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## **Chapter- I**

### **Introduction**

Tripura Information Commission, with this edition, is preparing its fourth annual report. Other three reports, relating to the years 2005-06, 2006-07 and 2007-08 were prepared and forwarded to the State Government with recommendation to lay before the Tripura Legislative Assembly for those being Vetted. The Right to Information Act, 2005 mandates preparation of the annual report so that the implementation of the provisions of the act is mirrored in that report and the appropriate Commission can suggest, recommend necessary steps if the Commission is of the opinion that the functions of the Public Authorities under this Act do not conform with the provisions or spirit of the Act. The State Information Commission, in its three previous reports had made several recommendations for promoting and to have affective implementation of the Act in the State. The report gets its worthiness when it gets propagation. Tripura Information Commission consciously believes and is hopeful that this report would get legitimate propagation and the State Government would take appropriate necessary action on the recommendations made in the report.

1.1.2 The Right to Information Act, is a land mark citizen friendly legislature. Yet, it being so, the Tripura Information Commission, from the experiences it gathered, is of the opinion that fruits of the legislature are yet to be exploited by the mass people specially, the disadvantaged group. Public awareness about their right to access information held by the Public Authority in accordance with the provisions of the act depends mostly on the extent to what the citizens have been educated in RTI. The sincere and citizen friendly attitude of the information providers under the public authorities are the primary requirement of the meaningful democracy with good governance. The appropriate government and the public authorities are mainly vested with the responsibility of building capacity through education and training of the stake holders under the public authorities and the development of awareness amongst the public at large as laid down under section 26 of the RTI Act. The citizens, at the grassroots level are not very much aware of the legislature and they seldom come to use the Right to Information Act. This is happened due to lack of understanding about the Act by the disadvantaged group. Even though, it can not wisely be said that the response to the Act is not encouraging. However, at the present, the Right to Information Act is broadly being used by the educated citizens and

amongst them, the employees are the notable users. The Tripura Information Commission is being the important stakeholder, it is always in thought of focusing the areas where implementation of the provisions of the Act lacks and how to bring about improvement in the implementation of the provisions of the Act. The Tripura Information Commission has set up a vision to strengthen the awareness generation programme, specially in disadvantaged group covering all the Sub-Divisions of the State and during the reporting period, the Commission has already covered all most all the Sub-Divisions and some of the Sub-Divisions more than once. The efforts of the Commission alone are not adequate and awareness generation can not be the only tools to bring about desired improvement in the implementation of the provisions of the Right to Information Act. The provisions of the Act suggest that the appropriate Government is to look after certain areas concerning to the proper implementation of the provisions of the Act and with out such action, though the legislature is a land mark one, its implementation can not appropriately be blossomed. The Tripura Information Commission in its previous reports made some specific recommendations to the State Government to consider those recommendations and to adopt as policy decision of the Government for proper implementation of the provisions of the Right to Information Act. It is time to have again looked in the recommendations made by the Commission.

1.1.3 The record management, including cataloguing and indexing of records enabling easy access to information is an important aspect of the Right to Information Act. This is necessary to ensure timely disposal of request for information as provided under the Act. The Tripura Information Commission, in deciding certain appeals and complaints has observed that Public Authorities need to bring about substantial improvement in the management of records and how to do it, the Right to Information Act is very specific and given mandate there in the Act. As about destruction of records, though there is a Central Act and rules framed there on by the Central Government, the State Government is yet to adopt the said act or to enact its own act to regulate destruction or retention of records. The administrative orders now in force lack from legal point of view. This Commission, in several orders and judgments has discussed and suggested for going in to formulation of a suitable legislature guiding procedure for destruction and retention of records.

1.1.4. The compliance of the provisions of the act in the state, in spite of various constraints, is encouraging. The number of requests and appeals made to the SPIOs and to the Departmental Appellate Authorities compare to the previous years is larger. Similarly, information furnished by the SPIOs is also larger compare to the previous years which means that the compliance of the provisions of the act in the state is better and the stake holders now better understand the provisions of the Act and this is indexed in the number of second appeal and complaint presented before this Commission during the reporting period. Though the number of requests have substantially gone up but comparatively, the number of 2<sup>nd</sup> appeal and complaint are not as well. The reasons behind are that the SPIOs are now more responsive and understand the provisions of the act better and requesters also get their required information within the time specified under the Act. The Commission may therefore, can claim that the mission set up by it is gradually getting momentum.

1.1.5. Tripura Information Commission, as a matter of principle, gives quick response to the 2<sup>nd</sup> appeal and complaint and disposes, generally, in normal cases, with in a day or two of the date of hearing and in extra ordinary circumstances and in complicated cases, decision is given taking little bit more time. The Commission, during the reporting period, in one case only took about six months time due to veracity of the case. The judgment and order of the Commission is webenabled and uploaded in the website [www.tripua.nic.in](http://www.tripua.nic.in).

1.1.6. The Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India has launched a Centrally Sponsored Plan Scheme for Strengthening and Capacity Building of the Information Commissions and Propagation of the Right to Information. Tripura Information Commission, under the said scheme has submitted project proposal to the DoPT. The DoPT, making some adjustment in the scheme has approved it and first installment of fund is placed. Tripura Information Commission has taken all steps to implement the scheme. Once the scheme is implemented, the citizens would no more be required to visit the Commission for filing appeal or lodging complaint. Instead, they would be in a position to register appeal and complaint online. Tripura Information Commission expects that the implementation of the scheme can be completed by the next financial year.

1.1.7. The overall response of citizens towards use of the Right to Information Act in the state is encouraging. There is significant increase in the number of information seekers during the period under report as compared to the previous years. The response of the stake holders is also positive. Therefore, the information seekers need not to lodge 2nd appeal or complaint as many. The Commission expects that during the coming years, understanding about the RTI legislatures amongst the users and the stake holders would be better and the fruits of the legislature could be better exploited.

## CHAPTER – II

### ACHIEVEMENTS

2.1.1: **Development of awareness.** The fundamental principle of the Right to Information Act may be to bring about equality among all citizens by ensuring availability of information on the lawful actions of the public authority with a view to bring transparency in Government functioning. It intends to ensure fairness in the formulation and implementation of public policies. The civil society may feel that the Right to Information Act has brought privilege to them to make public officials responsible and accountable for their assigned tasks. It is believed that the Right to Information Act has given an excellent opportunity to the public in their respective fields to develop skill and to utilize for their betterment and the society as well. But the successful use of the legislature mostly depends on how the people utilize the legislature and how far they have made them equipped to utilize the act to exploit its fruits. The awareness and propagation of the Right to Information Act are therefore, the important tools to bring about desired goal of the legislature. Though the Act mandates that the appropriate Government within and extent of its resources may develop and organize educational programmes to advance the understanding of the people, in particular of disadvantaged communities as to how to exercise the rights contemplated under the Right to Information Act and the state Government also has taken necessary steps in that direction, the Tripura Information Commission felt that the Commission would also take necessary steps for propagation of the RTI and for education of the people of the state in Right to Information.

2.1.2. As suggested by this Commission, the Government of Tripura declared the State Institute of Public Administration and Rural Development as Nodal Agency for implementation of the RTI Act within Tripura. The SIPARD on its own has been holding training and education programmes for the FAAs, SPIOs and the SAPIOs. It has also been holding workshops and seminars on RTI with the participation of media persons and member of the non-government organizations. For the said purpose, the SIPARD is being funded under the United Nations Development Project. As per suggestion of this Commission, the SIPARD, during the period under report placed funds with the District Magistrates & Collectors for making arrangements to conduct training programmes for both the officials as well as educational programmes for developing awareness on RTI among the people in rural areas. In the programmes organized by the SIPARD both the State Chief Information Commissioner

and the State Information Commissioner actively participated and placed their presentation on the Act and the Rules as well as allied RTI related matters.

2.1.3. This apart, the Press Information Bureau as a part of their Bharat Nirman Chetana Utsav, Public Information Campaign organizes seminar on Right to Information. The State Information Commissioner, as per request of the Press Information Bureau attended, addressed the participants and made presentation on the RTI matters.

2.1.4. Besides the programmes arranged by the SIPARD after active persuasions by this Commission, the District Administration and some public authorities arranged training programmes and workshops for the Appellate Authorities, SPIOs and the SAPIOs designated by the respective public authorities during the period under report as described below. In all those programmes both the SCIC and the SIC attended, addressed the participants and made presentation on the RTI matters.

Date	Name of the authority organized programme	Place of training /workshop	Participant.
1	2	3	4
04.04.08	SIPARD	SIPARD	Media persons and NGOs
08.07.08	Tripura State Co-operative Bank Ltd.	Conference Hall of the Engineers, G. Basti.	All the stake holders of the Bank.
06.09.08	SIPARD	SIPARD	All the stake holders of the IGNOU
21.11.08	SIPARD	SIPARD	All the stake holders of the West Tripura District.
30.12.08	District Administration, South.	Santirbazar Community Hall.	All the stake holders of the Sub-Division.
31.12.08	District Administration ,South	Udaipur Town Hall.	All the stake holders of the Udaipur Sub-Division.
21.02.09	Agriculture Department.	SIPARD	All the stake holders of the Agriculture Department.
26.02.09	District Administration, North.	Zilla Parishad Hall, Kailashahar.	All the stake holders of the District including PRI Bodies.
27.02.09	Police Administration.	Conference Hall, Office of the S.P.(N)	All the stake holders of the Police Administration of the North and Dhalai Districts.
28.02.09	Police Administration.	SIPARD	All the stake holders of the Police Administration of the West and South Districts.

## **2.2.1 Proactive disclosure by Public Authorities:**

Section 4(2) of the RTI Act provides that it shall be a constant endeavor of every Public Authority to provide as much as information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. Keeping this provision in view, the State Government have issued instructions to the Public Authorities to publish information proactively which is a natural corollary of the citizen's right to information and forms the sine que non of transparent and accountable governance. Information received from the departments so far, only a few Public Authorities did make such disclosure upto 31.03.2009 and details of proactive disclosure made by the Public Authorities already found place in the annual report of 2006-07. Thereafter, no further report has been received by this Commission updating the publication of information under section 4(1)(b) of the Act. The public authorities are required to take appropriate steps for updating the publication of information under section 4(1) (b) of the Act immediately.

### **2.3.1. Designation of FAAs, SPIOs AND SAPIOs:**

One of the important functions of the public authorities is to designate the stakeholders, namely, the First Appellate Authorities, the State Public Information Officers and the State Assistant Public Information Officers as provided under sub sections (1) and (2) of section 5 and section 19(1) of the RTI Act, 2005. In the annual reports of 2005-06 and 2006-07 and 2007-08, the names of such officers designated by several public authorities had already been particulated. During the year under report, the ICFAI University designated the First Appellate Authority, the State Public Information Officer and the State Assistant Public Information Officer.

2.3.2. Failure to designate the stakeholders, namely, the First Appellate Authorities, the State Public Information Officers and the State Assistant Public Information Officers by the public authority is a ground for lodging complaint before the Information Commission under section 18(1) of the said Act. So, the public authorities are required to be more vigilant and should see that the posts of such stakeholders are not kept vacant for any moment. Designating the First Appellate Authority, State Public Information Officer and State Assistant Public Information Officer does not end the responsibility of the Public Authority. The changes take due to transfer, retirement etc. in the chair of the said authorities have to taken care of so that no chair of any of the aforesaid authorities remains vacant.

**2.4 Disposal of request for information by the SPIOs during the period under report:**

Status of disposal of the requests for information by the State Public Information Officers based on the Annual Reports furnished by the different departments stands as under: -

Name of Department	No of Requests Received during the Year	No. of Requests Disposed	No. of Requests Rejected	No. of Requests allowed	No of requests pending at the end of the year
(1)	(2)	(3)	(4)	(5)	(6)
Tripura Public Service Commission	284	284	Nil	284	Nil
Agriculture Department	04	04	Nil	04	Nil
Animal Resources Deptt	05	05	Nil	05	Nil
Assembly Secretariat	04	04	Nil	04	Nil
C M Secretarial	05	05	Nil	05	Nil
Tripura State Cooperative Bank Ltd.	01	01	Nil	01	Nil
Education (SW & SE)	19	19	Nil	19	Nil
Education (Higher)	62	61	01	61	Nil
Education (School)	99	99	Nil	99	Nil
Education (YAS)	01	01	Nil	01	Nil
ICFAI University	03	03	Nil	03	Nil
Election Department	07	07	Nil	07	Nil
Food, Civil Supplies & Consumer's Affairs	13	13	Nil	13	Nil
Forest Department	126	117	Nil	126	09
Fisheries Department	01	01	Nil	01	Nil
Finance Department	11	11	Nil	11	Nil
General Administration (AR) Department	07	07	Nil	07	Nil
General Administration (P&T) Department	07	07	Nil	07	Nil
General Administration (SA) Department	02	02	Nil	02	Nil
General Administration (Pol) Department	01	01	Nil	01	Nil
General Administration (P& S) Department	02	02	Nil	02	Nil
Home (Jail) Department	10	10	Nil	10	Nil
Home (Police) Department	51	51	Nil	51	Nil
Director General of Police	31	26	05	26	Nil

Health Department	116	116	Nil	126	Nil
Information, Cultural Affairs & Tourism	08	07	Nil	08	01
Industries & Commerce	38	37	Nil	37	01
Labour Department	02	02	Nil	02	Nil
Law Department	04	04	Nil	04	Nil
PW Department	25	25	Nil	25	Nil
Revenue Department	990	978	Nil	990	12
Science, Technology & Environment Department	08	08	Nil	08	Nil
Urban Development Department	43	43	Nil	43	Nil
Tripura Information Commission	11	11	Nil	11	Nil
Tripura Gramin Bank	03	03	Nil	03	Nil
Tribal Welfare Deptt.	08	08	Nil	08	Nil
Total	2012	1983	06	2006	23

**2.5. Summary of fees collected by the Public Authorities under various Department during the period under report:**

Name of Department	Fee Collected Section 6(1)	Fee Collected Section 7(1)	Total Collection
Tripura Public Service Commission	2770.00	56.00	2826.00
C M Secretariat	50.00	-	50.00
Agriculture Department	40.00	-	40.00
Tripura Legislative Assembly	40.00	-	40.00
Animal Resources Department	50.00	1326.00	1376.00
Cooperative Bank Ltd.	10.00	-	10.00
Education (Higher)	1490.00	260.00	1760.00
Education (School)	940.00	1826.00	2766.00
Education (YA&S)	10.00	2.00	12.00
Education ( SW&SE)	170.00	783.00	953.00
ICFAI University, Tripura	30.00	-	30.00
Forest Department	1090.00	13983.00	15073.00
Food & Civil Supplies Department	130.00	424.00	554.00
Fisheries Department	10.00	10.00	20.00
Finance Department	160.00	658.00	818.00
General Administration (AR) Department	70.00	260.00	330.00
General Administration (P&T) Department	70.00	28.00	98.00
General Administration (SA) Department	10.00	0.00	10.00
Health Department	960.00	2605.00	3565.00
ICAT Department	80.00	36.00	116.00
Industries & Commerce	370.00	2156.00	2535.00
Home ( Police )	190.00	128.00	318.00
Home (Prison)	60.00	224.00	284.00
Director General of Police	120.00	128.00	248.00
Law Department	40.00	-	40.00
Labour Department	20.00	-	20.00

P W Department	250.00	245.00	495.00
Revenue Department	1600.00	5540.00	7140.00
Science & Technology Department	80.00	88.00	168.00
Tribal Welfare Department	80.00	48.00	128.00
Tripura Information Commission	100.00	71.00	171.00
Tripura Gramin Bank	30.00	-	30.00
Urban Development Department	920.00	-	920.00
Grand Total	12040.00	30904.00	42944.00

**2.6. Disposal of first appeal under section 19(1) of the Act by the First Appellate Authorities during the period under report:**

Name of the department	Appeals received for disposal			Appeals disposed of during the year			Pending at the end of the year
	Pending of previous year	Received during the year	Total for disposal	Allowed	Dismissed	Total	
TPSC	Nil	04	04	04	Nil	04	Nil
Assembly Secretariat	Nil	01	01	01	Nil	01	Nil
ARDD	Nil	01	01	01	Nil	01	Nil
Education (School)	Nil	12	12	12	Nil	12	Nil
Education (Higher)	Nil	03	03	03	Nil	03	Nil
Education (YA&S)	Nil	01	01	01	Nil	01	Nil
Forest Deptt	Nil	03	03	03	Nil	03	Nil
GA(A/R)	Nil	01	01	01	Nil	01	Nil
Forest	Nil	04	04	04	Nil	04	Nil
Home (Prison)	Nil	02	02	02	Nil	02	Nil
Industries & Commerce	Nil	04	03	03	01	04	Nil
ICAT	Nil	01	01	01	Nil	01	Nil
PW Deptt.	Nil	03	03	03	Nil	03	Nil
Revenue	Nil	08	08	08	Nil	08	Nil
Science & Technology	Nil	01	01	01	Nil	01	Nil
<b>Grand Total</b>	<b>NIL</b>	<b>68</b>	<b>68</b>	<b>68</b>	<b>NIL</b>	<b>68</b>	<b>NIL</b>

Remaining 37 departments are reported to have not received any first appeal by the public authorities under their respective control.

**2.7. Disposal of complaint under section 18(1) and second appeal under section 19(3) of the Act by the Tripura Information Commission during the period under report:**

Nature of cases	Cases received for disposal			Cases disposed of during the year			Pending at the end of the year
	Pending of previous year	Received during the year	Total for disposal	Allowed	Dismissed	Total	
Complaint u/s 18(1)	04	52	56	22	15	37	19
Second appeal u/s 19(3)	05	29	34	15	12	27	7

2.7.1. During the period under report, the number of application for information received by the State Public Information Officers is 2012 and as against, only 6 applications were rejected and the information against the rest of the cases was furnished by them. The SPIOs decided 2006 cases during the period under report leaving only 23 cases pending. Amongst all the stake holders, Revenue Department has received as many as 990 applications which is the highest number of application received by a single Department and this number amounts 49.2% of the total applications received during the period under report. Tripura Public Service Commission is the 2<sup>nd</sup> highest recipient of the applications reckoning to 284 and Forest Department is the 3<sup>rd</sup> highest recipient of the applications reckoning to 126. The number of application received during the period under report is almost double the number application received corresponding period of the last year. The number of 1<sup>st</sup> appeal received by the 1<sup>st</sup> Appellate Authority during the period under report is 68 only and this indicates that the applicants were not required to approach to the 1<sup>st</sup> Appellate Authority for information and the State Public Information Officers have better adapted the provisions of the RTI. Application fees received during the period under report amounted to Rs. 12,040/- and total fees received amounted to Rs. 42,944/-. Tripura Information Commission received 52 number complaints and 29 number 2<sup>nd</sup> appeal during the period under report and disposed of 37 complaints and 27 number 2<sup>nd</sup> appeals. This number corresponding to the last year is not higher and this means that the citizens are now not required to approach the Commission as many and they get the required information from the State Public Information Officers. This improvement has been sustained due to constant monitoring done by the Commission.

## **CHAPTER-III**

### **TRIPURA INFORMATION COMMISSION –AN OVERVIEW**

Constitution of the State Information Commission as mandated under sub-section (1) of Section 15 of the Right to Information Act, 2005, the State Government vide notification No 3(5)-GA(AR)/2005/P-III dated 10<sup>th</sup> October,2005 constituted the Tripura Information Commission. The State government vide notification No F.3(5)-GA(AR)/2005/P-III dated 17<sup>th</sup> January,2006 appointed Sri B.K.Chakraborty,IAS (Retd) and Sri D.K.Daschoudhuri, TJS (Retd) as the State Chief Information Commissioner and the State Information Commissioner respectively and functioning of the Commission started immediately after taking oath of office administered by His Excellency the Governor of Tripura on 19<sup>th</sup> January, 2005 by –

- i). Sri B.K.Chakraborty, IAS,(Retd) as the State Chief Information Commissioner
- ii).Sri D.K.Daschoudhuri, TJS (Retd) as the State Information Commissioner.

#### **3.2.2 Location and Office accommodation of the Commission:**

The Tripura Information Commission is located in the first floor of the Secretariat Annex building, Pandit Nehru Complex, Gurkhabasti, Agartala-799006.The General Administration (SA) Department has spared 6(six) rooms to the Commission. 3 rooms are used as the chambers of the Chief Information Commissioner, Information Commissioner and the Secretary of the Commission. One room is earmarked for Ejlas of the Commission and 2 rooms are used for office of the Commission.

