

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 255/2018/SIC-I

Mr. Viki Prabhakar Pednekar,
S/o Prabhakar Pednekar,
Occupation Temporary Driver,
R/o Tropa, Sodiem, Siolim,
Bardez Goa.

.....Appellant

V/S

1. The Public Information officer,
The Head Master,
Shri Shanta Vidyalaya,
Sodiem, Siolim-Bardez Goa.

2. Deputy Director of Education ,
North Educational Zone,
Mapusa , Bardez- Goa.

..... Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 31/10/2018
Decided on:17/12/2018

ORDER

1. By this appeal the Appellant assails the order dated 12/10/2018, passed by the Deputy Director of Education, North Educational Zone, Mapusa Goa and First Appellate Authority (FAA), in first appeal No. NEZ/ADM/RTI/FAA/64/2018/4182, filed by the Appellant herein.
2. The facts in brief which arises in the present appeal are that the Appellant Shri Viki Pednekar vide his application dated 27/08/2018 has sought information on 2 points as set out in the said application under the Right To Information Act, 2005 from Respondent Public Information Officer (PIO) of Shri Shanta Vidyalaya, Sodiem-Siolim, Bardez, Goa.
3. It is contention of the appellant that his said application was not responded by Respondent No.1 PIO within stipulated period of 30 days, as such deeming the same as rejection, he preferred 1st appeal

on 28/9/2018 before the Respondent No. 2 Deputy Director of Education , North Zone at Mapusa being first appellate authority

4. The Respondent No. 2 First appellate authority by an order dated 12/10/2018 disposed his first appeal by coming to the conclusion that since entire process of interview being cancelled and being suitable intimation given to appellant, the question of furnishing information does not arise. No any further relief was granted to the appellant by the First appellate authority.
5. Being not satisfied with the order dated 12/10/2018 passed by Respondent No.2 First appellate authority and reasoning given by Respondent No.2 First appellate authority, the Appellant approached this Commission on 31/10/2018 on the ground raised in the memo of appeal.
6. In the present appeal appellant sought direction as against Respondents to furnish information as sought by him and for invoking penal provisions.
7. In pursuant to the notice of this Commission the appellant appeared in person. Respondent No. 1 PIO Shri Shashikant Naik was present. On behalf Respondent No. 2 first appellate authority Shri Dayanand Chawedekar appeared.
8. The reply was filed by the Respondent No. 1 PIO on 6/12/2018 alongwith enclosures. The Copy of the same was furnished to the appellant.
9. Written arguments were also filed by appellant on 12/12/2018 and by Respondent PIO on 17/12/2018.
10. It is contention of the appellant that First appellate authority ought to have directed PIO to provide information. It is his further contention that the Respondent No.1 PIO had denied him the requested information to cover up its wrong doing and illegal activity by way of abruptly addressing a general and vague letter to him . It was further

contended that the Respondent No, 1 PIO was involved into illegal practice and malpractice in selection procedure with preconceived notion for favouritism towards the particular candidates, to extract and fulfil personal benefits.

Vide written argument it was contended that the cancellation of interview is arbitrary as there were no complaint of leakage of question papers has been reported either to the Department nor to the Management and that no FIR has been lodged against the culprit.

It was further contended the School Management has been promoting the name of Mr. Jaidev Nilesh Shetye who failed in the first interview and the written test and hence the School Management took haphazard decision to cancel the interview process illegally.

It was further contended that by another RTI application dated 20/10/2018 he had sought for information and documents pertaining to second interview and skilled test conducted by selection committee on 15/10/2018 which was duly submitted by PIO and it was shocking and surprising that the same person related to Raghunath Fadte has been selected by the school Management . It was further contended that the question paper was leaked and no body scored marks above 14 except Jaidev who failed in the first interview

11. The Respondent No. 1 PIO by reply dated 6/12/2018 submitted that the interview was held on 25/8/2018 for the post of (C) group multitasking employees and minutes were prepared by the interview committee as per the R.R. It was further contended that when it was brought to the notice of chairman on 3/9/2018 that there is a possibility of leakage of photo copies of question papers of skilled test of the said interview as the question papers were drawn by one of the clerical staff who happened to be relative of selected candidates, the school informed the said fact to the Deputy Director

of Education, Mapusa Zone vide letter dated 11/9/2018 and a fresh permission was sought to conduct fresh interview by cancelling the earlier interview.

