

**MANIPUR INFORMATION COMMISSION**  
Room No. 317, 3<sup>rd</sup> Floor, New Secretariat Annexe,  
Manipur Secretariat, Imphal- 795 001.

**Appeal Case No. 13(B)/2011**

**Ms. Ningombam Dhanabati, D/o N. Tomchou Singh,  
Singjamei Chinga-Makha Phura Makhong,  
P.O. Singjamei Bazar- 795008, Manipur.**

**- Appellant.**

**- Vs. -**

- 1. The Secretary/State Public Information Officer,  
Board of Secondary Education,  
Manipur, Imphal.**
- 2 The Principal Secretary (Education)/First Appellate Authority,  
Government of Manipur.**

**Respondents.**

**26/8/2011**

**DECISION OF THE COMMISSION**

**Brief of the Case.**

This is an appeal preferred by Ms. Ningombam Dhanabati D/o N. Tomchou Singh of Singjamei Chinga Makha Phura Makhong, P.O. Imphal against the decision of the First Appellate Authority/Commissioner, Education Dept., Govt. of Manipur.

The appellant made an application to the State Public Information Officer (herein after referred to as SPIO) of the Board of Secondary Education Manipur (herein after referred to as Board or BSEM) under the R.T.I. Act, 2005 seeking certain information on 2/12/2010. As she could not get the information sought from the SPIO within the stipulated period of 30 days, she preferred an appeal with the Commissioner of Education/First Appellate Authority (herein after referred to as FAA), Govt. of Manipur on 4/1/2011 against the SPIO.

The FAA disposed the appeal on 21/1/2011 with a direction to the SPIO "to furnish copies of the requisition letter of the Department of Social Welfare, Manipur requesting for the conduct of the examination, as well as the forwarding letter of the Secretary, BSEM for furnishing the marks obtained by the candidates to the Social Welfare Department to the applicant on or before 24/01/2011".

Further the applicant was advised by the FAA to file fresh application to the SPIO of the Social Welfare Department for seeking information/documents pertaining to recruitment process for appointment of Supervisor of Social Welfare Department.

Being dissatisfied with the decision, the appellant preferred a second appeal with this Commission against the SPIO and the FAA with a request to inquire into the matter and to pass an appropriate order so as to enable the appellant to access the information requested and also to punish the errant officer. Hence, the inquiry.

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### Findings

During the course of inquiry, it was noticed that the appellant could get a copy of the decision of the FAA only on 25/4/2011.

The SPIO furnished a copy of the letter No. 1/159/95-SW II dated 26/2/2011 of the Social Welfare Department instructing the Board to conduct the examination to the appellant vide his letter Ex/196-ED/06(Pt)/453 dated 22/1/2011 in compliance of the FAA's decision. The appellant denied the receipt of this letter and she could get a copy of it during the course of enquiry. And the SPIO has also not furnished a copy of the forwarding letter mentioned in the decision of the FAA. The SPIO in his above referred letter informed the appellant to contact the Department of Social Welfare, Govt. of Manipur "for the marks and other things".

If the requested information is not in the possession of the Board and held by another Public Authority, the SPIO, under the provisions of the Section 6(3) of the R.T.I. Act, should have transferred the application or such part of it as may be appropriate to that other public authority; in this case, to the SPIO of the Directorate of Social Welfare Dept. The FAA or the SPIO should not ask the appellant to make fresh application to the SPIO of the Department of Social Welfare or to approach the Department of Social Welfare.

The information sought by the appellant is as under :

- "a) Whether the Board of Secondary Education, Manipur (BOSEM) can conduct the written test examination of Supervisors of Social Welfare Department? If yes, please furnish a copy of the said rules/Act/orders. If not, please furnish the basis for conducting the said examination thereof.
- b) Please furnish a copy of answer scripts of the candidates who stood first and who had got minimum marks among the selected/passed candidates of General and OBC category.
- c) Please furnish the total marks secured by Roll No. 2172 and the copy of the answer scripts of the same of the above mentioned examination.
- d) Please furnish a copy of the list of selected candidates indicating their marks secured in order of merits signed by the Board Members/examiners for all the candidates who passed the above mentioned examination.
- e) Disclose the minimum marks/pass/cut of marks of the said examination."

Since the examination for recruitment of the Supervisor of Social Welfare Dept. was conducted by the Board, all information requested by the appellant should be available with the Board either in original or in the form of Office Copy. Therefore, on 24/6/2011, during the course of inquiry, the SPIO was asked to furnish the remaining information within seven days or to give justification for denial of any of the information.

