the Doordarshan on condition that such amount shall be kept in a separate account and shall not be dealt with and dispose of the said amount until further orders" to be passed in the said writ appeal. The Doordarshan was accordingly directed to immediately start telecasting the matches. The Bench then took up the question whether TWI is entitled to telecast the matches from Indian territory. It noted that no formal order as required under the proviso to Section 4 (1) of the Telegraph Act has been granted in favour of either CAB or TWI. Purporting to take notice of the national and international impact of the issue, the Bench directed the 5th appellant before them viz., the Secretary, Ministry of Telecommunications, Government of India "to consider the facts and circumstances of the case clearly suggesting that there had already been and implied grant of permission, shall grant a provisional permission or licence without prejudice to the rights and contentions of the parties in this appeal and the writ application and subject to the condition that respondent no.6 (5th appellant in appeal) in the writ application will be at liberty to impose such reasonable terms and conditions consistent with the provision to Section 4 (1) of the Indian Telegraph Act having regard to the peculiar facts and circumstances of the case." The Secretary was directed to decide the said question within three days from the date of the said order after hearing all the parties before the Division Bench, if necessary."

From the above said judgments, it is clear that the right to get the information is a basic recognized right and the same is also a fundamental right.

39.The information is required in the public interest as well as in the interest of not only the

petitioners but the respondents 1 to 3 as well. Since the respondents 1 to 3 have in clear terms averred that the procedure adopted is just and fair and proper furnishing of the information sought for by the petitioners would go a long way in not only making them to understand about their position but also prevent them from approaching the legal forms seeking their redressal apart from enhancing the reputation of the respondents. It is a well established fact that system which is transparent will have lesser legal issues than the one which is closed. After all as held by the Hon'ble Supreme Court in various pronouncements referred above, transparency is one of the basic pillars of the democratic system. It also keeps the faith of the people in the working of the system. The Judgment relied upon by the learned senior counsel for the petitioners Shri.K.M.Vijayan reported in Air 2009 Calcutta 97 [University Of Calcutta And Others Vs. Pritam Roj] answers the substantial issues raised in the present writ petition. The Hon'ble Division Bench of the Calcutta High Court has considered the matter in extensio and held that an answer sheet would come under the definition of Section 2(f) of the Right to Information Act, 2005. The Hon'ble Division Bench was also pleased to held that in such a situation Section 8(1) of the Right to Information Act, 2005 cannot be pressed into service against those who seek the answer sheets which is an information coming under the purview of the Act.

40. In so far as the judgment relied upon by Shri.G.Masilamani, learned senior counsel for the respondents 1 and 3 is concerned, this Court is of the opinion that they are not applicable to the facts in issue. The question of applicability of the Right to Information Act, 2005 has never been put in issue in those judgments. It is well settled principle of law that a judgment is a binding precedent for what it decides. In the Judgment reported in (2009) 3 Ctc 97 [D.Sivakumar And Another Vs. The Government Of Tamil Nadu And Others] it has been held that until and unless an issue has been consciously considered and decided by the Court and a ratio has been laid in pursuant to the same, the judgment rendered by the Court cannot be held to be a binding precedent.

41. The Right to Information Act, 2005 has been introduced in order to bring out the transparency and accountability in a decision making process. The said Act will have to be interpreted liberally until and unless the same is prohibited in law as provided under Section 8(1) of the said Act, which is not the case here. As rightly contended by the learned senior counsel for the petitioners it cannot be said that even after the process of selection is over the Right to Information Act, 2005 cannot be pressed into service.

42. As observed earlier, the petitioners may not be entitled to get the documents required by them under the Right to Information Act, 2005 when it comes against the policy decision of the respondents in formulating the process of selection. However, the same cannot be construed to hold that in any given situation the documents sought for by the petitioners cannot be given notwithstanding the provisions of the Right to Information Act, 2005. As observed earlier while interpreting the enactments an attempt should be made to have a harmonious construction of both the enactments.

43. Therefore while disposing the writ petitions, this Court is of the opinion that certain directions will have to be given taking into consideration of the facts and circumstances of the case.

(i) The prayer sought for by the petitioners in so far as forbearing the respondents from proceeding with the selection process is hereby rejected. Hence, the respondents 1 to 3 are at liberty to proceed with the selection process.

(ii) The respondents 1 to 3 are hereby directed to furnish the information sought for by the petitioners within a period of six weeks from the date of publication of the results to be

announced in pursuant to the oral interview. The petitioners are at liberty to take appropriate action known to law after obtaining the information to be furnished by the respondents 1 and 3 if they are so advised.

44. Accordingly the writ petitions are disposed of with the above said observations. No costs. Consequently, connected miscellaneous petitions are closed.