

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.****Appeal No. 166/2016**Mrs. Anjali Ashok Redkar,
W/o Mr. Ashok Redkar,
Opp. M.P.T. Administrative Office,
Headland Sada, Mormugao Goa.

....Appellant

V/s.

1. The State Public Information Officer,
O/o the Institute of Psychiatry and Human Behavior,
Bambolim Goa.
2. The First appellate Authority,
Dr. Pradeep Naik Director/Dean,
Institute of Psychiatry and Human Behavior,
Opp. Holy Cross Shrine,
Bambolim Goa.

.....Respondents

**Appeal filed on;-31/08/2017
Decided on: 20/09/2017****ORDER**

1. By an application dated 23/06/2016 filed under section 6(1) of Right to Information Act 2005, Appellant, Mrs. Anjali Ashok Redkar sought certified copies of the full file alongwith all medical Report of Mr. Ashok Redkar having OPD No. 66681 from the Public Information Officer (PIO) of Institute of Psychiatry and Human Behavior, Bambolim-Goa.
2. The said application was responded by the Respondent No. 1 PIO on 24/06/2015 interms of section 7(1) thereby denying the information under section 8(1)(e) and 8(1)(j) under the RTI Act 2005.

- 3.** Being aggrieved by the said response, the appellant then approached the FAA by way of first appeal under section 19(1) of the RTI Act on 26/07/2016.
- 4.** The Respondent No. 2 First Appellate Authority (FAA) by an judgment dated 18/08/2016 dismissed the said appeal by upholding the say of the Respondent No. 1 PIO.
- 5.** Being aggrieved by the action of both the Respondents and as she did not receive the information she approached this Commission by way of second appeal on 30/08/2016 with the prayer for direction for furnishing the information as sought by her and for invoking penal provisions.
- 6.** In pursuant to the notice, appellant was present in person . Respondent No. 1 PIO Dr. Shilpa Vaikar appeared and filed her reply on 10/03/2017. The reply was also filed by Respondent No. 2 on 10/02/2017. The copy of the same was furnished to the appellant.
- 7.** A notice to Shri Ashok Redkar was also issued by this Commission under section 19 (4) of the RTI Act 2005 to make his submission. The 3rd party Shri Ashok Redkar did not appeared before this Commission nor filed his reply.
- 8.** According to the Appellant Shri Ashok Redkar is her husband and she sought for the said information to produce it before judicial Magistrate Vasco da Gama in Criminal Case No. 05/DVA/2015/A. It is her further contention that in-laws are making false submissions that Shri Ashok Redkar is mad and mentally retarded person.

9. The PIO in her reply has raised the exceptions for furnishing the information firstly on the ground that same is held in fiduciary capacity which is exempted from disclosure under section 8(1) (e) of the act. It is further claimed that appellant had not established any larger public interest that warrants disclosure of such personal and confidential information. It was also further contention that case records cannot be equated with ordinary medical records and access to full records might provide serious reactions on patient including suicide. It was further concluded that is not exclusively related to a patient rather a sufficient number of people are involve and that it is neither in the interest of patient nor of the other person interviewed by the Mental Health Professionals to disclose the contents. It was further concluded that Psychiatric record is created with the understanding of both the parties and its purpose is strictly therapeutic and not to be use for legal purposes. It was further contended that moral and ethical and legal duty of Psychiatric to maintain confidentiality in theurepatic relationship. It is her further contention that as per National Human Right Commission the Psychiatric has to maintain confidentiality in therapeutic relationship. It is her further contention that visitors who are appointed as per mental Health Act, 1987 by the State Government for every Psychiatric Hospital also not entitled to inspect any personal records of the inpatients.

10. It is her further contention that as ethical code of conduct in Psychiatry/Psychiatry and law, safeguarding confidentiality is a prerequisite in a doctor patient relationship. The PIO has filed the copy of extract of Mental

Health care of relevant regulation in the Mental Health Care Act 1987 and the Xerox copies of the extract of the National Human Right Commission.

11. On going through the application filed by Appellant under section 6(1) of the act it is seen that the information sought by the appellant pertains to the details of the ailment and the reports. Such records if disclose may reveal the secret of patient. The entire full file may also contain the fine details and intricate involved in the patient. The illness alleged in the present case is not the one which can effect community at large. The same atleast which can effect with another individual with reference to the behavior. Inview of the above I am in agreement with the submission of PIO that the secrets are forbidden from the disclosure.

12. The Appellant though she has claimed in the memo of Appeal that she is legally wedded wife of the Ashok Redkar and entitle to get information. She has not produced the marriage certificate in support of such contention/averments. Even assuming without admitting that ,she is wife of the Mr. Ashok Redkar. If one peruses the provision of RTI Act neither section 6(1) of the Act nor exemptions contained in the section 8 grant any privileges to the relatives of 3rd party to have special access to the information of his/her counterpart. Under the RTI Act the issue to be considered is whether as the citizen of India as a information seeker can have access to the information of another, and that it has relationship to the public activity or that the larger public interest is involved. The relationship of the information seeker and the 3rd party is immaterial.

- 13.** Further she has claimed that the said information concerns to her life and liberty. However she has failed to produce any evidence in support of her said contention. Appellant has not be able to justify how the disclosure of information would be in public interest.
- 14.** In the present case the 3rd party Shri Redkar have been examined by the Institute of Psychiatry and Human Behavior being his individual requirement. He is neither accountable to public authority nor has relationship to the functioning of the Public authority. Nor his illness has no implication on the society as the whole. The basic protection afforded by virtue of exemptions enacted under section 8(1)(j) cannot be lifted or disturbed.
- 15.** While dealing with the similar issue the Hon'ble High Court of Bombay at Goa writ petition No. 1/2009 (Kashinath J. Shetye V/s Public Information Officer and other) has observed at para 8
- "To my mind, what cannot be supplied, is a medical record maintained by the family Physician or a private hospital to that extent, it is his right of privacy, it certainly, cannot be invaded"
- 16.** Considering the above provision of the law, ratio laid down by Bombay High Court in Kashinath Shetye case and the limitation under the Act and by further considering the nature of the information sought, I am in agreement with the PIO that the information sought will come under exception under section 8(1)(e)(j) of the Act. As I find that the Medical Report of the 3rd party are not in the course of the public

activities nor disclosure of the said information has any relationship to any public activity or interest.

17. In the above circumstances I find no merits in the appeal. Consequently the same is dismissed with the following :-

Order:-

Appeal is dismissed. Order dated 24/06/2016 is upheld.
Proceeding stands closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

Sd/-

(Ms Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

Kk/-fn