#### **3.3.1 Role and Power of the Commission :**

Tripura Information Commission is a quasi judiciary forum established as per provision of Section 15(1) of the Right to Information Act, 2005. It enjoys the power of the Civil Court as are vested in trying a suit under the Code of Civil Procedure and it can issue summon and enforce the attendance of a person and compel them to give oral or written evidence and to produce documents or things requiring the discovery and inspection of documents; receiving evidence on affidavit; sending requisition for any public records and copies thereof from any court or office. The Commission has a number of key roles to play to ensure that the Right to Information Act is effectively assisting the citizens to have access to information, specially the desadvanced group. The Information Commission is responsible for :-

**(i) Handling of Complaints and Appeals:** It is the duty and responsibility of the Commission to receive and enquire a complainant from any person who has been unable to submit a request for information to a Public Information Officer for reason that no such officer has been appointed; Public Information Officer has refused to receive and accept application for information or appeal; refused access to any information; has not given response to a request for information with in specified time; PIO has demanded unreasonable fee; applicant believes that he has been given incomplete, misleading or false information. It is also the duty and responsibility of the Commission to receive

Second Appeal filed against the decision of the First Appellate Authority within a period of 90 days from the date on which the 1<sup>st</sup> Appellate Authority disposed of the 1<sup>st</sup> appeal. In deciding the 2<sup>nd</sup> appeal, the Commission has the power to require the Public Authority to take steps to comply with the provisions of the RTI Act; pass direction to provide information in the same form in which information is sought for; direct the public Authority to designate State Public Information Officer and proactively disclose certain information; pass direction about record management and destruction of records; direct the public Authority to enhance the provision of training on the Right to Information for its officials; providing an annual report to the Commission by every Public Authority; require the Public Authority to compensate the complainant/appellant for any loss or other detriment suffered; impose penalty and recommend for instituting departmental proceeding against the erring Public Information Officers; reject the 2<sup>nd</sup> appeal.

**(ii). Monitoring of Implementation:** The annual report is required to be prepared by the State Information Commission partly based on the data to be furnished by the Public Authorities in form the annual report. The said report has to be furnished by the Public Authority after the end of each year. This is required as per provision laid down under section 25(2) of the Right to Information Act, 2005. The State Information Commission has to oversee the compliance of the said provision of the Act and suggest the Public Authorities about compliance of the provision of the Act. The State Information Commission may recommend specifying the steps which in its opinion is necessary to be taken by the public authorities in relation to the exercise of its function under the Act which does not conform with the provisions or spirit of the Act to promote such conformity.

**(iii). The Special Human Right Oversight:**

The provision contained under Section 24(4) of the Act, the State Govt., in exercise of the said power conferred upon it may exempt the intelligence and security organization from the purview of the Right to Information Act by issuing notification in the official gazette time to time. The State Government, by virtue of the said power has exempted the Police Organization including its Forensic Laboratory from the purview of this Act. However, the information pertaining to the allegation of human right violation, the Police Organization also including its forensic laboratory is required to obtain approval of the State Information Commission to furnish information. That a part, the Police Organization including its Forensic Laboratory is also bound to furnish information pertaining to the allegation of corruption even then it is exempted from the purview of the Right to Information Act.

#### **3.4.1. Function of the Tripura Information Commission:**

(i). Tripura Information Commission decides both complaint under section 18 and second appeal under section 19(3) of the Right to Information Act. In course of deciding complaint as well as appeal, the Commission calls attendance of both the complainant/appellant and the respondent issuing notice and summon in the prescribed form allowing reasonable time for making written rejoinder and representation by the

complainant/appellant and the respondent as the case may be and also for personal hearing.

(ii). The Commission does not consider personal appearance of the complainant/appellant mandatory. Even, in absence of the complainant/appellant, the Commission decides complainant/appeal on merit. The Commission generally decides no case with out having heard the respondent.

(iii). The Commission announces order concluding hearing and detailed judgment and order is pronounced normally on the same day or within a couple of days duly authenticated from the Commission and provides to the parties to the complaint and appeal either by hand or by post as opted by them. The copy of the judgment and order is also uploaded to the website of the Tripura Information Commission and judgment and order of the Commission is easily accessible to the citizens.

(iv). The Right to Information Act, 2005 does not provide time limit for deciding an appeal or a complaint. Tripura Information Commission insists on early disposal of the cases. Generally, the cases which are not complicated are disposed of after a single hearing which hardly takes a month. The complicated cases are being disposed of with in a span of time on an average 2(two) months of their institution with the Commission. Under exceptional circumstances, in one case only, the Tripura Information commission pronounced final judgment after six months.

(v). Tripura Information Commission does not close any case with out receiving compliance report from the stake holders. The Commission gets it ensured making special mention in the judgment and order for sending compliance report specifying time limit. A case is finally closed having examined the compliance report and getting satisfied with action of the stake holders.

(vi). The proceedings of the Commission are held in congenial informal atmosphere to enable the requesters to feel free to present their cases and express their views with out any fear and apprehension.

(vi). The penal proceedings, the Commission takes up separately and the officers against whom allegations are brought to have violated the provisions of the Act are being allowed reasonable opportunity of being heard and the Commission decides the proceedings having heard the officers against whom allegations are brought.

(vii). Some times, citizens are in wrong notion that the Information Commission will provide redress to their ultimate grievances and they lodge complaint with the Commission or file appeal before the Commission. The Commission makes every effort at the time of hearing to convince them that the Commission is concerned with only grievances pertaining to information sought for. The redress against ultimate grievances may be sought for from the Department/ Organization concerned/ Other sources, as the case may be relevant.

(viii). For the propagation of the RTI and training of the stake holders, the Commission takes sincere initiative and gives suggestions to the Public Authorities where the stake holders lack to bring improvement. The Commission also gives suggestion to the Public Authorities about record management, indexing, cataloguing and computerizing of records.

**3.5.1. Budget Provision made for the Tripura Information Commission :-**

		Rupees in thousand
Sl. No	Item of Expenditure	2008-2009
1.	Salaries	2700
2.	Travel Expenses	150
3.	Office Expenses	300
4.	Purchase of Vehicle	500
5.	Cost of fuel and maintenance cost of vehicle	300
6.	Hiring charges of private vehicle	150
7.	Expenditure on private witnesses	10
8.	Strengthening and Capacity building of the Information Commission and RTI propagation.	54
	<b>Total</b>	<b>4110</b>

3.6.1 **Secretariat of the Commission:** In consistence with the provision laid down under section 16(6) of the Right to Information Act, 2005, the State Government have posted one TCS Officer to function as Secretary to the Commission. Besides, the Commission has also been provided with the following category of staff on deputation from the other departments:-

SL No	Designation	Number
1.	Private Secretary, Grade III	1
2.	P.A. Grade-I	3
3.	Office Superintendent	1
4.	Assistant	1
5.	Driver	2
6.	Group D	6

Address and Contact Number of the Secretary, Tripura Information Commission:- Pandit Nehru Complex, Gurkhabasti, Agartala -799006. Phone – 0381-2224146 (O), 0381-2382378 (R).

## CHAPTER-IV

### COMMISSION'S OBSERVATIONS AND RECOMMENDATIONS

4.1. **Previous unimplemented recommendations:** Tripura Information Commission in its annual reports for the year 2005-06, 2006-07 and 2007-08 forwarded to the State Government made some observations and recommendations. Although, the State Government has taken some steps for implementation of those recommendations, major recommendations of the Commission are yet to be implemented. Some of the recommendations are to be implemented by the Central Government and rest by the State Government. Therefore, this Commission considers it expedient to reiterate those unattended recommendations in this report also.

4.2. **Enforcement of decisions of the Commission:** Section 19(7) of the Right to Information Act, 2005 stipulates that the decision of the Information Commission shall be binding. The Act is however, silent about the action to be contemplated in case there is non-compliance. There are instances of non-compliances of the orders passed by the Commission. Therefore, it is suggested that a new sub-section to the Section 19 of the Act to be inserted empowering the Commission to enforce its decisions including penalizing the head of the Public Authority for continued contempt of its orders. The amount of penalty imposed or compensation awarded by the Commission should be made recoverable as an arrear of land revenue. It is therefore, suggested that a separate Section 20-A may be added for the purpose.

4.2.1. **Systematic Reforms of Record Management:** Indexing of record is an integral part to locate important information either to meet the needs of the citizens or even for simple auditing or accounting purpose. In such a situation, if the managing and indexing of records are neglected, it would not be possible to effectively implement access to the information as contemplated in the Act. It is therefore, critical to put strong procedure and guideline in place for the implementation of a useful record management system though it would be impractical to expect uniformity is practiced across the public authorities, given the essential differences in the nature of their functioning, procedure and guidelines help to attain consistency in record keeping system. It is not that the record keeping system is not prevailing, but advancement towards e-governance having increased use of computers for storage of data as well as for dissemination of information with a gradual shift to automated environment will ensure overall efficiency and productivity in the era of transparent governance.

4.2.2. So far, the Department of Information Technology with the assistance of the Ministry of Communication has set Community Information Centers in most of the Block Headquarters in the State. Considering the usefulness of those centers, the state government has decided to improve further coverage net including the panchayats in rural Tripura to disseminate development based information. Tripura Information Commission suggests the State Government to extend the facility to the citizens and empowered them to have access to information under the provisions of the Right to Information Act. In

addition, specific budgets may be sanctioned to all the public authorities for creating framework for setting up an efficient record management system without which public authorities may not be able to provide required all information sought for as per provisions of the Act efficiently.

4.2.3. The Commission examined the 'Record Retention Schedule of Records Common to All Departments' published on 06.04.2000 by the General Administration (AR) Department, Government of Tripura under the signature of the then Chief Secretary, Sri V.Thulsidas. The Commission is of the view that this schedule does not cover management and maintenance of all public records created by the agencies of the Government of Tripura, public sector undertakings, statutory bodies, corporations and commissions including medical treatment records of the patients in Government hospitals. Moreover, it is only an executive instruction for retention of records without having any legal cover for the responsibilities of the record creating agencies with respect to the arrangement, management, custody, disposal, deposit and preservation of and access to the public records. The above instructions also do not speak anything about the procedure as to how the destruction of public records is to be made. Therefore, the above schedule for record retention is considered to be inadequate having no legal force.

4.2.4. There exists a law namely, the Public Records Act, 1993 enacted by the Parliament and came into force on 01.03.1995 to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administration, Public Sector Undertakings, Statutory bodies, Corporations, Commissions and Committees constituted by the Central Government or Union Territory Administration and the matter connected therewith and incidental thereto. For carrying out the purposes of the said Act, the Central Government has also framed the Public Records Rules, 1997, which include provisions for destruction of Public records. This Commission, therefore, advises the Government of Tripura to come forward and take immediate necessary steps for enforcement of similar Act and Rules for regulating the management, administration and preservation of public records of the State Government, Public Sector Undertakings, Statutory bodies, Corporations, Commissions and Committees constituted by the state government and the matters connected therewith and incidental thereto. The General Administration (AR) Department, Government of Tripura may take necessary initiative in the matter.

4.3. **Use of E-Governance:** The use of e-governance for strengthening the RTI implementation is mutually beneficial. In fact, the RTI Act is India's first law and perhaps the only law that obliges the Government as provided under section 4(1)(a) to take up e-governance. Digitization of all Government Departments is considered vital to strengthen e-governance and quite important to address the information need of the citizens.

4.4. **RTI Education:** The Commission does not consider conducting training programmes and workshops for the information providers and development of public awareness as adequate and the only means of education on the RTI. In order to achieve the object and the enactment of the Act, education should be spread over among the

masses and for that end it is considered necessary to incorporate the subject RTI in the curriculum in schools and colleges as a long term measure. The Commission is, therefore, of the opinion that the RTI could be included as a subject at the degree and secondary levels while at the elementary levels, one page information on RTI can be provided in an appropriate place of the text books to attract the attention of the mothers of the children and other readers. However, the matter should be standardized so that there is no misinterpretation at any stage. Therefore, the task for preparation of materials and their inclusion in the text books may be entrusted upon the University for the colleges, Tripura Board of Secondary Education for the secondary and NCERT/SCERT for the elementary levels. The State Government should, therefore, come forward with specific decision in the matter.

**4.5. Capacity building and training:** It is observed that the State Government has already published a handbook containing instructions for the SPIOs and SAPIOs, which is not adequate. Detailed guidelines are to be prepared and published by the State Government as required under section 26(2) of the Act. The State Government is required to develop and organize educational programmes to advance understanding of the public in particular of the disadvantaged communities as to how to exercise the rights contemplated under the Act. The State Government is also required to train the SAPIOs. SPIOs and other stakeholders and produce relevant training materials for use by the public authorities themselves. For these purposes, the State Government may extend adequate financial support and other resources to the public authorities.

**4.6. Support to the Tripura Information Commission:** For efficient and smooth functioning of the Tripura Information Commission, the State Government may consider to extend the following support to the Commission on priority:-

(i). Required number of posts at all level may be created and staff be provided accordingly. As required under section 16(6) of the Act, rules prescribing the terms and conditions of the services of the employees of the Commission are also to be framed.

(ii). Independence of the State Information Commission and effective discharge of its duties and responsibilities cannot be guaranteed without granting full financial and administrative autonomy. For allowing complete financial and administrative autonomy to the Tripura Information Commission, the following steps including delegation of financial powers may be considered by the State Government at the earliest:-

- (a) Tripura Information may be included in the definition of 'Department' at rule 2(g) of the DFPRT 1994;
- (b) The State Chief Information Commissioner, Tripura Information Commission may be delegated with all powers of Department under the DFPRT 1994;
- (c) The Secretary, Tripura Information Commission may be delegated with the powers of the head of department and head of offices of the Commission and be allowed to exercise all powers of head of office under DFPRT 1994;

(d) Notwithstanding the provisions under rule 9 of DFPRT,1994, the Tripura Information Commission maybe exempted from obtaining prior concurrence of the Finance Department in respect of the followings:-

- \* Hiring of vehicles at the rates and conditions specified by the State Finance Department from time to time.
- Installation of telephones, extension of existing telephones and Provision of STD facilities subject to the entitlement specified by the State Finance Department from time to time.

Purchase of Furniture, Fax Machine, Photocopiers and Computers  
With accessories after observing all required formalities and  
subject to availability of fund.

- Purchase of newspapers and periodicals.

4.7.1. **Suggestions placed by this Commission in the National Conference held in New Delhi.**

## **CHAPTER –V**

### **HIGHLIGHTS OF THE DECISIONS TAKEN BY THE COMMISSION IN DECIDING COMPLAINTS UNDER SECTION 18(1) AND SECOND APPEALS UNDER SECTION 19(3) OF THE ACT.**

#### **5.1. Appeal No TIC-09 of 2008-09 between Asutosh Debnath – Appellant vs. Secretary, Tripura Public Service Commission and another decided by this Commission on 28.07.2008.**

#### **Note: Citizens have the right to know the basis of selection of the public servants.**

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 25.06.2008 of Sri Asutosh Debnath (here in after referred to as the appellant) received by this Commission on the same date. The facts leading to this second appeal are that the appellant submitted a written request on 26.03.2007 to the State Public Information Officer (SPIO) in the Tripura Public Service Commission (TPSC), Agartala seeking certain items of information, which are summarized below:-

(i) Marks of the screening test secured by the candidates selected for the post of HM (High School);

(ii) Marks of the personality test (interview) secured by the candidates selected for the post of HM (High School);

(iii) To allow the appellant for inspection of his own evaluated answer script of the screening test as well as inspection of the computation sheet of marks secured by the candidates selected for the post of HM (High School) including the marks secured by the appellant in the personality test (interview) conducted by the TPSC for recruitment to the post of HM (High School).

2. It is alleged by the appellant that although on 24.05.2008, the concerned SPIO provided him with the information at items (i) & (ii) above and also allowed for inspection of his own evaluated answer script of the screening test, but did not allow for inspection of the computation sheet of marks as mentioned at item (iii) above. Being aggrieved with the denial of inspection of this part of information by the concerned SPIO, the appellant preferred a first appeal on 24.05.2008 to the Secretary, TPSC, Agartala being the First Appellate Authority (FAA) for allowing him for inspection of the records mentioned above. Sri A.K.Poddar, Secretary, TPSC, Agartala being the FAA decided the first appeal by an order dated 20.06.2008 stating that the appellant should be allowed for inspection of his own marks only as computed in the personality test (interview), while the marks computed for the candidates selected for the post of HM (High School) cannot be shown to the appellant without having 'no objection' from

the candidates as these are third party information. Being aggrieved with the above decision of the FAA, the appellant presented this second appeal before this Commission seeking appropriate redress to have access to the above part of information in the form of inspection. The appellant furnished photocopies of the relevant papers and documents along with the memorandum of second appeal.

3. On perusal of the memorandum of appeal with enclosures, it was found in form and within time and accordingly, it was registered as a second appeal under section 19(3) of the Act.

4. In response to the summons, the Respondent 1 Sri A.K.Poddar, Secretary, TPSC, Agartala(FAA) and the Respondent 2 Sri K. Das, Joint Secretary, TPSC, Agartala (SPIO) appeared and submitted their respective written representations.

5. Heard oral submissions made by both the parties.

Issue for decision:

6. The only issue to be decided is if the decision dated 20.06.2008 of the FAA passed in the first appeal dated 24.05.2008 is tenable under the law and if the appellant is entitled to have access to the information in the form of inspection as requested?

Reasons for decision:

7. At the outset, it is to be mentioned that in his memorandum of second appeal, the appellant mentioned some facts and sought for some reliefs, which are not the contents of the original written request dated 26.03.2008. So we refrained from discussing anything about those extraneous matters and confined ourselves only to the issue of denial of the request of the appellant for inspection of the computation sheet of marks secured by the selected candidates in the personality test (interview) for recruitment to the post of HM (High School) as sought for by the appellant under item no-3 of his written request dated 26.03.2008.

8. The submission of the Respondent 1 is that in the present case, the marks secured by the selected candidates in the personality test as computed have already been displayed in the office notice board of the TPSC. So, in our view, such records can no longer be confidential and related to the third party. This Commission has already held in its several judgments that the tabulation sheet or computation sheet containing the marks secured by the candidates in any competitive examination prepared for recruitment to the post of public servant are public records since it is done in the public interest. So, the request for access to such records by any citizen under the Act cannot be denied on the plea of personal information or third party information.

9. The view of the Respondent 1 being the FAA taken in his order dated 20.06.2008 about disclosure of the third party information is also contrary to the provisions of section 11 of the Act. In case of disclosure of any third party information, the SPIO is required to follow the procedure contained in section 11 of the Act. The FAA is also required to keep in view the provisions of section 11 of the Act in taking any decision on the first appeal as required under section 19(3)

of the Act. Again, the Respondent 1 being the FAA himself undertook the task of providing the information to the requester, which also not the correct procedure. He should have given direction to the SPIO for disclosure of the information within a specified time.

10. It is also observed that in disposing of the written request in issue, the Respondent 2 being the SPIO in his letter of intimation dated 23.04.2008, remained silent about the documents sought to be inspected by the appellant Henceforth, the Respondent 2 being the SPIO should take the decision categorically against every item of information sought for by a requester.

11. Having regard to the facts and circumstances discussed here in above, we hold that the decision of the Respondent 1 denying inspection of the computed sheet of marks secured by the selected candidates in the personality test (interview) for recruitment to the post of HM (High School) is not tenable in law and liable to be dismissed. The appellant is entitled to have access to the above information in the form of inspection, which should be allowed by the Respondent 2 being the SPIO within a period of 15 days from the date of passing of this judgment and order.

Decision:

12. In fine, the appeal is allowed on contest. The order dated 20.06.2008 of the Respondent 1 being the FAA passed in the first appeal dated 24.05.2008 of the appellant is hereby set aside. It is ordered that the Respondent 2 being the SPIO should allow the appellant to inspect the computed sheet of marks secured by the selected candidates in the personality test (interview) conducted by the TPSC for recruitment to the post of HM (High School), within a period of 15 days from the date of passing of this judgment and order without charging any further fees since the same was not allowed by the SPIO within the statutory period prescribed by the Act.

