

274/LA  
11/7/18

Appeal No. 57/2017 / 713  
Goa State Information Commission,  
Kamat Towers,  
Seventh Floor, Patto,  
Panaji-Goa  
Dated: 6/07/2018

To,  
Ms Lida Joao,  
r/o H.No. 1001, Bainfol, Assolna,  
Salcete-Goa-403701.

..... Appellant

V/s

1. The Public Information Officer,  
Controller of Examinations,  
Goa University, Taleigao Plateau, Goa 403 206

2. The Public Information Officer (PIO),  
Assistant Registrar Exams (Professional),  
Goa University, Taleigao Plateau, Goa.  
Respondent

.....

**Sub:- Order in Appeal No. 57/2017**

Sir/Madam,

I am directed to forward herewith authenticated copy of the Order dated 5/07/2018 passed by the Commission in the above referred matter for information and necessary action at your end.

Yours faithfully,



(Shanti Makwana Harding)  
Under Secretary  
Goa State Information Commission,  
Panaji-Goa

**Encl: Authenticated copy of above mentioned order**



## GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 57/2017

Ms Lida Joao,  
r/o H.No. 1001, Bainfol, Assolna,  
Salcete-Goa-403701.

V/s

..... Appellant

1. The Public Information Officer,  
Controller of Examinations,  
Goa University, Taleigao Plateau, Goa 403 206



2. The Public Information Officer,  
Assistant Registrar Exams (Professional),  
Goa University, Taleigao Plateau, Goa.

..... Respondent

### CORAM:

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Filed on: 4/05/2017**

**Decided on: 05/07/2018**


### ORDER

1. By this appeal the Appellant Miss Lida Joao assails the order, dated 10/2/2017 passed by the first appellate authority in case No. 48/2017 filed by the appellant herein .
2. The facts in brief arises in the present appeal are that the appellant by her application dated 17/11/2016, sought certain information on 8 points pertaining to period 2007 to 2016 from Respondent No.2 PIO, Assistant Registrar-Exams (Professional), Goa University as stated therein. The said information was sought by the appellant in exercise of her right u/s 6(1) of the RTI Act 2005
3. The above application was responded by Respondent NO. 2 the Assistant Registrar of exams on 13/12/2012 and by Respondent no. 1 PIO, controller of examination Goa University on 15/12/2016 wherein the information sought by the appellant was rejected in terms of section 8(e) and 8 (j) of the Act being confidential in nature.




4. Appellant being not satisfied with the reply of above Respondent No. 1 approached the first appellate authority on 12/1/2017. First appellate authority by his order 10/2/2017 dismissed the said appeal by upholding the say of Respondent No. 1.
5. Being aggrieved by the action of both the Respondents, the present appeal came to be filed by the appellant on 3/05/2017. The appellant by this appeal has prayed for direction for furnishing her required information as sought by her vide application dated 17/11/2016 free of cost and for invoking penal provisions.
6. The appellant has challenged the order passed by First appellate authority on several ground as raised in the memo of appeal.
7. The notice of the appeal was given to both the parties. The appellant appeared in person. Respondent No. 1 was represented by Advocate Mrs Agni and her associates.
8. Reply filed by Respondent No. 1 on 21/11/2017. The Respondent no. 1 PIO has resisted the appeal thereby contending that there were no malafide in denying the information in terms of section 8(e) and 8(j) of RTI Act. The copy of the reply was furnished to the appellant.
9. The appellant also filed a rejoinder on 2/02/2018 to the reply filed by Respondent dated 21/11/2017.
10. Respondent No. 1 also filed affidavit in rejoinder on 21/6/2018. The copy of the same could not be furnished to the appellant on account of her absent. However the appellant was granted opportunity to correct the same and to argue the matter.
11. Since the appellant did not turned up for subsequent hearing, and as sufficient time has lapsed, the commission had no other option to hear the arguments of respondents. Advocate Agni advanced arguments on behalf of both the Respondents.



