

BEFORE THE GOA STATE INFORMATION COMMISSION

Seventh Floor, Kamat Towers, Patto, Panaji, Goa.

CORAM: Shri. Prashant S. P. Tendolkar,

State Chief Information Commissioner

Smt. Pratima K. Vernekar,

State Information Commissioner

Shri Juino De Souza,

State Information Commissioner

Appeal No.15/SCIC/2014

Shri Trajano D'Mello,

R/o Opposite Peddem Sports Complex,

Mapusa, Bardez –Goa.

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Appellant

V/s

1) Under Secretary (Health-I)/Public Information Officer,
Public Health Department, Secretariat,
Porvorim Bardez-Goa.

2) Additional Secretary (Health) First Appellate Authority,
Public Health Department,
Secretariat, Porvorim,
Bardez-Goa.

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Respondents

Filed on 11/02/2014

Disposed on 14/10/2016

FACTS:

- a) The appellant, by his application dated 17/09/2013, filed under 6(1) of the Right to Information 2005 (Act for short) sought certain certified copies of the information from respondent no.1, Public Information Officer(PIO), Under Secretary, Health on the following four points:

" a) The notings/written instruction on the basis of which it was directed to provisionally admit as per NEET to PG at GMC.

b) The notings/written instruction on the basis of which it was directed to reverse to admission based on NEET to PG at GMC.

...2/-

c) Indicate the month of the payment of the doctors as per NEET for the PG course from 24th June 2013.

d) Indicate the date and month of commencement of the academic year for the year 2013-2014 for PG courses."

b) By a reply dated 30/9/2013, the PIO in exercise of its rights under section 6(3), referred the application pertaining to part information on point © and (d) to the PIO, Goa Medical College and by another reply, dated 28/10/2013, the PIO respondent no.1, Under Secretary, Health informed the appellant that the information in respect of points (a) and (b) is ready and that the same can be collected on payment of Rs. 20/-.

c) It appears that the appellant has paid the said amount and collected the information as furnished by Respondent No 1 PIO. However being aggrieved that complete information has not been furnished and certain pages of information are missing, the Appellant filed a First Appeal on 25/11/2013 before Respondent No. 2, being the First Appellate Authority (FAA).

d) The Respondent No.2 vide order, dated 26/12/2013 partly allowed the same and directed the PIO to furnish certain further copies of further notings at pages Nos. 69, 81 and 82, while rejecting the prayer of the Appellant for notings at other pages.

e) The appellant has approached this Commission by this second appeal under section 19(3) of the Act challenging the order of the FAA on the grounds that the PIO deliberately did not furnish the complete information to the appellant and that the information as

furnished, on the face of it, discloses that all internal pages are not furnished and some of the information forming the part of the information sought was in clandestine manner suppressed from the appellant.

f) According to appellant PIO has committed material irregularity by not furnishing the notings of the Advocate General which also forms a part and parcel of the information sought by the appellant and that the communication of the Advocate General is not immune under the RTI.

g) The Appellant has further contended that the First Appellate Authority misdirected himself as regards the letter received from the Advocate General to the extent of declaring his communication as immune from disclosure and that has thus committed material irregularity in observing that the communication of Advocate General is immune from disclosure u/s 126 of The Indian Evidence Act and further that the authorities under the act have acted under political fields and denied information to the appellant.

It is with these grounds that the appellant by his prayers has sought for a direction to the respondent no 1, PIO to furnish the information as also for imposing fine and also for direction to initiate disciplinary proceedings.

h) As in the appeal Memo one of the ground raised therein was regarding the immunity from disclosure of the opinion of the Advocate General (AG) under RTI Act, the matter was referred to the full Bench.

i) The parties were notified, pursuant to which the appellant appeared in person and the Respondent no.1 PIO is represented by Adv. A. Talaulikar.

j) The PIO filed a reply dated 07/06/2016. It is the contention of PIO that the application for information was received in his office on 30/09/2013. The PIO has admitted that the copy of the application was transferred to the PIO, Goa Dental College, Bambolim on 30/09/2013 itself as the information pertaining to points (c) & (d) fall under the preview of the PIO, Goa Medical College by taking recourse to Section 6(3) of the said Act.

According to PIO, it has furnished the information available with it and denied that it has violated the mandate of law as the information provided is as per the points raised by the Appellant in his RTI Application dated 17/09/2013.

With reference to the grounds of appeal, respondent no.1 PIO submitted that the internal pages were not provided to the Appellant as the same are notings of the Ld. AG and hence held in confidentiality, trust and fiduciary relations and consequently exempted from disclosure within the ambit of Section 8(1) (j) of the said Act and hence not provided. The PIO denied that he has suppressed the information in clandestine manner committing material irregularity or that he has acted in collusion.

k) Arguments were heard. The Appellant by narrating the facts, submitted that the PIO and the FAA have denied to furnish the information by taking shelter of communication of letter from the AG and have wrongly concluded that the letter of AG cannot be given. In support of his arguments the appellant has relied upon the judgment in the case of ***M.T. Khan V/S Government of AP and Ors.(2004) 2 SCC 267.***

l) On the other hand the Ld. Advocate Talaulikar submitted that the PIO is justified in not furnishing part of the information as the opinion of AG is Privileged Communication and the same is immune to

disclosure u/s 8(j) of the Act being in fiduciary capacity. Thus according to advocate Talaulikar no fault can be found in the order passed by the FAA.

m) Ld. Advocate Talaulikar also filed written submissions. The PIO has relied upon the judgments passed in the case of ***Sheilesh Gandhi etc V/s Central Information Commission & Ors***, of The Bombay High Court and ***Guirish Ramchandra Deshpande V/s Central Information Commission & Ors (2013) 1 SCC 212*** and ***Mr. Mani Ram Sharma V/S Supreme court of India*** passed by Central Information Commission.