13. Let copy of this judgment and order be sent to the appellant and the Respondents.

14. Pronounced.

## **5.2 Appeal No TIC-30 of 2008-09 between Sri Abhijit Das vs. President, Tripura Board of Secondary Education and another decided by this Commission on 19-12-2008.**

### **Notes : Citizens have the right to inspect the answer script.**

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 12.11.2008 of Sri Abhijit Das (here in after referred to as the appellant) received by this Commission on the same date. Facts leading to this second appeal are that the appellant submitted a written request seeking information under the Act on 26.06.2008 to Sri P.R.Deb, Secretary, Tripura Board of Secondary Education (TBSE), Agartala being the State Public Information Officer (SPIO), in response to which, the latter denied the information on 14.07.2008. Being aggrieved with the decision of the SPIO, the appellant preferred a first appeal on 16.08.2008 to the President, TBSE, Agartala being the First Appellate Authority (FAA) seeking appropriate redress. Sri S. Sengupta, President, TBSE and the FAA upheld the decision of the SPIO and dismissed the appeal by an order dated 12.09.2008. Being dissatisfied with the said order of the FAA, the appellant preferred this second appeal before this Commission for having access to the information sought for. The appellant furnished photocopies of the relevant papers along with the memorandum of second appeal.
2. On perusal of the memorandum of appeal with enclosures, it was found in form and within time and, therefore, was registered as a second appeal under section 19(3) of the Act.
3. In response to the summons, Respondent 1 Dr. A. Deb Roy, President, TBSE and the present FAA and Respondent 2 Sri Swapan Kumar Poddar, Secretary, TBSE and the present SPIO appeared and submitted their respective written representations defending the decisions of their predecessors.
4. It deserves mention here that the FAA and the SPIO, who had disposed of the first appeal and the written request in issue respectively, in the meantime, have been transferred from the TBSE and the new incumbents have joined and have been designated as the FAA and the SPIO by the appropriate authority, as mentioned in the preceding paragraph.
5. Heard oral submissions made by the appellant, the present FAA and the present SPIO.

**Issues for consideration:**

- (i) Are the decision dated 12.09.2008 of the Respondent 1 being the FAA and the decision dated 14.07.2008 of the Respondent 2 being the SPIO maintainable?
- (ii) Is the appellant entitled to have access to the information in the manner as sought for by him vide his written request dated 26.06.2008?

**Reasons for decision:**

6. For the sake of convenience, both the issues are taken together for discussion.

7. The appellant vide his written request dated 26.06.2008 sought for inspection and providing copies of the evaluated answer scripts of Philosophy and Bengali subjects against his Roll No- 13715 of the H.S.(+2) stage, examination, 2008. The Respondent 2 being the SPIO rejected the written request on 14.07.2008 showing the reason that the TBSE was exempted from disclosure under section 8(1)(j) of the Act. In the first appeal in issue, the Respondent 1 being the FAA vide his order dated 12.09.2008 upheld the decision of the Respondent 2 justifying denial on the same reason as shown by the Respondent 2 and in addition, held that the TBSE being the statutory body have been conducting Secondary and Higher Secondary (+2) stage examinations every year under strict confidentiality, for which the TBSE cannot disclose the information relating to the examiners or assessment as they made to the individual examinee on considering their safety. He also held that such disclosure was not required in the public interest.

8. We have appreciated both the decisions of the Respondents 1 & 2 and the respective written representations of the present FAA and the SPIO. The Respondent 1 being the FAA rested on three counts to justify the denial of the written request for disclosure of the evaluated answer scripts. Firstly, he supported denial of the information in issue invoking the provisions of section 8(1)(j) of the Act as made by the SPIO claiming the TBSE as to have been exempted from disclosure of any information under the Act. The Respondent 1 in his order dated 12.09.2008 did not elaborate as to how the TBSE being a public authority as a whole is exempted from disclosure under the Act. Secondly, the Respondent 1 recorded his apprehension in his impugned order that disclosure of the evaluated answer scripts might divulge the name of the examiners at the cost of their safety. Such apprehension is absolutely unwarranted in view of the fact that the appellant did not request for disclosure of the names of the examiners. Disclosure of the evaluated answer scripts was possible by severing the portion containing the particulars of the examiners from the evaluated answer scripts as per provision of section 10 of the Act. Thirdly, the Respondent 1 argued that

maintenance of the confidentiality in conducting the examinations may be disturbed in case of disclosure of the evaluated answer scripts. Maintenance of confidentiality in conducting the examinations has no relevancy in disclosure of the evaluated answer scripts since, mere confidentiality is no ground of exemption from disclosure under any of the clauses of section 8 or 9 of the Act.

9. This Commission in the meantime, decided two second appeals on the same subject matter of disclosure of the information relating to the evaluated answer scripts of the examinees who appeared in the H.S.(+2) examination, 2008 conducted by the TBSE. They are as follows:-

- (i) Appeal No-21 of 2007-08 (Sri Chidananda Choudhury v. S. Sengupta, President, TBSE and the FAA & another) decided on 15.07.2008.
- (ii) Appeal No. TIC – 18 of 2008-09 (Sri Tuhin Roy Chowdhury v. Sri S. Sengupta and the FAA & another) decided on 25.10.2008.

10. We have made elaborate discussions on the similar subject matter in which, the then the President, TBSE and the Secretary, TBSE were the Respondents being the FAA and the SPIO respectively. The present Respondents justified the decisions of their predecessors relying on the same authorities in the above two second appeals before this Commission. It is fact that the TBSE being the public authority by preferring writ petitions before the Hon'ble Gauhati High Court challenged the decisions of this Commission given in the above two second appeals. The Hon'ble High Court is yet to give its verdict except the orders passed suspending execution of the orders passed by this Commission in the above two second appeals. So, we find no reason to deviate from our earlier views taken on similar issue in the above two second appeals. The relevant portions of the judgment and order dated 15.07.2008 of this Commission passed in Appeal No-21 of 2007-08 are reiterated below:-

"9. Issues No.(i) & (ii): For the sake of convenience, both the issues are taken together for discussion. In substance, the information required by the appellant were : (1) to provide certified copies of the evaluated answer scripts and the loose sheets account maintained by the invigilators of three subjects of his daughter who appeared at the H.S.(+ 2) examination, 2007 conducted by the TBSE and (2) inspection of the tabulation sheets, evaluated answer scripts and loose sheets account of these three subjects.

10. To justify the denial of disclosure of the information, both the Respondents rested on the same ground that the TBSE as a whole is exempted from disclosure of information under section 8(j) of the Act. The section of the Act appears to have been misquoted by the Respondents, which ought to have been the section 8(1)(j) of the Act. The Education (School) Department,

Government of Tripura identified the TBSE as the Public Authority and designated Sri S. Sengupta, President, TBSE and Sri P.R.Deb, Secretary, TBSE as the FAA and the SPIO respectively vide notification No.F.13(3-43)/SE/GL-1/2005 dated 01.08.2006. Therefore, the contention of the Respondents that the TBSE is exempted from disclosure of any information under the Act is totally misconceived and erroneous. The question remains is that if the information sought for by the appellant are exempted from disclosure under clause (j) of sub section (1) of section 8 of the Act. Provisions of section 8(1) (j) of the Act are reproduced below:-

*'8(1)(j): 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 of 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.'*

11. In order to invoke of the above provision of the Act to justify the denial of disclosure of any information, it is necessary to prove that the required information is personal information having no relation with any public activity or interest and that it may cause unwarranted invasion of the privacy of the individual.

12. Considering the nature of the information, it cannot be said that the evaluated answer scripts of a student, which are the product of an examination conducted by a Board of Examination and participated by a large number of students, are personal information of a particular student. In such examination, the calibre and academic progress of the students are tested by some experts and the latter's assessment are transformed into awarding marks depicting on the body of the answer scripts, which are also recorded in the tabulation sheets for the purpose of assigning rank or gradation to the examinees. The tabulation sheets are prepared by the officials entrusted by the Board for the said purpose. The apprehension or possibility of committing error or mistake on the part of those officials cannot be ruled out. So, the examinees, in given circumstances, may have the reasons to suspect the correctness of examining the papers by the examiners, making entries in the tabulation sheets and stitching the loose sheets used by the students along with their answer scripts. For the sake of transparency, fair play and fairness in the examination process and to ensure accountability of the stakeholders involved in conducting the examinations and

publication of the results thereof, a duty is cast upon the concerned public authority to disclose the answer scripts and the tabulation sheets etc to an examinee on demand. It is also a requirement of strict observance of the principal of natural justice. . Allowing of inspection of the evaluated answer scripts by the students will also have the following dimensions:-

- (i) A student will be aware of the mistakes and other lapses made in the answer scripts, which will allow him/her the opportunity of rectification and also to be alert in future.
- (ii) Teachers responsible for evaluation of the answer scripts will have a better standard of accountability because of the fact that they will now be aware that the evaluated answer scripts would be subject to inspection by the students. This will enhance the efficiency of the examiners.
- (iii) The common citizens will have much more respect for and confidence on the Board because of its complete transparency in functioning. Thereby the efficiency and overall standard of the Board will also go up.

Accordingly, we are of the view that the examination conducted by the Tripura Board of Secondary Education is in the public interest and the records pertaining to the above information are public records.

13. The appellant requested for disclosure of his daughter's examination result records, which in no way is to cause invasion of the privacy of the examinee. The father being the guardian of his ward has the every right to seek information pertaining to the examination of his daughter as they maintain a fiduciary relationship and such disclosure does not amount to personal information causing unwarranted invasion of the privacy of any other individual. So, the ground of causing invasion of the privacy of an individual also cannot stand in the way of disclosure of the information sought for in the present case.

14. Notwithstanding the fact that the evaluated answer scripts along with loose sheets account thereof and the tabulation sheets are public records, for the sake of administrative convenience, we are of the view that instead of allowing blanket disclosure, reasonable restriction may be imposed in the form of disclosure. We are to take into account the practical difficulties of the concerned public authority in providing copies of the evaluated answer scripts, which involves enormous labour, resource and also the safety and security of the concerned examiners. Considering all the aspects, as a matter of principle, we are not in favour of providing copies of the evaluated answer scripts along with the loose sheets account and the relevant tabulation sheets.

However, the appellant may be allowed to inspect the records pertaining to the information sought for.

15. Both the Respondents, in course of hearing on this appeal, in support of denial of disclosure of the information relied on the decisions of the Apex Court delivered in the following cases:-

(i) Maharashtra State Board of Education and Higher Education vs. Paritosh Bhopesh Kumar Sheth and another reported in AIR 1984 SC 1543.

(ii) Fatheh and Himmatlal vs. State of Maharashtra reported in AIR 1977 SC 1825

(iii) President, Board of Secondary Education, Orissa and another vs. D. Suvankar and another reported in (2007) 1. SCC 603.

16. The decisions of the Apex Court in the first two cases referred to above, were given before enactment of the Act and, therefore, it can safely be said that the provisions of the Act were not taken into consideration by the Apex Court in arriving at the decisions and, therefore, the decisions were deemed to have been rendered in percuriam creating no binding precedent. As regards the third case referred to above, we have carefully gone through the copy of the judgment produced by the Respondents and it is found that the matter of disclosure of the evaluated answer scripts, the loose sheets account and the tabulation sheets etc of the examination conducted by the Board of Secondary Education, Orissa under the RTI Act, 2005 was not the issue at all in that case. The order dated 14.11.2006 passed by the Apex Court in the third case mainly deals with re-evaluation of the answer scripts and on the appeal against the order of a Division Bench of the Orissa High Court awarding compensation of Rs. 20,000/- on the Board of Secondary Education, Orissa for wrong intimation about the total marks actually received by the Respondent 1 in the said appeal, which are not the subject matters of the present appeal before this Commission under the Act. The Apex Court in Union of India and another v. Maniklal Banerjee reported in 2006 (i) SCC 643 held as thus - '*It is now well settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent*'-(Para-19). Keeping the above principle as laid down by the Apex Court in view, the decision rendered in the case of President, Board of Secondary Education, Orissa amounted in percuriam having no binding precedent in the present case which stands completely on different facts and issues. So, the above three decisions of the Apex Court need not be based for deciding the present appeal.

17. The Respondents also relied on the decision dated 23.04.2007 of the Central Information Commission (CIC) given in Complaint No.CIC/WB/2006/00223 etc. between Rakesh Kumar Singh

and others, Complainant/Appellant and Harish Chander, Assistant Director, Lok Sabha Secretariat and others.

18. At the outset, it is to be noted that there exists no provision in the Act like Article 141 of the Constitution making the decisions of the CIC to be precedent binding for the State Information Commissions (SIC), nor there is any hierarchy of status between the CIC and the SIC. In fact, both the CIC and the SIC are enjoying same powers and authorities to discharge within their respective territorial jurisdiction as prescribed by the Act. So, this Commission is not bound by the decision of the CIC and, therefore, this Commission has the authority either to agree or disagree with any principle laid down by the CIC on any particular issue.

19. Now, let us examine the views taken by the CIC in the above referred cases. The subject matter of the above cases was no doubt disclosure of the evaluated answer scripts to the examinees in respect of the examinations conducted by the UPSC, Staff Selection Commission, CBSE, Jal Board, Railways, Lok Sabha Secretariat, DDA etc. The CIC giving its own reasons, took two views in two different circumstances relating to disclosure of the evaluated answer scripts as contained in paragraphs 39, 40 and 42 of their judgment in the above cases, which are reproduced below:-

*'39. In regard to public examinations conducted by institutions established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made thereunder like CBSE, Staff Selection Commission, Universities, etc, the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets would result in rendering the system unworkable in practice and on the basis of the rationale followed by the Supreme Court in above two cases, we would like to put at rest the matter of disclosure of answer sheets. **We therefore decide that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.***

*40. Insofar as examinations conducted by other public authorities, the main function of which is not of conducting examinations, but only for filling up of posts either by promotion or by recruitment, be it limited or public, the rationale of the judgments of the Supreme Court may not be applicable in their totality, as in arriving at their conclusions, the above judgments took into consideration various facts like the large number of candidates, the method and criteria of selection of examiners, existence of a fool-proof system with proper checks and balances etc. Therefore, in respect of these examinations, the disclosure of the answer sheets shall be the general rule but*

each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice. If that be so, the disclosure of the evaluated answer sheets could be denied but not otherwise. However, while doing so the concerned authority should ensure that the name and identity of the examiner, supervisor or any other person associated with the process of examination is in no way disclosed so as to endanger the life or physical safety of such person. If it is not possible to do so in such cases, the authority concerned may decline the disclosure of the evaluated answer sheets u/s 8(1) (g).

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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 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 candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. The 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.'

20. With due honour to the CIC and most respectfully, we disagree with the above decisions of the CIC for the reasons already stated in paragraphs 12, 13 and 14 above.

21. The very objectives of enactment of the RTI Act, 2005 are that the Constitution of India has established democratic Republic and that the democracy requires an informed citizenry and transparency of information which are vital, to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The purpose of the Act, therefore, is not to reduce, but to enhance the rights of the citizens."

11. We consider it expedient to reiterate the discussions made in Appeal No. TIC - 18 of 2008-09 on similar subject matter and the relevant portions of the judgment and order are reproduced below:-

"14. The Calcutta High Court in a recent judgment passed in the case of Pritam Rooz v. University of Calcutta and others reported at AIR 2008 Calcutta 118, has elaborately discussed the question of affording access to the evaluated answer scripts under the RTI Act, 2005 keeping in view the precedents of the Supreme Court and the decision of the Central Information Commission. We are impressed by the said decision of the Calcutta High Court and inclined to reproduce some important and relevant portions of the said judgment here. In the above referred case, the petitioner being the examinee, in his petition under Article 226 of the Constitution raised an important question that whether an examinee was entitled to have access to his evaluated answer scripts under the RTI Act, 2005 when he was refused such access by the State Public Information Officer in the Calcutta University. The Calcutta University to justify the denial relied on an order dated April 24, 2007 of the Central Information Commission and also referred to the judgments reported at (2007) 2 SCC 112 (Uttaranchal Forest Development Corporation v. Jiban Singh), AIR 2003 SC 3032 (P.K. Nagaranjan v. Government of Tamilnadu) and AIR 1984 SC 1543 (Maharashtra State Board of SHSE v. Paritosh Bhupesh Kumar Sheth). On the other hand, the petitioner referred to the judgments reported at AIR 1995 SC 1236 (Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal), AIR 2002 SC 2112 (Union of India v. Association of Democratic Rights) and AIR 2007 SC 1706 (Coal India Limited v. Saroj Kumar Mishra). The Calcutta High Court also discussed the judgment reported at AIR 2007 SC 3098 (Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das). After discussing the above case laws and several other judgments of the Supreme Court, the Calcutta High Court delivered the judgment, inter-alia, in the following passages :-

*'73. The University's first challenge (and it is, indeed the University's challenge as the onus is on the rejection being required to be justified) that what an examinee seeks in asking for inspection of his answerscript is not information at all cannot be accepted. In the stricter sense, if such answerscript answers to the description of information whether such information is of the examinee's creation counts for little. In the broader perspective, if a document submitted takes on any marking it becomes a new document. The University's offer of making the marks allotted to each individual question available to all candidates is fair and laudable, but not if it comes with the rider that the answerscripts should then be exempted from being divulged. Notwithstanding the principle of severability contained in Section 10 of the said Act, the answered paper with or without an examiner's etchings thereon is not information exempted under any of the limbs of Section 8.*



become relics of today. If the Central Information Commission can rightfully aspire for a day when answerscripts would accompany the mark sheets, that there is no facility therefor today would not lead to the natural words and import of the said Act to be constricted by any concern for the immediate hardship and inconvenience. The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained devise of construction. In a constitutional democracy, every limb and digit of governance is ultimately answerable to the government.

88. Up until the Ayan Das case and down the ages when the Paritosh Bhupesh Kumar Sheth and Suvankar cases were decided, the issues were not tested against the provisions of the said Act. Subject to the legislation being within the bounds of constitutional propriety, the legislature may bring an enactment to undo a view expressed by Court for notwithstanding the contemporary fading demarcations of the functions of the several organs of State, the Court may have to yield to the legislature in the business of law-making as it is the vocation of the one and the subject of scrutiny and application of the other.

89. The aspirations that the said Act addresses, the hope that it kindles and the direction that it gives to a right ordained under the Constitution hardly permit an answerscript to slip out of its refreshingly agreeable sweep. The sand in the hourglass has run out on all forms of feudal practice and the inglorious vestiges of its overstaying relics need to be ruthlessly torn down in the land belonging to the Constitution. The old order that the University seeks to preserve must yield to the mores of the times.

90. As much as an examining body may own an obligation to its set of examiners. It owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter for the little man to have the curriculum vitae of the candidates who seek his insignificant vote the right of the examinee is no less to seek inspection of his answerscript.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience or on the test of openness and transparency being inherent in human rights or by the myriad tools of construction or even by the Wednesbury yardstick of reasonableness the State Public Information Officer's rejection of the writ petitioner's request to obtain his answerscript cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.'

15. Relying on the above decision of the Calcutta High Court and also reiterating our decision given in Appeal No-21 of 2007-08 as discussed above, we are of the view that the decisions taken by the Respondents 1 & 2 denying disclosure of the evaluated answer scripts of the appellant are not sustainable and liable to be set aside. However, we are not in favour of disclosure of the evaluated answer scripts in the form of certified copy for the reasons already stated in our earlier judgment in Appeal No -21 of 2007-08 ( Para -14 ) and as discussed in paragraph -13 of this judgment. We, therefore, hold that the appellant is entitled to have inspection of his own evaluated answer scripts of all the subjects he appeared in the H.S. (+2) examination, 2008, which the Respondent 2 being the SPIO shall allow to the appellant after observing all the required formalities within a period of 15 days of this judgment and order free of charge."

12. It is the settled law that any principle laid down by a quasi-judicial tribunal is binding for all the subordinate authorities within its territorial jurisdiction. Tripura Information Commission is a tribunal and all the stake holders namely, the First Appellate Authorities, State Public Information Officers and the State Assistant Public Information Officers are the subordinate authorities to the Tripura Information Commission and, therefore, they are bound by the decisions taken and the principles laid down by the Commission. In the present case, we are surprised to note that the first judgment and order on the same subject matter were delivered by this Commission on 15.07.2008 in Appeal No-21 of 2007-08 between Sri Chidananda Choudhury – appellant v. S. Sengupta, President, TBSE (FAA) & another, respondents, enunciating the principle that the evaluated answer scripts of an examinee appeared in the examinations conducted by the TBSE is an information to be disclosed in the form of inspection under the Act. The ground of rejection of such request of a requester seeking inspection of the evaluated answer scripts as relied on by the concerned SPIO and the FAA in the above appeal were categorically held to be not maintainable by this Commission. So, the Respondents 1 & 2 were under obligation to abide by the above principles laid down by this Commission in their subsequent decisions in similar cases of requests for disclosure of the evaluated answer scripts of an examinee. The Respondent 2 being the SPIO took the decision on 14.07.2008 i.e. a day ahead of this Commission's first order and, therefore, the above principle of the Commission was not binding upon him as on that date. But, the Respondent 1 being the FAA passed his order on 12.09.2008, which was much later than the order dated 15.07.2008, passed by this Commission in Appeal No-21 of 2007-08 as referred to above. Thus, we are constrained to observe that the Respondent 1 Sri S. Sengupta had deliberately ignored the principle laid down by this Commission in his impugned order dated 12.09.2008 and thus acted against the principle of natural justice and the rule of law. The Respondent 1 being the FAA is, therefore, directed to be more circumspect in future in dealing with the first appeal of similar nature.

