

**OFFICE OF THE
ASSAM INFORMATION COMMISSION
JONAKKEE COMPLEX, PANJABARI, GUWAHATI-781 037**

Case No. : SIC/DRN.81/2017
Appellant : Md. Abdul Wahab
Respondent : The SPIO, O/o the Assam Public Service Commission,
Jawaharnagar, Khanapara, Guwahati
Date of hearing : 16.02.2018
Second Appeal heard by : Shri Pinuel Basumatary,
State Information Commissioner, Assam

O R D E R
16.02.2018

Shri Tapan Kumar Das, SPIO, Assam Public Service Commission and Shri Bhaba Ch. Das, Junior Assistant are present. The SPIO submitted a Written Statement dated 09.02.2018.

The Appellant, Md. Abdul Wahab is present.

Heard the Appellant. He submitted that he was not satisfied with information/response provided to him in respect of point numbers 2, 3 and 4 of his Application dated 24.08.2017. He reiterated his contention made in his Second Appeal dated 09.11.2017.

Perused the case record. It is seen that in respect of point number 2 wherein the academic marks/percentage of marks obtained by the candidates in various examinations was sought. The Respondent had stated that the same could not be provided on the plea that the same was not a part of record maintained by the Public Authority “for use in its day to day function”. In his Appeal, the Appellant stated that the Public Authority had required all academic marks of the candidates before the interview and the same was required to award weightage of 50 percent for academic qualifications. In respect of point number 3 wherein he has sought information on the marks awarded in the viva voce to the candidates, the total marks secured have been furnished without specific allotment of marks in respect of academic, General Bearing etc. that comprise the viva voce part. In the last point, the Appellant sought a copy of video recording clips of viva voce interview of the candidates whereas the same was not provided based on legal opinion of the Standing Counsel of the Commission. The Appellant has contended that the SPIO’s decision was contrary to the RTI Act, 2005 and it amounted to the abuse of the objective of the said Act.

Heard the SPIO and perused the Written Statement. The submission of the SPIO is summarized as follows :

Point number 2 : The academic marks/percentage from HSLC onwards was not a part of record maintained of the Public Authority and that the academic marks/qualification of the candidates were recorded point-wise/class-wise in the form of a statement. The SPIO has then gone on to state that the confidential section recorded the marks in respect of educational

qualification and the said marksheets bearing the names and signatures of the Chairman/Members of the Commission who had conducted the interview and therefore this could not be furnished to the candidates as per Section 8 (1) (g) of the Act.

Point number 3 : the marks of the interview as sought for has been furnished.

Point number 4 : the footage has not been provided based on the legal opinion of the Standing Counsel of the Commission has been exempted from disclosure U/S 8 (d) and (e) of the said Act.

After a careful consideration of the facts brought up before the Commission, the following observations are made :

Point number 2 : The two statements of the SPIO appears contradictory. The submission by the SPIO is not acceptable for the reason that according to “the selection procedure for the post of Lecturers for Social Science (DIET) under the Directorate of SCERT, Assam” a copy of which has been provided by the SPIO to the Appellant, 50 percent of the total 100 marks allotted for interview is to be based on marks obtained in academic examinations, namely, HSLC, HS, Degree, Master Degree, Teacher’s Education. As the Public Authority gave weightage to each candidates according to the procedure the marks obtained by the candidates in the examinations had to be recorded/tabulated. By his own admission the SPIO has added that the marksheets were prepared. Therefore the same constitute records to be maintained by the Public Authority. Therefore the information sought for by the Appellant on the academic marks/percentage secured by the candidates will have to be provided by the SPIO.

Point number 3 : The copy of the documents furnished to the Appellant indicates the total marks obtained by them and not the marks awarded for the viva voce part of the interview. In other words, the breakdown of marks awarded on academic examinations and the viva voce has been given. Therefore the statement of the SPIO is not acceptable.

Point number 4 : In rejecting the request for copy of the video recording, the Respondent has simply quoted the legal opinion of the Standing Counsel. Perusal of the Standing Counsel indicates that Counsel has put forward the issue of fiduciary relationship and want of larger public interest as the reason for claiming examinations from the disclosure U/S 8 (d) and (e) of the said Act. The SPIO has not given detailed reasoning to the Appellant for claiming the said exemptions on the ground of fiduciary relationship and lack of larger public interest. Quoting provisions of Section 8 (1) of the Act to the information without giving any detailed justification for grounds as to how these provisions are applicable is not acceptable and amounts to malafide denial of legitimate information. Further, not providing the reasons of how that this part of the Application for information was rejected would attract penalties U/S 20 (1) of the sad Act.

In view of the facts brought out above, and the observations made thereon, the Commission hereby orders as follows –

- (i) The remaining information in respect of point number 2 and 3 as brought out above, shall be provided, free of cost, to the Appellant, within 7 days of receiving this order, and
- (ii) The SPIO shall either provide a copy of the video recording of the viva voce interview of candidates as sought for by the Appellant or provide to the Appellant detailed justification as to how the provisions of the Sub-Section U/S 8 (1) of the said Act are applicable. This action may be taken within 7 days of receipt of this order.

The Second Appeal is hereby disposed of. However, the Appellant shall be at liberty to move this Commission, if he is aggrieved with the response of the SPIO.

Sd/-

Pinuel Basumatary
State Information Commissioner, Assam
Panjabari, Guwahati

Authenticated true copy

Sd/-
Joint Registrar
Assam Information Commission

Memo No. SIC/DRN.81/2017

Dtd. 16.02.2018

Copy to:

1. The SPIO, O/o the Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati- 781 022, Assam for information and necessary action.
2. The First Appellate Authority/Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati- 781 022, Assam for information.
3. The Appellant, Md. Abdul Wahab, S/o- Abdul Azad Ali, Vill & PO- Nizkharupetia, Dist- Darrang, Assam, Pin- 784 115 for information.
4. Computer Section for uploading in the Website.
5. Office File.

Joint Registrar
Assam Information Commission