

GOA STATE INFORMATION COMMISSION
AT PANAJI

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

Complaint No. 534/SCIC/2010

Dr. Kalpana V. Kamat,
C/o. Gajanan V. Kamat,
F-4, 1st Floor, Caldeira Arcade,
Bhute Bhat, Mestawado,
Vasco-da-Gama, Goa

...

Complainant

V/s

Mrs. Seema Malkarnekar,
Public Information Officer,
Goa Public Service Commission,
EDC House, Block 'C', 1st Floor,
Dada Vaidya Road,
Panaji – Goa

...

Opponent.

Complainant alongwith her representative Shri Jowett D'souza.
Opponent absent.
Adv. Shri P. Dangui for the Opponent.

O R D E R
(15/12/2010)

1. The Complainant, Dr. Kalpana V. Kamat, has filed the present complaint praying that inquiry be made with respect to reply of respondent dated 15.09.2010 and for directing Respondent to furnish complete information to the petitioner as per letter dated 10.08.2010.

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

That the Complainant applied for the post of Teacher Grade-I (Biology) ADEI under Directorate of Education. The Selection to the post of Teacher Grade-I (Biology) is conducted through Goa Public Service Commission exams. That on completion of oral interview of shortlisted candidates held on 8th June and 9th June 2009, four candidates were selected. It is the case of the Complainant that on 10.08.2010 the Complainant sought certain information under Right to Information Act, 2005 ('R.T.I.' Act for short) from the Opponent. That the Complainant received incomplete information from the Opponent on 15.09.2010 which provides only written examination papers based on Subjective and General knowledge in respect

...2/-

of Complainant alone. That other information was not furnished. Being aggrieved, the Complainant has filed the present Complaint.

3. The Opponent resists the Complaint and their say is on record. It is the case of the Opponent that the Complaint filed by the Complainant is not maintainable in law. That the Complainant ought to have filed the First Appeal before the First Appellate Authority as provided under section 19 of the R.T.I. Act and, therefore, the present Complaint may not be entertained. That the present Complaint has been filed only to harass the Opponent. It is the case of the Opponent that Complainant was furnished part of the information and was also informed that the other could not be provided as the same was exempted under section 8(1) (e) of R. T. I. Act. That certificates of other candidates as sought are in fact personal information and disclosure of which has no relationship to any public activity or interest and no public interest would be served in disclosing this information. It is further the case of the Opponent that furnishing copies of evaluated answer papers would compromise the fairness and impartiality of the selection process. In short it is the case of the Opponent that Opponent was justified in not issuing the information sought by the Complainant, and, therefore, the Complaint is liable to be dismissed.

4. Heard the arguments. Shri Jowett D'Souza, representative of the Complainant argued on behalf of the Complainant and Adv. H. D. Naik argued on behalf of the Opponent.

Representative of the Complainant referred to the facts of the case in detail and submitted that the information asked can very well be given. According to him part of the information is furnished and the other part could be given. He relied on a judgment of Delhi High Court. He also referred to the rejoinder which is on record.

Advocate for the Opponent submitted that Complaint is not maintainable. According to him reply was furnished on 15.09.2010 and that no Appeal is filed. He referred to section 19. He next submitted that answer papers cannot be given. According to him Complaint may not be entertained.

5. 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 Complainant, vide her application dated 10.08.2010 sought certain information from the Public Information Officer/Opponent. The information consists of copy of entire screening written examination papers of three candidates, mark sheet copies and copies of teaching experience certificates. By reply dated 15.09.2010 the Public Information Officer furnished written examination papers of the Complainant and in respect of other two candidates the request was rejected under section 8(1)(e) of the R.T.I. Act. Regarding mark sheet copies and teaching experience the request was rejected on the ground that it was personal information and disclosure of which has no relationship to any public activity or interest and no public interest would serve in disclosing this information.

The grievance of the Complainant is that such an information ought not to have been rejected as the same can very well be given under the R.T.I. Act.

6. It is to be noted here that right to know is a basic right of citizens of a free country. Long back Aristotle observed that people desire to know. Without adequate information a person cannot form an informed opinion. The Right to Information Act 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public

authority. The citizens and information seekers have, subject to few exemptions, an overriding right to be given information on matters in possession of State and Public Agencies that are covered by the Act.

