

“C.R”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

WP(C) NO. 24260 OF 2015

PETITIONERS:

- 1 THE APPELLATE AUTHORITY,
KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS JOINT SECRETARY,
(ADVICE LITIGATION),
PATTOM, THIRUVANANTHAPURAM.
- 2 THE STATE PUBLIC INFORMATION OFFICER
THE KERALA PUBLIC SERVICE COMMISSION,
DISTRICT OFFICER, KOZHIKODE.

BY ADV SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS:

- 1 THE STATE INFORMATION COMMISSION
KERALA, THIRUVANANTHAPURAM-695001,
REPRESENTED BY ITS SECRETARY.
- 2 A.K.BALAKRISHNAN NAIR
NELULI VILLA, EDAKKULAM P.O.,
QUILANDY-673 306.

BY ADVS.
SRI.M.AJAY, SC, STATE INFORMATION COMMISSION
SMT.K.J.GISHA
SRI.JAGAN ABRAHAM M.GEORGE
SRI.P.JAYABAL MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EASWARAN S., J.

“C.R”

W.P.(C). No. 24260 of 2015

Dated this the 17th day of July, 2024

JUDGMENT

The present writ petition is filed by the Kerala Public Service Commission challenging the order passed by the 1st respondent to disclose certain information which is sought by the 2nd respondent as evident from Ext.P1. By Ext.P1, the 2nd respondent applicant under the provisions of the Right to Information Act has sought for certain details which are as follows:

- “1. One copy of the question papers of all P.S.C. examinations conducted from 01.01.2013 to 30.06.2013.
2. The official answers to the questions
3. The name of the exams i.e., for what post etc.
4. The date of the examinations.”

2. By Ext. P2, the petitioner informed the applicant that the question papers of the previous examinations are not retained in the

District Office of the Public Service Commission. As far as the questions 2, 3 and 4 are concerned, it was mentioned that the answer keys of all examinations held by the PSC are published in the official website and therefore the same can be accessed from the website. Though, the 2nd respondent filed an appeal before the Appellate Authority by Ext. P3, the same was rejected. Aggrieved by the aforesaid rejection, the 2nd respondent approached the Appellate Authority under the Right to Information Act. By Ext.P5, the 1st respondent passed an order directing the petitioner to disclose the information as sought for under Ext.P1. Thus Ext.P5 is impugned by the petitioner.

3. A counter affidavit has been filed on behalf of the 2nd respondent in which it is contended that the stand taken by the PSC is not justified because the information which was sought for would definitely come within the purview of the provisions of the Right to Information Act and that the PSC, being a public authority would not have denied the same. It is further contended that the materials were

deliberately being suppressed and the question papers of PSC examination were being listed in the official website. Instead of publishing the details, the petitioner choose not to disclose the details by making an evasive stand that the question papers were not kept in the District office.

4. I have heard Sri.P.C. Sasidharan, learned counsel appearing for the petitioner, and Sri. M.Ajay, learned Standing Counsel appearing for the 1st respondent.

5. Sri.P.C. Sasidharan, learned counsel appearing for the petitioner would submit that the PSC was not obliged to disclose the information as contained in Ext.P1 because the question papers were destroyed by the PSC. According to the learned counsel, perusal of Ext.P1 would reveal that the information sought for was for the period from 01.01.2013 to 30.06.2013. The learned counsel relied on Rule 272 of the Office Manual of the Kerala Public Service Commission. He would further placed reliance on the Rules framed under Section 2 of the Kerala Destruction of Records Act, 1961. According to the

learned counsel, as per the schedule to the said Rules the question papers are not required to be kept in the office for more than a period of one month from the date of the examination. Therefore, learned counsel submitted that it is impossible for the petitioner to submit the information as required by the 2nd respondent. Reliance is also placed on the judgment of the Division Bench of this Court in **Kerala Public Service Commission vs. State Information Commission, Kerala** reported in **2011 (2) KHC 87**.

