

**CENTRAL INFORMATION COMMISSION**  
Block IV, 5<sup>th</sup> Floor, Old JNU Campus  
New Delhi 110067

**Appeal No.CIC/MA/A/2006/00793**

**(Right to Information Act – Section 19)**

**Name of the Appellant:**

1. Shri Shiv Shambhu & ors.
2. Shri Sanjeev Kumar & ors.

**Name of the Public Authority:**

Union Public Service Commission  
Dholpur House, New Delhi.

**Date of the Decision: 13.11.2006**

**Background & Facts:**

In Rajnish Choudhry Vs. UPSC, this Commission vide decision dated 1.9.2006 decided as under:

- (1) Total marks scored by the appellant in written papers as well as interview should be disclosed.
- (2) The procedure and the technique that are followed to determine the cut-off point (or level of score of marks) to draw the line between successful candidates and others should be disclosed for each category of aspirants.
- (3) Since the action relating to determination and application of cut-off point being an extremely critical factor in life and career of a person should fall under public domain, the information sought should be furnished since the matter is complete and over.
- (4) On the grievance that the Selection Committee was not properly composed, there is no provision in the RTI Act for redress of such grievance. However, in order to ensure that persons of high caliber and integrity are associated with the process of selection, the

composition of such Boards/Committees should be made public after the entire process of selection is over.

2. UPSC requested for recall of this decision and to decide the appeal de novo by the Full Commission after affording reasonable opportunity of being heard including oral hearing to UPSC. It was also submitted on behalf of the UPSC that the process of recruitment has significant bearing on life and liberty of citizens and that the issue involved in the present case is of prime importance and of public nature.

3. In pursuance of the request of the UPSC, the Commission decided to hear the matter by its full Bench.

4. In the meanwhile, some of the Civil Service aspirants who have appeared for the Civil Services preliminary examination, 2006, including one Shiv Shambhu and many other applicants applied to the UPSC seeking the following information:

- (a) Separate cut-off marks for General Studies and for every optional subject for different categories such as General, OBC, SC/ST and PH;
- (b) Details of marks obtained by each candidate;
- (c) Model answers for each series of every subject;
- (d) Reasons behind re-conducting of the examination on the subject of Public Administration.

5. Finding delay in the UPSC giving a decision on furnishing of the information sought, some of the petitioners, represented by Shri Shiv Shambhu & ors., approached this Commission on 23.8.2006 stating, inter-alia, that the CPIO of the UPSC was not releasing the requested information even though it was so promised earlier. The petition of the applicants was treated as a complaint and UPSC was asked to offer their comments in respect of the same vide letter dated 25.8.2006. CPIO of UPSC vide his letter dated 8<sup>th</sup> September, 2006 informed the applicants that the information sought by them forms part of the UPSC's

crucial secrets and Intellectual Property u/s 8(1)(d) of the RTI Act, 2005. UPSC also informed that the information requested by the applicants is in the nature of secret documents u/s 8(2) of the RTI Act and there being no public interest requiring its disclosure, it cannot be disclosed as the disclosure would harm the protected interest. UPSC also found that the disclosure of the information shall irreparably undermine the integrity, strength and efficacy of the competitive public examination system of paramount significance conducted by the UPSC. However, the CPIO of the UPSC enclosed a self-explanatory press-note in respect of the information sought conducting of the examination in the subject of Public Administration on 19.5.2006.

6. The applicants after receipt of the communication from CPIO submitted an appeal before the First Appellate Authority of the UPSC and also filed a complaint petition u/s 18(1) (b) of RTI Act before this Commission. Some of the candidates on the same matter submitted an appeal before this Commission directly.

7. In view of the fact that the matters both in the case of Rajnish Singh Chaudhary Vs. UPSC and in this case filed by Civil Service Aspirants were analogous in nature and concerning the same public authority, the Commission decided that both the cases be heard together by the Full Bench on 16.10.2006.

8. After hearing all the parties, the Commission decided that the case of Rajnish Singh Chaudhary Vs. UPSC in respect whereof the UPSC has requested for rehearing the matter, orders would be passed separately after the UPSC submits written arguments, if any, as regards the maintainability of review petition. Since there were simultaneous appeals and complaints on the same subject, the Commission preferred not to adjudicate the matter concerning the Civil Service Aspirants and directed the First Appellate Authority to first dispose of the appeal pending before it within one week and fixed 23.10.2006 as the next date of hearing. However, the First Appellate Authority of UPSC rejected the

appeal and upheld the decision of the CPIO vide its order dated 20.10.2006 (hereinafter referred to as the impugned order).

9. The Civil Services aspirants formally filed their Second Appeal against the impugned order before this Commission on 26.10.2006. In fact, two appeal petitions have been filed, one by Shiv Shambhu & ors and the other by Sanjeev Kumar & ors. Since they deal with the same matter, only one number was assigned to them and they are being dealt with jointly. In response to the appeal petition, UPSC filed their replies and the matter was heard by Full Bench on 3.11.2006.

UPSC was represented by:

1. S/Shri SK Mishra, Sr. Advocate
2. Biresh Kumar
3. A.K. Vishan Dass
4. V.P. Singh
5. V. Mitra

Appellants were present together with the following representatives:

1. S/Shri Prashant Bhushan, Sr. Advocate
2. Aman Lekhi, Sr. Advocate
3. Sudhir Kumar, Advocate
4. Rakesh Kumar, Advocate
5. Jaspreet, Advocate
6. Karmveer, Advocate

10. In their appeal petitions, the appellants have submitted as follows:

- (i) The impugned order is contradictory to the stand taken by the CPIO as the Appellate Authority has erroneously found that there is no cut-off marks fixed by the respondents whereas the CPIO had overtly withheld the information u/s 8(1) (d) and 8(2) of the RTI Act.
- (ii) The findings of the appellate authority are wholly perverse, misconceived and unfounded as the respondent cannot shortlist candidates without first fixing cut-off marks.

- (iii) The contention of the appellate authority that the disclosure of individual score of the candidates along with the keys of question papers would have wider implication to the extent of derailing the entire structure and process of Civil Services Examination is not correct and in support of their submissions, they have also quoted the report of the Kothari Committee.
- (iv) UPSC has been publishing the marks of each of the candidates in the main examination even before commencement of the interview and as such, there can be no reasonable basis for withholding of marks in respect of the preliminary examination. Other State Public Service Commissions are also furnishing similar information to the candidates.
- (v) The provisions of Section 8(1)(d) of RTI Act deal with information concerning commercial confidence, trade secret or Intellectual Property whereas the UPSC is not involved in commercial or trade activities and as such, there is no Intellectual Property involved therein. The information requested does not fall within the ambit of Official Secrets Act and as such, the provisions of section 8(2) of the RTI Act are not applicable.

11. UPSC on the other hand, in their rejoinders submitted separately in respect of the two appeal petitions, has submitted as under:

- (i) There are no pre-prescribed cut-off marks;
- (ii) UPSC with a view to avoiding a situation where most of the candidates could come from a few disciplines having low or higher scoring in optional papers had introduced and adopted the scaling methodology which has been developed after consulting renowned experts in the field and as such, it constitutes Intellectual Property of the UPSC as envisaged u/s 8(1)(d) of the Act.

- (iii) Even if the scaling procedure can be taken as "*information simpliciter*", still, it is protected from disclosure u/s 8(1) (d) as it may adversely affect the competitive position of third parties.
- (iv) Statistical aspects of the scaling method relate to the confidentiality and viability of the method and individual marks in each paper and the model answer key if revealed would ultimately lead to the revelation of the formula employed which would adversely affect the competitive position of the genuinely meritorious candidates.
- (v) Even before the examination was held, UPSC made it clear that the UPSC will not disclose either the individual marks or the cut-off marks to the candidates. In case the individual marks and cut-off marks are to be disclosed to the candidates, this will be such a colossal work for the Commission that it will be impossible to conduct all the examinations as per the examination schedule.

12. The Full Bench of the Commission heard the arguments advanced by learned counsels appearing on behalf of UPSC and the appellants. Opening the arguments on behalf of the UPSC, Sri Mishra submitted that there are no pre-determined cutoff marks for the Preliminary Examination. The candidates receive no grades for the marks that they obtain in this examination. The marks are finally assigned to the candidates in accordance with the Scaling methodology based on Kothari Committee Report. The UPSC has developed this methodology along with application software. Being a part of the intellectual property of the UPSC this methodology is protected` under section 8(1)(d) of the RTI Act, 2005 and the same cannot be disclosed under the RTI Act.