7. It is pertinent to note that integrity of examination system should not be compromised. Conduct of examination for identifying and shortlisting of candidates in terms of competence, attitude, skills, etc. is a highly confidential activity and, therefore, answer sheets are normally not disclosed. Multiple type of examinations 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. Many applications under R.T.I. Act have been filed and exemption has been claimed either under section 8(1) (e) - Fiduciary relationship with the examiner and section 8(1) (j) - Personal information of examiner. These matters have come before Central Information Commission and various State Information Commissions.

(i) 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.

(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.”

I have also perused the rulings relied by the Advocate for the Opponent, i.e. (i) Shri J. Shahbudeen *v/s.* Director of Postal Services Kerala Circle; (ii) Shri George Paul *v/s.* Bharat Sanchar Nigam Ltd and Ms. Treesa Irish *v/s.* Kerala Postal Circle, Trivandrum. The sum and substance of these rulings is that evaluated answer sheets need not be disclosed and that furnishing copies of the evaluated answer papers would be against public interest and would compromise the fairness and impartiality of the selection process.

8. I have also perused some other rulings. (i) Maharashtra State Board of Secondary and Higher Secondary Education and anr. *v/s.* Paritosh Bhupesh Kumarseth, etc. AIR 1984 SC 1543. It was observed that finality ought to be attached to the results of public examinations, that an examinee has no right to inspect his answer script and that principles of natural justice have no applications in such cases. (ii) Secretary W.B. Council of Higher Secondary Education *v/s.* Ayan Das (2007) 8 SCC 242 and (iii) University of Calcutta & Others *v/s.* Pritom Rooj (Calcutta High Court). Central Information Commission in a catena of judgments/orders have held that a citizen cannot seek disclosure of the evaluated answer sheets under R.T.I. Act, 2005.

Be that as it may, however, in my view the Commission has to adopt a beneficial approach in tune with the interests of the information seekers whereby allowing R.T.I. Act to have its full play thereby allowing the Complainant to see the answer sheets so that any doubt or suspicion is cleared or wiped out and faith in the system is restored. However, this Commission feels that a fine balance has to be struck between the imperatives of confidentiality of information with the right of the citizen to get information. In the instant case no balance will be affected if papers of other candidates are shown to the Complainant.

I have also perused the rulings of the Hon'ble High Court of Delhi relied by the Complainant as well as Arunachal Pradesh Public Service Commission *v/s.*

Arunachal Pradesh Information Commission and Another 2010 (2) id 582 (Gauhati H.C.).

9. Point No. 2 is regarding copies of mark sheet of other two candidates and point No. 3 is about their teaching experience certificates. This was rejected on the ground of personal information and disclosure of which has no relationship to any public activity or interest and no public interest would serve in disclosing this information. Apparently the same was rejected under section 8(1) (j).

Section 8 is as under:-

8. Exemption from disclosure of information: Notwithstanding anything contained in this Act there shall be no obligation to give any citizen –

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless Central Public Information officer or the Appellate Authority as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

From the above provision it is evident that the exemption is attracted under two circumstances. Firstly if the information is personal in nature and has no relationship to any public activity or interest. Secondly furnishing the same would cause unwarranted invasion of privacy of an individual. Again the same is subject to the opinion of State Public Information Officer or Appellate Authority that the larger public interest justifies the disclosure.

In the instant case the information sought is in respect of selection conducted by Public Authority to fill a public post. Once certain documents are produced before the Public Authority in connection with this post the same cannot be considered as personal. Again furnishing of such information would certainly instill confidence in the process. Again, candidates are selected/appointed on the basis of mark sheets, experience and other criteria/qualifications prescribed and hence these qualifications have direct relationship with their duty and, therefore, exemption from disclosure of information under section 8(1) (j) is not available or attracted.

I am fortified in the above by the observations of the Hon'ble Allahabad High Court in *Surender Singh v/s. State of U.P. and Others* 2009 (1) ID 208. The relevant observations are in para 6, 7 and 8.

"6. Section 11 of the Act relates to third party information. Third party has been defined under section 2 (n) to mean a person other than the citizen making a request for information and includes a public authority. It is only when the third party treats the information required to be disclosed as confidential that the authority is required to give a written notice to such third party of the request. In case such information is not held as confidential no written notice is required to be given. Such provisions in section 11 appear to be for the purpose of preventing the Act from becoming a tool in the hands of a busy body only for the purpose of setting personal scores or other oblique motives.