It was further contended that answer papers of candidates who had appeared for the above said interview on 25/8/2018 had become invalid on account of cancellation of the said interview and the appellant was accordingly informed vide letter dated 26/9/2018.

It was contended that they had responded the application of the appellant well within stipulated time on 26/9/2018 and the appellant was informed that the concerned documents of the said interview had becomes invalid.

Vide written arguments, the respondent PIO submitted that the contention of the appellant the cancellation of interview was arbitrary as there were no complaint of leakage of question paper is contrary to his own statesman made in his letter dated 27/8/2018 addressed to the headmaster and his representation dated 3/9/2018 made to the Chief Secretary/Chief Vigilance officer Government of Goa.

Vide written argument the respondent PIO contended that on the receipt of the letter dated 27/8/2018 from the appellant, the managing committee of the said school inquired the said matter with their staff and learnt that LDC of the said school has drawn the photocopies of the question papers through the pen drive given to him by Principal and his relative stood at rank number 1 of the merit list, considering the scope of leakage of question paper, the Chairmen of the Managing Committee and the other selection committee took the decision to cancel the said interview as on 25/8/2018 .

- 12 . In support of above contention the PIO placed on record the letter dated 27/8/2018 addressed to the Head Master of Shanta Vidyalaya, Sodiem, Siolim and the dated 3/9/2018 addressed to Chief Secretary by the appellant herein.

13. It was further contended by the PIO that they have got no objection to provide the information as sought by appellant at point no.2 of his application dated 27/8/2018 i.e. the certified copies of the list of candidates for interview for peon/Multitasking employees and accordingly the same was furnished to the appellant alongwith the reply dated 6/12/2018.
14. The appellant during the hearing on 12/12/2018 submitted that he is satisfied with the information provided to him at point no. 2 . However his grievance in respect of non furnishing the information at point no. 1 .
15. I have scrutinised the records available in the file and also consider submission of the parties.
16. The question which arises for my determination is whether the appellant is entitle for information sought by him at point No. 1?
17. On scrutiny of the application in terms of section 6(1) of the RTI Act, 2005 it is seen that the appellant has sought at point no. 1 the certified copies of answer papers of the candidates appeared for interview for peon/multitasking employees
18. The Uttarananchal Hon'ble High Court in writ petition No. 1623(M/S) of 2012- Uttarakhand Public service Commission Haridwar District, through its secretary V/s Tanvir Ahmad held that ;

“Thus it is quite clear that 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) of R.T.I. Act would operate as an 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. Therefore, the respondent has a right to seek inspection as well as disclosure of the answer-books.”

“In view of the findings of the Apex Court the petitioner cannot deny to supply the information to the examinee who wrote the answer books. I find no illegality in the impugned order. In the case at hand third party has not applied for the supply of information but the examinee has applied for the copies of answer books written by him”.

19. The Apex Court in the case of Central Board of Secondary Education V/s Aditya Bandopadhyaya in Civil Appeal No. 6454 of 2011 has also held at para 38;

“ in view of foregoing, the order of the High Court directing the examining bodies to permit examinees to have inspection of their answer books is affirmed, subject to the clarifications regarding scope of RTI Act and the safeguards and condition subject to which information should be furnished” .

20. In view of the ratio laid down by the above court only the examinee or the candidate is entitled to receive his/her answer paper but not of other candidates who have appeared and answered the examination.

21. This Commission also finds that this is not an fit case warranting levy of penalty on PIO as the PIO has placed on record the letter dated 26/9/2018 addressed to appellant interms of section 7(1) of the RTI Act, 2005 in support of their contention that they had responded well within stipulated time of 30 days.

22. In the above given circumstances, following order is passed:-

ORDER

a) Appeal is partly allowed.

b) The Respondent No. 1 PIO is hereby directed to give the inspection to appellant herein of his original answer paper and to provide the certified copy of his answer paper of the interview of

Peon /Multitasking employee held on 25/8/2018 pertaining to the appellant Shri Viki Prabhakar Pednekar, free of cost, within 15 days from the receipt of this order.

With the above directions Proceedings stands closed. Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa