

**GOA STATE INFORMATION COMMISSION**

**AT PANAJI**

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

**Complaint No. 16/SCIC/2011**

Shri Ramachandra S. Hegde,  
Teacher,  
M.E.S. Higher Secondary School,  
Zuarinagar - Goa ...Complainant

V/s

1) Public Information Officer,  
Secretary,  
Goa Board of Secondary &  
Higher Secondary Education,  
Alto Porvorim – Goa ... Opponent No. 1.

2) Chairman,  
Goa Board of Secondary &  
Higher Secondary Education,  
Porvorim – Goa ... Opponent No. 2.

**ORDER**  
**(07.10.2011)**

1. The Complainant/Appellant, Shri Ramachandra S. Hegde, has filed the present Complaint/Appeal praying that necessary action be taken to furnish him the requested information.

2. The brief facts leading to the present Complaint/Appeal are as under:- That the Complainant/Appellant vide letter dated 01.09.2010 sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Respondent No. 1/Public Information Officer (PIO). That the Respondent No. 1 has refused to furnish the above information vide letter dated 28.09.2010 by citing reason that Complainant is a third party. That the Complainant/Appellant preferred Appeal before the First Appellate Authority vide letter dated 18.10.2010 requesting him to furnish him the sought information. That by Order dated 14.02.2010 the Appellate Authority has refused to furnish the information. It is the case of the Complainant/Appellant that he is a teacher teaching in MES Higher Secondary School for the last twenty two years and that examination work of the Goa Board is of confidential nature till the examination process is in

force. That once such examinations are over he is entitled to know all the information about the examinations conducted.

Being aggrieved by the Order of the First Appellate Authority the Complainant/Appellant has filed this Appeal/Complaint.

3. The Opponent/Respondent No. 1 resists the Complaint/appeal and the reply is on record. It is the case of Respondent/Opponent No. 1 that the Complaint does not disclose the provisions of RTI Act under which it is filed. That the Complaint is misconceived and not maintainable; that the Complainant appears to be aggrieved by the Order dated 14.02.2010 passed by the First Appellate Authority which Appeal was filed under section 19(1) of RTI Act. That the remedy for the person dissatisfied by the Order passed by the First Appellate Authority is to prefer Second Appeal in terms of sub section 3 of section 19 of the Act within 30 days from the Order of the Appellate Authority. That the Complainant has not filed any Appeal as provided under section 19(3) of the Act within prescribed time. That the present Complaint, therefore, is not maintainable. On merits it is the case of the Respondent No. 1 that the Complainant in his application dated 18.10.2010 sought information as regards the names of Higher Secondary School teachers in connection with examination work and about action of the Board. That the said information was sought for the years 2008-2009 and 2009-2010. That Respondent No. 1 as PIO gave the reply dated 20.08.2010 stating that apart from being confidential matter the information sought by the Complainant pertains to the third parties and since disclosure of the same does not serve any wider public interest, the information sought was not furnished. That the Opponent No. 2 as the Appellate Authority dismissed the Complaint/Appeal affirming the view taken by the Respondent/Opponent No. 1/PIO. It is the case of the Respondent/Opponent No. 1 that utmost secrecy and confidentiality is the foundation and essence of the public examination system consisting of paper setting and assessment of answer papers conducted by the Board and all those who are part of the system have to maintain confidentiality for retaining public trust in the examination or else the entire system is bound to collapse. That it is incorrect that confidentiality about examination work is terminal with the process of examination. That the appointments for confidential work are made by the Board and are accepted by the appointees with mutual trust and

mutual responsibility for maintaining such trust is not terminated on the termination of the examination. That any disclosure of the names of the examiners, past or present, would be breach of trust of the examinations while accepting the appointment and also breach their fiduciary relationship with the Board. That in case the names of the Examiners who were appointed for the past examinations were disclosed, the Board would be bound to exclude them from consideration for appointment for future examinations and this may result in Board being compelled to exclude a large number of teachers with disastrous consequences for the entire examination system. The term 'third party' is also defined in the Act. In short, according to the Respondent No. 1 the Complaint is liable to be dismissed.

4. 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 given or not?

At the outset I must say that the Complainant/Appellant filed a Complaint, by order dated 20.09.2011 the same was treated as maintainable.

It is seen that the Complainant, vide application dated 01.09.2010 sought certain information from the PIO. By reply dated 28.09.2010 the Opponent No.1/PIO informed that apart from being confidential matter, the information sought by him through the four paras with Sr. No. 1 to 4 pertains to third parties and as they hold that the disclosure of the same does not speak any wider public interest and they do not incline to furnish it to third parties. Being not satisfied the Complainant preferred the Appeal before the First Appellate Authority. By order dated 14.12.2010 the Appeal was dismissed.

It is the contention of the Complainant/Appellant that confidentiality does not come under any of the provisions of the Act. He also submitted that once examination is over he is entitled for information and that there is no fiduciary relationship.

5. The information sought is as under:-

“1. Names of Higher Secondary Teachers who have been appointed/nominated for confidential work of the Goa Board for the year 2008-09 and 2009-10.

2. Names of Higher Secondary Teachers who have flatly rejected the assessment work of the Goa Board for the year 2008-09 and 2009-10.
3. Furnish the names of Higher Secondary Teachers who have accepted the confidential work of Goa Board but not reported for the duties for the year 2008-09 and 2009-10.
4. What action the Goa Board has taken on those teachers who have accepted but not reported for the duties for the year 2008-09 and 2009-10.”

The information is refused on the ground of confidentiality and third party information.

6. There is an application on record stating about third party.

Section 2 (n) defines third party as under:-

“(n) “Third party” means a person other than the citizen making a request for information and includes a public authority.”

A person making a request for information cannot be a ‘third party’. However, public authority can be ‘third party’.

7. 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. Larger number of applications filed under RTI 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 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 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.



9. Coming to the information sought. Regarding item No. 1/Sr. No. 1 names cannot be disclosed in view of all the above. However number of teachers called can be given.

Regarding item at Sr. No. 2 only number be given and names need not be disclosed.

Regarding item at Sr. No. 3 only number of such teachers be given.

In case name of Appellant figures in any of these then his name only be disclosed to him.

Regarding item at Sr. No. 4 to my mind the same can be furnished. No names are sought. Therefore, the action taken be informed.

10. Reply is furnished in time. So there is no question of delay involved.

11. In view of all the above, names cannot be disclosed as observed above, however, the numbers can be given. Information as regards point/item at Sr. No. 4 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 the number in respect of items at Sr. No. 1, 2 and 3 and to furnish information in respect of point No. 4 within 20 days from the receipt of this Order.

The Appeal/Complaint is accordingly disposed.

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

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

