

# GOA STATE INFORMATION COMMISSION AT PANAJI

**CORAM:** Shri M. S. Keny, State Chief Information Commissioner

**Appeal No. 128/SCIC/2010**

Mr. Edwin Rodrigues,  
Curca-Canturim,  
P.O. Goa Velha,  
Tiswadi – Goa

..... Appellant.

V/s.

1) Public Information Officer,  
Dy. Secretary,  
Goa Public Service Commission,  
Panaji – Goa

..... Respondent No. 1.

2) First Appellate Authority,  
Goa Public Service Commission,  
Panaji - Goa.

..... Respondent No. 2.

Appellant alongwith his representative Shri Rui Ferreira.  
Adv. Shri H. D. Naik for Respondent No. 1.

## **J U D G M E N T** **(18-10-2010)**

1. Appellant, Edwin Rodrigues, had filed the present appeal praying that the Public Information Officer/Respondent No. 1 be directed to furnish the information sought by the Appellant vide his letter dated 18.06.2009 at Sr. No. 4 at the earliest free of cost; and to impose maximum cost/fine on the Public Information Officer for non-furnishing of information sought at Sr. No. 1 and 2 within 30 days from the filing of his R.T.I. Application i.e. prescribed time limit as contemplated under the Act.
2. The facts leading to the present Appeal are as under:  
That the Appellant, vide his application dated 18.06.2009, sought certain information under Right to Information Act, 2005 ('R.T.I.' Act for short) from the Respondent No. 1. That the Respondent No. 1 replied to the said Application and therein at Sr. No. 1 and 2 and 4 of said reply, gave false,

...2/-

vague and evasive answers and hence the same is and has to be treated as non-furnishing/supply of required information sought. Being not satisfied by the non-receipt of information from the Respondent No. 1 at Sr. No. 1, 2 and 4 within the specified period of 30 days i.e. the period from 18.06.2009 to 18.07.2009, the Appellant preferred the First Appeal on 28.07.2009 before the Respondent No. 2, however, the same was dismissed arbitrarily. That the Appellant thereafter preferred Second Appeal before this Commission and by Judgment and Order dated 31.12.2009 has directed the First Appellate Authority to decide the Appeal on merits. That thereafter the Appeal was heard and on 23.02.2010 the Appellant received the information at Sr. No. 1 and 2 by post. That the First Appellate Authority disposed off the Appellant's Appeal on 26.02.2010 directing the Public Information Officer to furnish the information at Sr. No. 1 and 2 but declined to grant the information sought at Sr. No. 4 of Appellant's R.T.I. Application. Being aggrieved the Appellant has preferred this Appeal on various grounds as mentioned in the memo of Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No. 1 is on record. It is the case of the Respondent No. 1 that Goa Public Service Commission has its own website i.e. <http://goapsc.gov.in>. That Goa Public Service Commission normally puts up the details of the marks obtained by the candidates for written examination so also the list of candidates who have been selected and recommended to the Government along with marks on the Commission's website. That by letter dated 09.07.2009 the Respondent No. 1 informed the Appellant that information pertaining to point No. 1 and 2 could be obtained from the website of the Goa Public Service Commission; regarding Sr. No. 3 information was furnished and as regards point No. 4 (Sr. No. 4) the Appellant was informed that information sought was of topmost

confidential nature and the same therefore could not be furnished. That this letter was sent within 30 days. Respondent No. 1 refers to appeal and order passed and that pursuant to the order information at Sr. No. 1 and 2 has been furnished. It is the case of the Respondent No. 1 that the grievance of the Appellant in the present Appeal is in respect of non-furnishing of information at Sr. No. 4. That the information has been rightly denied to the Appellant as the disclosure of the same would be against larger public interest. That the information is otherwise confidential in nature and also is exempted u/sec. 8(1) (e) of the R.T.I. Act. According to the Respondent No. 1 Appeal is liable to be dismissed.

4. Head the arguments. Shri Rui Ferreira argued on behalf of the Appellant and Adv. Shri H. D. Naik argued on behalf of Respondent No. 1. Both sides advanced elaborate arguments.

Shri Ferreira referred to the facts of the case in detail. According to him information regarding 1 and 2 is not furnished and that website was not available on that day. He next submitted that website is misleading. He next referred to Sr. No. 4 and reply of Public Information Officer then reply before First Appellate Authority and also reply before the Commission. According to him the Respondent No. 1 wants to hide under the said clause. He also referred to section 8(1) (j) as well as 8(1) (e). According to him Commission is disrespected. That the reply does not have affidavit and as such reply should be discarded. He referred to section 19(5). He also referred to the rulings Xerox copies of which are on record.

He lastly submitted that information at Sr. No. 4 be given free of cost because of denial of information.

5. Advocate for Respondent No. 1 also referred to the facts of the case and submitted that information in respect of Sr. No. 4 cannot be given.