13. Mr. Mishra also contended that even if this be treated as *information simpliciter*, it is still protected under Section 8(1) (d) as besides constituting Intellectual Property of UPSC, it also constitutes *information simpliciter* as it adversely affects competitiveness of the Commission. The information sought will enable coaching centers to develop short-cut techniques, which will defeat

the purpose of the UPSC to select the brightest and fittest and meritorious candidates for the country's topmost services. Hence, in larger public interest it is not possible to share this information. Larger public interest requires that public services are manned by competent persons. It is the concern of the UPSC that such things are not tampered with by disclosing it to the public.

14. Mr. Mishra during the course of his arguments submitted that in case of preliminary examination, statistical methods are used. He explained that under the formula, which he himself does not know, UPSC gives more numbers to certain papers. In response to a query from Information Commissioners Prof Ansari and Mrs. Padma Balasubramanian, that no scientific formula could be taken as something that cannot be disclosed, Mr. Mishra submitted that after the application of the formula, certain marks are ascribed to each candidate. Once the candidates arrive at the same marks, rules then provide for short listing candidates numbering 12-13 times of total vacancies. At this stage Information Commissioner Sri AN Tiwari, asked that since the logic is being disclosed to us, what is then the harm in disclosing it to the public? The learned Counsel submitted that even the Chairman of the UPSC is not privy to this. The idea is to make it as confidential as possible.

15. In this context the learned Counsel referred to the provisions of Section 13 of the Copyright Act, where under copyright subsists throughout India in original literary works. He then referred to Sec.2 (4) of the Copyright Act, which gives an inclusive definition of "literary work", and accordingly a literary work includes computer programs, cables and compilation including computer data base. He submitted that this is exactly what this information is about which the respondents/petitioners are asking UPSC to share.

16. He further submitted that disclosure of data would harm competitiveness of those people who are genuinely meritorious candidates and who have much larger and comprehensive knowledge of the subject in question and as such their

competitiveness will be affected and they will come under disadvantage. The disclosure will enable the coaching centres to lay their hands on short-cuts , which will adversely affect those who are more meritorious.

17. Submitting his arguments on behalf of the appellants, the learned Counsel Shri Prashant Bhushan, Senior Advocate submitted his dissatisfaction that the system was admitted to have been kept unpredictable. He emphasized that disclosure of scaling system is absolutely essential in the public interest. Since the UPSC is not a commercial organization, it cannot claim Intellectual Property or Copyright. He also questioned as to how disclosure of scaling system would harm the competitive interest of a third party, particularly after the examinations are over.

18. Mr. Aman Lekhi, Senior Advocate appearing on behalf of some of the appellants, submitted that principle of maximum disclosure is the object of the Right to Information Act and that the public authorities are under an obligation to publish the way they function. It is more so in case of a public body providing direct services to the public. If the information is revealed, flaws can be pointed out, which can be acted upon to perhaps devise a better formula, as there is always scope to improve upon. He alleged that UPSC is making a virtue of nothing else but of unpredictability of methodology of examination. In this context, he cited the following observations of the Hon'ble Supreme Court in *Raj Narain vs State of U.P.* [1975 (3) SCR 360]:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.”

19. The learned counsel also submitted that section 8(1)(d) of the RTI Act is relevant only when the information relates to commercial confidence or a trade secret or when the disclosure would harm the competitive position of a third

party. Since UPSC is not a commercial organization, it cannot claim the protection under the said clause. On the other hand, the UPSC is obliged to disclose such information in public interest. He also submitted that the UPSC has denied the information to the appellants on the ground that the information is something that is “a crucial secret” but such a concept is unknown to Right to Information Act. At this stage, Chief Information Commissioner Wajahat Habibullah reminded the learned counsel that this particular aspect has not been pressed by the UPSC. The learned counsel also submitted that there is nothing of as much confidentiality as the UPSC is emphasizing. In this context, he cited the example of the UP Public Service Commission which has already put on their website both scaled marks and unscaled marks.

### **Decision Notice**

20. The Right to Information Act has been enacted with a view to securing access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. In its Preamble, it has been clearly set out that an informed citizenry and transparency of information is vital to the functioning of a democracy and to hold the Government and its instrumentalities accountable to the governance. Section 3 of the Act declares that all citizens shall have the right to information. This right is, however, subject to other provisions of the Act. Thus, it is very clear that every public authority must strive to secure access to the information to the citizens, should promote transparency and disclose rather than withhold information. The information that can be withheld could be only those which are likely to conflict with:

- (i) other public interest including efficient operation of the Governments; or
- (ii) optimum use of limited fiscal resources; or
- (iii) preservation of confidentiality of sensitive information.