13. Having regard to the discussions made here in above, reiterating on our earlier decisions on the similar subject matter, we are to hold that the impugned decisions of the Respondents 1 & 2 denying disclosure of the evaluated answer scripts in the form of inspection are not maintainable. The appellant is entitled to have access to the information namely, inspection of his evaluated answer scripts as sought for by him. However, we are not inclined to allow supply of the copies of the evaluated answer scripts for the reasons already discussed.

**Decision:**

14. In fine, the appeal is partially allowed on contest with the following orders:-

- (i) The decision dated 14.07.2008 of the Respondent 2 being the SPIO on the written request dated 26.06.2008 of the appellant and the decision dated 12.09.2008 of the Respondent 1 being the FAA on the first appeal dated 16.08.2008 of the appellant in issue are hereby set aside.
- (ii) The appellant is entitled to have access to his own evaluated answer scripts of Bengali & Philosophy subjects against his Roll No. 13715 of the H.S.(+2) examination, 2008 conducted by the TBSE in the form of inspection, which shall be allowed by the present SPIO Sri Swapan Kumar Poddar, Secretary, TBSE within a period of 15 days from the date of passing of this judgment and order after observing all the required formalities.

15. Let copy of this judgment and order be sent to the appellant and the Respondents. Also send a copy of this judgment and order to the Commissioner & Secretary to the Government of Tripura, Education (School) Department, Agartala being the head of the Department.

16. Pronounced.

**5.3 Appeal No TIC-32 of 2008-09 between Sri Baptu saha vs. The President, T.B.S.E. and another decided by this Commission on 03-01-2009.**

**Note: Citizens have the right to inspect the answer script.**

1. The second appeal No.TIC -32 of 2008-09 under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 25.11.2008 of Sri Baptu Saha (here in after referred to as the Appellant No- 1) received by this Commission on the same date. The case of the Appellant No -1 is that he submitted a written request on 25.98.2008 to the State Public information Officer (SPIO) in the Tripura Board of Secondary Education (TBSE), Agartala seeking inspection of the evaluated answer scripts of H.S.(+ 2 stage) Examinations, 2008

of Physics, Chemistry & Biology of the Appellant No -1 bearing Roll No- Agar/M/Reg No- 12686 accompanied with application fee of Rs. 10/-. In response, Sri P.R.Deb, the then Secretary, TBSE, Agartala and the SPIO denied the inspection of the evaluated answer scripts as sought for by an order dated 23.09.2008 invoking the provisions of section 8(1)(j) of the Act. Being dissatisfied, the Appellant No- 1 preferred a first appeal against the decision of the SPIO on 17.10.2008 to the President, TBSE, Agartala being the First Appellate Authority (FAA). Dr. A. Deb Roy, President, TBSE, Agartala and the present FAA dismissed the first appeal by an order dated 14.11.2008. Being aggrieved with the decision of the FAA, the Appellant No- 1 preferred this second appeal before this Commission seeking direction for having access to the information sought for in the form of inspection.

2. The second appeal No - TIC-33 of 2008-09 under section 19(3) of the Act arose out of a memorandum of appeal dated nil of Smt. Debahuti Ghosh (here in after referred to as the Appellant No- 2) received by this Commission on 03.12.2008. Facts leading to this second appeal are that the Appellant No- 2 submitted a written request seeking information under the Act on 20.06.2008 to the SPIO in the TBSE, Agartala seeking inspection of her own evaluated answer scripts of Chemistry, Biology and English of H.S.(+ 2 stage) Examinations, 2008 bearing Roll No- North/F/Reg No- 22995. Sri P.R.Deb, the then Secretary, TBSE, Agartala and the SPIO denied the inspection as sought for by the Appellant No- 2 by an order dated 14.07.2008 invoking the provisions of section 8(1)(j) of the Act. Being aggrieved with the decision of the SPIO, the Appellant No- 2 preferred a first appeal to the President, TBSE, Agartala being the FAA, which was decided by Sri S. Sengupta, the then President, TBSE, Agartala and the FAA by an order of dismissal dated 12.09.2008. Being aggrieved with the decision of the FAA, the Appellant No- 2 preferred this second appeal before this Commission seeking direction for having access to the information sought for in the form of inspection.

2. Both Appellants No - 1 & 2 furnished photocopies of the relevant papers along with their respective memorandum of second appeals. On perusal of both the memorandum of the second appeals with enclosures, they were found in form and within time and, therefore, were registered as second appeals under section 19(3) of the Act.

3. In response to the summons, Respondent 1 Dr. A. Deb Roy, President, TBSE and the present FAA and Respondent 2 Sri Swapan Kumar Poddar, Secretary, TBSE and the present SPIO appeared in both the cases and submitted their respective written representations, which were similar in contents defending the decisions of their predecessors and the Respondent 1. In the meantime, both Sri S. Sengupta, President, TBSE and the former FAA and Sri P.R.Deb, Secretary, TBSE and the former SPIO have been replaced by Dr. A. Deb Roy and Sri S.K.Poddar respectively.

4. Heard oral submissions made by the Appellants No - 1 & 2 on their respective appeals and the Respondents 1 & 2 in both the appeals on two separate dates on 04.12.2008 and 24.12.2008.

5. In both the appeals, the pivotal issue for decision is whether the Appellants No- 1 & 2 are entitled to inspection of their own evaluated answer scripts of some subjects of the H.S.(+2 stage) Examinations, 2008. Thus, considering similarity in the subject matter and the issues for decision, we find it convenience to dispose of both the appeals by this common judgment and order.

**Issue for decision:**

- (i) Are the decisions of the concerned SPIO and the FAA given on the respective written requests and the first appeals maintainable?
- (ii) Are the Appellants No - 1 & 2 entitled to the information as sought for vide their respective written requests in issue?

**Reasons for decision:**

6. Issues No (i) & (ii): Both the issues are taken together for discussion for the sake of convenience. We have gone through the written requests in issue of the Appellants, the memorandum of second appeals of the Appellants, the written representations of the Respondents 1 & 2 submitted in both the appeals and also considered the oral submissions made by the parties in both the second appeals.

7. The Appellants No- 1 & 2 sought for inspection of their own evaluated answer scripts of some subjects as they appeared in the H.S.(+2 stage) Examinations, 2008 under the Act. Both the written requests were denied by Sri P.R.Deb, the then Secretary, TBSE, Agartala and the SPIO invoking the provisions of section 8(1) (j) of the Act without elaborating as to how the information sought for were exempted from disclosure. In Appeal No- TIC 32 of 2008-09 Dr. A. Deb Roy, President, TBSE, Agartala and the present FAA by an order dated 14.11.2008 dismissed the first appeal of the Appellant No-1 and upheld the decision dated 23.09.2008 of the SPIO, wherein, to justify his order of dismissal further added that such disclosure is exempted under the provisions of section 8 of the Act, which

postulates inter-alia that such disclosure would endanger the safety of individuals or that is not related to public interest.

8. In Appeal No-TIC 33 of 2008-09, Sri S. Sengupta, the then President, TBSE, Agartala and the FAA by an order dated 12.09.2008 dismissed the first appeal of the Appellant No-2 agreeing with the grounds of decisions of the then SPIO and in addition expressed the view that TBSE cannot disclose the information relating to the examiners or assessment as they made to individual examinee on considering their safety apart from that such disclosure cannot be said to be required in the public interest.

9. We have appreciated the decisions of Sri P.R.Deb, ex-Secretary, TBSE and the former SPIO given in both the written requests seeking information in issue and the decisions of Sri S. Sengupta, ex-President, TBSE and the former FAA and Dr. A. Deb Roy, present President, TBSE and the FAA in the respective first appeals in issue. In all the decisions, the common reason for denial is that the disclosure of the evaluated answer scripts in the form of inspection is exempted under section 8(1)(j) of the Act, although none of the said stakeholders elaborated as to how the provisions of section 8(1)(j) of the Act was attracted in the present case. In addition, Sri S. Sengupta and Dr. A Deb Roy being the FAA both expressed their views that the disclosure of the evaluated answer scripts might divulge the names of the examiners at the cost of their safety. Such appreciation is absolutely unwarranted in view of the fact that neither of the appellants requested for disclosure of the names of the examiners. Disclosure of the evaluated answer scripts in the form of inspection was possible by severing the portion containing the particulars of the examiners from the evaluated answer scripts as per provisions of section 10 of the Act. Sri S. Sengupta, former President, TBSE further rested on the plea that maintenance of the confidentiality in conducting the examinations may be disturbed in the event of disclosure of the evaluated answer scripts. In our view, the maintenance of confidentiality in conducting the examinations has no relevancy in disclosure of the evaluated answer scripts since mere confidentiality is no ground of exemption from disclosure under any of the clauses of sections 8 and 9 of the Act. Again, both the FAAs were of the view that disclosure of the evaluated answer scripts were not in the public interest. In our view, they misconstrued the term of public interest. We have already held in Appeal No-21 of 2007-08 that the examinations conducted by a Board of Secondary Education are in the public interest only. The relevant portion of paragraph -12 of the said judgment and order is reproduced in paragraph - 10 below in this judgment.

10. As per provisions of section 19(5) of the Act, in an appeal, the onus to prove that the denial of the request was justified is on the SPIO who denied the request. Both the cases under second appeals, the SPIOs and the FAAs submitted the written representations almost in the same tune. They put reliance on some authorities of the Hon'ble Supreme Court, the Central Information

Commission, which were also relied on by the Respondents in the second appeals bearing Appeal No -21 of 2007-08 (Sri Chidananda Choudhury vs. President, TBSE and another), Appeal No.TIC -18 of 2008-09 (Sri Tuhin Roy Choudhury vs. Sri S. Sengupta, President, TBSE and another) and Appeal No. TIC-30 of 2008-09 (Sri Abhijit Das vs, President, TBSE and another) decided by this Commission on 15.07.2008, 25.10.2008 and 19.12.2008 respectively. The same issue of disclosure of the evaluated answer scripts in the form of inspection was the subject matter in the above three second appeals. This Commission after discussing all the authorities as relied on by the present Respondents decided all the above three second appeals in favour of disclosure of the evaluated answer scripts of the H.S.(+2 stage) examinations of 2007 and 2008 conducted by the TBSE, Agartala in the form of inspection. It is a fact that the TBSE being the public authority by preferring writ petitions before the Hon'ble Gauhati High Court challenged two decisions of this Commission given in Appeal No-21 of 2007-08 and Appeal No.TIC-18 of 2008-09. The Hon'ble Gauhati High Court is yet to give its verdict except orders passed suspending execution of the orders of this Commission given in the above two second appeals. So, we find no reason to deviate from our earlier views taken on the similar issue in the above mentioned three second appeals. The relevant portion of the judgment and order dated 15.07.2008 of this Commission passed in Appeal No- 21 of 2007-08 are reiterated below:-

"9. Issues No.(i) & (ii): For the sake of convenience, both the issues are taken together for discussion. In substance, the information required by the appellant were : (1) to provide certified copies of the evaluated answer scripts and the loose sheets account maintained by the invigilators of three subjects of his daughter who appeared at the H.S.(+ 2) examination, 2007 conducted by the TBSE and (2) inspection of the tabulation sheets, evaluated answer scripts and loose sheets account of these three subjects.

10. To justify the denial of disclosure of the information, both the Respondents rested on the same ground that the TBSE as a whole is exempted from disclosure of information under section 8(j) of the Act. The section of the Act appears to have been misquoted by the Respondents, which ought to have been the section 8(1)(j) of the Act. The Education (School) Department, Government of Tripura identified the TBSE as the Public Authority and designated Sri S. Sengupta, President, TBSE and Sri P.R.Deb, Secretary, TBSE as the FAA and the SPIO respectively vide notification No.F.13(3-43)/SE/GL-1/2005 dated 01.08.2006. Therefore, the contention of the Respondents that the TBSE is exempted from disclosure of any information under the Act is totally misconceived and erroneous. The question remains is that if the information sought for by the appellant are exempted from disclosure under clause (j) of sub section (1) of section 8 of the Act. Provisions of section 8(1) (j) of the Act are reproduced below:-

'8(1)(j): 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 of 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.'*

11. In order to invoke of the above provision of the Act to justify the denial of disclosure of any information, it is necessary to prove that the required information is personal information having no relation with any public activity or interest and that it may cause unwarranted invasion of the privacy of the individual.

12. Considering the nature of the information, it cannot be said that the evaluated answer scripts of a student, which are the product of an examination conducted by a Board of Examination and participated by a large number of students, are personal information of a particular student. In such examination, the calibre and academic progress of the students are tested by some experts and the latter's assessment are transformed into awarding marks depicting on the body of the answer scripts, which are also recorded in the tabulation sheets for the purpose of assigning rank or gradation to the examinees. The tabulation sheets are prepared by the officials entrusted by the Board for the said purpose. The apprehension or possibility of committing error or mistake on the part of those officials cannot be ruled out. So, the examinees, in given circumstances, may have the reasons to suspect the correctness of examining the papers by the examiners, making entries in the tabulation sheets and stitching the loose sheets used by the students along with their answer scripts. For the sake of transparency, fair play and fairness in the examination process and to ensure accountability of the stakeholders involved in conducting the examinations and publication of the results thereof, a duty is cast upon the concerned public authority to disclose the answer scripts and the tabulation sheets etc to an examinee on demand. It is also a requirement of strict observance of the principal of natural justice. . Allowing of inspection of the evaluated answer scripts by the students will also have the following dimensions:-

- (iii) A student will be aware of the mistakes and other lapses made in the answer scripts, which will allow him/her the opportunity of rectification and also to be alert in future.

- (iv) Teachers responsible for evaluation of the answer scripts will have a better standard of accountability because of the fact that they will now be aware that the evaluated answer scripts would be subject to inspection by the students. This will enhance the efficiency of the examiners.
- (iii) The common citizens will have much more respect for and confidence on the Board because of its complete transparency in functioning. Thereby the efficiency and overall standard of the Board will also go up.

Accordingly, we are of the view that the examination conducted by the Tripura Board of Secondary Education is in the public interest and the records pertaining to the above information are public records.

13. The appellant requested for disclosure of his daughter's examination result records, which in no way is to cause invasion of the privacy of the examinee. The father being the guardian of his ward has the every right to seek information pertaining to the examination of his daughter as they maintain a fiduciary relationship and such disclosure does not amount to personal information causing unwarranted invasion of the privacy of any other individual. So, the ground of causing invasion of the privacy of an individual also cannot stand in the way of disclosure of the information sought for in the present case.

14. Notwithstanding the fact that the evaluated answer scripts along with loose sheets account thereof and the tabulation sheets are public records, for the sake of administrative convenience, we are of the view that instead of allowing blanket disclosure, reasonable restriction may be imposed in the form of disclosure. We are to take into account the practical difficulties of the concerned public authority in providing copies of the evaluated answer scripts, which involves enormous labour, resource and also the safety and security of the concerned examiners. Considering all the aspects, as a matter of principle, we are not in favour of providing copies of the evaluated answer scripts along with the loose sheets account and the relevant tabulation sheets. However, the appellant may be allowed to inspect the records pertaining to the information sought for.

15. Both the Respondents, in course of hearing on this appeal, in support of denial of disclosure of the information relied on the decisions of the Apex Court delivered in the following cases:-

(i) Maharashtra State Board of Education and Higher Education vs. Paritosh Bhopesh Kumar Sheth and another reported in AIR 1984 SC .1543.

(ii) Fatheh and Himmatlal vs. State of Maharashtra reported in AIR 1977 SC 1825

(iii) President, Board of Secondary Education, Orissa and another vs. D. Suvankar and another reported in (2007) 1. SCC 603.

16. The decisions of the Apex Court in the first two cases referred to above, were given before enactment of the Act and, therefore, it can safely be said that the provisions of the Act were not taken into consideration by the Apex Court in arriving at the decisions and, therefore, the decisions were deemed to have been rendered in percuriam creating no binding precedent. As regards the third case referred to above, we have carefully gone through the copy of the judgment produced by the Respondents and it is found that the matter of disclosure of the evaluated answer scripts, the loose sheets account and the tabulation sheets etc of the examination conducted by the Board of Secondary Education, Orissa under the RTI Act, 2005 was not the issue at all in that case. The order dated 14.11.2006 passed by the Apex Court in the third case mainly deals with re-evaluation of the answer scripts and on the appeal against the order of a Division Bench of the Orissa High Court awarding compensation of Rs. 20,000/- on the Board of Secondary Education, Orissa for wrong intimation about the total marks actually received by the Respondent 1 in the said appeal, which are not the subject matters of the present appeal before this Commission under the Act. The Apex Court in Union of India and another v. Maniklal Banerjee reported in 2006 (i) SCC 643 held as thus - '*It is now well settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent*'-(Para-19). Keeping the above principle as laid down by the Apex Court in view, the decision rendered in the case of President, Board of Secondary Education, Orissa amounted in percuriam having no binding precedent in the present case which stands completely on different facts and issues. So, the above three decisions of the Apex Court need not be based for deciding the present appeal.

17. The Respondents also relied on the decision dated 23.04.2007 of the Central Information Commission (CIC) given in Complaint No.CIC/WB/2006/00223 etc. between Rakesh Kumar Singh and others, Complainant/Appellant and Harish Chander, Assistant Director, Lok Sabha Secretariat and others.

18. At the outset, it is to be noted that there exists no provision in the Act like Article 141 of the Constitution making the decisions of the CIC to be precedent binding for the State Information Commissions (SIC), nor there is any hierarchy of status between the CIC and the SIC. In fact, both the CIC and the SIC are enjoying same powers and authorities to discharge within their respective territorial jurisdiction as prescribed by the Act. So, this Commission is not bound by the decision of the CIC

and, therefore, this Commission has the authority either to agree or disagree with any principle laid down by the CIC on any particular issue.

19. Now, let us examine the views taken by the CIC in the above referred cases. The subject matter of the above cases was no doubt disclosure of the evaluated answer scripts to the examinees in respect of the examinations conducted by the UPSC, Staff Selection Commission, CBSE, Jal Board, Railways, Lok Sabha Secretariat, DDA etc. The CIC giving its own reasons, took two views in two different circumstances relating to disclosure of the evaluated answer scripts as contained in paragraphs 39, 40 and 42 of their judgment in the above cases, which are reproduced below:-

*'39. In regard to public examinations conducted by institutions established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made thereunder like CBSE, Staff Selection Commission, Universities, etc, the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets would result in rendering the system unworkable in practice and on the basis of the rationale followed by the Supreme Court in above two cases, we would like to put at rest the matter of disclosure of answer sheets. **We therefore decide that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.***

*40. Insofar as examinations conducted by other public authorities, the main function of which is not of conducting examinations, but only for filling up of posts either by promotion or by recruitment, be it limited or public, the rationale of the judgments of the Supreme Court may not be applicable in their totality, as in arriving at their conclusions, the above judgments took into consideration various facts like the large number of candidates, the method and criteria of selection of examiners, existence of a fool-proof system with proper checks and balances etc. Therefore, in respect of these examinations, the disclosure of the answer sheets shall be the general rule but each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice. If that be so, the disclosure of the evaluated answer sheets could be denied but not otherwise. However, while doing so the concerned authority should ensure that the name and identity of the examiner, supervisor or any other person associated with the process of examination is in no way disclosed so as to endanger the life or physical safety of such person. If it is not possible to do so in such cases, the authority concerned may decline the disclosure of the evaluated answer sheets u/s 8(1) (g).*

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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 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 candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. The 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.'

20. With due honour to the CIC and most respectfully, we disagree with the above decisions of the CIC for the reasons already stated in paragraphs 12, 13 and 14 above.

21. The very objectives of enactment of the RTI Act, 2005 are that the Constitution of India has established democratic Republic and that the democracy requires an informed citizenry and transparency of information which are vital, to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The purpose of the Act, therefore, is not to reduce, but to enhance the rights of the citizens."

