

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 81/2007-08/Excise

Shri. Sunil S. Shetye,
"Shiv Prasad", H. No. 691/58,
B. B. Borkar Road,
Porvorim, Bardez - Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Asst. Commissioner of Excise,
Office of the Commissioner of Excise,
Panaji - Goa.
2. First Appellate Authority,
The Commissioner of Excise,
Office of the Commissioner of Excise,
Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 20/12/2007.

Appellant in person.

Adv. K. L. Bhagat for both the Respondents.

ORDER

This disposes off the second appeal filed by the Appellant against the order dated 17th July, 2007 by the first Appellate Authority, Respondent No. 2 herein, (hereinafter referred to as the "impugned order") passed under the Right to Information Act, 2005 (RTI Act for short). The brief point for decision is whether the answer papers of the successful candidates and of the Appellant who appeared for written examination for the recruitment of the Excise Inspector in the Department of Excise, Goa Government can be given to the Appellant. Earlier, he submitted two requests dated 30th May and 6th June, 2007 which were replied by the Public Information Officer on 19th June, 2007 and another request on 5th July, 2007 based on the reply of the Public Information Officer. The information was given by the Public Information Officer in time and to all the

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questions except for the documents mentioned namely the answer sheets, and a model answer paper. The Public Information Officer has also not given information on a question relating to the performance of the Appellant during his interview where he has questioned the allotment of only two marks to him out of 25 marks. We will make it clear in the beginning itself that we are not sitting here in judgment over the correctness of the interview procedure or the marks allotted therein. Not only this is not allowed under the RTI Act, it would also amount to the substitution of our satisfaction in the place of satisfaction of the selection committee, which is not correct.

2. The notices were issued. Written statements were filed by both the Respondents and the matter was argued by both the Appellant and the Advocate for the Respondents. The reason given by the Public Information Officer for denying the answer books is that it would violate confidence reposed by the candidates in the selectors and which is exempted under the RTI Act. He has also taken a plea that the name and the identity of the examiners, if known, will be harmful for the safety of the examiners. The Appellant countered this argument saying that there is no name of the examiner nor the names of the candidates written on the answer papers. We have found that the answer sheets, though confidential, are not about any commercial or trade secrets and though they are the intellectual property of the candidates concerned, its disclosure will not harm the competitive position of any third party. It is, therefore, not covered under the section 8(1)(d) of the RTI Act. However, the documents requested cannot be given as they violate the "fiduciary relationship" between the candidates and the selectors protected under section 8(1)(e) of the RTI Act and hence cannot be disclosed. We, therefore, uphold the decision of both the Public Information Officer and the first Appellate Authority, though for a different reason. The other point regarding not giving the model answer paper by the Public Information Officer, we accept the plea that no such paper exists and therefore, cannot be given. The appeal consequently fails and is hereby dismissed.

Announced in the open court on this 20th day of December, 2007.

Sd/-

(A. Venkataratnam)

State Chief Information Commissioner, GOA.

Sd/-

(G. G. Kambli)

State Information Commissioner, GOA.

/sf.