21. The Act recognizes the paramountcy of the democratic ideal and seeks to harmonize the above conflicting interests by incorporating Sections 8 and 24 which explicitly provide as to what information can be withheld or which are the organizations which could remain outside the purview of the Act.

22. UPSC is not an organization that has been kept out of the reach of RTI and as such, if it wants to withhold some information from the reach of the citizens, it can do so only by taking recourse to provisions of the Act and not in any other manner. Thus, the impugned order refusing disclosure of information has to be in conformity with the provisions of the Right to Information Act, 2005.

23. In this context, it is also pertinent to refer to sub-section (5) of Section 19 of the Act which clearly lays down that the onus to prove that a denial of request for information was justified shall be on the Central Public Information Officer and not on the information seeker.

24. In the instant case, the appellants have asked for the following information:

- (i) Cut-off marks for each of the optional subjects and the General Studies for different categories like General/OBS/SC/ST/PH;
- (ii) Details of marks obtained by the concerned appellant in the Civil Services Preliminary Examination;
- (iv) Model answers for each series of every subject.

25. Insofar as the reasons for re-holding of the examination in the subject of Public Administration is concerned, CPIO has already furnished a self-explanatory note which was released to the Press. As this point was not pressed in the appeal petition, no decision in regard thereto is necessary.

26. In the impugned order as well as in the oral arguments, UPSC has been emphasizing the peculiar nature of the examination and the process of an even evaluation of performance of candidates. UPSC has further submitted that this process has been designed by the UPSC after years of expertise and

consultation with the subject experts and, therefore, this is a subject matter of Intellectual Property which the UPSC is not in a position to disclose. The other stand that the UPSC had taken is that disclosure of the information would seriously affect the competitive position of the 3<sup>rd</sup> parties, i.e., those who have been short-listed for the next stage of the examination or who would be preparing for the future examinations. The denial of information is, therefore, claimed to be justified u/s 8(1) (d) of the RTI Act.

27. The submissions of the UPSC as aforesaid mainly relate to the nature of examination, the process of evaluation which includes the process of evenly balancing scores in respect of various optional subjects, and the question papers and the answers for each of the optional subjects and the General Studies. UPSC has failed to explain as to how disclosure of individual marks to the candidates could be an Intellectual Property of the UPSC. UPSC has already conducted the examination. The question papers designed in consultation with subject experts and prepared by UPSC were circulated to the candidates in the Examination Hall, who have attempted answers. These answers have been evaluated and marks have been awarded. During the course of hearing, it was pointed out before us that for evenly balancing the performance of candidates in various optional subjects, UPSC applies the scaling formula and accordingly, the candidates are assigned the marks after applying the scaling formula. But we see no reason as to how the assigned marks after applying the formula, whatever it might be, could be a part of Intellectual Property of the UPSC. Similarly, cut-off marks in respect of each of the subject are also fixed in accordance with the said formula. Exemption is claimed by UPSC about the "process" which has been developed as an original literary work, but the same is not true in respect of marks assigned after the process of evaluation is applied. So, whatever claim of Intellectual Property there is in respect of the formula or the process, the same cannot be applied to the product, i.e. the marks assigned to each candidate and the cut-off marks fixed in respect of each of the optional subjects. Similarly, we see no reason to deny the disclosure as regards the cut-off marks, if any, fixed for the General Studies paper which is common to all

examinees and application of the scaling formula may not be at all there in this case.

28. The appellate authority while passing the impugned order has stated that the UPSC did not fix any subject-wise cut-off marks. It has also been mentioned in the impugned order that since there are no subject-wise pre-determined cut-off marks, the information requested is non-existent. On the other hand, CPIO while denying the request for information did not say that the information is non-existent or that there is no cut-off marks for each of the subject. If that is so, UPSC can provide marks obtained by the appellants in the General Studies paper and the marks assigned to them in their respective optional papers after applying the scaling formula.

29. The question that needs to be determined now is as to whether the question papers *per se* or the standard answers or the model answers can be categorized as Intellectual Property of the UPSC. During the course of arguments, it was clear that the Intellectual Property claimed is under the Copyright Act and what is prohibited under the Copyright Act is not disclosure but reproduction and circulation thereof.