According to him names of experts cannot be given. He relied on two Judgments Xerox copies of which are on record. He referred to the order of First Appellate Authority para 5. He also referred to section 19(3). He submitted that if names are disclosed there would be no secrecy. According to him appeal is liable to be dismissed.

6. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant, vide his application dated 18.06.2009, sought certain information from the Respondent No. 1. The information consisted of four items, i.e. Sr. No. 1 to 4. I need not refer to the First Appeal, Second Appeal, etc as mentioned in the records. As on now the information at Sr. No. 1, 2 and 3 has been furnished. The information at Sr. No. 4 has not been furnished. Public Information Officer by letter dated 09.07.2009 had informed that "the information called is topmost confidential and the same cannot be furnished".

The First Appellate Authority vide order dated 26.02.2010 observed as under: "As regards panel of experts the Appellant has sought information as regards the name, address, qualification and designation of panel of experts who has conducted oral interviews. In this regard I agree with the say of Respondents that it is personal information of the persons called to assist the Commission in selection of suitable candidates for the posts. Moreover in the present case no larger public interest is involved in disclosure of this information to the Appellant. Therefore Respondent was justified in not providing the information to the appellant treating as confidential".

7. The grievance of the Appellant is that the information sought at Sr. No. 4 does not come under the purview of section 8(i) of the R.T.I. Act and that the same ought to have been furnished. I have also perused the rulings relied by the Appellant and the copies of which are on record.

The Sr. No. 4 is as under:

“4. The name, address, qualification and designation if any of the panel of experts who had conducted the oral interview, except Chairman G.P.S.C.”

It is to be noted here that multiple types of examination are conducted at different levels like those in Schools, Professional Colleges, Departments, Public Service Commissions, etc. where purpose varies from admission to selection or promotion in services. Large number of applications has been filed under the R.T.I. Act. Exemption has been claimed under:

Section 8(1) (e) Fiduciary relationship with the examiner.

Section 8(1) (j) Personal information of examiner.

These matters have come before Central Information Commission and various State Information Commissions. The reasons given by different authorities, some of them are as under:

(i) If the identity of the examiners is disclosed, then all such examiners would hesitate to take up an assignment of this kind. It may cause harm to the examiners.

(ii) That there has to be some confidentiality in the whole process. If the identity of the examiners becomes known, serious consequences will follow. In this connection some cases were cited where examiners were threatened.

In Ms. Threesa Irish v/s. Kerala Postal Circle in ICIB/A-2/COC/2006 it has been observed that when the answer papers are evaluated, the authority conducting the examination and the examiners evaluating the answer sheets stand in a fiduciary relationship between each other. Such a relationship warrants maintenance of confidentiality by both of the manner and method of evaluation. This decision was cited with approval in other cases.

The fiduciary relationship between the examiners and the authority conducting the examination is personal and it can extend only in so far as the disclosure of the identity of the examiner is concerned.

8. I have perused some of the rulings of the Central Information Commission on the point.

(i) Shri G. N. Kumar v/s. West Central Railway, Jabalpur (No. CIC/VK/A/2006/00413-416 dated 16.11.2006). In this case there were four identical Appeals. The appellant had sought for authenticated copies of the proceedings of Selection Committee for the post of Passenger Drivers in the pay scale of Rs. 5500-9000 during 2004-2005 result of which was published on 17<sup>th</sup> February 2005. Public Information Officer declined information under section 8(1) (j) of the R.T.I. Act. The First Appellate Authority upheld the decision. The Appellant preferred Second Appeal.

It was observed that since the selection process was already over, there was no element of confidentiality. However, the names of the persons who were there in the selective Committee may not be disclosed. The Public Information Officer was told to apply the doctrine of severability as provided in section 10(2) of the R.T.I. Act and supply the remaining information to the Appellant.

(ii) In G. Gurunadham v/s. BSNL, Hyderabad (CIC/AD/A/09/00162 dated 26.03.2009) it was observed as under:

**".... In regard to public examinations conducted by institutions established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made thereunder like CBSE, Staff Selection commission, Universities, etc,** the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets or where the disclosure of evaluated answer sheets would result in rendering the system unworkable in practice and on the basis of rationale followed by the Supreme Court in the above two cases, we would like to put at rest the matter of disclosure of answer sheets. We therefore decide that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.

Insofar as examinations conducted by other public authorities, the main function of which is not of conducting examinations, but only for filling up of posts either by promotion or by recruitment, be it limited or public, the rationale of the judgments of the Supreme Court may not be applicable in their totality, as in arriving at their conclusions, the above judgments took into consideration various facts like the large number of candidates, the method and criteria of selection of examiners, existence of a fool-proof system with proper checks and balances etc. Therefore, in respect of these examinations, the disclosure of the answer sheets shall be the general rule but each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice. If that be so, the disclosure of the

evaluated answer sheets could be denied but not otherwise. However, while doing so the concerned authority should ensure that the name and identity of the examiner, supervisor or any other person associated with the process of examination is in no way disclosed so as to endanger the life or physical safety of such person.”

