

**BEFORE THE ORISSA INFORMATION COMMISSION
BHUBANESWAR**

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

Date: 25th July, 2008

Second Appeal No 236 / 2007

Asutosh Paikaray,
SDT and PRO, Nilgiri,
PO-Raj Nilgiri-756040,
Balasore District.....Appellant

-Vrs-

1. Public Information Officer,
Orissa Public Service Commission,
Cuttack,
Cuttack District.
2. First Appellate Authority,
Orissa Public Service Commission,
Cuttack,
Cuttack District.Respondents



Decision

1. Appellant Asutosh Paikaray is present. PIO and First Appellate Authority of Orissa Public Service Commission, Cuttack (OPSC for short) were found absent when the case was taken up but entered appearance during the course of hearing. They filed a copy of the form A application dated 20/12/06 of the Appellant. Heard. Perused the case record. This arises out of second appeal petition dated 07/06/07.

2. It reveals from the record that the Appellant's form A application dated 20/12/06 sent by post was received by the PIO, OPSC on 27/12/06. The Appellant had sought for information on three points relating to Orissa Civil Service, (Main) Examination, 2000, namely:-

“(i) that the questions were not asked as per the instructions given in the syllabus in Mathematics Paper-I and Paper-II and Physics Paper-II question were asked out of syllabus that is 1(b) and 5(a) in Orissa Civil Services (main) Examination, 2000, why?.

(i) Did the OPSC adopt the scaling system in this connection?
and

(ii) What was the cut off marks for SEBC (Male) Category in OCS Main Examination, 2000? ”

3. The PIO expressing his inability to furnish the information on the ground that disclosure thereof had been exempted under Section 8 (1)(j) of the RTI Act, 2005 (Act for short), communicated the said rejection to the Appellant vide letter no.537 dated 24/01/07.

4. Against the said order of the PIO, the Appellant on 17/02/07, preferred an appeal under Section 19 (1) of the Act before the First Appellate Authority. The said Authority in his order dated 09/03/07 dismissed the appeal by upholding the decision of the PIO. The said orders of the First Appellate Authority has been impugned in this appeal by the Appellant.

5. Before registration of this appeal, preliminary notice was issued by the State Commission to the PIO calling for a status report regarding the matter. The PIO submitted his report to the State Commission vide letter no.38344/ PSC dated 11/07/07 wherein he has indicated that the information sought for related to confidential issues and disclosure thereof will not serve any public interest. He explained that "the Appellate Authority in his findings intimated that so far as the information related to item (i) it may be stated that the questions of all the subjects for the Orissa Civil Services (Main) Examination, 2000 were prepared by the subject experts as per the syllabus. It is beyond imagination to predict that the questions were set out of the syllabus for the subjects Physics and Mathematics with respect to OCS (Main) Examination, 2000 at such a belated stage. No such complain at the time of examination and evaluation was received by the OPSC either from the candidates or from the examiners. The questions were definitely set as per the syllabus, answer papers are duly evaluated, the results were published accordingly and suitable candidates were already recommended to the Government for appointment.

Regarding the informations at item (ii) and (iii) that is following scaling system and fixation of cut off mark for SEBC (Men) category of OCS (Main) Examination, 2000, the Commission have fixed the cut off marks for each category of candidate as per the Schedule II (III) appended to OCS (Combined Competitive Recruitment Examination) Rules, 1991 which speaks that candidates who obtained such minimum qualifying marks in the Main Examination as may be fixed by the Commission at their discretion shall be called for the personality test. These are all confidential matter and supply of informations in this



regard will not serve any public interest rather may cause injury to the public interest. These above information are related to the policy decision of the Commission and being confidential in nature cannot be shared with the Appellant as it is exempted under 8(i)(j) of the RTI Act, 2005". According to him, as the information sought were directly related to policy decisions of the OPSC and confidential in nature, cannot be shared with the Appellant.

6. The above explanation / clarification given by the Respondents may be sufficient to exonerate them from the liability under Section 20 (1) of the Act, but the fact that information relating to policy decisions of the Public Authority cannot be shared is not sanctioned by any of the provisions of the Act. Moreover policy decisions cannot be termed as confidential not to be shared with in the absence of any exemption prescribed / provided for under the Act.
7. The overriding effect of the Act over any other legislation or instrument inconsistent with the provisions of this Act has been mandatorily prescribed in Section 22 of the Act. The above would highlight the real intention of the Legislators that providing permissible information to every citizen is the rule and under no circumstance it shall be refused.
8. In view of the above facts and circumstances of the case, the State Commission while exonerating both the Respondents direct the PIO to provide the information sought by the Appellant within 30 days of receipt of these orders and report compliance to the State Commission.

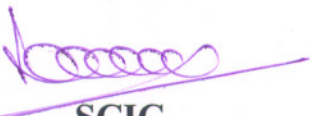
Thus the concurrent findings of both the learned forums below are hereby set-aside and the appeal is allowed. As both the Respondents have acted within the maximum time period stipulated, there are no orders on penalty.

9. Put up this case after receipt of the compliance report from the PIO.

Pronounced in open proceedings

Given under the hand and seal of the State Commission, this 25th day of July, 2008.




SCIC
25-7-08