30. In this context it is pertinent to refer to Section 13 of the Copyright Act which clearly lays down that subject to the provisions of the Act, the copyright shall subsist throughout India in all literary, dramatic, musical and artistic works which are original. Section 2 (o) gives an inclusive definition of "literary work" so as to include computer programs in addition to what is commonly understood as "literary work". Section 14 of the Copyright Act defines copyright in 'literary work' as an exclusive right to do or authorize the doing of any of the following acts: -

- (i) to re-produce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;

- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

In case of Computer program it also includes to sell or to give for commercial rental or offer for sale or for commercial rental any copy of the computer program.

31. Section 51 of the Copyright Act elaborates as to when Copyright in a work shall be deemed to have been infringed and it accordingly includes the following acts:

- (i) When any person does any thing, the exclusive right to do which, is by this Act conferred upon the owner of the Copyright;
- (ii) When any person makes, distributes or exhibits or imports any infringing copies of the work;

Thus, any reproduction, translation or adaptation or making copies or films are all acts of infringement to the Copyright.

32. It is a fact that UPSC consults the subject experts, designs the questions papers, and takes model answers in respect of each of such question papers. The question papers, which are prepared by subject experts for UPSC in a particular manner, are original literary works and as such copyright in respect thereto vests in the UPSC. Since this literary work has been done by the subject experts on behalf of the UPSC, it can legitimately claim copyrights thereof and can thereby restrict its circulation or can exclude others from circulating it.

33. Since copyrights are part of Intellectual Property right, which is covered under Section 8(1) (d) of the Right to Information Act, this Commission cannot

order its disclosure. Under Section 8 (1) of the RTI Act, the UPSC, therefore, has no obligation to disclose any such material unless it is satisfied that larger public interest warrants the disclosure of such information.

34. The Commission has carefully considered the aspects of public interest involved in the matter. It has also considered the submissions made by the UPSC and also by the appellants. There is no doubt that the issues involve paramount public interest of selecting the best available brains for manning the Civil Services. Equally important is the need to have a transparent system known to each of the aspirants. Contrary to what the UPSC has claimed, this is the only sure means of ensuring a level playing field. A public authority should not be as possessive of its copyright as an ordinary owner who wants to keep his property to his chest. Throwing the process open for public scrutiny might probably result in evolving a system better than what has hitherto been followed by the UPSC. In this context, it is pertinent to refer to the provisions of Section 9 of the RTI Act that reads as under:

“Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.”

Thus, a CPIO is empowered to reject a request for information where such a request for providing access to information would involve an infringement of copyright subsisting in a person. The power of the CPIO does not extend to rejecting such a request if the infringement of copyright involved is belonging to the State. Even Section 8(1) (d) also mandates the competent authority to order disclosure of information, if it is satisfied that larger public interest so warrants.

### **Orders**

In view of the reasons cited above, the Commission, therefore, directs as under:

- i) The UPSC shall, within two weeks from the date of this order, disclose the marks assigned to each of the applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Optional Papers; and
- ii) The UPSC, within two weeks from the date of this order, shall also disclose the cut-off marks fixed in respect of the General Studies paper and in respect of each of the Optional Papers and if no such cut-off marks are there, it shall disclose the subject-wise marks assigned to short-listed candidates; and
- iii) The UPSC shall examine and consider under Section 8(1) (d) of the RTI Act the disclosure of the scaling system as it involves larger public interest in providing a level playing field for all aspirants and shall place the matter before the Competent Authority within one month from the date of this order. This will also cover the issue of disclosure of model answers, which we recommend should in any case be made public from time to time. In doing so, it shall duly take into account the provisions of Section 9 of the RTI Act.

The appeal petitions stand disposed of accordingly.

The decision agreed to by the Full Bench is announced by the Chief Information Commissioner on this the 13<sup>th</sup> day of November 2006.

(Wajahat Habibullah)  
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(L.C. Singhi)  
Addl. Registrar

Copy to:

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjehan Road, New Delhi-110001.
2. Shri Biresk Kumar, Additional Secretary, Appellate Authority, Union Public Service Commission, Dholpur House, Shahjehan Road, New Delhi.
3. Shri M.P. Singh, JS, PIO, UPSC, Dholpur House, Shahjehan Road, New Delhi.
4. Shri Shiv Shambhu, 401, F/2, C/o Nepal Singh, Room No.301, Budh Vihar, New Delhi-67.
5. Sanjeev Kumar Shukla, 83, 3rd Floor, Bhai Parmanand Colony, Delhi-110009.