

BEFORE THE ORISSA INFORMATION COMMISSION

BHUBANESWAR

Present: Hon'ble Shri D.N.Padhi, SCIC

Date: 4th April, 2008

Second Appeal No. 384 of 2007



Rajalaxmi Behera,
C/o-Dayanidhi Das,
Senior Assistant,
Energy Department,
Government of Orissa,
Secretariat, Bhubaneswar Appellant

-Vrs-

1. Public Information Officer
Office of the Principal,
Rama Devi Women's (Autonomous) College,
Bhubaneswar.
2. First Appellate Authority
Cum-Principal,
Rama Devi Women's (Autonomous) College,
Bhubaneswar Respondents

Decision

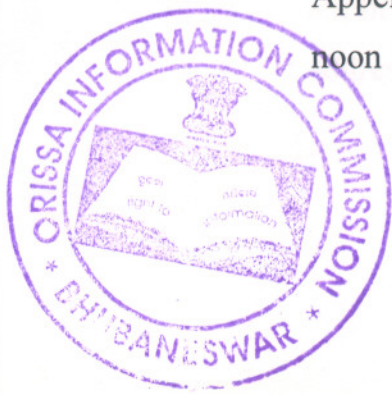
1. Appellant Rajalaxmi Behera is present with one of her relatives namely Dayanidhi Das, Senior Assistant in the Energy Department, Secretariat, Bhubaneswar. Harihar Gupta, Reader in Commerce-cum-PIO and Pratima Kumari Devi, Principal-cum-First Appellate Authority of Rama Devi Women's (Autonomous) College, Bhubaneswar are also present. Heard both sides and perused the case record.
2. It reveals from the documents on record that the Appellant had filed form A application in the Central RTI Cell of Orissa Secretariat on 03/08/07 addressed to the PIO, Higher Education Department, Government Orissa,

Bhubaneswar seeking verification, and supply of photocopies thereafter, of her answer paper IV of +3 2nd year Arts English (Hons). The said PIO received the request of the Appellant on 04/08/07 and finding that the information could be available either with the Rama Devi Women's (Autonomous) College or the Utkal University transferred the same to the PIO of the said College/University on the same day under Section 6(3) of the RTI Act, 2005 (Act for short) vide letter No.31252 dated 04/08/07.

3. The PIO, Rama Devi Women's (Autonomous) College, Bhubaneswar intimated the Appellant in form C vide his letter No.2794 dated 25/08/07 that the Public Authority is under an obligation to uphold the fiduciary relationship between the examiner(s) of the institution and, therefore, the information sought for, that is, photocopies of answer paper IV of +3, 2nd year Arts, English (Hons.) cannot be supplied in view of the exemption available under Section 8(1) of the Act. The PIO has failed to quote the exact sub-Section viz Section 8(1) (e) in his order but by necessary implication it is understood that he had rejected the request of the Appellant by referring to the exemption under Section 8 (1) (e) of the Act. The PIO having replied in form C on 25/08/07, though in the negative, had complied the provisions of Section 7(1) of the Act and no delay has been caused at his level.

4. The Appellant on receipt of form C from the PIO preferred first appeal before the Principal-cum-First Appellate Authority of the College on 22/09/07 and the latter in her order dated 15/10/07 upheld the findings of the PIO and dismissed the appeal. The First Appellate Authority had disposed of the appeal filed before her under Section 19(1) of the Act within the time limit prescribed under Section 19(6) of the Act.

5. The said order of the First Appellate Authority dated 15/10/07 has been impugned in this appeal under Section 19 (3) of the Act filed before the State Commission. The legality, propriety and maintainability of the concurrent findings of the PIO of the First Appellate Authority is the crucial issue for consideration by the State Commission in this appeal.
6. The Appellant prayed that there was no legal impediment in providing copies of her answer sheets as requested when in other similar cases the State Commission have given express directions to provide copies of evaluated answer sheets to the examinee concerned. It is submitted by both the Respondents that in the examination rules adopted and prevalent in their College there is no provision for providing copies of the evaluated answer sheets to the examinee(s).
7. Perhaps both the PIO and First Appellate Authority have lost sight of the overriding provisions enshrined at Section 22 of the new Act. The said provisions are clear that if there are any non-obstante provisions in some other law or instrument which are inconsistent with the provisions of this Act, the same are to be ignored in terms of the overriding effect of Section 22 of the Act. The State Commission on application of the said doctrine of Law is of the considered opinion that the findings of both the PIO and the First Appellate Authority is neither legal nor sustainable. The State Commission while setting aside the impugned orders of the PIO allow the appeal. At the same time the Respondents are directed to provide photocopies of the evaluated answer scripts requested for by the Appellant by blanking out /blocking the name(s) and initial(s) of the examiner(s) as also the code number(s) to maintain the fiduciary relationship. The Appellant is directed to appear in person before the PIO on 08/04/08 at 12 noon to receive photocopies of the evaluated answer scripts sought for by



her in form A application dated 03/08/07 on payment of due cost thereof in accordance with the Orissa Right to Information Rules, 2005. PIO will report compliance to the State Commission through the Registrar. Subject to the above compliance, the appeal is disposed of and closed.

Pronounced in open proceedings

Given under the hand and seal of the State Commission, this 4th day of April, 2008.



Hon'ble SCIC

4.4.08



MEM