7. The information sought by the appellant in the present case relates to six Assistant Teachers of the institution in question and the educational certificates submitted by them for being appointed as Assistant teachers. Since the institution in question and the committee of Management managing the institution is a public authority as defined in the Act the Assistant Teachers working therein are also performing the duties of imparting education to the society. Consequently when the Assistant Teachers are

performing public activity the information sought by the applicant is with relation to such activity and cannot be said that the teaching work done by the six Assistant Teachers has no relationship to any public activity or interest. The information sought by the appellant cannot also be said to cause unwarranted invasion of the privacy of such Assistant Teachers in the institution inasmuch as their educational certificates are matter of record of the institution on the strength of which they have obtained appointments as Assistant Teachers and are performing public activities by imparting education in the institution. By no stretch of imagination can it be held that the information regarding their appointment and educational certificates would be unwarranted invasion of their privacy. Their educational qualifications are not privy to them but are records available with the institution which is a public authority within the meaning of the Act.

8. The information sought in the present case cannot also be brought within the meaning of being confidential to the third party. The records of educational certificates of the six Assistant Teachers are available with the public authority and have relationship to their performing their duties as such. They were appointed by virtue of their qualifications and hence such qualifications have direct relationship to their duties. As such the exemption from disclosure of information under section 8(j) is not available in the present case."

10. If one travels down the memory lane and observe the authoritative judgments of Hon'ble Supreme Court right from Raj Narain case to S.P. Gupta and Other, one would invariably come across two milestones - one that in a Government of responsibility like ours there can be but few secrets and secondly for openness in the Government. The spirit of the Constitutional right to expression and information may not be lost.

It is pertinent to note that Commission's discipline/judicial discipline demand deference to precedents. Society has progressed and progressive legislation like RTI Act has been enacted, aspirations of public have risen and veils of secrecy as well as curtains that were put in its infancy or adulthood have been removed/raised and secrets of yesteryears have come into the open and it would not be a cry in wilderness if this Commission aspires that a day will come when secrecy would be a relic of the past and answer papers would accompany mark sheets thereby fulfilling the mandate of R.T.I. Act.

11. It was contended by Advocate for the Opponent about maintainability of the complaint. According to him Complainant has not preferred First Appeal and instead filed the Complaint which is not maintainable.

In the case before me the position is, the information is sought and the Opponent partly furnished the same and rest was not furnished on account of section 8. Thereafter the present Complaint is filed. According to the Complainant, the Complaint is maintainable. To my mind the remedy lies of First Appeal. Even assuming for a while the ground of rejection is not valid yet the fact remains that good or bad, Public Information Officer acted within law. I have perused some of the rulings of Central Information Commission wherein matters were not entertained without approaching First Appellate Authority. In some complaints were entertained under certain circumstances.

Under section 18(1) Complaint may be filed if sub-section (a) to (f) are attracted. Complaint can be filed in case the Public Information officer does not respond within the time limits specified under the law. The reply of Public Information Officer has the backing of law.

I do agree with the Advocate for the Respondent No. 1 on this count. But in the instant case I am inclined to entertain the Complaint firstly because of the

factual matrix of this case and secondly because R.T.I. Act is a people friendly, user friendly Act and to deny information on such ground is not in true spirit of the Act. However, it is made clear that this should not be cited as precedent. I find some support regarding this in Life Insurance Corporation of India & Others V/s. Central Information Commission & Others (W.P. No. 8708/2008 Delhi High Court). No doubt facts are different but the principle is attracted in the factual backdrop of this case.

12. In view of all the above, I am of the opinion that request of the Complainant can be granted partly. Hence, I pass the following Order:

ORDER

The Complaint is allowed and the Opponent is hereby directed to furnish the information in respect of point/Sr. No. 2 and 3 of the Complainant's application dated 10.08.2010 within twenty days from the date of receipt of the Order. In respect of point No. 1 written examination papers of Kum. Ansari Azra Z. A. and Shri Kotker Devidas Vithoba be shown to the Complainant to ascertain that the same have been evaluated. Names and other things need not be disclosed. No copies, photocopies are allowed to be taken.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 15th day of December, 2010.

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