11. We also consider it useful to reiterate the discussion made in Appeal No-TIC-18 of 2008-09 on similar subject matter and the relevant portions of the judgment and order are reproduced below:-

"14. The Calcutta High Court in a recent judgment passed in the case of Pritam Roop v. University of Calcutta and others reported at AIR 2008 Calcutta 118, has elaborately discussed the question of affording access to the evaluated answer scripts under the RTI Act, 2005 keeping in view the precedents of the Supreme Court and the decision of the Central Information Commission. We are impressed by the said decision of the Calcutta High Court and inclined to reproduce some important and relevant

portions of the said judgment here. In the above referred case, the petitioner being the examinee, in his petition under Article 226 of the Constitution raised an important question that whether an examinee was entitled to have access to his evaluated answer scripts under the RTI Act, 2005 when he was refused such access by the State Public Information Officer in the Calcutta University. The Calcutta University to justify the denial relied on an order dated April 24, 2007 of the Central Information Commission and also referred to the judgments reported at (2007) 2 SCC 112 (Uttaranchal Forest Development Corporation v. Jiban Singh), AIR 2003 SC 3032 (P.K. Nagaranjan v. Government of Tamilnadu) and AIR 1984 SC 1543 (Maharashtra State Board of SHSE v. Paritosh Bhupesh Kumar Sheth). On the other hand, the petitioner referred to the judgments reported at AIR 1995 SC 1236 (Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal), AIR 2002 SC 2112 (Union of India v. Association of Democratic Rights) and AIR 2007 SC 1706 (Coal India Limited v. Saroj Kumar Mishra). The Calcutta High Court also discussed the judgment reported at AIR 2007 SC 3098 (Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das). After discussing the above case laws and several other judgments of the Supreme Court, the Calcutta High Court delivered the judgment, inter-alia, in the following passages :-

*'73. The University's first challenge (and it is, indeed the University's challenge as the onus is on the rejection being required to be justified) that what an examinee seeks in asking for inspection of his answer script is not information at all cannot be accepted. In the stricter sense, if such answer script answers to the description of information whether such information is of the examinee's creation counts for little. In the broader perspective, if a document submitted takes on any marking it becomes a new document. The University's offer of making the marks allotted to each individual question available to all candidates is fair and laudable, but not if it comes with the rider that the answer scripts should then be exempted from being divulged. Notwithstanding the principle of severability contained in Section 10 of the said Act, the answered paper with or without an examiner's etchings thereon is not information exempted under any of the limbs of Section 8.*

*74. As a matter of principle, if answer scripts cannot be opened up for inspection it should hold good for all or even most cases. Since the said Act permits a request for third party information, subject to the consideration as to desirability in every case, a third party answer scripts may, theoretically, be sought and obtained. The University's first argument would then not hold good for a third party answer script would be information beyond the knowledge of its seeker.*

75. There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner but to keep the examiner's identity concealed. The argument made on behalf of the public authorities before the Central Information Commission has, thankfully, not been put forward in this case. This University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness here to not divulge the identity of its examiners there is a desirable and worthy motive - to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation.

76. Whether or not an examiner puts his pen to the answer script that he proceeds to evaluate would not rob the answer script of retaining its virtue as information within the meaning of the said Act even it is made available for inspection in the same form as it was received from the examinee. The etchings on an answer script may be additional information for a seeker, but the answer script all along remains a document liable to be sought and obtained following a request under Section 6 of the Act. That the etchings may be pointless or that they may be arbitrary or whimsical in the absence of any guidelines makes little difference.

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87. Judicial discipline demands deference to precedents not only of the hierarchical superior but also of a forum of coordinate jurisdiction but it does not command a fawning obeisance in the deification of any precedent. As society progresses and aspirations rise, it shakes off the shackles that it invented in its infancy or adolescence. Marvels of yesterday become relics of today. If the Central Information Commission can rightfully aspire for a day when answer scripts would accompany the mark sheets, that there is no facility therefore today would not lead to the natural words and import of the said Act to be constricted by any concern for the immediate hardship and inconvenience. The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained

devise of construction. In a constitutional democracy, every limb and digit of governance is ultimately answerable to the government.

88. Up until the Ayan Das case and down the ages when the Paritosh Bhupesh Kumar Sheth and Suvankar cases were decided, the issues were not tested against the provisions of the said Act. Subject to the legislation being within the bounds of constitutional propriety, the legislature may bring an enactment to undo a view expressed by Court for notwithstanding the contemporary fading demarcations of the functions of the several organs of State, the Court may have to yield to the legislature in the business of law-making as it is the vocation of the one and the subject of scrutiny and application of the other.

89. The aspirations that the said Act addresses, the hope that it kindles and the direction that it gives to a right ordained under the Constitution hardly permit an answer script to slip out of its refreshingly agreeable sweep. The sand in the hourglass has run out on all forms of feudal practice and the inglorious vestiges of its overstaying relics need to be ruthlessly torn down in the land belonging to the Constitution. The old order that the University seeks to preserve must yield to the mores of the times.

90. As much as an examining body may own an obligation to its set of examiners. It owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter for the little man to have the curriculum vitae of the candidates who seek his insignificant vote the right of the examinee is no less to seek inspection of his answer script.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience or on the test of openness and transparency being inherent in human rights or by the myriad tools of construction or even by the Waynesburg yardstick of reasonableness the State Public Information Officer's rejection of the writ petitioner's request to obtain his answer script cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.'

15. Relying on the above decision of the Calcutta High Court and also reiterating our decision given in Appeal No-21 of 2007-08 as discussed above, we are of the view that the decisions taken by the Respondents 1 & 2 denying disclosure of the evaluated answer scripts of the appellant are not sustainable and liable to be set aside. However, we are not in favour of disclosure of the evaluated answer scripts in the form of

certified copy for the reasons already stated in our earlier judgment in Appeal No -21 of 2007-08 ( Para -14 ) and as discussed in paragraph -13 of this judgment. We, therefore, hold that the appellant is entitled to have inspection of his own evaluated answer scripts of all the subjects he appeared in the H.S. (+2) examination, 2008, which the Respondent 2 being the SPIO shall allow to the appellant after observing all the required formalities within a period of 15 days of this judgment and order free of charge."

12. It is the settled law that any principle laid down by a quasi-judicial tribunal is binding for all the subordinate authorities within its territorial jurisdiction. Tripura Information Commission is a quasi - judicial tribunal and all the stakeholders namely, the FAAs, the SPIOs, and the SAPIOs are subordinate authorities to the Tripura Information Commission and, therefore, they are bound by the principle laid down by this Commission in deciding the written request seeking information and the first appeals under the Act. In the present two cases, we are surprised to note that Sri P.R.Deb, ex-Secretary, TBSE and the SPIO denied the inspection of the evaluated answer scripts on the request of Sri Baptu Saha on 23.09.2008 i.e. after the decision taken on 15.07.2008 by this Commission in Appeal No- 21 of 2007-08 and enunciating the principle that the evaluated answer scripts of the examinee appeared in the examinations conducted by the TBSE is an information and to be disclosed in the form of inspection under the Act. Both the FAA i.e. Sri S. Sengupta and Dr. A. Deb Roy passed their orders on the first appeals in issue on 12.09.2008 and 14.11.2008 respectively i.e. long after the first decision taken on 15.07.2008 by this Commission in the matter as discussed here in above. Thus, Sri P.R.Deb, former Secretary, TBSE and the SPIO, Sri S. Sengupta, former President, TBSE and the FAA and Dr. A. Deb Roy, present President, TBSE and the FAA did ignore deliberately the principle laid down by this Commission in their respective orders. None of them submitted anything showing reasons for such dishonour to the principle laid down by this Commission. Since, two writ petitions challenging the decisions of this Commission favouring disclosure of the evaluated answer scripts in the form of inspection are pending before the Hon'ble High Court, we refrained from taking any decision on the above three stakeholders for ignoring the principle laid down by this Commission at this stage.

13. Having regard to the discussions made here in above and reiterating our earlier decisions on the similar subject matters, we are to hold that the impugned decisions of the Respondents denying disclosure of the evaluated answer scripts in the form of inspection are not maintainable. The Appellants are entitled to have access to the information namely, inspection of their own evaluated answer scripts as sought for by them.

**Decision:**

14. In fine, both the appeals are allowed on contest with the following orders:-

- (i) The decisions dated 14.07.2008 and 23.09.2008 given by Sri P.R.Deb, former Secretary, TBSE and the SPIO denying disclosure of the evaluated answer scripts to both the Appellants and the decision dated 12.09.2008 of Sri S. Sengupta, former President, TBSE and the FAA given on the first appeal of the Appellant No-2 and the decision dated 14.11.2008 of Dr. A. Deb Roy, present President, TBSE and the FAA given on the first appeal of the Appellant No-1 are hereby set aside.
- (ii) The Appellant No-1 Sri Baptu Saha having Roll No- 12686 is entitled to have access to his own evaluated answer scripts of Physics, Chemistry & Biology subjects of the H.S.(+2 stage) Examinations, 2008 conducted by the TBSE in the form of inspection.
- (iii) The Appellant No -2 Smt. Debahuti Ghosh having Roll No- 22995 is entitled to have access to her own evaluated answer scripts of Chemistry, Biology & English subjects of the H.S.(+2 stage) Examinations, 2008 conducted by the TBSE in the form of inspection.
- (iv) Sri S.K.Poddar, present Secretary, TBSE and the SPIO shall allow both the Appellants 1 & 2 to inspect their own evaluated answer scripts of the subjects as requested by them vide their respective written requests in issue within a period of 15 days from the date of passing of this judgment and order after observing all the required formalities free of charges since the inspection was not allowed by the SPIO within the statutory period as prescribed by the Act.

15. Let copy of this judgment and order be sent to the Appellants 1 & 2 and the Respondents. Also send a copy of this judgment and order to the Commissioner & Secretary to the Government of Tripura, Education (School) Department, Agartala being the head of the administrative department.

16. Pronounced.

**5.4. Appeal No TIC-18 of 2008-09 between Sri Tuhin Roy vs. the {resident of the Tripura Board of Secondary Education and another decided by this Commission on 25.10.2008.**

**Note: Citizens have the right to inspect the answer script.**

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 11.08.2008 of Sri Tuhin Roy Chowdhury (here in after referred to as the appellant) received by this Commission on the same date.

2. Facts leading to this second appeal are that the appellant submitted on 13.06.2008 a written request to the State Public Information Officer (SPIO) in the Tripura Board of Secondary Education (TBSE), Agartala seeking four items of information under the Act, which are described below:-

- (i) The reason for not displaying the result against Roll No-13534 in the website on 10.06.2008
- (ii) Photocopies of the answer scripts of all the subjects of the requester in the H.S. (+2) examination, 2008.
- (iii) Information regarding the person (s) liable for the said insensible error.
- (iv) The result and the total marks/division against Roll No-13534.

3. In response to the said request, Sri P.R. Deb, Secretary, TBSE and the SPIO communicated his orders dated 02.07.2008 to the appellant, which are quoted below:-

" Considered the matter for furnishing information or supply of copies of answer scripts as made under the RTI Act, 2005.

- (a) After consideration it is ordered that photocopies of the aforesaid answer scripts cannot be provided as those are exempted under Section 8(1)(j) of the RTI Act, 2005. As such, request as made at serial 2 of Annexure-A is negated.
- (b) Information as requested at serial 1 of Annexure -A :

Result of the successful candidates and partly successful candidates are only published by the Tripura Board of Secondary Education (TBSE) by denoting the Roll No.

- (c) Information as requested at serial 3 of Annexure -A:

In view of the information as furnished at Para (b), there is no error at all.

- (d) Information as requested at serial 4 of Annexure-A:

Result and total marks against Roll No. 13534 (Sri Tuhin Roy Chowdhury, Prachabharati School).

Bengali -	53		
English -	34		
Physics -	30 + 18	= 48	
Chemistry -	12 + 16	= 28	
Biology -	09 + 16	= 25	

Mathematics - 11

Total – 199

Result : X

This order may be furnished to the petitioner, Sri Tuhin Roy Chowdhury forthwith.”

4. Being aggrieved with the above decision of the SPIO, the appellant preferred a first appeal on 07.07.2008 to the First Appellate Authority (FAA) in the TBSE, Agartala seeking appropriate redress, which was decided by Sri S. Sengupta, President, TBSE being the FAA by an order dated 30.07.2008. The concluding portion of the said order is as follows:-

“ It appears that the SPIO has rejected the request for supply of copies of all answer scripts holding that disclosure of the answer scripts are exempted under Section 8(1)(j) of the RTI Act, 2005. The said provision of the RTI Act, 2005 stipulates that notwithstanding anything contained in this Act there shall be no obligation to give any citizen 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 with the larger public interest justifies the disclosure of such information.

A harmonious reading of this provision definitely indicates that the information as sought by the Appellant falls within the ambit of Section 8(1)(j) of the RTI Act, 2005 and disclosure is not warranted in the larger public interest. Hence there is no infirmity in the order of the SPIO, TBSE.

In regard to the information as supplied by the SPIO, the Appellant points out some discrepancy between the information furnished and the information available in the mark sheet for Chemistry (theory).

The SPIO is directed to appreciate the matter afresh so far information relating to Chemistry (theory) is concerned and pass appropriate order clarifying whether there is any discrepancy in the information supplied vide Annexure-A appearing at the bottom of the order dated 02.07.2008 and the mark sheet against Roll No. 13534 of H.S.(+ 2 stage) Examination, 2008. All other grounds of the appeal save and except as indicated above is rejected and SPIO is not required to consider the whole matter afresh. The appeal is thus partly allowed with a direction to the SPIO to pass an appropriate order on the alleged discrepancy as indicated above within a period of 15 days from the date of receipt of this order. A copy of the order be forwarded to the Appellate Authority as a mark of compliance.

The matter is accordingly remanded." (Pages 3, 4 & 5 of the order)

5. The Respondent 1 in deciding the first appeal in issue did not make specific discussion in respect of disclosure of the information sought for under items No.(i) & (iii) except that all other grounds advanced by the appellant were rejected, which tantamounted non interference in the decision of the SPIO.

6. In compliance with the order dated 30.07.2008 of the FAA, the SPIO passed an order on 14.08.2008, the concluding portion of which runs as follows:-

" On remand when the matter has been enquired into for the said marks as gathered from the answer script was not reflected in the mark sheet. It has been clarified by the concerned Section that incorrect marks appeared in the printed mark sheet for the fault as committed by the organization as entrusted with the printing of mark sheet. It is to be pointed out that such fault has occurred in a large number of mark sheets for operational defects as clarified by the said organization. Later on the correct mark sheets were printed and supplied to the candidates under the supervision of the Tripura Board of Secondary Education.

In this case before the corrected mark sheet could be supplied to Shri Tuhin Roy Chowdhury, he applied for the review and accordingly supply of the corrected mark sheet was withheld. However, on completion of the review Shri Tuhin Roy Chowdhury has been supplied with the correct mark sheet through the school authority showing the said marks "12" in Chemistry (Theoretical) in the relevant column of the mark sheet. Hence the discrepancy as surfaced has been removed by correct disposition of the fact and information.

This order be treated as part of the order dated 02.07.2008. A copy of this order be immediately furnished to the Appellate Authority (the President, TBSE) and to Shri Tuhin Roy Chowdhury." (Pages 2 & 3 of the order)

7. In his memorandum of second appeal preferred before this Commission, the appellant averred that the decision of the FAA was neither transparent nor satisfactory. The information provided by the SPIO was based on the imaginary marks put by the Board for all the subjects in the mark sheets. The appellant further stated that he had a rank in the AIEEE and he sought for a thorough and impartial investigation by this Commission. The appellant furnished photocopies of all the relevant papers along with the memorandum of second appeal.

8. In response to the summons, the Respondent 1 Sri S.Sengupta, President, TBSE, Agartala and the FAA and the Respondent 2 Sri P.R.Deb, Secretary, TBSE, Agartala and the SPIO appeared and submitted their respective written representations, copies of which were furnished to the appellant through his authorized representative.

9. Heard oral submissions placed by the representative of the appellant and the Respondents.

**Issues for decision:**

10. In consideration of the facts and the circumstances of the second appeal, the issues require determination are as follows:-

- (i) Are the decision dated 30.07.2008 of the Respondent 1 and the decisions dated 02.07.2008 and 14.08.2008 of the Respondent 2 maintainable?
- (ii) Is the appellant entitled to have access to the information sought for by him vide his written request dated 13.06.2008?

**Reasons for decision:**

11. For the sake of convenience, both the issues are taken together for discussion.

12. We have carefully gone through the written request dated 13.06.2008, the memorandum of appeal with rejoinder thereto of the appellant and the written representations of the Respondents. We have also taken into consideration the oral submissions placed for both the parties. Under items No. (i) and (iii) of the written request dated 13.06.2008 of the appellant, the information sought for were the queries made to know as to why the result against the Roll No-13534 was not displayed in the website on 10.06.2008 and the particulars of the person(s) liable for such insensible error, in reply to which the Respondent 2 being

the SPIO vide his order dated 02.07.2008 intimated the appellant that the result of the successful candidates and partly successful candidates were only published by the Tripura Board of Secondary Education (TBSE) by denoting the Roll No and ,therefore, there was no error at all. Such decision of the Respondent 2 (SPIO) was also upheld by the Respondent 1 (FAA) in the concerned first appeal. As against item No.(iii), the appellant wanted to have the result and the total marks/division against Roll No-13534, in reply to which the Respondent 2 being the SPIO furnished the information on 02.07.2008, which decision was however, modified by the Respondent 1 vide his order dated 30.07.2008 and accordingly, the Respondent 2 being the SPIO furnished modified information on 14.08.2008 making necessary correction in the information in issue. We have carefully appreciated the information provided initially by the Respondent 2 being the SPIO and also the subsequent modified information provided by him in compliance with the order of the Respondent 1 being the FAA and we are of the view that all these three information were correctly and adequately provided. Therefore, the appellant should not have any reasonable ground to be aggrieved so far as the disclosure of the aforesaid three information are concerned.

13. Under the item No.(ii), the information sought for by the appellant was the photocopy of the answer scripts of all subjects of the appellant in the H.S.(+2) examination, 2008. This information was denied by the Respondent 2 being the SPIO invoking the provisions of section 8(1)(j) of the Act, which was also upheld by the Respondent 1 being the FAA by his order dated 30.07.2008. Similar question was decided on 15.07.2008 by this Commission in Appeal No-21 of 2007-08 between Sri Chidananda Choudhury Vs. Sri S. Sengupta, President, TBSE and another. In the said appeal, the TBSE denied inspection of the evaluated answer scripts on the same ground. The relevant portions of the said judgment and order are quoted below:-

"10 \* \* \* \* \* The question remains is that if the information sought for by the appellant are exempted from disclosure under clause (j) of sub section (1) of section 8 of the Act. Provisions of section 8(1)(j) of the Act are reproduced below :-

*"8(1)(j): 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 of 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."

11. In order to invoke of the above provision of the Act to justify the denial of disclosure of any information, it is necessary to prove that the required information is personal information having no relation with any public activity or interest and that it may cause unwarranted invasion of the privacy of the individual.

12. Considering the nature of the information, it cannot be said that the evaluated answer scripts of a student, which are the product of an examination conducted by a Board of Examination and participated by a large number of students, are personal information of a particular student. In such examination, the calibre and academic progress of the students are tested by some experts and the latter's assessment are transformed into awarding marks depicting on the body of the answer scripts, which are also recorded in the tabulation sheets for the purpose of assigning rank or gradation to the examinees. The tabulation sheets are prepared by the officials entrusted by the Board for the said purpose. The apprehension or possibility of committing error or mistake on the part of those officials cannot be ruled out. So, the examinees, in given circumstances, may have the reasons to suspect the correctness of examining the papers by the examiners, making entries in the tabulation sheets and stitching the loose sheets used by the students along with their answer scripts. For the sake of transparency, fair play and fairness in the examination process and to ensure accountability of the stakeholders involved in conducting the examinations and publication of the results thereof, a duty is cast upon the concerned public authority to disclose the answer scripts and the tabulation sheets etc to an examinee on demand. It is also a requirement of strict observance of the principal of natural justice. . Allowing of inspection of the evaluated answer scripts by the students will also have the following dimensions:-

- (v) A student will be aware of the mistakes and other lapses made in the answer scripts, which will allow him/her the opportunity of rectification and also to be alert in future.
- (vi) Teachers responsible for evaluation of the answer scripts will have a better standard of accountability because of the fact that they will now be aware that the evaluated answer scripts would be subject to inspection by the students. This will enhance the efficiency of the examiners.
- (iii) The common citizens will have much more respect for and confidence on the Board because of its complete transparency in functioning. Thereby the efficiency and overall standard of the Board will also go up.

Accordingly, we are of the view that the examination conducted by the Tripura Board of Secondary Education is in the public interest and the records pertaining to the above information are public records.

13. The appellant requested for disclosure of his daughter's examination result records, which in no way is to cause invasion of the privacy of the examinee. The father being the guardian of his ward has the every right to seek information pertaining to the examination of his daughter as they maintain a fiduciary relationship and such disclosure does not amount to personal information causing unwarranted invasion of the privacy of any other individual. So, the ground of causing invasion of the privacy of an individual also cannot stand in the way of disclosure of the information sought for in the present case.

