

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No. 169/SCIC/2010

Mr. Sudan R. Sawal Desai,
H. No. 7/33-B,
Salmona, Saligao,
Bardez – Goa

..... Appellant.

V/s.

1) First Appellate Authority,
Shri Sunil Masurkar,
Secretary,
Goa Public Service Commission,
Panaji – Goa

.... Respondent No. 1.

2) Public Information Officer,
Goa Public Service Commission,
EDC House, Panaji – Goa

..... Respondent No. 2.

Appellant in person.

Adv. H. D. Naik for Respondent No. 1.

J U D G M E N T
(12-11-2010)

1. The Appellant, Shri Sudan R. Sawal Desai, has filed the present Appeal praying for directions to the Respondent No.2 to provide total information as sought by him in his letter dated 27.07.2010 and for imposing penalty under section 20(1) and (2) of the Right to Information Act.

2. The brief facts leading to the present Appeal are as under:

That the Appellant sought certain information under Right to Information Act, 2005 ('RTI Act' for short). That no information was furnished by the Public Information Officer/Respondent No. 2. The reply given was that information under point No. 1 cannot be furnished as the same would impede the process of recruitment and information under point No. 2 and 3 is not available in the record. It is the case of the Appellant that the main principle of RTI Act is to promote transparency and accountability in the working of every Public

....2/-

Authority and that the acts of the Respondents shows that they do not work transparently and that there is a doubt in selection process. The Appellant also apprehends the possibility of corrupt practice in selection process. Being not satisfied the Appellant preferred the First Appeal. By Order dated 2nd July, 2010 the Appeal was dismissed. Being aggrieved the Appellant has preferred the present Appeal.

3. Notice was duly served on Respondent No. 1 and 2. However, they remained absent. Advocate H. D. Naik remained present on behalf of Respondent No. 2/Public Information Officer. The Respondents did not file any reply as such however, Adv. H. D. Naik advanced arguments.
4. Heard the arguments. The Appellant argued in person and Adv. H. D. Naik argued on behalf of Respondent No. 2/Public Information Officer.

The Appellant referred to the facts of the case in detail. According to him he sought information by application dated 27.04.2010. That it was not explained in what way it would impede the process of selection. According to him there is no bar to provide the information during recruitment process in progress. According to him the transactions of Goa Public Service Commission ought to be transparent. The Appellant filed written arguments which are on record. He also filed additional written arguments which are also on record.

Adv. Shri Naik referred to the facts of the case. According to him there are no fixed marks as such. He next submitted that information sought could not be granted except 1 and 2. He also relied on Dr. Celsa Pinto v/s. Goa State Information Commission and Anr. 2008 (4) ALL MR 586.

5. In reply the Appellant submitted that not a single information was provided and that heavy penalty be imposed.

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 sought certain information vide his application dated 27.04.2008. By reply dated 30.04.2010 the Respondent No. 1/Public Information Officer informed that item 1 cannot be furnished as the information would impede the process of recruitment. It was also informed that as regards point No. 2 and 3 the information is not available in the records. It is seen that Appellant preferred the Appeal. However the same was dismissed. It is pertinent to note the observation of the First Appellate Authority. "Furthermore the screening test as well as oral interview was still to be held as on the date when the information/reply was furnished by Public Information Officer to the Appellant."

It appears that process is complete. In any case information as regards point No. 1 and 2 can be given and Public Information Officer should furnish the said information.

7. Coming to the point No. 3 i.e. Names of dignitaries/persons on Selection Board for written and oral examinations.

The grievance of the Appellant is that the information sought at Sr. No. 3/Item No. 3 does not come under the purview of section 8 of the R.T.I. Act and that the same can be furnished. I have perused the written arguments of the Appellant.

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 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. 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 17th 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 relates to names of dignitaries/persons in Selection Board for written and oral examinations.

From all the above it is clear that the information sought at Sr. No./Item No. 3 cannot be permitted to be furnished.

8. It was contended by the Appellant in another case this information is furnished. I have seen the documents produced by the Appellant and which are on record. This Commission has no objection if Public Information Officer furnishes such information. However, Commission has to go as per the mandate of R.T.I. Act.
9. Another aspect is regarding delay. Appellant vehemently contends that there is delay. Application is dated 27.04.2010 and reply of the Public Information Officer is dated 30.04.2010 and the same is in time. According to the Appellant reply given is false, however the same stands scrutiny of law.

Appellant next contended that First Appellate Authority is liable for fine and he even relied on section 20. It is seen that First Appellate Authority has to dispose the appeal within thirty days or forty five days with reasons. In the instant case Appeal was filed on 27.05.2010 and Order is dated 02.07.2010. If thirty days are considered there is 3/4 days delay and if forty five days are considered there is no delay. Even otherwise First Appellate Authority is not covered by the penal provisions.

10. In view of all the above, I pass the following Order:

ORDER

The Appeal is partly allowed. The Public Information Officer/Respondent No. 2 is directed to furnish the information to the Appellant in respect of point/item/Sr. No. 1 and 2 of his application dated 27.04.2010 within ten days from the receipt of this Order and report compliance.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 12th day of November, 2010.

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

