

# **GOA STATE INFORMATION COMMISSION AT PANAJI**

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

Appeal No. 37/SCIC/2011

Shri Orlando Menezes,  
Teacher Gr.-I,  
Shri Shantadurga Higher Secondary School,  
Bicholim - Goa

.... Appellant

V/s.

1) Public Information Officer,  
Goa Board of Secondary &  
Higher Secondary Education,  
Alto Porvorim - Goa

.... Respondent No. 1.

2) First Appellate Authority,  
Chairman of Goa Board of Secondary &  
Higher Secondary Education,  
Alto Porvorim - Goa

.... Respondent No. 2.

Adv. Shri P. Kamat for Complainant.

Adv. Shri J. P. Mulgaonkar for Respondent No. 1.

## **J U D G M E N T** **(07.10.2011)**

1. The Appellant, Shri Orlando Menezes, has filed the present Appeal praying that the records and proceedings in respect of application dated 22.09.2010 and Appeal record be called from the Respondent and that the Respondent be directed to furnish information as asked by the Appellant.

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

That the Appellant, vide his application dated 22.09.2010 sought certain information under the Right to Information Act, 2005 ('RTI Act' for short) from the Respondent No. 1/Public Information Officer (PIO). That the Respondent has not given information; that the Appellant thereafter preferred First Appeal before Respondent No. 2 who by order dated 20.01.2011 dismissed the Appeal observing that the information cannot be made available due to its confidential nature. That even after the First Appeal the complete information was not furnished. Being aggrieved the Appellant has filed the present Appeal on the ground as set out in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No. 1 is on record. In short, it is the case of Respondent No. 1 that he did not violate the provisions of RTI Act or that the reasons given by the Respondent are illegal. That the Order sought to be challenged in Appeal are in accordance with the settled law that the provisions of RTI Act cannot be used for seeking disclosure breaching the confidentiality attached to the matters concerning public examinations by the bodies like the Respondent – Board, particularly, when such disclosures are prohibited by the rules and regulations of the Board itself. That no case is, therefore been made out for interference in Second Appeal in the Order passed by the First Appellate Authority. The Respondent No. 1 prays that Appeal be dismissed.

4. Heard the arguments. Ld. Adv. Shri P. Kamat argued on behalf of the Appellant and the Ld. Adv. Shri J. P. Mulgaonkar argued on behalf of Respondent No. 1. Advocate for the Complainant submitted that part of information has been given. According to him section 8(1) (e) is not applicable in the present case. He also relies on a CIC ruling copy of which is on record. He next referred to the Order of the First Appellate Authority and submitted that First Appellate Authority does not state how the same is confidential. He also referred to section 4 of the RTI Act and submitted that authorities are required to maintain the records properly. According to him Appeal should be allowed.

5. During the course of his arguments Advocate for Respondent No. 1 referred to Order of First Appellate Authority and submitted that Order does not state how it is confidential. According to him confidentiality is to be spelt out by the rules. He also referred to the official gazette Chapter II Rule 58. He submitted about trust in the Board, responsibility, confidentiality is maintained by the Board. According to him section 8(1) (e) is very much applicable and besides, no larger public interest warrants disclosure. According to him Appeal is to be dismissed.

In reply Advocate Shri Kamat also referred to Rule 58 and submitted that the same cast duty and obligation on the Staff. According to him Rule 58 is not applicable and also section 8(1) (e) is not applicable.

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

It is seen that by application dated 22.09.2010 the Appellant sought certain information as under:-

“(1) How many teachers were called as examiners for correcting papers at Higher Secondary School Certificate Examination and how many have been relieved by the board before the completion of examination work from the year 2000 till August 2010. Give the names of all these teachers in different streams.

(2) Out of total number of such teachers, in cases of how many teachers adverse remarks were directed to be recorded in confidential service records. Kindly give the names of all those teachers.”

