

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present: Shri Sunil Kumar Misra
State Chief Information Commissioner**

Dated 28th February, 2020

Second Appeal No.729/2016

Sk. Saifuddin

At: Trilochanpur (Maqbulmohalloa)

PO: Padampur

Dist: Cuttack

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Appellant

Vrs.

1. Public Information Officer
Directorate of Secondary Education, Odisha
Bhubaneswar

2. First Appellate Authority
Directorate of Secondary Education, Odisha
Bhubaneswar

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Respondent s

DECISION

1. Appellant, Sk. Saifuddin, is present along with his authorised representative, Pradip Pradhan. The appellant has filed a written submission along with enclosures. The same are taken on record.

1.1 Dr. Priti Prativa Bhol, Ex-First Appellate Authority of the Directorate of Secondary Education, Odisha and now working as Additional Director in the said Directorate is also present.

2. Vide 4 different undated applications in Form-A filed before the PIO of the Directorate of Secondary Education, Odisha, the appellant had requested the PIO to provide to him true and attested copies of the original tabulation

sheets and mark registers of 4 candidates in the Moulvi, Mahir and Alim Examinations conducted in different years ranging from 1994 to 2001. Information relating to one candidate had been sought in each application.

3. The PIO vide a letter dated 26.02.2015 informed the appellant that the information/ documents sought by him could not be supplied as the Madrasa Board happened to be an autonomous body consisting of the Director as President, the Special Inspecting Officer as Secretary and the Deputy Director (M&S) as Vice-President; and the Board had not decided to provide the required information. Aggrieved, the appellant filed first appeal vide an undated appeal memo in Form-D. The First Appellate Authority-cum-Dy. Director (GS) of the Directorate of Secondary Education noted the grounds on which the PIO had earlier rejected the application in Form-A. During the course of the appeal hearing, the S.I.O-cum-Secretary submitted before the First Appellate Authority that the information sought by the appellant were confidential relating to different examinations conducted by the Odisha State Board of Madrasa Education; and, moreover, the same which related to third parties had no relationship to any public activity or interest. Hence, the required information could not be provided in view of Section 8(1)(j) of the RTI Act, 2005. The First Appellate Authority considered the submission thus made and rejected the appeal.

4. At the time of the initial hearing on 04.09.2018, the Commission considered the stand taken by the PIO and the First Appellate Authority. The Commission observed that it was not comprehensible as to how the PIO

denied information by stating that Madrasa Board had not taken any decision in the matter of giving information. There is no clause in Section 8 of the RTI Act which prohibits disclosure of information on account of a decision not having been taken by the concerned Board. The Commission further observed that the First Appellate Authority was prima-facie not justified in taking a new stand, i.e. third party information, and by making reference to Section 8(1)(j), for rejecting the appellant's appeal. No such stand had been taken by the PIO earlier. The Commission directed both the authorities to show cause why adverse view should not be taken of their failure to provide information to the appellant.

4.1 Without prejudice to the above, the Commission also observed that the appellant had filed the subject appeal by combining all the 4 applications in Form-A. Whereas, filing of such a combined appeal has not been envisaged under the RTI Act, 2005. The appellant was given opportunity to make his submission in this matter. The appellant was also directed to demonstrate the nexus of the information sought by him with any public interest.

4.2 During subsequent hearings, both the parties filed written submissions. The First Appellate Authority stated that she was not aware that the appellant had filed 4 different applications and that is why she had disposed of the appeal. The appellant contended that adverse view should not be taken of filing a combined appeal as the First Appellate Authority herself had disposed of the appeal in combined manner. As regards the merit of his request for information, the appellant made a detailed submission wherein he alleged

corruption and manipulation in the marks awarded to the candidates. It was also alleged that additional marks had been awarded by tampering with the answer-sheets and mark-register. In this connection, the appellant submitted copy of a report of an enquiry conducted by the School & Mass Education Department into similar allegations of manipulations resorted to by the ex-Secretary of the Odisha State Board of Madrasa Education. The appellant also filed a copy of the enquiry report dated 12.07.2013 of the Joint Director of the Regional Directorate of Education wherein several lapses were pointed out in the valuation, re-addition of marks etc. made by the Madrasa Board.

5. At the time of the last hearing on 24.02.2020, the appellant fairly accepted that there was a technical error in the filing of a combined appeal. It was nonetheless submitted that the information should not be denied as there were manipulations which needed to come to light. In the further submission made in connection with today's hearing, the appellant has pleaded that at least one of the 4 applications be taken up for consideration and the remaining appeals be remanded to the First Appellate Authority for being decided along the line of the decision to be given by the Commission in the identified case.