2) Finding:

a) We have perused the records. The controversy has originated from the application filed under section 6(1) of the Act by the appellant. By said application the appellant has sought information on the points (a),(b),(c) and (d) as contained therein, in the form of certified copies. According to PIO, as the information relating to the points (c) and (d) were held by other Public authority, therefore as required U/S 6(3) of the Act the PIO correctly transferred said part to the said appropriate authority and there is no dispute between the parties regarding the information furnished on points(c) and (d).

b) Thereafter PIO proceeded to dispose the request for the remaining information of the appellant on the other two points i.e.(a) and (b). In response to said application by reply dated 28/10/2013, Respondent No.1, PIO has stated:

"-----that the information in respect of point Nos. a) and (b) is ready and the same may be collected after effecting the payment of Rs. 20/- towards the cost of certified copies of the documents....."

From the above reply it was clear that the PIO has volunteered to furnish all the information at point (a) and (b) without any reservation and towards which Rs. 20/- were demanded as fees.

c) On perusal of the information furnished to appellant, as is produced by him, it is seen that while page Nos.65, 66, 70 to 74, 83, 84 and 88 of the file are furnished, the intervening pages i.e. 67 to 69, 75 to 82 and 85 to 87 are withheld and not furnished. According to the appellant the PIO has furnished only part of the information and not the complete information. In the said reply, dated 28/10/2013, the PIO has not stated any reason nor shown any indication as to why that said missing pages nos. 67 to 69, 75 to 82 and 85 to 87 shall not be given or cannot be furnished to the Appellant.

d) In the first appeal before the respondent No.2 as per the appeal Memo which is on record, the appellant has raised the grievance that the PIO has not set out and furnished complete information as per the points in (a) and (b) of questionnaire given by the appellant as the information at page numbers 67 to 69, 75 to 82 and 85 to 87 is not furnished.

e) If one peruses the application as filed by the appellant under section 6(1), what was sought was the relevant notings in the file as a whole and there is no mention of any notings of AG. Similarly in the reply of the PIO dated 28/10/2013 in response to the said application, there is also no reference that the missing pages contain the notings of A.G and thus not furnished. It is only for the first time in the first appeal that PIO has come out with a reply giving a justification for bifurcating the file and furnishing part and withholding the rest on the ground that the said pages contains notings of A.G.

f) The First Appellate Authority (FAA) at para (13) of the order has concurred with the contention of the PIO that the file notings at the said withheld page Nos. 67 to 69, 75 to 82 and 85 to 87 pertains to professional opinion and it is immune and exempt from disclosure under section 126 of the Indian Evidence Act and further that the communication from learned AG is to be treated as privileged communication entered into between the client and the Advocate. The First Appellate authority upheld this contention and while deciding the appeal directed the PIO to furnish further certain information contained at some of the withheld pages Nos. 69, 89 and 82 thereby further bifurcating the information.

g) To our mind in doing so the FAA has ignored the fact that what was sought by the appellant were the notings/written instruction which according to our interpretation are entire notings and what has been furnished by the PIO by withholding certain pages is part notings i.e. part information.

h) While furnishing the said information to the appellant the PIO could very well have supplied part information and refused to supply certain other part by citing exemption as ground under section 8 of the Act, however this has not been done.

i) Also while furnishing the information the PIO has segregated the records by withholding certain part without giving a justifiable reason to the Appellant and which to our mind is improper and incorrect. The First Appellate authority has also ignored this lapse on part of the PIO and has indulged in ordering further part of information, which has resulted in the PIO supplying certain other pages thus cutting the information in bits and pieces.

j] Though in the ground of appeal the appellant has contended that the missing pages contain notings that are pertaining to AG and even

these are not immune from disclosure and the commission has heard arguments of both parties on the point of privilege communication and immunity of notings of the AG, to our mind such a controversy is not relevant as the RTI applicant herein has not sought information from the office of the Advocate General but from the client which is a Public Authority.

k) We accordingly hold that as the information contained in the undisclosed pages, even if they pertain to notings of AG, being already in the public domain, are no more immune to disclosure by public authority. The Appellant is therefore entitled to receive the entire information as was sought by him.

l) It is seen that the appellant has filed additional documents inwards on 12/10/2016. The said documents are copy of an RTI application dated 24/10/2013, copy of reply of PIO dated 24/10/2013 to that RTI application, copy of another RTI application dated 09/01/2014 and copies of correspondence dated 09/01/2014 and certified copy of communication from Ld. Advocate General. These documents are irrelevant and have no bearing with the present appeal and hence are not required to be considered.

In the light of the above discussions, the appeal is bound to succeed and the impugned order of the FAA is liable to be set aside. Accordingly we proceed to dispose the present appeal with the following:

ORDER

The appeal is allowed. The impugned order of the FAA is set aside. The PIO is hereby directed to furnish complete information to the appellant, including information relating to notings by the learned

...9/-

Advocate General if any, contained in the internal pages from page nos 67 to 69, 75 to 82 and 85 to 87 that have been hitherto withheld, free of cost, within thirty working days from the date of receipt of this order.

Parties to be notified alongwith copy of this order, free of cost.

Proceedings closed.

Pronounced in the open proceedings.

Sd/-
(Shri. Prashant S. P. Tendolkar)
State Chief Information
Commissioner
Goa State Information
Commission,
Panaji-Goa

Sd/-
(Smt. Pratima K. Vernekar)
State Information Commissioner
Goa State Information
Commission,
Panaji-Goa

Sd/-
(Shri Juino De Souza)
State Information Commissioner
Goa State Information
Commission,
Panaji-Goa