By reply dated 20/21.01.2010 the PIO/Respondent No. 1 furnished the information. The information in respect of item No. 1 is furnished. Only number of examiners called in 2009 and 2010 and number of teachers relieved before completion of work is furnished. Only names are not disclosed on account of confidentiality involved. In respect of point No. 2 information is furnished. Again name of the teacher is not disclosed. Being not satisfied the Appellant preferred the Appeal before the First Appellate Authority. By order dated 20.01.2011 the Appeal was dismissed.

It is now the contention of the Appellant that the contention that the information is confidential is not correct and therefore the order is illegal.

7. It is seen that PIO informed that records are disposed off and so are not available and that information prior to 2009 are not available. It is contended that records are to be well maintained and referred to section 4 of the RTI Act. No doubt records are to be well maintained. However it appears that the Rule 87(2) of Goa Board Rules, 1975 permit disposal.

The eloquent reply to the contention of the Appellant is found in Central Board of Secondary Education and Anr v/s. Aditya Bandopadhyay & Others 2011 (2) ID 101 (Supreme Court). In para 29 it is observed as under:-

"29. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answerbooks for a period of six months. The fact that right to information is available in regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the RTI Act is to make available or give access to *existing information* or information which is expected to be preserved or maintained. If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. For example, with reference to answer-books, if an examinee makes an application to CBSE for inspection or grant of certified copies beyond three months (or six months or such other period prescribed for preservation of the records in regard to other examining bodies) from the date of declaration of results, the application could be rejected on the ground that such information is not available. The power of the Information Commission under section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary *to secure compliance with the provision of the Act*, does not include a power to direct the *public authority* to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority."

8. The other aspect is about the names of Teachers called as examiners. According to Advocate for Appellant section 8(1) (e) is not attracted whereas according to Advocate for Respondent No. 1 it is attracted and he also relied on rule 58. Advocate for Appellant submits that rule 58 is not attracted.

Rule 35 is as under:-

“35. Secrecy relating to paper-setting – The persons appointed on the paper-setter’s panels shall maintain absolute secrecy about the matters related to setting of question papers including their appointments as per the norms laid down by the Board.”

Rule 58 speaks of maintenance of secrecy relating to assessment work and is as under:-

“58. Maintenance of secrecy relating to assessment work – The Staff appointed by the Board for assessment work shall maintain absolute secrecy about the matters related to evaluation of answer-books including their appointments and shall take meticulous care to adhere to the norms laid down by the Board.”

9. I have perused the ruling relied by the Advocate for 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 have been filed under the R.T.I. Act. Exemption has been claimed as 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.

10. 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 foolproof 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 concerns Teachers who were called as Examiners and therefore names cannot be disclosed. It is seen that number is given.

11. The second item is as under:-

"2. Out of total number of such teachers, in cases of how many Teachers adverse remarks were directed to be recorded in confidential service records, kindly given the names of all those teachers."

The reply is as under:-

2. (i) Only one teacher in the year 2010. His name is not disclosed for reason as at 1 (iii).

(ii) Information of the year before 2009 is not available for reason as at 1(i) above.

In respect of this item/point No. 2 reply is given in respect of 2010. However name is not disclosed. It appears appellant is also a member of teaching fraternity. Maybe he was also connected with this task of work. In any case if this one teacher is the Appellant then in that case the name can be disclosed to him with the adverse remark if directed to be recorded in confidential service records.

12. It is stated that information of the year before 2009 is not available. Under RTI the information that is not available cannot be furnished. The Right to Information Act can be invoked only for access to permissible information.

13. The reply is furnished in time. So there is no question of delay as such.

14. In view of all the above names cannot be disclosed as observed above. However information as regard point/item No. 2 can be granted as observed hereinabove. Hence, I pass the following Order:-

### **ORDER**

The Appeal is partly allowed. The Respondent No. 1 is hereby directed to furnish information in respect of point/item No. 2, if the name

of the teacher concerned is appellant himself within 20 days from the receipt of this order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 7<sup>th</sup> day of October, 2011.

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