

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

AND

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 25th OF NOVEMBER, 2022

MCC No.2260 of 2022

Between:-

**ADVOCATE UNION FOR DEMOCRACY AND SOCIAL
JUSTICE THROUGH ITS SECRETARY RAM GIRISH**

.....PETITIONER

***(BY SHRI VINAYAK PRASAD SHAH AND SHRI R.S.
THAKUR, ADVOCATES)***

AND

**HIGH COURT OF M.P., PRINCIPAL SEAT AT JABALPUR,
THROUGH: REGISTRAR GENERAL, M.P. HIGH COURT,
JABALPUR.**

.....RESPONDENTS

***(BY SHRI ADITYA ADHIKARI, SENIOR ADVOCATE WITH SHRI
EZAZ SIDDIQUI, ADVOCATE)***

*This petition coming on for order this day, Justice Sheel Nagu
passed the following:*

ORDER

By this petition, certificate of preferring appeal before Apex Court is sought by invoking provisions of Article 134A of the Constitution in respect of an order passed by this Court on 02.09.2022 dismissing WP No.13090/2022 by which relief was sought for making available all the answer sheets of main written examination conducted for appointment to the post of Civil Judge (Entry Level) and as well as at the District & Sessions Judge level.

2. Bare reading of Article 132 r/w Article 134A of the Constitution reveals that a certificate can be granted for cases where substantial question of law as to the interpretation of the Constitution is involved which is evident from bare reading of Article 134A which is reproduced below for ready reference and convenience:

“132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) xxx xxx

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation- For the purposes of this article, the expression “final order” includes an order deciding an

issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

134A. Certificate for appeal to the Supreme Court-
Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134-

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub clause (c) of clause (1) of Article 134, may be given in respect of that case.”

3. Learned counsel for petitioner seeking certificate submits that as per the Constitution, the sovereign power is ultimately vested in the citizen and therefore, every member of the citizenry ought to have access to all the answer sheets of all the candidates who have appeared in the said examination by making them available on the website of the examining body. It is contended that by doing so the object behind right to information which is part and parcel of the Fundamental Right under Article 19(1)(a) of the Constitution shall be served.

4. Bare perusal of the judgment dated 02.09.2022 in regard to which certificate is sought reveals that this Court while dismissing the petition

had relied upon Apex Court verdict in the case of *Central Board of Secondary Education and another vs. Aditya Bandopadhyay and others, (2011) 8 SCC 497*. Relevant paragraphs 45 & 67 of the said judgment are reproduced below for ready reference and convenience:

“45 One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an 9 WP-13090-2022 exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.

67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the nonproductive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national

development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.”

5. The Apex Court in the case of ***Aditya Bandopadhyay and others (supra)*** have impliedly held that the act of candidate to submit his answer sheet to the examining body for evaluation and declaration of result creates fiduciary relationship which stands breached in case any person except the candidate concerned and examining body has access to the contents of the answer sheet. The Apex Court also held that disclosure of all the answer sheets of all the candidates to any member of the general public will lead to impracticality as the examining body will be bogged down with thousands of applications/representations/queries/objections and litigation arising from such disclosure. The Apex Court thus held that right to information under the RTI Act should not be stretched to a limit where it enters the realm of absurdity.

6. In view of above, the issue herein stands settled by Apex Court and thus does not involve any substantial question of law as to the interpretation of Constitution.

7. Consequently, no case for issuance of certificate under Article 134A is made out and therefore this petition under Article 134A of the Constitution stands **dismissed** sans cost.

(SHEEL NAGU)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

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