6. The submissions thus made have been considered whereupon the Commission proceeds to dispose of the subject appeal as under:

6.1 Section 6(1) of the RTI Act, 2005 provides for making a request in writing through an application for information. Section 7(1) states that on receipt of a request under Section 6, the PIO shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either

provide the information or reject the request..... In other words, the PIO has to give a decision on the request. Section 19(1) provides that a person who does not receive a decision within the specified time may prefer an appeal. Section 19(3) provides that a second appeal against the decision under Section 19(1) shall lie with the Commission.

6.2 It would be clear from the foregoing that an application with request for information shall be decided upon by the PIO whose decision can be appealed against before the First Appellate Authority and an appeal against the decision of the First Appellate Authority shall lie with the Commission. The expressions “a request”, “an application” “a decision”, “an appeal”, and “a second appeal” are in the singular and not in the plural. The chain is singular all through. Therefore, there is no scope for filing a combined first appeal in continuation of four requests made through four separate applications for information. The Act also does not envisage filing of a combined second appeal.

6.3 In view of the above, a combined appeal filed by an applicant before the First Appellate Authority or a combined appeal filed by an appellant before the Second Appellate Authority would become liable to be treated as un-maintainable.

6.4 As a corollary of what is stated in para 6.2, even a PIO has to dispose of every separate request through a separate decision. Similarly, a First Appellate Authority has to ensure that the applicant/appellant files separate appeals in respect of such separate decisions of the PIO. Where a combined

appeal has been filed, the appellant should be intimated about its unmaintainability. Of course, there is nothing in the Act prohibiting simultaneous disposal of multiple applications and more than one appeal by the PIO and the First Appellate Authority through consolidated decisions and orders. But then, in such cases, the consolidated decisions/orders must make references to the separate applications and appeals which would not cease to be separate merely on account of the fact that the PIO or the First Appellate Authority is disposing of the same consolidatedly. Such consolidated decision/order will have to be treated as a combination of multiple decisions/orders; and as an appeal is required to be filed against "a decision", separate second appeals will have to be filed even where a consolidated decision has been made.

6.5 In the present case, the PIO made a single decision in respect of four separate applications. Although he mentioned the names of the four candidates, he did not refer to the four separate applications. Hence the decision of the PIO cannot be treated as a consolidated decision. Even the First Appellate Authority in her order did not make mention of four applications. She was not even aware that four application had been filed by the appellant. She merely decided on the decision of the PIO. Thus, the order of the First Appellate Authority too cannot be treated as a consolidated order. For the same reason, her decision cannot be treated as a combination of four separate decisions, consolidated for the purpose of convenience. It has to be treated as a decision.

6.6 Now the question is whether the appellant in such a situation was under obligation to file separate second appeals against “a decision”? Strictly going by Section 19(3) which enables an appellant to file a second appeal against a decision, the appellant’s action cannot be seriously found fault with.

6.7 Now the question is, even if the appellant’s action cannot be found fault with, can his appeal be entertained and treated as maintainable. For deciding this question, a few factors will have to be taken into consideration. Is the public authority in respect of all the four applications/ appeals one and the same? Are the subject matters of all the four applications intrinsically identical? Could the applicant/appellant have justifiably and validly filed one application instead of four applications? If the answers to the above questions are in the affirmative, then the question of entertaining the appeal should be decided liberally and the appellant should not be loaded with or made to suffer from the mistakes committed by the PIO and the First Appellate Authority.

6.8 In the present case, the public authority is the same i.e. Odisha Madrasa Board. The subject matter is the same, i.e. copies of tabulation sheets and mark register relating to 4 candidates. The appellant could also have filed a single application in respect of all the 4 candidates instead of filing 4 applications. In view of the above, the technical infirmity associated with the filing of the subject appeal will have to be treated as hyper-technical in nature and can and should be more appropriately attributed to the PIO and the First Appellate Authority than to the appellant. Nearly 4½ years have elapsed since the appellant filed the first appeal. If the technical flaw with the subject appeal

is to be gone by exclusively, then the appellant will have to go back to the First Appellate Authority. Directing the appellant to do so would subject him a much longer wait. That might be legally correct but would be highly unfair. Moreover, as held by the Courts, a minor technical irregularity should not be taken to sound the death-knell of substantive justice.