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In compliance of the Commission's direction, the SPIO furnished information in respect of para (a) of the application seeking information under the RTI Act made by the appellant; in respect of para (b), information was denied on the following grounds: "There is no existing provision in the Examination rules of the Board of Secondary Education, Manipur to show the answer scripts to the candidates or his/her representative. The information asked by the petitioner is exempted under Section 8(1)(e) of the RTI Act, as Board of Secondary Education, Manipur shares fiduciary relationship with its examiners and maintain confidentially of both the manner and method of evaluation. The larger public interest does not warrant the inspection of answer scripts of any examinations. It is felt that the information asked for is purely personal in nature and no public interest will be served under Section 8(1)(j) of the RTI Act."; in respect of para (c), marks secured was intimated but no copy of answer script was given; in respect of para (d), a list of eligible candidate was furnished but without the marks secured by them on the ground that the marks obtained by each individual in the written examination was handed over to the Department of Social Welfare Dept.; and in respect of para (e), the information was furnished vide his letter No. Ex/196-ED/06(Pt) 199/B dated 27/6/2011 only in respect of General category only and no cut off marks for OBC candidates was given.

The information sought under para (b) is the copy of the answer script of the candidates who stood first and who got minimum marks among the selected/passed candidates of general and OBC category. And the reason for denial is (i) "There is no existing provision in the examination rules of the Board of Secondary Examination, Manipur to show the answer scripts to the candidates or his/her representative" and (ii) "The information asked by the petitioner is exempted under Section 8(i)(e) of the R.T.I. Act." And no public interest will be served as envisaged u/s 8(1)(j) of the RTI Act.

As regards (i) above, the Section 22 of the R.T.I. Act states that "this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act." Therefore, the Rules framed by the Board cannot curtail the right of a citizen guaranteed by the R.T.I. Act and the ground for denial is untenable.

As regard reason no.(ii) above, the information which is exempted from disclosure under section 8(1)(e) is as follows :- "information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;"

In this regard, it would be appropriate to notice the decision of the Central Information Commission in a case analogous to the present one. In the Decision of the Central Information Commission in Mr. Sirajul Islam Vs. Dr. Alok Sen, First Appellate Authority, Assam University, Silchar: Complaint No.CIC/SG/C/2008/00096 dated 27/11/2009, the Central Information Commission observed :- "The Respondent has submitted his written submission in which he has stated that the then FAA Mr. S.Sen Gupta had issued an order after the hearing. The FAA has rejected the disclosure of the information by upholding the PIO's claim of exemption under Section 8(1)(e) & (g). However, no reasoning has been advanced in the order to justify this. The Commission cannot accept the claim of fiduciary relationship because no argument has been advanced to show how a fiduciary relationship exist in

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the instant matter. Section 8(1)(e) of the RTI Act exempts from disclosure "information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;"

"The traditional definition of a **fiduciary** is a person who occupies a position of **trust** in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. The information must be given by the holder of information when there is a choice, -as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship." Hence the Commission holds that the disclosure of marks does not violate any fiduciary relationship. (underline added)

The respondent also claimed the exemption u/s 8(1)(j) which exempts "information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

Gauhati High Court in its order dated 16/9/2010 in WP 283 of 2010 defined the term personal information as under :

"10. The term 'personal information' occurring in Section 8(1)(j) of the Act, disclosure of which is exempted, naturally, denotes personal information of person other than the person who seeks information, and as maintained by the authority, which if disclosed, would cause unwarranted invasion of the privacy of the individual. It does not include the personal information of the person seeking such informations that are maintained by the authority."

There is no doubt that information relating to answer scripts of other candidates than the person seeking information is personal information. Disclosure of such information is not obligatory on the part of the SPIO unless the SPIO is satisfied that the larger public interest justifies that disclosure of such information.

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When we look at the preambles to the Right to Information Act, 2005, the objects, among others, are for promotion of transparency and accountability in the working of every public authority and also to contain corruption and to hold Government and their instrumentalities accountable to the governed. We may recall the 1982 ruling of the Supreme Court (Transfer of Judges) that "Disclosure of Information as regards the functioning of the government must be the rule and secrecy an exception."

Therefore, the SPIO while making a decision under u/s 8 or 11 of the Act, transparency and public interest should be kept in mind.

The information sought by the appellant from the respondent SPIO, relates to the examination conducted by the Board of Secondary Education, Manipur (BSEM) for recruitment of the Supervisor in the Social Welfare Department, Government of Manipur. This Commission in its decision dated 14/1/2008 in Appeal Case No. 89 of 2007 (N. Uttam Meitei Vs JS(Home)/SPIO & another) observed that "The answer script in such competitions for recruitment for jobs, access to it is crucial, to make a competition transparent and accountable, it is extremely essential to know how the performance of a candidate fair in the scheme of things of the competition, instead of keeping it in a box." And decided that a photocopy of the answer script of the written examination (after concealing the identity or signature of the examiner in case if it is recorded in that script) be provided by the SPIO within fifteen days from the receipt of the order, free of cost. This decision was upheld by the Gauhati High Court in its order dated 23/5/2008 in WP(C) No. 318 of 2008.