14. Notwithstanding the fact that the evaluated answer scripts along with loose sheets account thereof and the tabulation sheets are public records, for the sake of administrative convenience, we are of the view that instead of allowing blanket disclosure, reasonable restriction may be imposed in the form of disclosure. We are to take into account the practical difficulties of the concerned public authority in providing copies of the evaluated answer scripts, which involves enormous labour, resource and also the safety and security of the concerned examiners. Considering all the aspects, as

a matter of principle, we are not in favour of providing copies of the evaluated answer scripts along with the loose sheets account and the relevant tabulation sheets. However, the appellant may be allowed to inspect the records pertaining to the information sought for.

15. Both the Respondents, in course of hearing on this appeal, in support of denial of disclosure of the information relied on the decisions of the Apex Court delivered in the following cases:-

(i) Maharashtra State Board of Education and Higher Education vs. Paritosh Bhopesh Kumar Sheth and another reported in AIR 1984 SC .1543.

(ii) Fatheh and Himmatlal vs. State of Maharashtra reported in AIR 1977 SC 1825

(iii) President, Board of Secondary Education, Orissa and another vs. D. Suvankar and another reported in (2007) 1. SCC 603.

16. The decisions of the Apex Court in the first two cases referred to above, were given before enactment of the Act and, therefore, it can safely be said that the provisions of the Act were not taken into consideration by the Apex Court in arriving at the decisions and, therefore, the decisions were deemed to have been rendered in percuriam creating no binding precedent. As regards the third case referred to above, we have carefully gone through the copy of the judgment produced by the Respondents and it is found that the matter of disclosure of the evaluated answer scripts, the loose sheets account and the tabulation sheets etc of the examination conducted by the Board of Secondary Education, Orissa under the RTI Act, 2005 was not the issue at all in that case. The order dated 14.11.2006 passed by the Apex Court in the third case mainly deals with re-evaluation of the answer scripts and on the appeal against the order of a Division Bench of the Orissa High Court awarding compensation of Rs. 20,000/- on the Board of Secondary Education, Orissa for wrong intimation about the total marks actually received by the Respondent 1 in the said appeal, which are not the subject matters of the present appeal before this Commission under the Act. The Apex Court in Union of India and another v. Maniklal Banerjee reported in 2006 (i) SCC 643 held as thus - '*It is now well settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent'*-(Para-19). Keeping the above principle as laid down by the Apex Court in view, the decision rendered in the case of President, Board of Secondary Education, Orissa amounted in percuriam having no binding precedent in the present case which stands completely on different facts and issues. So, the above three decisions of the Apex Court need not be based for deciding the present appeal.

17. The Respondents also relied on the decision dated 23.04.2007 of the Central Information Commission (CIC) given in Complaint No.CIC/WB/2006/00223 etc. between Rakesh Kumar Singh and others, Complainant/Appellant and Harish Chander, Assistant Director, Lok Sabha Secretariat and others.

18. At the outset, it is to be noted that there exists no provision in the Act like Article 141 of the Constitution making the decisions of the CIC to be precedent binding for the State Information Commissions (SIC), nor there is any hierarchy of status between the CIC and the SIC. In fact, both the CIC and the SIC are enjoying same powers and authorities to discharge within their respective territorial jurisdiction as prescribed by the Act. So, this Commission is not bound by the decision of the CIC and, therefore, this Commission has the authority either to agree or disagree with any principle laid down by the CIC on any particular issue.

19. Now, let us examine the views taken by the CIC in the above referred cases. The subject matter of the above cases was no doubt disclosure of the evaluated answer scripts to the examinees in respect of the examinations conducted by the UPSC, Staff Selection Commission, CBSE, Jal Board, Railways, Lok Sabha Secretariat, DDA etc. The CIC giving its own reasons, took two views in two different circumstances relating to disclosure of the evaluated answer scripts as contained in paragraphs 39, 40 and 42 of their judgment in the above cases, which are reproduced below:-

*"39. In regard to public examinations conducted by institutions established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made thereunder like CBSE, Staff Selection Commission, Universities, etc, the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets would result in rendering the system unworkable in practice and on the basis of the rationale followed by the Supreme Court in above two cases, we would like to put at rest the matter of disclosure of answer sheets. **We therefore decide that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.***

*40. Insofar as examinations conducted by other public authorities, the main function of which is not of conducting examinations, but only for filling up of posts either by promotion or by recruitment, be it limited or public, the rationale of the judgments of the Supreme Court may not be applicable in their totality, as in arriving at their conclusions, the above judgments took into consideration various facts like the large number of candidates, the method and criteria of selection of examiners, existence of a fool-proof system with proper checks and balances etc. Therefore, in respect of these examinations, the disclosure of the answer sheets shall be the general rule but each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice. If that be so, the disclosure of the evaluated answer sheets could be denied but not otherwise. However, while doing so the concerned authority should ensure that the name and identity of the examiner, supervisor or any other person associated with the process of examination is in no way disclosed so as to endanger the life or physical safety of such person. If it is not possible to do so in such cases, the authority concerned may decline the disclosure of the evaluated answer sheets u/s 8(1)(g)."*

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*"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 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 candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. The 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."*

20. With due honour to the CIC and most respectfully, we disagree with the above decisions of the CIC for the reasons already stated in paragraphs 12, 13 and 14 above.

21. The very objectives of enactment of the RTI Act, 2005 are that the Constitution of India has established democratic Republic and that the democracy requires an informed citizenry and transparency of information which are vital, to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The purpose of the Act, therefore, is not to reduce, but to enhance the rights of the citizens.

22. In view of the discussions held in paragraphs 12, 13 and 14 above, the appellant is entitled to inspection of the records pertaining to the information sought for."

14. The Calcutta High Court in a recent judgment passed in the case of Pritam Roor v. University of Calcutta and others reported at AIR 2008 Calcutta 118, has elaborately discussed the question of affording access to the evaluated answer scripts under the RTI Act, 2005 keeping in view the precedents of the Supreme Court and the decision of the Central Information Commission. We are impressed by the said decision of the Calcutta High Court and inclined to reproduce some important and relevant portions of the said judgment here. In the above referred case, the petitioner being the examinee, in his petition under Article 226 of the Constitution raised an important question that whether an examinee was entitled to have access to his evaluated answer scripts under the RTI Act, 2005 when he was refused such access by the State Public Information Officer in the Calcutta University. The Calcutta University to justify the denial relied on an order dated April 24, 2007 of the Central Information Commission and also referred to the judgments reported at (2007) 2 SCC 112 (Uttaranchal Forest Development Corporation v. Jiban Singh), AIR 2003 SC 3032 (P.K. Nagaranjan v. Government of Tamilnadu) and AIR 1984 SC 1543 (Maharashtra State Board of SHSE v. Paritosh Bhupesh Kumar Sheth). On the other hand, the petitioner referred to the judgments reported at AIR 1995 SC 1236 (Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal), AIR 2002 SC 2112 (Union of India v. Association of Democratic Rights) and AIR 2007 SC 1706 (Coal India Limited v. Saroj Kumar Mishra). The Calcutta High Court also discussed the judgment reported at AIR 2007 SC 3098 (Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das). After discussing the above case laws and several other judgments of the Supreme Court, the Calcutta High Court delivered the judgment, inter-alia, in the following passages :-

"73. The University's first challenge (and it is, indeed the University's challenge as the onus is on the rejection being required to be justified) that what an examinee seeks in asking for inspection of his answerscript is not information at all cannot be accepted. In the stricter sense, if such answerscript answers to the description of information whether such information is of the examinee's creation counts for little. In the broader perspective, if a document submitted takes on any marking it becomes a new document. The University's offer of making the marks allotted to each individual question available to all candidates is fair and laudable, but not if it comes with the rider that the answerscripts



88. Up until the Ayan Das case and down the ages when the Paritosh Bhupesh Kumar Sheth and Suvankar cases were decided, the issues were not tested against the provisions of the said Act. Subject to the legislation being within the bounds of constitutional propriety, the legislature may bring an enactment to undo a view expressed by Court for notwithstanding the contemporary fading demarcations of the functions of the several organs of State, the Court may have to yield to the legislature in the business of law-making as it is the vocation of the one and the subject of scrutiny and application of the other.

89. The aspirations that the said Act addresses, the hope that it kindles and the direction that it gives to a right ordained under the Constitution hardly permit an answerscript to slip out of its refreshingly agreeable sweep. The sand in the hourglass has run out on all forms of feudal practice and the inglorious vestiges of its overstaying relics need to be ruthlessly torn down in the land belonging to the Constitution. The old order that the University seeks to preserve must yield to the mores of the times.

90. As much as an examining body may own an obligation to its set of examiners. It owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter for the little man to have the curriculum vitae of the candidates who seek his insignificant vote the right of the examinee is no less to seek inspection of his answerscript.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience or on the test of openness and transparency being inherent in human rights or by the myriad tools of construction or even by the Wednesbury yardstick of reasonableness the State Public Information Officer's rejection of the writ petitioner's request to obtain his answerscript cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside."

15. Relying on the above decision of the Calcutta High Court and also reiterating our decision given in Appeal No-21 of 2007-08 as discussed above, we are of the view that the decisions taken by the Respondents 1 & 2 denying disclosure of the evaluated answer scripts of the appellant are not sustainable and liable to be set aside. However, we are not in favour of disclosure of the evaluated answer scripts in the form of certified copy for the reasons already stated in our earlier judgment in Appeal No -21 of 2007-08 ( Para -14 ) and as discussed in paragraph -13 of this judgment. We, therefore, hold that the appellant is entitled to have inspection of his own evaluated answer scripts of all the subjects he appeared in the H.S. (+2) examination, 2008, which the Respondent 2 being the SPIO shall allow to the appellant after observing all the required formalities within a period of 15 days of this judgment and order free of charge.

**Decision:**

16. In fine, this second appeal is partially allowed on contest with the following orders:-

- (i) The decisions of the Respondents 1 & 2 disclosing the information under items No - (i), (iii) & (iv) are adequate.
- (ii) The decisions of the Respondents 1 & 2 denying the disclosure of the information under item No - (ii) are set aside.
- (iii) The appellant is entitled to have access to his own evaluated answer scripts of all the subjects he appeared in the H.S. (+2) examination, 2008 conducted by the TBSE in the form of inspection, which shall be allowed by the Respondent 2 being the SPIO free of charge within a period of 15 days from the date of passing of this judgment and order after observing all the required formalities.

17. Let copy of this judgment and order be sent to the appellant and the respondents.

**5.5. Complaint No TIC-02 of Sri Binoy K. Bhattacharjee against the President, District Consumer Disputes Redressal Forum, west Tripura District, Agartala and two others.**

**Note: Public Authority is only competent to designate the FAA, SPIO and the SAPIO.**

1. This complaint arises out of a written application dated 09.05.2008 of Sri Binay K. Bhattacharyya (here in after referred to as the complainant) received by this Commission on the same date. Case of the complainant is that the District Consumer Disputes Redressal Forum, West Tripura District, Agartala was constituted under the Consumer Protection Act, 1986 and as such as per definition contained in section 2(h) of the RTI Act, 2005 (for short the Act), it is a public authority. But, the said District Consumer Disputes Redressal Forum, West Tripura District, Agartala has neither appointed nor published the names, designation and other particulars of its Public Information Officers within 120 days from the date of enactment of the Act. As a result, the complainant has been unable to submit a written request for information to the State Public Information Officer (SPIO) in the said public authority. Hence, the complainant sought for issuing a direction to the President, District Consumer Disputes Redressal Forum, West Tripura District, Agartala for immediate appointment of its Public Information Officers, publishing the names, designation and other particulars of the SPIOs and cost for lodging the complaint.

2. On perusal of the complaint, adequate material was found to take cognizance of a complaint under section 18(1) of the Act.

3. On perusal of the records maintained in this Commission, it reveals that the Department of Food, Civil Supplies & Consumer Affairs (FCS&CA), Government of Tripura has not taken adequate steps as required by the Act for identification of public authority under its control and follow up actions by the concerned public authority. So, this Commission considered it convenient to

hear the complaint in presence of the official head of the Department of FCS&CA, Government of Tripura and the President, State Consumer Disputes Redressal Commission (SCDRC), Tripura. Accordingly, they were made Opposite Parties (OPs) in this complaint along with the President, District Consumer Disputes Redressal Forum (DCDRF), West Tripura District, Agartala and summonses were issued to them to appear and submit their respective written representations.

4. In response to the summons, Sri A. Barman Roy, Joint Director, FCS&CA Department, Government of Tripura appeared for and on behalf of the OP 1 the President, DCDRF, West Tripura District, Agartala and the OP 2 the Commissioner & Secretary to the Government of Tripura, FCS&CA Department duly authorized and submitted two written representations signed by the OPs 1 and 2. The OP 3 the President, SCDRC, Tripura neither appeared nor sent any written representation.

5. To sum up the present factual position relating to the identification of public authority, designation of the First Appellate Authority (FAA), SPIO, and the State Assistant Public Information Officer (SAPIO) in the establishments of the SCDRC, Tripura and the DCDRF, West Tripura District, Agartala as narrated in the written representations of the OP2 is as follows :-

- (i) Being the official head of the administrative department, the Commissioner & Secretary to the Government of Tripura, FCS&CA Department vide notification No.F.2-1(12)-DF/2005 dated 19.03.2008 notified the President, SCDRC, Tripura headed by Sri P.K.Sarkar, Hon'ble High Court Justice (Retd) as the Public Authority as well as to function as the FAA in respect of the SCDRC, Tripura and the DCDRFs (4 Nos) at Agartala, Udaipur, Kamalpur and Kailashahar.
- (ii) The OP 2 the Commissioner & Secretary to the Government of Tripura, FCS&CA Department vide notification No.F.2-1(12)-DF/2005 dated 27.05.2008 designated Sri A. Barman Roy, Joint Director, FCS&CA Department and Sri S. Banerjee, Assistant Director, FCS&CA Department as the SPIO and the SAPIO in respect of the offices of the President, SCDRC, Tripura and the President, DCDRF, West Tripura District, Agartala respectively. Under the same notification, he has also designated the respective Sub Divisional Magistrates (SDMs) and the Assistant Directors, FCS&CA Department attached to the Food Sections of the SDMs of Udaipur, Kamalpur & Kailashahar Sub Divisions as the SPIOs and the SAPIOs in respect of the offices of the President, DCDRFs at Udaipur, Kamalpur and Kailashahar respectively.

6. Admitting the legal position that the public authority is under obligation to designate the FAA, SPIO and the SAPIO in all its administrative units, the OP 2

submitted that taking into consideration the views of the President, SCDRC, Tripura as communicated by the Secretary to the SCDRC vide No. F.1(1)-SC/2005/326 dated 17.05.2008 that since all the administrative functions of the SCDRC were being performed by the administrative department and also for want of competent officer in the said SCDRC, the SPIOs and the SAPIOs should be designated by the department, he being the official head of the administrative department designated the officers of the FCS&CA Directorate, the SDMs and the Assistant Directors, FCS &CA Department attached to the Food Sections of the SDMs offices as the SPIOs and the SAPIOs vide notification No.F. 2-1(12)-DF/2005 dated 27.05.2008 in respect of the offices of the SCDRC, Tripura and the DCDRFs.

7. The OP 1 in his written representation submitted that he being the District Judge, West Tripura District has been functioning as part time President of the DCDRF at Agartala. There is no adequate and competent staff in the cell of the Forum to be designated as the SPIO or SAPIO.

Points to be decided:

- (i) If the District Consumer Disputes Redressal Forum, West Tripura District, Agartala is a public authority within the meaning of section 2(h) of the Act?
- (ii) Whether or not the designation of the SPIOs and the SAPIOs in the State Consumer Disputes Redressal Commission, Tripura and the District Consumer Disputes Redressal Forums as done by the OP 2 being the official head of the Department of Food, Civil Supplies & Consumer Affairs was proper?
- (iii) If the complainant is entitled to cost for lodging the complaint?

Reasons for decision:

8. Point No.(i): It is admitted fact that the DCDRFs were constituted as per provisions of the Consumer Protection Act, 1986 an Act made by the Parliament. But, it is also fact that the DCDRFs are the administrative units of the SCDRC as evident from section 24 B (2) of the said Act, which provides that the State Commission shall have administrative control over the District Forum within its jurisdiction in all matters referred to sub section (1) of section 24 B of the said Act, namely :-

- (i) calling periodical return regarding the institution , disposal , pendency of the cases;
- (ii) in issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior services of copies of documents produced by one party to the opposite parties furnishing of English translation of judgment written in any language, speedy grant of copies of documents;

- (iii) generally overseeing the functioning of the District Forum to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi judicial freedom.

9. Section 2(h) of the Act prescribes the qualifications for becoming a public authority. This section, however, does not empower any authority or body or institution to become a public authority automatically. The organizations which qualify to become public authorities within the meaning of section 2(h) of the Act are required to be identified and notified as the public authorities by the administrative department of the 'appropriate Government' or the 'competent authority', as the case may be. Accordingly, the FCS & CA Department, Government of Tripura being the administrative department has notified the SCDRC, Tripura as the public authority in respect of the offices of the SCDRC, Tripura and the four DCDRFs at Agartala, Udaipur, Kamalpur & Kailashahar. As per provisions of sub sections (1) and (2) of section 5 of the Act, every public authority is required to designate as many officers as the SPIOs and the SAPIOs in all administrative units or offices including sub-divisional and sub-district level offices as may be necessary. Keeping the above position of the law in view, it can safely be held that according to the spirit of the Act, the DCDRF which is a district unit under the administrative control of the SCDRC, Tripura, is not a public authority and, therefore, was not required to appoint the SPIOs and the SAPIOs and publish their names and other particulars as required under sub sections (1) and (2) of section 5 of the Act. Thus, we find no merit in the claim of the complainant that the DCDRF, West Tripura District is a public authority and, therefore, no direction is required to be issued to the President, DCDRF, West Tripura District, Agartala as sought for.

10. Point No.(ii): There is no dispute that the SCDRC, Tripura is a public authority as rightly identified and notified by the Department of FCS&CA, Government of Tripura. The Act provided some specific duties and functions to be discharged by the public authority, which include publication of seventeen point information proactively and designation of the SPIOs and the SAPIOs as required under section 4(1)(b) and sub sections (1) and (2) of section 5 of the Act respectively. In the present case, on the plea of inadequate staff in the State Commission and the four District Forums, the Department of FCS &CA, Government of Tripura being the administrative department has issued notification designating officers of other offices as the SPIOs and SAPIOs in respect of the offices of the SCDRC, Tripura and the four DCDRFs at Agartala, Udaipur, Kamalpur and Kailashahar as discussed at paragraph – 5 (ii) above. Section 5(1) of the Act provides that every public authority shall designate SPIOs in all administrative units or offices under it, which means that the officers within the same public authority shall have to be designated as the SPIOs and the SAPIOs. Therefore, we are of the view that such steps on the part of the OP2 being the official head of the concerned Department was not in accordance with the provisions of sub sections (1) and (2) of section 5 of the Act. This apart, designation of the SPIOs and the SAPIOs from the offices beyond the control of the head of the public authority may create difficulties in dealing with the requests of the information seekers within the time

frame as prescribed by the Act and also to exercise control over them by the head of the public authority as assigned to it by the Act.

11. The OP 2 furnished a list of officers presently posted in the SCDRC, Tripura and the four DCDRFs. It reveals that there are at least two regular employees in each of the offices of the SCDRC, Tripura and DCDRFs at Agartala and Udaipur and one UD Clerk in each of the DCDRFs at Kamalpur and Kailashahar.

12. Having regard to the facts, circumstances and the position of law discussed here in above, we are to hold that the notification issued by the OP 2 being the Commissioner & Secretary to the Government of Tripura, FCS&CA Department designating officers from other offices as the SPIOs and SAPIOs in the SCDRC, Tripura and the four DCDRFs at Agartala, Udaipur, Kamalpur and Kailashahar was not in accordance with the provisions of the Act and, therefore, improper. In exercise of the powers conferred by section 19(8) (a)(ii) of the Act, we would, therefore, advise that the President, SCDRC, Tripura being the head of the public authority in respect of the State Commission and the four District Forums, shall designate the Secretary to the State Commission and an official below him as the SPIO and the SAPIO respectively in the SCDRC, Tripura and the Presidents of the respective District Forums and an official below them as the SPIOs and the SAPIOs respectively in respect of the offices of the DCDRFs at Agartala, Udapur, Kamalpur and Kailashahar.

13. Point No.(iii): There exists no provision in the Act to award cost for lodging any complaint under section 18(1) of the Act. So, claim of the complainant for cost is not sustainable and, therefore, rejected.