6. On the other hand, the learned Standing Counsel appearing for the 1st respondent would contend that the conduct of the constitutional authorities like the petitioner is far from satisfactory. Whenever such information is sought for by the applicants, neither the petitioner would be evasive in their answers nor they would take a stand that the question papers would have been destroyed. He further points out that the application for the information was given on 16.7.2013. Therefore, even applying the Rules which have been relied on by the counsel for the petitioner, the question papers for the period

from 16.6.2013 to 30.6.2013 ought to have been given by the petitioner to the informant. He would further place reliance on the judgment of the learned Single Judge of this Court in Writ Petition (Civil) No.38172 of 2010 decided on 17.10.2022. According to the Standing Counsel, the said judgment was affirmed by a Division Bench of this Court in Writ Appeal No. 924 of 2023 dated 08.06.2023. I have considered the rival submission raised across the bar.

7. This Court is called upon to decide the following two important questions:

i) Whether the information now directed to be furnished by the 1st respondent should be furnished by the petitioner at this point of time.

ii) Whether directions under Ext.P5 can be directed to be complied when the records are destroyed.

8. The answers to these questions may be slightly intertwined. Pertinently, the writ petition filed in the year 2015 is kept pending and the operation of Ext.P5 stayed. The result of the discussions below

will give answer to the question raised as to whether Ext.P5 requires compliance after 9 years.

9. According to the learned counsel, the PSC is not obliged to keep the question papers intact for ever. In order to appreciate the contentions of Sri.P.C.Sasidharan it would be apposite to extract Rule 272 of the Office Manual of the Kerala Public Service Commission.

“272. Question Papers shall be dispatched in specially made cloth-lined sealed covers to the Regional Offices/the District Offices of the Commission to arrange the distribution of them to the centres in the district concerned. In the case of centres in Thiruvananthapuram District, the distribution shall be arranged by the Controller of Examinations. The remaining question paper packets, shall be kept under the safe custody of the Controller of Examinations till the examination is over. After the conduct of examination the remaining question paper packets will be disposed of by the Joint CE under the supervision of Controller of Examination and they shall be disposed off as per rules.”

10. The State of Kerala has promulgated the Kerala Destruction of Records Act, 1961. Exercising the powers conferred under Section 2 of the Act 2 of 1962, Rules are framed by the State for destruction of the records with the Kerala Public Service Commission. Rule 3 of the

said Rules specifies that the records specified under Annexure-B attached to these Rules may be destroyed on the expiry of the period mentioned in column 3 thereof in the manner prescribed thereunder. Sl.No.31 to the Appendix-B relates to excess question papers. The same is extracted below for reference:

Sl.No. 31	Excess Question papers	1 month from the date of examination
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11. The question as to whether the petitioner is obliged to follow the directions of the 1st respondent is no longer res integra. The Division Bench of this Court in **Kerala Public Service Commission Vs State Information Commission, Kerala [2011 (2) KHC 87]** has already held so. Therefore, this Court has no hesitation to hold that the petitioner was obliged to adhere to the directions of the 1st respondent.

12. However, the issue before this Court is that, can the 1st respondent direct the petitioner to disclose the details of the question papers which have been destroyed. The decision on this issue is

necessitated since according to the 1st respondent, the petitioner always finds reason to deny the details of question papers whenever they are sought for.

13. As said above, a cumulative reading of the Office Manual prescribing the procedure for preservation of the records coupled with the Rules framed under the Kerala Destruction of Records Act, 1961, it certainly provides power to the PSC to destroy the records on the expiry of the period mentioned therein. Hence, this Court has to necessarily find the issue in favour of the petitioner. Therefore, once the PSC has destroyed the records on happening of the event specified in the Rule, it is not obliged to provide the information when sought for under the provisions of the Right to Information Act. Hence, it is declared that once the records are destroyed, the PSC cannot be compelled by the 1st respondent to disclose the information. To that extent, the order impugned in the writ petition requires interference.