However, as regards seeking copy of answer scripts of other candidates, it being a personal information, the SPIO has to see if the public interest in disclosing it, outweighs in importance any possible harm or injury to the interest of such third party and an opportunity of being heard should be given to the third party/candidates concerned before taking the decision either to disclose or not to disclose.

In Rakesh Kumar Singh Vs Harish Chander, Assistant Director, Lok Sabha Secretariat, Information Cell, Parliament House and other analogous cases, the Central Information Commission in para 42 of its order dated 23.4.2007 observed as follows :

"42. However, insofar as the departmental examinees are concerned or the proceedings of Departmental Promotion Committees are concerned, the Commission tends to take a different view. In such cases, the numbers of examinees are limited and it is necessary that neutrality and fairness are maintained to the best possible extent. Disclosure of proceedings or disclosure of the answer sheets not only of the examinees but also of the other candidates may bring in fairness and neutrality and will make the system more transparent and accountable. The Commission, moreover finds that the proceedings of the Departmental Promotion Committees or its Minutes are not covered by any of the exemptions provided for under Section 8(1) and, therefore, such proceedings and minutes are to be disclosed. If a written examination is held for the purpose of selection or promotion, the concerned candidates may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. The

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right to get an evaluated answer sheet does not, however, extend to claiming inspection of or getting a copy of the evaluated answer sheets concerning other persons in which case, if the concerned CPIO decides to disclose the information, he will have to follow the procedure laid down under Section 11 of the Right to Information Act.”.

The SPIO, when deciding in an issue relating to furnishing of information appeared to be exempted under any clause under Section 8(1) of the RTI Act, should keep in mind the spirit of the Act i.e., maximum transparency and minimum confidentiality to make the working in the Public Authority transparent so as to gain the public confidence in its system. The Public Authority, like the Board of Secondary Education, Manipur conducting public examinations and other examinations relating to recruitment of staff for the Government Departments, as entrusted from time to time, should act in the manner which may remove any doubt by any person in its working. As observed by the Central Information Commission in its decision reproduced in the above para that “Disclosure of proceedings or disclosure of the answer sheets not only of the examinees but also of the other candidates may bring in fairness and neutrality and will make the system more transparent and accountable.”, in the present case also, the SPIO is expected to take his decision in the spirit of the Act for transparency and neutrality.

#### DECISION

In the light of the discussions made in the foregoing paras, the Commission decides that :

- i) The Secretary and SPIO of the Board of Secondary Education, Manipur should furnish an authenticated photocopy of the answer scripts (after concealing the identity or signature of the examiner if it was recorded in the answer script) of Ms. Ningombam Dhanabati Devi, the appellant who appeared the written test/examination for recruitment of Supervisors of the Social Welfare Department, Government of Manipur conducted by the Board (BSEM) in September, 2010 under Roll No. 2172 within fifteen days from the date of receipt of this decision free of cost;
- ii) The SPIO/Secretary, BSEM should also furnish an authenticated copy of the list of candidates found eligible in the above referred written test/examination for the Viva-Voce/other test by the DPC (in order of merit if the document is available in that form; if not in the form in which the list was prepared by the BSEM) alongwith the marks secured by each candidate within fifteen days from the date of receipt of this decision, free of cost;
- iii) Alongwith the above information, the SPIO should also furnish the cut off marks separately for the General and OBC candidates (if the different cut-off marks are prescribed); and

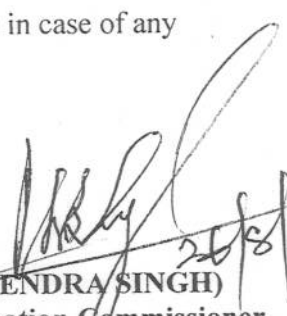
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- iv) (a) As regards furnishing of the copy of the answer scripts in respect of the candidates who secured the highest marks and the lowest marks among the eligible General and OBC candidates respectively, the Secretary/SPIO of the Board (BSEM) is directed to decide the matter as per provisions under Section 11 of the R.T.I. Act, if he decides to disclose the information in order to ensure the transparency and accountability in the function of the Board.

The appeal is allowed to the extent stated above.

- (b) The appellant can approach this Commission again in case of any grievance, within three weeks from the date of this order.


Pronounced in open.

  
(CH BIRENDRA SINGH)  
State Information Commissioner,

Endt. No. A.C.13(B)/2011

Imphal, the 26th August, 2011.

- Copy to:- 1. The Principal Secretary (Education)/  
First Appellate Authority,  
Government of Manipur.  
2. The Secretary/State Public Information Officer,  
Board of Secondary Education, Manipur, Imphal.  
3. Ms. Ningombam Dhanabati,  
D/o N. Tomchou Singh,  
Singjamei Chinga-Makha Phura Makhong,  
P.O. Singjamei Bazar- 795008,  
Manipur.

  
(M.N. SHAH)  
Deputy Registrar,  
Manipur Information Commission,  
Imphal.

