

ORISSA INFORMATION COMMISSION
BHUBANESWAR

Present: Shri Tarun Kanti Mishra,
State Chief Information Commissioner

Date: - 07th June, 2011

Complaint Case No.1413 / 2008

Rashmi Ranjan Behera,
C/o Kiranmoy Behera,
At-Lalbazar, Ward No.10,
PO-Baripada
District-Mayurbhanj, PIN-757001..... Complainant

-Vrs-

Public Information Officer,
M.P.C. Autonomous College,
Takhatpur, BaripadaOpposite Party

Decision

1. Complainant Rashmi Ranjan Behera is absent on call. Abani Kumar Kundu, PIO-cum-Reader in Oriya, Bankim Chandra Sahoo, Reader in Statistics, Mahesh Chandra Mohapatra, Reader in Commerce and Mandakini Mishra, ex-PIO-cum-Principal-in-charge (now retired) all of M.P.C. (Autonomous) College, Baripada are also absent on call.
2. Complainant Rashmi Ranjan Behera had filed form-A application dated 29/07/08 with the PIO, MPC (Autonomous) College, Baripada seeking the photocopies of his valued answer scripts of Mathematics Papers-I, II, III, IV and Chemistry (Hons) Papers-IV, V, VII, VIII, IX, and X for the examination year 2007-08.
3. In his submission the PIO stated that the complainant was asked on 22/08/08 to deposit Rs.30/- towards cost of postage as he had mentioned in his form-A application to receive the information by registered post. The complainant deposited the cost on 27/08/08. He was informed by registered post vide letter No-6805 dated 29/08/08 that "the college authorities are not empowered to provide the photocopies of the valued answer scripts of any examination conducted by MPC Autonomous College, Takhatpur,

Baripada. In his letter, the PIO gave three reasons and the same are quoted verbatim below.

- i) The Statutory Committees of MPC (Auto) College like Examination Committee, Academic Council, Executive Committee have not made any provision for supplying the Xeroxcopies of the valued answer Scripts.
- ii) As per the letter No-5690(45) dated 18/02/2006 of the Department of Higher Education, Orissa, Bhubaneswar a committee has been set up to examine the need of supplying the Xeroxcopies of the valued answer scripts of the examinations conducted by the Autonomous Colleges and Universities. But no such instruction for supplying the Xerox copies of the valued scripts has been received from the Government.
- iii) Since there is no provision in the statute of the North Orissa University & we have received no instructions from the parent University for providing Xeroxcopies of the valued answer scripts on demand, the MPC (A) College, Baripada being an affiliated college under NOU, cannot provide the same to the students on demand."

4. Being aggrieved, the complainant filed First Appeal dated 02/09/08 with the First Appellate Authority which was received on 05/09/08. The latter informed the complainant vide letter dated 12/09/08 that the College has no provision for supply of copy of the answer scripts to the candidates.

5. Not satisfied with such decision, the complainant approached the Commission on 16/09/08. Accordingly, opposite parties were issued with show cause notices to explain as to why the information was not supplied to the complainant.

6. Mandakini Mishra, ex-PIO and Principal in-charge (Retd.) averred that Section 8 of the RTI Act, 2005 provides exemption from disclosure of information under various circumstances and reasons explained elaborately. Referring specifically to the provision of Section 8(1)(e) of the RTI Act, 2005 she submitted that she did not supply the

copies of evaluated answer scripts because she did not want to break the fiduciary relationship between the Principal, Controller of Examinations and the Examiners who are acting as their appointees for the purpose of evaluating the answer scripts. She relied on a few decisions of the Central Information Commission defending her action. The PIO also defended his action on similar grounds.

7. Over the time, a number of decisions on similar issues have been pronounced by the Central Information Commission and several State Commissions. There are also a few decisions of High Courts. Now there is a virtual consensus that the copies of his own answer scripts can be furnished to an examinee under the RTI Act, 2005. Notable among them are the decisions of Delhi High Court [Writ Petition (C) No.8529/2009], Madras High Court [Writ Petition (C) No.13132/2009] and Calcutta High Court (AIR-2009, Cal, 97). The Orissa Information Commission had also decided that copies of answer scripts should be supplied to an examinee by blanking out the names of the examiner, his/her initial and the code number etc. to maintain secrecy and the fiduciary relationship. The Commission had further observed that, even if there are no provisions in the Rules and Statutes of the Universities and other educational institutions to furnish the copies of the answer scripts, the overriding effect of Section 22 of the Act should govern the case.

8. In the instant case, there was no mala fide or willful refusal to furnish the copies of the answer scripts to the complainant. On account of their honest doubts, the ex-PIO and the ex-Principal decided not to supply the information. However, the PIO had already supplied the information to the complainant, as per the direction of the Commission on 22.03.2011. Since similar doubts might be still persisting in the minds of many PIOs in different educational institutions, the Principal Secretary, Information & Public Relations Department being the head of the nodal Department is directed to issue appropriate clarification to all Departments of Government associated with educational activities and conduct of examinations to facilitate an examinee to have access to the photocopies of

his/her own answer scripts under the provisions of the RTI Act, 2005. With these directions, the case is closed.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 07th June, 2011.

State Chief Information Commissioner
07.06.2011