Decision:

14. In fine, the complaint stands disposed of with the following orders:-

- (i) The District Consumer Disputes Redressal Forum, West Tripura District, Agartala is not a public authority but, a unit of the State Consumer Disputes Redressal Commission, Tripura.
- (ii) The President of the State Consumer Disputes Redressal Commission, Tripura being the head of the public authority is directed to take the following steps :-
  - (a) To designate the SPIOs and the SAPIOs in respect of the offices of the SCDRC, Tripura and the four DCDRFs at Agartala, Udaipur, Kamalpur and Kailashahar in the manner prescribed at paragraph – 12 above within a period of 15 days from the date of passing of this judgment and order.
  - (b) To publish seventeen point information proactively for the SCDRC, Tripura and the four DCDRFs and also to arrange for their wide dissemination as required under sections 4(1)(b) and

4(3) of the Act within a period of 30 days from the date of passing of this judgment and order.

- (c) A report of compliance of the directions given at (a) & (b) above shall be sent to this Commission.

15. Let copy of this judgment and order be sent to the complainant and the OPs.

16. Pronounced.

**5.6. Complaint No TIC-04 of 2008-09 of Smt. Anjana Deb against the Dy. Director, Youth affairs and Sports and two others decided by this Commission 11.07.2008.**

**Note: Ignorance does not amount exemption in discharging the functions of the stake holders under the RTI.**

1. This complaint arises out of a written application dated 12.05.2008 of Smt Anjana Deb (here in after referred to as the complainant) sent by courier post and received by this Commission on 14.05.2008. The allegation of the complainant is that she submitted through courier post a written request dated 17.12.2007 to the Sports Officer, Sub-Divisional Youth Affairs & Sports (YA&S) Office, Dharmanagar seeking three items of information under the RTI Act, 2005 (for short the Act) depositing Rs.10/- as the application fee and advance additional fee of Rs.10/- by money order, which were received by the latter on 18.12.2007. Having no response from the Sports Officer, YA&S, Dharmanagar, the complainant preferred a memorandum of first appeal on 05.03.2008 to the Deputy Director of YA&S, North Tripura District, Kailashahar being the First Appellate Authority (FAA) who also did not respond to the first appeal till the date of lodging the complaint. Hence, the complainant approached this Commission seeking appropriate redress to have access to the information sought for. The complainant furnished copies of the requisite papers and documents along with the written application.

2. On perusal of the complaint, adequate materials were found to take cognizance of a complaint under section 18(1) of the Act.

3. In response to the summonses, the Opposite Party (OP) 1 Sri Harendra Ch. Sarkar, Deputy Director of YA&S, North Tripura District, Kailashahar and the OP2 Sri Swapan Kumar Das, Sports Officer, Sub-Divisional YA&S Office, Dharmanagar appeared and submitted their respective written representations.

4. It reveals from the written representation of Sri Swapan Kumar Das, Sports Officer, Sub-Divisional YA&S Office, Dharmanagar that at the relevant time, he was neither the State Public Information Officer (SPIO) nor the State Assistant

Public Information Officer (SPIO) in the office of the Sports Officer, Sub-Divisional YA&S, Dharmanagar and, therefore, after receipt of the written request in issue of the complainant, he sent the same along with the fees of Rs.20/- to the Directorate of YA&S, Government of Tripura, Agartala vide covering letter No.F.5(16)/SAYS-DMN/07/994 dated 05.01.2008 addressed to the Director, YA&S, Government of Tripura, Agartala. He further submitted that he was designated as the SPIO by the public authority concerned vide notification No.F.4(43)-DYAS/2005/14804-823 dated 25.02.2008.

5. Since the written request dated 17.12.2007 of the complainant in issue along with the fees was sent to the Director of YA&S, Government of Tripura, he was impleaded as the OP 3 and accordingly summoned. In response, Sri S. Bhowmik, Director of YA&S, Government of Tripura appeared and submitted his written representation narrating the facts and the circumstances under which, the written request and the first appeal in issue of the complainant were handled.

6. On perusal of the written representation of the OP3, it reveals that the OP2 after receipt of the written request dated 17.12.2007 of the complainant seeking information along with the application fee of Rs.10/- and advance fee of Rs.10/- (Rs. 20/- in total), had sent them to the Director of Youth Affairs & Sports, Government of Tripura vide his letter No.F.5(16)/SYAS-DMN/07/994 dated 05.01.2008 and the same was received in the office of the latter on 06.02.2008. But, so far no formal receipt towards payment of the fees was issued to the complainant nor it was deposited in the Government ex-chequer against the appropriate head of account. As on the date of receiving the written request by the OP 2, he was not the designated SPIO, but in the meantime, he has been designated as the SPIO vide notification No.F.4(43)-DYAS/2005/14804-823 dated 25.02.2008 in respect of the Sub-Divisional Youth Affairs & Sports Office, Dharmanagar. So, this Commission by an interim order passed on 25.06.2008 directed the Director of Youth Affairs & Sports, Government of Tripura (OP3) to make necessary arrangements for issue of formal money receipt to the complainant towards payment of Rs.10/- as application fee, deposit of the said amount in the Government ex-chequer and refund of the balance amount of Rs.10/- to the complainant paid by her as advance fee ( as the information sought for were not provided to the complainant within the statutory period, no additional fee shall be realized for disclosure of the information ) by the OP2 Sri Swapan Kr. Das, Sports Officer, Sub-Divisional Youth Affairs & Sports Office, Dharmanagar (SPIO) within a period of 7 days from the date of order. The OP 2 has reported compliance of the said order vide his letter No.F.5(16)/SA/SAYS-DMN/07279-81 dated 01.07.2008, which has also been confirmed by the Director, YA&S, Government of Tripura (OP3) vide his No.F.4(43)-DYAS/RTI/2008/5816 dated 04.07.2008 along with the supported documents.

7. In the meantime, the OP2 has provided some information to the complainant vide his letter No.F.5(16)/SYAS-DMN/07/240-242 dated 18.06.2008 under intimation to this Commission, which were however, found to be incomplete. That apart, during the pendency of the present complaint, the OP 2 being the SPIO was not required to furnish any information except under specific

direction of this Commission. So, furnishing of the above incomplete information by the OP2 to the complainant is liable to be ignored.

Points for decision:

8. In consideration of the facts and the circumstances of the case, the following points are to be decided:-

- (i) Is the complainant entitled to have access to the information sought for vide her written request dated 17.12.2007?
- (ii) What are the irregularities committed in handling with the written request seeking information by the complainant and the first appeal in issue and if any penalty is to be imposed for those irregularities?

Reasons for decision:

9. Point No.(i): The information sought for by the complainant under her written request dated 17.12.2007 are summarized below:-

- (i) Whether the Flock leader (volunteers) of Bulbul unit under the control of the Tripura State Bharat Scouts and Guides are entitled to get the honorarium from the date of their joining in 1992? If so, what was/is the rate of honorarium?
- (ii) Names of other Bulbul Flock volunteers who were selected along with the complainant on 24.11.1992 at Dharmanagar station.
- (iii) What was the criteria and the basis for appointing casual workers from the post of Flock leader (volunteers)? What is the reason for not selecting the complainant as casual labour along with her colleagues Smt. Nandita Debroy, Smt. Sipra Chakraborty, Sri Basab Nandy and Smt. Anjana Bardhan?

10. Taking into consideration the nature of the information as narrated above, the OPs, which include the head of the public authority and the SPIO, did not raise any objection to the disclosure of the above information. We also do not find any bar under the Act to stand in the way in disclosure of the information sought for by the complainant. It is, therefore, held that the complainant is entitled to have access to the information sought for and the OP2 being the present SPIO is under obligation to provide the information to the complainant, if necessary, by procuring from the custody of the Director of YA&S, Government of Tripura who is also under legal obligation to make all the required information available to the OP2 for disclosure of the same to the complainant free of cost as the information could not be furnished by the concerned SPIO within the statutory period.

11. Point No.(ii): After careful appreciation of the written representations of the OPs 1,2,&3, the facts reveal are :-

(i) that the written request dated 17.12.2007 of the complainant along with the fees of Rs. 20/- was received by the OP2 on 18.12.2007 and as on that date the OP2 was neither SPIO nor SAPIO. So, he sent the said written request with fees to the Director of YA&S, Government of Tripura, Agartala on 05.01.2008, which was received in the office of the latter on 06.02.2008.

(ii) that as on 06.02.2008, Sri M.K.Das, Deputy Director, YA&S in the Directorate of YA&S, Government of Tripura was the designated SPIO of the YA&S Department for the entire state and he was also functioning as the Supervising Officer of the Establishment Section including RTI and Scouts & Guides affairs.

(iii) that the date of lodging the first appeal by the complainant on 05.03.2008, the OP3 was the FAA for the entire YA&S Department and the Deputy Director of YA&S, North Tripura District, Kailashahar was mere the SPIO for that office only.

(iv) that by notification No.F.4(43)-DYAS/2005/14804-823 dated 25.02.2008, the head of the public authority of the YA&S Department, Government of Tripura designated the OP 2 as the SPIO for the Sub-Divisional YA&S Office, Dharmanagar and the Director of YA&S, Government of Tripura as the FAA for the entire Department.

(v) that the OP1 confessed in his written representation that, although he received the memorandum of first appeal dated 05.03.2008 of the appellant, but did not take any step on it due to his ignorance about the relevant provisions of the Act. Of course, as on that date, he was no more the designated FAA.

(vi) that the written request of the complainant in issue along with the fees sent by the OP2 to the Director of YA&S, Government of Tripura, Agartala was not put up before the OP3 at all by the officials of the said Directorate, for which he could not take the required steps on that in time.

12. Having regard to the facts and circumstances discussed here in above, it is established that the OP 2 had rightly sent the written request in issue along with the fees to the Director of YA&S since he was not the SPIO during the relevant period. However, he had caused some delay in transmission of the written request. Sri M.K.Das, Deputy Director of YA&S, Government of Tripura, who was the SPIO of the YA&S Department for the entire state at the relevant period of time, did not attend at all to the written request in issue although he was under obligation to dispose of the same being the SPIO. OP 1 admitted receipt of the memorandum of first appeal in issue but confessed that he did not take any step for his ignorance of the relevant provisions of the Act. Since, he was not the FAA at that relevant time, he was under obligation to forward the same to the Director of YA&S, Government of Tripura, Agartala who was the FAA. It is also established that the written request in issue along with the fees was not at all put up before the OP3 who was at the helm of all affairs. Thus, we find that there was an absolute mishandling of the written request of the complainant in issue accompanying with fees in the Directorate of YA&S. In order to avoid such

occurrence in future, the OP 3 being the head of the Public Authority is required to enquire, identify the officials who were responsible for not attending to the written request in issue in time and take immediate appropriate action against them. Considering the facts and the circumstances of the case, we are not in favour of imposing penalty on any officials. This second point is decided accordingly.

Decision:

13. In fine, the complaint is allowed on contest with the following orders:-
  - (i) OP2 being the SPIO shall provide the information sought for by the complainant vide her written request dated 17.12.2007 within a period of 15 days from the date of passing of this judgment and order free of cost. If necessary, the information which are not available in his custody shall be procured by him from the custody of the OP3 and the latter being the head of the Public Authority shall render all assistance to the OP2 in this respect.
  - (ii) OP3 being the head of the public authority is directed to hold an enquiry into the mishandling of the written request of the complainant in issue and take immediate appropriate action against the officials who were found to be in dereliction of duties.
  - (iii) A report of compliance shall be sent to this Commission by the OPs 2 and 3 within a month of passing of this judgment and order.
14. Let copy of this judgment and order be sent to the complainant and the OPs.
15. Pronounced.

**5.7. Complaint No TIC-33 of 2008-09 of Sri Prasenjit Chakraborty against the S.P(Police Control) Police Headquarter, West Tripura, Agartala decided by this Commission on 13.01.2009.**

**Note: Written request for information relating to the other Public Authority should be transferred to the concerned Public Authority within five days from the date of receipt of such request.**

1. This complaint arises out of a written application dated 01.11.2008 of Sri Prasenjit Chakraborty (here in after referred to as the complainant) received by this Commission on the same date alleging that the complainant submitted a written request on 21.08.2008 accompanied by application fee of Rs. 10/- in cash to the State Public Information Officer (SPIO) in the office of the Director General of Police (DGP), Government of Tripura, Agartala seeking information under the RTI Act, 2005 ( for short the Act). The concerned SPIO did not respond to the said written request till the date of lodging the complaint although in the meantime, the statutory period for providing the information expired. Hence, the

complainant approached this Commission by way of this complaint seeking direction as permissible under the Act for having access to the information sought for and also to take appropriate action against the concerned SPIO for violation of the provisions of the Act. The complainant furnished photocopy of his written request dated 21.08.2008 along with the written application.

2. On perusal of the complaint with enclosure, we found adequate materials to take cognizance of a complaint under section 18(1) of the Act and accordingly, it was registered.

3. In response to the summons, the Opposite Party (OP) Sri N.C.Das, IPS, SP (Police Control), Police Headquarters, Agartala and the SPIO in the office of the DGP, Government of Tripura, Agartala appeared and submitted his written representation.

4. Heard oral submissions made by both the parties.

**Points for decision:**

5. In consideration of the facts and the circumstances of the case, the following points require decision.

- (i) Is the complainant entitled to have access to the information sought for vide his written request dated 21.08.2008?
- (ii) Is the decision of refusal to provide the information of the OP sustainable in law?
- (iii) Has the OP committed violation of any provisions of the Act to warrant penalty as per provisions of section 20(1) of the Act?

**Reasons for decision:**

6. Points No (i) & (ii): Both the points are taken together for discussion for the sake of convenience. We have carefully gone through the written request of the complainant in issue seeking information, the written complaint and the written representation submitted by the OP being the SPIO and also considered the oral submissions made by both the parties.

7. The complainant vide his written request dated 21.08.2008 sought for the following information:-

*"1) What information your department have regarding the presence of ISI (Inter Services Intelligence of Pakistan) agents in Tripura? What places could be their probable hideouts?*

*2) How many suspected ISI agents have been arrested in the state by the state police/BSF/CRPF or any other security agency so far (please give the name, address, date of arrest, place of arrest, their plans and motives of each individual)?*

*3) Does your department think that ISI has been/ is using Tripura as the corridor for infiltrating militants?*

- 4) *Is ISI having or suspected to be having relation with banned organizations like All Tripura Tiger Force (ATTF) and National Liberation Front of Twipra (NLFT)? If yes, what could be the motive and strategy behind these relations?*
- 5) *Could ISI have/Is ISI having any plan to disturb the normal relation between the tribal and non tribal or Hindu and Muslim people of Tripura by inciting communal riot?*
- 6) *How many training camps of extremist organizations of Tripura are there in Bangladesh at present? Please give information regarding the location, name of camp in charge, name of the extremist organization, whether ISI supported of each camp.*
- 7) *Is police department planning to introduce special security measures for the governor/chief minister/ministers/chief secretary/DGP/top political leaders of various political parties keeping in view the alleged ISI sponsored terrorist activities occurred in different parts of the country?*
- 8) *Does your department feel the need of generating mass awareness about the destructive activities ISI could cause through it's agents in Tripura unless precautionary measures are taken? If yes, what steps have been taken in this regard?*
- 9) *How much (in Kilometer) of total international border in the state has been taken under barbed wire fencing and how much remained undone? What are the problems being faced in remaining areas. Please specify the areas, the type of problems being faced in constructing fencing and the type of measures initiated to overcome the problems? Please mention the total amount of money sanctioned for the purpose of constructing fencing across the border in Tripura and the amount spent so far.*
- 10) *What are the disputed lands/points between India and Bangladesh across the bordering areas between Tripura and Bangladesh? What the opinions of Govt. of Tripura and Govt. of India on these matters? What steps have been taken/would be initiated to solve these disputes?*
- 11) *Could ISI have any role in circulation of fake Indian currency in Tripura and in smuggling of arms, narco products, fencidyl etc. in Tripura?*
- 12) *Does your department think there is necessity of proactive and preventive measures jointly by the central and stage governments to foil the probable plans of ISI and international terrorist organizations?*
- 13) *Is your intelligence system having adequate capacity/know how/networks to combat the eventualities or claims to be further modernized? Please give details.*
- 14) *What is the actual geographical area (in square kilometer) of Tripura? Of this, how many Kilometers actually are bordering with Bangladesh? "*

8. Although the complainant alleged that he did not receive any response to his written request in issue from the concerned SPIO, but the OP being the SPIO in his written representation divulged that after receipt of the written request of the complainant in issue, he sent a letter of intimation to the complainant vide No- 34616/F REV(171-B)/PHQ/08 dated 08.09.2008 stating that as per State Government notification NO.F.3(5)-GA(AR)-2005/IV dated 27.09.2005, the Right to Information Act, 2005 is applicable to the Police Organization only in respect of allegations of corruption and human rights violations. He also stated that as the information sought for by the complainant was not related to any of those two subjects, he was not in a position to provide the required information. It was also stated by the OP in his written representation that on receipt of the

summons from this Commission, he issued another letter to the complainant vide his office No.43099-100/FREV(171-B)/PHQ/08 dated 04.11.2008 enclosing therein a copy of the earlier letter dated 08.09.2008.

9. The complainant verbally submitted in course of hearing that he did not receive the first letter of intimation dated 08.09.2008 as sent by the OP at all. It was clarified by the OP that the letter of intimation dated 08.09.2008 was sent by ordinary post and it might be that due to postal negligence, the same did not reach to the complainant. From the facts discussed above, it is established that the OP being the SPIO responded to the written request of the complainant within the statutory period by sending the letter of intimation of denial of disclosure of the information showing specific reasons therefor. However, the SPIO should have satisfied himself that the letter of intimation reached to the hand of the complainant within the statutory period. Instead of sending such communication by ordinary post, some other method of despatching the letter like through special messenger, registered post etc. should be introduced so that the communication reaches to the requester within the reasonable time.

10. We have considered the reasons advanced by the OP justifying denial of disclosure of the information. It is a fact that the State Government vide its notification as quoted by the OP kept the Home (Police) Department including its Forensic Laboratory out of the purview of the Act except the information pertaining to violations of human rights and allegations of corruption. Now, it is to be looked into if the information sought for by the complainant pertain to violations of human rights or allegations of any corruption. On careful examination of the particulars of the information as mentioned in paragraph - 7 above, we find that the information under Sl. Nos 1 to 8 and 11 to 13 do not disclose anything constituting violations of human rights or allegations of corruption and, therefore, the decision of the OP being the SPIO is perfectly correct. However, the information sought for under Sl Nos 9 & 14 although, are not pertaining to violations of human rights or allegations of corruption, but these information are not supposed to be available within the custody of the public authority of the Police Organization and are supposed to be available in the custody of some other public authority/authorities of the appropriate Government of Tripura. So, the OP being the SPIO is under obligation to take recourse of the provisions of section 6(3) of the Act and transfer the written request in respect of the aforesaid two information to the concerned public authority for providing the information to the complainant within the statutory period. As regards the information sought for under Sl No -10 of the written request in issue, we are of the view that the subject of International border disputes is a matter supposed to be dealt with by the appropriate public authority of the Government of India and the information in respect of such matter may be available in the custody of such appropriate authority of the Government of India. So, the complainant is required to seek such information from the concerned public authority under the Government of India.

11. Issue No(iii): It has already been discussed in the preceding paragraphs that the OP being the SPIO had taken steps on the written request of the

complainant in issue within the statutory period by sending letter of intimation to the complainant stating his inability to disclose the information showing reasons therefor. According to the complainant, the letter of intimation did not reach to him in time. In this respect, we have already made our observations regarding despatching the letter of intimation in the paragraph – 9 above. So, we are not inclined to repeat the matter. It is also stated by the OP being the SPIO in his written representation as well as in oral submission that besides sending the letter of intimation, the OP had also verbally discussed with the complainant about disposal of the written request in issue explaining the legal perspective before lodging this complaint. This was also admitted by the complainant in his verbal submission in course of hearing but, insisted for a written response of the SPIO in the matter as available under the Act. Considering all these aspects, we are convinced that the OP being the SPIO had no malafide intention in the denial of disclosure of the information to the complainant and, therefore, his conduct does not amount to violation of any provisions of the Act to warrant any penal action under section 20(1) of the Act.

**Decision:**

12. In fine, the complaint is partially allowed on contest with the following orders:-

- (i) The decision of the OP being the SPIO in respect of the information sought for under SI Nos 1 to 8 and 11 to 13 as mentioned in the written request in issue is justified and sustainable. The complainant is not entitled to have access to the aforesaid information under the Act.
- (ii) As regards the information sought for under SI Nos 9 & 14 as mentioned in the written request in issue of the complainant, the OP being the SPIO should transfer within a period of 3 days from the date of passing of this judgment and order photocopy of the written request of the complainant in issue to the appropriate public authority/authorities for providing such information to the complainant within the statutory period as prescribed by the Act.
- (iii) For having access to the information sought for as mentioned under SI No-10 of the written request in issue, the complainant is required to make the request to the appropriate public authority under the Government of India.