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12. Vide memo of appeal the appellant have contended that the Respondent did not apply their mind to the provisions of the act and non furnishing the information is in total violation of the provisions of the law . It was further contended that information was denied to her only because illegality and irregularities at the examination held in Goa University would come to be fore. Vide memo of appeal it was contented that the information does not fall within the exemption of law under RTI Act 2005 and as such the Respondent were duty bound to provide the information as sought by her. It was further contended that the FAA acted without jurisdiction illegally thereby causing grave miscarriage of justice and it was further contended that the FAA grossly erred in accepting the submission of Respondent .
13. In the nutshell, it is the case of appellant that Respondent PIO has been very casually and denied the information with malafide motives which is totally in contravention in manner and duties cast upon PIO under the Act.
14. Advocate A. Agni on behalf of Respondent submitted that the issue in the main appeal is limited to the information sought by the appellant whether the same can be provided or not. The facts brought by the appellant on record via her rejoinder are totally unnecessary and irrelevant as far as the present appeal is concerned. It is further contended that the selection of examiner in any subject is done by the chairmen and the members of board of studies meeting and unless a qualifications are examined they cannot be appointed as examiner. She further contended that the since the allegation made in this regards is unsupported by any specific details/documents, as such the same should not be considered. Advocate Agni further submitted that the allegation made by the appellant by her rejoinder are false and fabricated only to mislead the commission. Further she contended that the appellant is misleading this commission and contradicting herself. Advocate submitted that at para 4 of memo of





appeal, the appellant has admitted that having received letter dated 13/12/2016 where in she was told to collect information from the office of payment of fees and vide letter dated 15/12/2016 that she was informed by PIO that the information being confidential in nature cannot be provided u/s 8(e) and 8(j) of RTI Act however as at para 5(e) she contradicted her own statements and contended that no reply or statement in writing was submitted to her. Advocate submits that the appellant has come with uncleaned hand. Advocate further submitted that that the appellant have not mentioned anywhere in appeal as to how the information is not confidential and how it does not come within the ambit of section 8(e) and (j) and there is no dispute on the said point by the appellant. Advocate Agni submitted that neither the FAA nor the college of SKHMC have been arrayed as a party by the appellant and those were the necessary parties as the allegation also have been made against them by appellant.

15. I have considered the submissions made by Respondent and also perused the records available in the files.
16. Considering the rival contentions of both the parties, the issues /points arises for my consideration is Whether the appellant is entitled for the information at point 1 to 8 as sought by her vide her application dated 17/11/2016 ?
17. On perusing the application of the appellant dated 17/11/2016, it is seen that the appellant has sought for the list of the examiners external for BHMS, Master panel of BHMS, list of CAP Directors, list of supervisors, list of paper setters for BHMS examination, list of moderators for BHM examination and the names/list of examiners deleted from the master panels. In other words the appellant intends to know the names of examiners, so also of supervisors, moderators, paper setters etc. of BHMS examination.




18. **In this context the Apex Court in case of Kerala Public Service Commission Vs. State Information Commission (2016) 3 Supreme Court Cases 417 at para 8 and 9 has held**

8. "In the present case, PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, PSC and examiners stand in a principal-agent relationship. Here PSC and examiners stand in a principal-agent relationship. Here PSC in the shoes of a principal has entrusted the task of evaluating the answer papers to the examiners. Consequently examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by PSC. As a result, a fiduciary relationship is established between PSC and the examiners". Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we do not see any logical reason as to how this will benefit him or the public at large. **We would like to point out that the disclosure of the identity of examiners is in the least interest of the general public and also any attempt to reveal the examiners identity will give rise to dire consequences. Therefore, in our considered opinion revealing examiners identity will only lead to confusion and public unrest. Hence we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.**

9. "In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this Competitive environment, where candidate puts his





time in preparing for the competitive exams, **but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same State or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.**

19. **The Supreme Court of India in Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) in case of Bihar, Public Service Commission Vs. Respondent: Saiyed Hussain Abbas Rizwi and Another at para , 29, and 31 has held;**

"29. Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with examining body in confidence with the interviewers. Declaration



of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. **But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act".**

31. "For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and hold that the Commission is not bound to disclose the information asked for by the applicant under the Query No. 1 of the application".