(iii) In Anilkumar Gupta v/s. PGIMR Chandigarh (CIC/AD/A/2009/001005 decided on 02.09.2009) it was observed that disclosure of information pertaining to the examiner is exempt. It was observed as under:-

“While deciding the issue at hand, it is the considered opinion of the Commission that **the examiners, examining staff, the paper setter, Contributors to question papers, officials at the Examination cell etc. can all be considered as members of a group working towards a common objective of evaluating the merit of a candidate and, therefore, can be placed on the same pedestal qua the Examining Authority. All of these officials enjoy fiduciary relation with the Examining Authority (the Institute in this case), just like the examiner does.** The Commission has been quite specific while discussing the aspect of fiduciary relation in the Full Bench decision of the CIC and a catena of other judgments pronounced by the Commission, and also while clarifying the position with respect to the disclosure of information pertaining to the examiner while disclosing the answer sheets of the examinees. The Commission in a number of cases has held that the fiduciary relationship does exist between the examiner and the authority conducting the examination and therefore, the **disclosure of the information pertaining to the examiner is exempt** under Section 8(1) (e) of the RTI Act 2005. In Ms. Treesa Irish Vs. Kerala Postal Circle case (ICPB/A-2/COC/2006), it has been observed



that when the answer papers are evaluated, the authority conducting the examination and the examiners evaluating the answer sheets stand in a fiduciary relationship between each other. Such a relationship warrants maintenance of confidentiality by both of the manner and method of evaluation. That is the reason why while mark sheets are made available as a matter of course and copies of the evaluated answer papers are not made available to the candidates. The aforesaid decision was cited with approval in another case decided by Mrs. Padma Balasubramanian in Shri J. Shahabudeen Vs. Director of Postal Services (ICPB/22/2006).

In this case, the Respondent has taken the plea that disclosure of the identity of the officials who contributed the questions is exempt under Section 8(1) (e) of the RTI Act 2005. In fact, disclosure of identity in these cases may even endanger the life and physical safety of the contributor/examiner who is in possession of such confidential information. In this context, it is also relevant to mention the observation of the State Information Commission, West Bengal in Shri Utsab Dutta Vs. SPIO, University of Calcutta-

“.... the Commission feels that the words ‘information’, the disclosure of which would endanger the life or physical safety of any person...’ is relevant, though such a possibility of identifying the examiners and scrutinizers by seeing the signature of handwriting on a mere inspection of the answer script is very remote. The Commission further feels that though such possibility is remote, when the University takes care not to disclose the identity of the examinees, it can very well evolve and apply similar or more full proof method of not disclosing the identity of the examiners and scrutinizers.”

“Thus, in the case before us, the Commission reaffirms its considered view that the examiner, contributor of questions etc, are all in a fiduciary relationship with the authority conducting the examination and that the obligations are mutual. **The relationship does not end once the question paper/s are set.** The concerned authority has to take care that by disclosing identity of the contributor of questions, there is no possibility of an eventual harm to this person. Thus, even if question papers and/or answer sheets related to an examinee may be disclosed, the authority conducting the examination is obliged to ensure that the name and identity of the contributor of questions and/or examiner are not disclosed,.....”

The above observations hold good in the case before me as it is panel of experts.

From all the above it is clear that the information sought at Sr. No. 4 cannot be permitted to be furnished.

I have perused the rulings relied by Appellant. However, the same are in a different context. The above mentioned rulings are exactly on the point. It is to be noted here that apart from the above there are others also which state so.

In view of the above this request of the Appellant cannot be granted.

9. It was contended by representative of Appellant that in another case this information is furnished. I have gone through the relevant papers. What is furnished is Minutes of D.P.C. meeting for promotion to the post of Teachers Grade-I, etc. It is not regarding names of Examiners. Even otherwise D.P.C. Minutes can be furnished.

10. Another aspect is regarding delay. According to the Appellant there is long delay. According to the Advocate for the Respondent No. 1 there is no delay as such considering the reply dated 09.07.2009. To my mind this needs to be considered properly at the proper stage, regarding website, whether information was available at the relevant time, etc. In any case Public Information Officer should be given an opportunity to explain and/or show properly in the factual matrix of this case.
11. In view of the above, prayer (a) cannot be granted. Regarding prayer (b) Respondent No. 1 – Public Information Officer is to be heard on the same. Hence, I pass the following Order:

**ORDER**

The Appeal is partly allowed. Prayer (a) is not granted.

Regarding prayer (b) issue notice under section 20(1) of the R.T.I. Act to the Public Information officer/Respondent No. 1 why penalty action should not be taken against him for causing delay in furnishing information. The explanation, if any, should reach the Commission on or before 09.11.2010. Public Information Officer/Respondent No. 1 shall appear for hearing.

Further enquiry is posted on 09.11.2010 at 10:30a.m.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 18<sup>th</sup> day of October, 2010.

Sd/-  
(M.S. Keny)  
State Chief Information Commissioner