13. Let copy of this judgment and order be sent to the complainant and the OP. Also send a copy of this judgment and order to the Director General of Police, Government of Tripura being the head of the Public Authority.

**5.8. Complaint No TIC-46 of Sri Haripada Bhattacharjee against the Managing Director, Tripura Road Transport Corporation decided by this Commission on 26.03.2009.**

**Note: Ignorance does not debar the stakeholder of his responsibility.**

1. This complaint arises out of a written application dated 02.02.2009 of Sri Haripada Bhattacharjee (here in after referred to as the complainant) sent by courier post and received by this Commission on 06.02.2009. It is alleged by the complainant that he submitted a written request on 07.02.2008 by speed post to the Managing Director (MD), Tripura Road Transport Corporation (TRTC), Agartala seeking certain information under the RTI Act, 2005 ( for short the Act) accompanied by application fee in the form of Indian Postal Order (IPO). But, till the date of lodging this complaint, the complainant received no response from the MD, TRTC, Agartala. Hence, the complainant approached this Commission by way of this complaint for having access to the information sought for. Along with the written application, the complainant furnished photocopies of the written request in issue and postal receipt and IPOs being the proof of payment of requisite application fee.

2. On perusal of the written application with enclosures, adequate materials were found to take cognigence of a complaint under section 18(1) of the Act and accordingly, it was registered.

3. In response to the summons, OP Sri A. Halam, MD, TRTC, Agartala appeared and submitted his written representation.

4. Heard oral submissions made by the representative of the complainant and the OP.

**Point for decision:**

5. Considering the facts and the circumstances of the case, the only point to be decided is whether or not the complainant is entitled to have access to any information on the strength of his written request dated 07.02.2008.

**Reasons for decision:**

6. At the outset, it is observed that the written request dated 07.02.2008 of the complainant disclosed no particulars of information to be provided by the SPIO in the TRTC, Agartala under the Act. The complainant made references to his letters dated 22.06.2007, 05.07.2007 and 28.11.2007 in the matter of settlement of the claims of EPF, pension and other pensionary benefits addressed to the MD, TRTC, Agartala in his written request dated 07.02.2008. However, from the contents of the request letter dated 07.02.2008, it can be presumed that the complainant sought to know the status of the aforesaid representations sent to the MD, TRTC, Agartala in the matter of settlement of the claims of EPF, pension and other pensionary benefits. It is also verbally supported by the representative of the complainant who is happened to be the son of the complainant that under the request letter dated 07.02.2008, the complainant wanted to know the latest position of sanction and payment of EPF, pension and other pensionary

benefits of his father, the complainant who was a retired employee in the organization of the TRTC.

7. OP being the MD of TRTC, Agartala could not say as to who is the SPIO in the TRTC. He also denied to have received the impugned request letter dated 07.02.2008 of the complainant. But, it is evident from the photocopy of the postal acknowledgment that the said letter was received by the office of the TRTC, Agartala on 13.02.2008. Then, the OP clarified that the receipt clerk of the period in question was on leave and it might be that during his absence the aforesaid request letter had been misplaced. However, he undertook to issue necessary notification designating the FAA, SPIO and SAPIO immediately and also to provide the required information as mentioned here in above subject to direction by this Commission.

8. On the same date of hearing on 05.03.2009, this Commission received a copy of the notification No.F.7 (3)-TRTC/MD/09/RI/327 dated 05.03.2009 designating the FAA, SPIO and SAPIO in the TRTC, Agartala. It appears that Sri Jagadish Ch. DebBarma, Deputy MD (Admn), TRTC has been designated as the SPIO.

9. Having regard to the discussion made here in above, we are constrained to observe that the written request seeking information preferred by the complainant on 07.02.2008 was not in proper form containing the specific particulars of the information. However on humanitarian consideration, we accept the written request relying on the oral version of the representative of the complainant that the complainant sought for information about the latest status regarding payment of EPF, pension and other pensionary benefits from the SPIO in the TRTC, Agartala, for which he deposited a sum of Rs. 15/- in the form of IPO as fees. The OP expressed his readiness to provide the aforesaid information to the complainant. So, the concerned SPIO is also under obligation to disclose the aforementioned information to the complainant within a period of 15 days from the date of passing of this judgment and order free of charge.

10. The OP divulged his absolute ignorance about the fate of the fees deposited by the complainant in the form of IPO about more than a year back. So, the concerned SPIO in the TRTC, Agartala should enquire into the matter and submit a report to this Commission about the fate of the money deposited by the complainant as fees in the form of IPO within a period of 15 days from the date of passing of this judgment and order.

**Decision:**

11. In fine, the complaint is allowed on contest with the following orders:-

- (i) Sri Jagadish Deb Barma, Deputy MD (Admn), TRTC, Agartala and the SPIO is directed to provide the information as mentioned in the paragraph - 9 above to the complainant within a period of 15 days

from the date of passing of this judgment and order free of charge as the SPIO could not provide the information within the statutory period as prescribed by the Act. He shall submit a report of compliance to this Commission forthwith.

- (ii) Sri Jagadish Deb Barma, Deputy MD ( Admn) , TRTC, Agartala and the SPIO is further directed to enquire into the matter and submit a report to this Commission about the fate of the money deposited by the complainant as fees in the form of IPO within a period of 15 days from the date of passing of this judgment and order.

11. Let copy of this judgment and order be sent to the complainant and the OP. Also send a copy of this judgment and order to Sri Jagadish Deb Barma, Deputy MD (Admn), TRTC, Agartala being the SPIO.

12. Pronounced.

**5.9. Complaint No 51 of 2008-09 of Sri Sumanta Chakraborti against the Joint Secretary, Tripura Public Service Commission decided by this Commission on 13.05.2009.**

**Note: Citizens have right to inspect their own answer scripts.**

1. This complaint arose out of a written application dated 16.03.2009 of Sri Sumanta Chakrabarti (here-in-after referred to as the complainant) received by this Commission on 17.03.2009. Shorn of all the details of the allegations of the complainant are that he was harassed by the office of the Joint Secretary, Tripura Public Service Commission (TPSC), Agartala and the State Public Information Officer (SPIO) on 12.03.2009 when he went to submit a written request seeking information under the RTI Act, 2005 (for short the Act). Firstly, the concerned SPIO declined to receive the written request by himself asking to submit the same in the reception counter between 10-30 A.M. and 12-30 P.M. and insisted on making the request in the application format devised by them. Secondly, there was no pro-active publication disclosing the names of the First Appellate Authority (FAA), SPIO and the State Assistant Public Information Officer (SAPIO). Thirdly, there was also no scope for meeting the SPIO or SAPIO by the information seeker due to prevention by the security guard. Fourthly, in the reception counter, the receptionist declined to accept the written request on the plea that it was not in their own format and that the time for receiving the written request was over. Lots of questions were also put to the complainant for seeking information. Fifthly, after long persuasion although the receptionist after having talks presumably with the SPIO finally received the written request but, compelled the complainant to make the written request in their own format and to obtain the money receipt for payment of application fee on the following day at 4 P.M. Hence, the complainant approached this Commission for taking necessary action to redress his grievances.

2. On perusal of the written complaint dated 16.03.2009, cognizance was taken under section 18(1) of the Act and summons was issued upon the Opposite Party (OP) Sri K. Das, Joint Secretary, TPSC and the SPIO, in response to which, he appeared and submitted his written representation on the complaint.

3. After conclusion of hearing on the above complaint on 07.04.2009, the complainant submitted on 13.04.2009 another complaint in the form of written rejoinder to the complaint dated 16.03.2009 alleging further that in the meantime, on 08.04.2009, the concerned SPIO in response to his (the complainant) written request dated 12.03.2009 provided some information, some of which according to him were partial and in-complete. Since, the concerned SPIO did not communicate the complainant the name of the FAA at the time of furnishing the information as required by the Act, the complainant submitted this complaint in the form of written rejoinder before this Commission for having access to the complete information. Along with his written applications, the complainant furnished photocopies of all the relevant papers. In order to avoid multiplicity of proceeding, this Commission clubbed the written complaint dated 13.04.2009 with the earlier written complaint dated 16.03.2009 and decided together.

4. OP Sri K. Das, Joint Secretary, TPSC, Agartala and the SPIO appeared after having notice of the second written complaint dated 13.04.2009 of the complainant and submitted his written representation on the aforesaid complaint.

5. Heard oral submissions made by the complainant Sri S. Chakrabarti and the OP Sri K. Das, Joint Secretary, TPSC and the SPIO on both the complaints. Also heard oral submission placed by Ld. Advocate Sri P. Datta for & on behalf of the OP on the complaint dated 13.04.2009.

**Point for decision:**

6. In consideration of the facts and the circumstances of the case, the following points are to be determined:-

- (i) Are the complaints of causing harassment to the complainant by the OP being the SPIO and the receptionist of his office sustainable? If so, what remedial steps are to be taken by the OP being the SPIO?
- (ii) Is the decision of the SPIO denying full disclosure of the information maintainable?
- (iii) Is the complainant entitled to have access to the balance information as sought for by him?

**Reasons for decisions:**

7. Point No (i): We have carefully gone through the written application dated 16.03.2009 with enclosures of the complainant, the written representation dated

07.04.2009 of the OP. We have also taken into consideration the oral submissions placed by both the parties in regard to allegations of causing harassment to the complainant by the OP and the receptionist of his office. Briefly stated, the manner of causing harassment to the complainant are that the OP being the SPIO instead of receiving the written request seeking information under the Act either by himself or by the SAPIO entrusted the receptionist of his office to receive such written request, that only during two hours between 10-30 A.M. and 12-30 P.M. on a day was fixed for receiving the written request; that the money receipt for payment of application fee was not issued instantly but, on the following day; that the information seeker was compelled to make the written request in the format devised by the OP and that there was no scope for the information seeker to meet the SPIO or the SAPIO due to restriction imposed by the TPSC by posting security guard.

8. The OP in his written representation dated 07.04.2009 submitted that the names and other details of the FAA, SPIO and the SAPIO were displayed in front side of the reception counter on 11.04.2008; that since the form used by the complainant for seeking information was incomplete, he was asked to submit the written request in the format available in his office; that the SPIO himself was not contacted either by the complainant or the receptionist as alleged by the complainant. However, he admitted that issuance of receipt for payment of application fee on the following day was improper. In conclusion, the OP denied causing any sort of misconduct or harassment to the complainant.

9. In course of hearing, it is revealed from the oral submissions placed by the OP that since the TPSC office complex has been declared as restricted area, there exists no scope for the information seekers to meet directly with the SPIO or the SAPIO without having any entry pass from the reception counter to avoid prevention by the security guard. According to the provision of section 6(1) of the Act, the information seeker is required to submit his written request either to the SPIO or the SAPIO directly. It is also provided in the said section of the Act that in case of necessity, the SPIO or SAPIO themselves are required to render necessary assistance to the information seeker for having access to the information. So, it is quite necessary for the concerned SPIO to articulate an arrangement for having direct access to the SPIO or the SAPIO by the information seekers in consultation with the head of the public authority of the TPSC. It is admitted by the OP that only two hours time was fixed for receiving the RTI applications by the receptionist, which is not in accordance with the spirit of the Act. Information may be of either ordinary or urgent, which are to be provided within 30 days and 48 hours respectively. The written request may be submitted either directly in person or by post or by e-mail. So, the time for receiving the written request or any other material in connection with the Act should be the entire working hours of a working day and such period cannot be reduced for any reason what-so-ever. The OP being the SPIO is, therefore, under obligation to make such arrangement in his office. It is also admitted by the OP being the SPIO that receipt for payment of application fee and additional fees should have been issued instantly at the time of deposit of fees and the depositor should not be asked to collect the receipt at any subsequent time.

10. As regards use of format for seeking information, there is specific provision under Rule 7(8) of the Tripura Right to Information Rules, 2008 (for short the Rules), under which Form number -3 has been prescribed for making the request for information. However, if any information seeker chooses to make the request in plain paper containing the required materials, that should also be accepted for providing the information under the Act as per provisions of Rule -31 of the Rules. The SPIO has no authority to devise any specific format for seeking information by the information seeker.

11. Having regard to the discussion made here-in-above, the OP being the SPIO is required to take immediate necessary remedial measures as indicated in the preceding two paragraphs. He should see that the information seeker is not put to any sort of harassment for having access to the information under the Act.

12. Points No (ii) & (iii): For the sake of convenience, both the points are taken together for discussion. We have perused the written request dated 12.03.2009 of the complainant with enclosures, the written application dated 13.04.2009 of the complainant and the written representation dated 25.04.2009 of the OP. We have also considered the oral submissions placed by the complainant, the OP and Ld. Advocate Sri P. Datta for and on behalf of the OP.

13. Contention of the complainant is that he sought for 8 items of information under his written request dated 12.03.2009, out of which the OP being the SPIO provided the information in full in respect of items – 1, 4, 5 & 8. The OP has also provided the information partially in respect of items – 2, 3, & 7. The OP did not furnish any information against item – 6 on the plea that the particulars of the information sought for were not clear to the OP. So, we are concerned with the partial information denied by the OP being the SPIO against items – 2, 3, & 7 and full information sought for under item- 6 only, particulars of which are narrated below:-

Item- 2:- How many persons applied for the post of professor and assistant professor in different branches (furnish name, address, educational qualification and professional experiences)?

Item – 3 :- How many persons are called for the interview for the post of professor ( civil engineering, mechanical engineering, electronics engineering, telecom engineering, computer science and engineering, electrical engineering, automobile engineering, information technology, physics & mathematics) and for the post of assistant professor ( civil engineering, mechanical engineering, electronics engineering, telecom engineering, computer science and engineering, electrical engineering, automobile engineering, information technology, physics , chemistry & mathematics)? Provide names, address, educational qualification & professional experiences for the candidates called for the interview.

Item – 6 :- Furnish a copy of the appraisal report of the assessment of the status for eligible candidates who were called for the interview for the post of professor

( civil engineering, mechanical engineering, electronics engineering, telecom engineering, computer science and engineering, electrical engineering, automobile engineering, information technology, physics & mathematics) and for the post of assistant professor ( civil engineering, mechanical engineering, electronics engineering, telecom engineering, computer science and engineering, electrical engineering, automobile engineering, information technology, physics , chemistry & mathematics) – prepared by the TPSC.

Item – 7:- What is the benchmark/screening criteria fixed by the TPSC for each branch for calling interview for the post of professor & assistant professor?

14. At the outset, it is observed that the complainant did not elaborate the name of the institution or advertisement number of the TPSC, in respect of which the information were sought for. However, since the OP being the SPIO could identify the material records pertaining to the information and provided partial information, we are not entering into the matter of inadequacy of particulars of the information. The OP being the SPIO as against items – 2 and 3 provided number of persons applied for and the number of persons called for the interview for the post of professor and assistant professor in different branches. But, he denied furnishing the names, addresses, educational qualification and professional experiences of the candidates applied for and the candidates called for the interview showing the reason that those were personal/third party information. The complainant argued that the above information denied by the OP were supplied by the concerned candidates in order to secure an appointment to the public service and, therefore, such information are very much in the domain of public interest and as such, citizens have the right to access to such information for the sake of transparency and accountability. Sri P. Datta, Ld. Counsel for the OP, after trying unsuccessfully to defend the decision of the OP being the SPIO conceded that the public authority of the TPSC will have no objection in allowing disclosure of such information in the form of inspection, but it will lead to open a flood gate to disclose all the details of the candidates applied for securing a job through the TPSC. According to him in some occasions, thousands of candidates applied for the job in response to the advertisement of the TPSC. If the complainant is allowed access to the aforesaid information in the form of supply of details of all the candidates, it will create an instance, which can be utilized subsequently by some other persons putting the TPSC in a great difficult situation. Although, in his written representation dated 25.04.2009, the OP resisted his decision citing the provisions of sections 8(1)(d) & 8(1)(e) of the Act but, in course of placing their oral submissions, they did not rely on those provisions. Rather, Ld. Counsel for the OP expressed his view that the impugned information sought for by the complainant are very much within the public domain and are subject to disclosure under the Act. He insisted for not allowing disclosure in the form of supplying the names and other particulars of the candidates as sought for by the complainant but, inspection of the records to know the information may be allowed. Ld. Counsel for the OP in his oral submission charged the complainant's request for information to be vexatious and frivolous in view of the fact that he has already had such information by obtaining certified copy of the judgment delivered by the Gauhati High Court in

the writ petition brought by the appellant in the matter of recruitment under advertisement No.12/2008 by the TPSC. We are of the view that citizen's right to have access to the information under the Act stands completely on distinct and different footing and it cannot be equated with other similar right available through a court of law.

15. After careful appreciation of the arguments placed by both the parties, we are of the view that the impugned information i.e. the names, addresses, educational qualifications and professional experiences of the candidates applied for the post of professor and assistant professor and the candidates who were called for the interview for such posts as mentioned by the concerned candidates in their respective applications were for securing a public job and, therefore, the above information are subject to disclosure under the Act for the sake of transparency and accountability in the functioning of the TPSC. On perusal of the information provided by the OP on 08.04.2009 to the complainant, we find that only 9 candidates applied for the post of professor and 80 candidates applied for the post of assistant professor. Thus, 89 numbers of candidates cannot be termed to be a large number as claimed by the OP seeking exemption from disclosure in the form of supplying the details of the candidates. Furnishing a copy of the application form submitted by the concerned candidates to the complainant may meet his requirement. In our view, the exemption clauses of section 8(1)(d) and 8(1)(e) of the Act are not applicable in the present case. The information sought for are also not third party information as viewed by the OP. Moreover, an information is not exempted from disclosure merely on the ground that it is a third party information.

16. As regards information sought for under item- 6, the complainant submitted that he has already met the OP on 09.04.2009 and submitted a written clarification, but the OP did not give his decision on the said demand for information. A duty is cast upon the SPIO to render necessary assistance to an information seeker in case of any ambiguity or inadequacy in the particulars of the information sought for. So, the OP being the SPIO could have obtained the clarification about the particulars of the information before taking the decision in the matter. However, since the complainant has already supplied clarification to the OP, he is under obligation to communicate his decision on the requirement of the complainant as against item -6.

17. So far as the information sought for under item - 7 is concerned, the OP replied to the complainant that the benchmark was as per criteria of the Recruitment Rules as advertised. The complainant argued that in the advertisement, no benchmark was mentioned, only the requisite qualifications and other requirements were mentioned, which was admitted by the OP and submitted that no benchmark was based for screening of candidates to be called for the interview. Thus, it is clear that the information provided by the OP against item - 7 was inadequate. So, the OP being the SPIO is under obligation to provide specific information stating that no benchmark was considered or

based for screening the candidates for calling in interview except the requirements advertised.

18. To conclude the findings as against points (ii) & (iii), we hold that the decision of the OP being the SPIO as against information sought for under items – 2, 3, 6 & 7 denying partial information are liable to be set aside. He is under obligation to provide the balance information against items- 2 and 3 as discussed in paragraph – 15 above. He is to give his decision on the information sought for under item -6. He is also to provide specific information as against item – 7 in the light of the discussion made in paragraph – 17 above.

**Decision:**

19. In fine, the complaint is allowed on contest with the following orders:-

- (i) The OP being the SPIO is directed to take remedial steps for receiving the written request under the Act, for meeting the SPIO and the SAPIO by the information seekers without any obstruction etc. as discussed in paragraphs – 9 & 10 above.
- (ii) The decision dated 08.04.2009 of the OP being the SPIO on the written request dated 12.03.2009 of the complainant denying partial information sought for under items – 2, 3 & 7 and full information under item – 6 as mentioned in the said written request is set aside.
- (iii) The OP being the SPIO is directed to provide the balance information to the complainant under items – 2, 3 & 7 of the written request dated 12.03.2009 in the light of the discussion made in the paragraphs – 15, 17 & 18 above within a period of 15 days from the date of passing of this judgment and order free of charge since the SPIO could not provide information to the complainant within the statutory period as prescribed by the Act.
- (iv) The OP being the SPIO is also directed to dispose of the written request of the complainant seeking access to the information under item – 6 of his written request dated 12.03.2009 within a period of 15 days from the date of passing of this judgment and order without charging any additional fee.
- (v) The OP being the SPIO is also directed to submit a report of compliance of the aforesaid orders to this Commission forthwith.

20. Let copy of this judgment and order be sent to the complainant and the OP. Also send a copy of this judgment and order to the Chairman, TPSC being the head of the Public Authority.

21. Pronounced.