7. In the light of the discussion here-in-above, the Commission entertains the subject appeal and proceeds to dispose it of on merits as under :

7.1 As already noted, the appellant requested for copies of the Tabulation sheets and Mark Register in respect of four candidates. The stand taken by the PIO has been noted. The Commission has already observed that the fact that the Madrasa Board has not taken any decision in the matter of supply of information cannot come in the way of deciding whether or not the required information should be furnished. Such a decision has to be taken as per the provisions of the RTI Act, 2005; and only such information as fall within the ambit of Sections 8,9 and 11 can be considered for denial. Therefore, the PIO's stand is rejected. The stand taken by the First Appellate Authority was that the information was not disclosable in view of Section 8(1)(j) of the Act. The First Appellate Authority also held that the information sought by the appellant related to third party and, further that, disclosure of the information had no relationship to any public activity or public interest. Moreover, disclosure would cause unwarranted invasion of the privacy of the individual. The Commission cannot comprehend as to how the Tabulation sheet and Mark Register can be treated as third party or personal information. Because,

these are prepared as well as maintained by the Examining body which is a public authority. Neither the Tabulation sheet nor the Mark Register can also be said to have been provided by the candidate(s) to the public authority for keeping the same in its custody. No doubt, the marks reflected in the Mark Register relate to the candidate. However, the mark having been awarded by the examiner, the same cannot be treated as personal information of the candidate. Even otherwise, the appellant has submitted an enquiry report to contend that there were malpractices in the preparation of the Tabulation sheets and Mark Register. The enquiry report, a copy of which has been submitted by the appellant, is of the Joint Director, Regional Directorate of Education, Bhubaneswar. The enquiry had been made on the basis of allegations made against the ex-Secretary of the Odisha State Board of Madrasa Education. The allegations were regarding malpractice in changing the mark of a candidate in the Mark Register. The concerned candidate had written Moulvi examination in the year 1999. The Enquiry Officer verified the Mark Register for Madrasa Examinations of the years 1997 to 2001. She found that the Register had not been properly maintained. It was also found that marks in many pages had been changed by cutting the previously written mark without any attestation. The marks secured by/awarded to the concerned candidate were corrected, over-written and erased only with initials. The marks corrected in the individual papers by the Examiner also did not tally with the marks written in the Mark Register. In 9 out of a total of 11 papers, the earlier total marks of 348 were changed to 528 and concerned

candidate's Division was changed from 3rd Division to 2nd Division. The concerned delinquent officer also did not put up the revised mark sheet submitted by the Examiners to the President of the Board for approval. The marks communicated to the concerned Madrasa were as per the revised marks submitted by the Examiner and not as per the Mark Register which was a gross irregularity and serious lapse on the part of the delinquent officer i.e. the ex-Secretary of the Odisha State Board of Madrasa Education. The Enquiry Officer also noted that before destroying the answer-sheets, the ex-Secretary did not take the written approval/permission of the President of the Board and did not give any account of the destroyed documents.

7.2 The Commission finds that the information sought by the appellant related to the years 1994, 1995, 1997, 1999, 2000, 2001, 2002 & 2005. It is already seen that during the course of the enquiry, the Enquiry Officer verified the Mark Register for the period 1997 to 2001. Thus, half of the examinations referred to by the appellant related to the period covered by the Enquiry Officer. Even the other examinations had been conducted in the proximate years. Therefore, the contention of the appellant that he had asked for the information as there had been manipulation in the marks cannot be disregarded. Moreover, when there were irregularities as reported by the Enquiry Officer, it is in public interest that the same come to light. Hence, it cannot be said that the request of the appellant has no relationship to any public interest.

8. In the light of the above, the Commission holds that larger public interest warrants disclosure of the information sought by the appellant. Accordingly, the Commission hereby directs the PIO of the Odisha State Madrasa Education Board to provide to the appellant the information sought by him as per his applications in Form-A within 15 days from the receipt of this order under intimation to this Commission.

8.1 The commission also directs the concerned First Appellate Authority-cum-Dy. Director (GS) of the Directorate of Secondary Education, Odisha, Bhubaneswar to be more careful in future while dealing with and deciding on appeals filed under the RTI Act, 2005.

9. With the above observations and direction, the subject appeal is allowed and stands disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission, this Day the 28th February, 2020.

**State Chief Information Commissioner
28.02.2020**