20. Yet in another decision Hon'ble supreme Court in **"Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)**, while dealing with the said issue at para 28 has observed:

28. "When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known a disgruntled examinee who is not satisfied with evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies **not only to the examiner, but also to scrutinizer, coordinator and head examiner who deal with the answer book.** The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the



scrutiniser/co-ordinator/head examiner. **The information as to the names or particulars of the examiners/Co-coordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8 (1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety".**

**21. The High Court of Jharkhand at Ranchi in W. P. © No. 6079 of 2007 in Jharkhand Public Service Commission, Ranchi V/s The State of Jharkhand and Ors. At para 9 and 10 :-**

9. "As regards the information regarding the names and identities of the members of the interview Board, the same cannot possibly be furnished in view of the fact that confidentiality regarding the names and identities of the members of the interview Board needs to be preserved".

10. "Considering the facts and circumstances of the case and also in the light of the discussions made above, the claim of the petitioner that **the information sought for in respect of the names of the members of the interview Board cannot furnished since it would violate the confidentiality, appears to be a reasonable objection".**

**22. The Hon'ble High Court of Kerela in writ petition (c) No. 6532 of 2006 (c) Treesa Irish V/s State Information Commissioner as held;**

" a person who has been entrusted with the valuation of an answered script by an university enjoys the position of trust and there would come into existence in to fiduciary relationship between university and valuael of the answer script. It is further held public authority also not obliged to protect any other interest of the **examiner accept his identity "**

**23. Considering the nature of application u/s 6(1) of the Act. I find that there is no illegality or irregularity in the reply given in terms of section 7 of RTI Act by the Respondent No. 1 and also in the order passed by FAA. Considering the above ratios and principals laid**



down by the Hon'ble Apex Court and various Hon'ble Courts, I hold that the appellant is not entitled to have the information as sought for by her application dated 17/11/2016 as the disclosure of the same is exempted u/s 8(e) of RTI Act, 2005. However the right of the appellant to seek any such additional information in respect of same subject matter is kept open.

24. Vide rejoinder, the appellant has alleged manipulations in question paper, has questioned about appointment of certain persons as examiners, has raised objections for giving internship to certain students, receiving remuneration by some teacher without University teaching approval, students copying pre-recorded case to exam and carrying copy chits and so forth which was categorily denied and disputed by the Respondent. More so over the averments made in the said rejoinder are also not supported by any convincing documentary evidence. The appellant has also raised certain grievances of not giving promotion to her sister and of having harassed her sister by principal so also of non payment of remuneration to her by Goa University for practical exams conducted by her in may and October 2015. Never the less the grievances raised by the Appellant in her rejoinder, cannot be dealt by this Commission as this Commission has no jurisdiction and is not empowered to deal with the same. The appellant or aggrieved person may approach the Competent authority with such grievances.

25. The peculiar facts of the present proceedings, does not warrant levy of penalty on PIO.

26. In above given circumstances, following order is passed:-

Order:-

a) Appeal stands dismissed, however the right of the appellant to seek any further information pertaining to same subject matter is kept open.

b) Rest prayers are not granted.



Proceedings stands closed.

Notify the parties.

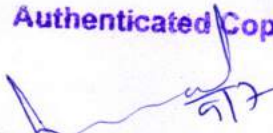
Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

Sd/-

**(Ms. Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa

Authenticated Copy

  
**Under Secretary cum Registrar**  
Goa State Information Commission  
Panaji - Goa