14. Although this Court has found that the PSC is entitled to fall back on the Rules framed under Act 2 of 1962, the Court must

address the issue raised by the learned Standing Counsel for the 1st respondent. According to the 1st respondent, the PSC is always in the habit of destroying the documents even when the application under the Right to Information Act, 2005 is pending. Such action according to the 1st respondent has to be deprecated. The learned Standing Counsel, Sri.M.Ajay, further pointed out that the application for information was received on 16.7.2013. However, the petitioner has destroyed the documents during the pendency of the application. In support of his contention, the learned counsel placed reliance on the decision in **Kerala Public Service Commission, Thiruvananthapuram & Ors. Vs State Information Commission and Another**, report in 2022 (6) **KHC 687**.

15. On going through the aforesaid decision, this Court is in full agreement to the views expressed by the learned Single Judge in the aforementioned decision. It is to be noted that the said decision of the learned Single Judge in **State Information Commission (Supra)** was affirmed by the Division Bench in WA No.924 of 2023. It is to be

noted that the application for information was given to the petitioner on 16.7.2013. Therefore, the answer sheets from 16.6.2013 to 30.6.2013 could not have been destroyed by the petitioner. The facts of destruction of the records are brought to the notice of this Court only when a query was raised by this Court as to the prejudice caused to the petitioner if the direction of the 1st respondent is complied. Therefore, it becomes necessary for this Court to decide on the plea of the petitioner regarding the destruction of the records. However, although this Court has found that the petitioner has power to destroy the records, the destruction of at least few of the question papers if caused as asserted by the learned counsel for the petitioner was admittedly during the period when the application for information was either pending before the 1st respondent or before the petitioner. Hence, this Court must find that the destruction of the records when the application was pending is certainly improper and uncalled for.

16. Having found on facts of the case that the destruction of the records after the receipt of the application for information was

improper, the question is what relief the petitioner and the 2nd respondent is entitled. Admittedly, the 2nd respondent, seems to be not interested in pursuing the claim. Had he shown interest in the same, the writ petition would not have been kept pending from 2015 onwards. It will be a futile exercise if directions are issued to the petitioner to furnish the information as sought for under Ext.P5. Hence, certainly, Ext.P5 has to be interfered with. However, before parting with the case, the Court should certainly remind the constitutional functionary in showing scant respect to the orders of the 1st respondent. Though this Court has found favour with the contentions of the petitioner, it would be appropriate to remind them that in future not to take any steps in tune with the Rules framed under Act 2 of 1962 for destructions of the records when an application is received under the Right to Information Act, 2005. Doing so, would definitely defeat the solemn purpose for which the Right to Information Act, 2005 was enacted. If in such event it is brought to the notice of the 1st respondent that during the pendency of an

application for information, records were destroyed by the PSC, the 1st respondent will be free to take appropriate action for which no general direction is required.

In the result, the writ petition is allowed. Ext.P5 order is quashed subject to the exceptions as above. No order as to costs.

Sd/-

**EASWARAN S.
JUDGE**

sjb

APPENDIX OF WP(C) 24260/2015

PETITIONERS EXHIBITS

EXHIBIT P1 TRUE COPY OF THE REQUISITION DATED
16.7.2013.

EXHIBIT P2 TRUE COPY OF THE INFORMATION FURNISHED BY
THE 2ND RESPONDENT DATED 14.8.2013.

EXHIBIT P3 TRUE COPY OF THE ORDER DATED 3.10.2013.

EXHIBIT P4 TRUE COPY OF THE EXPLANATION DATED
18.6.2015.

EXHIBIT P5 TRUE COPY OF THE ORDER DATED 23.6.2015.

EXHIBIT P6 TRUE COPY OF THE ORDER OF THE DIVISION
BENCH IN W.A.NO.989/20125 DATED 21.6.2012.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE