

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 88/SIC/2015

Shri Uday A. Chari Priolkar,
H. No. C-5/55,
Mala, Panaji-Goa

.....Appellant.

V/s.

- 1.** The Public Information Officer,
V. M. Salgaonkar Law College,
Miramar, Panaji-Goa
- 2.** Shri Sairaj Bhaje,
Laxmi Niwas, Near Kamat Plaza,
Santa Inez Panaji-Goa
- 3.** First Appellate Authority,
Principal College of Law,
At Miramar, Panaji-Goa

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 05/08/2015

Decided on: 11/06/2018

ORDER

1. The brief facts in present appeal are that the appellant Shri Uday S. Priolkar by his application dated 23/2/2015 sought certain information on 6 points from the Respondent no. 1 Public Information Officer (PIO) of V.M. Salgaonkar Law College. The said information was sought u/s 6 (1) of Right to Information Act, 2005.
2. According to the appellant he received a letter dated 25/2/2015 informing him that notice has been sent to Respondent No. 2 Shri Sairaj Baje inviting his objection if any since the information which was sought was pertaining to him.
3. According to the appellant he received a letter dated 4/3/2015 interalia informing him that respondent no. 2 has objected to supply his information interms of exemptions u/s 8(e) and 8(j) of

RTI Act, 2005. The copy of the letter dated 2/3/2015 addressed to the Respondent NO. 1 by Respondent No. 2 was also enclosed to his reply dated 4/03/2015.

4. According to the appellant he also received a copy of the letter dated 19/03/2015 addressed to Respondent no. 2 wherein it was intimated to Respondent NO. 2 that information sought by the appellant is not coming under fiduciary relation ship and since the said information cannot be denied to Parliament or State Legislature the same cannot be denied to any person and that the same can be furnished to the applicant.
5. As no information came to be furnished to the appellant, he preferred first appeal on 19/3/2015 before the Respondent NO. 3. Which was registered as first appeal No. BMSCL/RTI/2015-16/08 before the Respondent No. 3 herein. It is also contention of the appellant that he learnt that first appeal have been also filed by Respondent No. 2 herein with Respondent No. 3. It is the contention of the appellant that Respondent No. 3 passed 2 separate order on 30/4/2015 wherein his first appeal was dismissed and the appeal of the Respondent No. 2 was allowed and the Respondent No. 1 was directed not to provide the information.
6. In this background being aggrieved by the order of first appellate authority he approached this commission by this present appeal on 5/8/2015 in terms of section 19(3) of RTI Act 2005. In the present Appeal the appellant has sought direction to Respondent No.1 to furnish him the information free of cost as sought by him by his letter dated 23/2/2015 and for invoking penal provision as against Respondent No. 1 & 3 and also compensation interms of section 19(a)(b) of RTI Act, 2005.
7. In pursuant to notice of this Commission appellant appeared in person Respondent NO.1 and 3 was represented by Advocate S. Sarmalkar. Respondent No. 2 was present in person . Reply filed by

Respondent NO.1 & 3 on 3/11/2016 and by Respondent NO. 2 on 19/9/2016 resisting the appeal.

8. Vide reply, Respondent No.1 & 3, contended that in absence of any challenge of Judgment and order dated 30/4/2015 passed by the Respondent No.3 in the first appeal filed by Respondent No.2 before the Respondent No.3, the present second appeal filed by the appellant is not maintainable. It was further contended that the appellant cannot file Second appeal and question independent order passed in two separate first appeal filed by the appellant and by Respondent No.2. It was further contended that the order passed by Respondent No.3 in the first appeal filed by Respondent No.2 has attained finality and has a direct bearing on the subject matter of present appeal.
9. The Respondent No.2 vide his reply have contended that the LLB course undergone by him is a self financed course and as such it does not fall under the definition of public authority u/s 2(h) of the Act. It was further contended that the information sought was personal information which are exempted u/s 8(j) of the RTI Act. It was also further contended that the appellant has not mentioned or satisfied any larger public interest in seeking those information.
10. In the course of the present proceedings on 7/6/2017 Appellant submitted that he is only pressing for information at point No. 1, 2 & 5 as sought by him vide his above application and further submitted that he shall have no further grievances.
11. Written argument were submitted by the appellant with the registry of this commission on 10/2/2017. The appellant also argued the matter verbally. It is his contention that the public authority concerned herein i.e. V. M. Salgaonkar Law College has to act within the norms prescribed by the University. He further argued that the Respondent No. 2 did not complete his required attendance in the classes and as such, it is his contention he has sought the said

information at point no. 2 and 5 in the larger public interest in order to expose the illegalities and irregularities committed by the public authority concerned herein. He further submitted that when the records are available with the college, the PIO has to provide the information sought for. In support of his above contention he placed reliance on the judgment dated 21/05/2009 given by this Commission in appeal no. 20/SCIC/2009 Dr. Uday Nargarcekar V/s PIO. He also further submitted that since the said information cannot be denied to parliament, he is entitled to have the information and in support of his said contention he is relied upon the judgment passed by Hon'ble High court of Bombay at Goa in writ petition no. 1/2009 Kashinath Shetye V/s PIO . He further submitted that in terms of provision of act, 2005 every Citizen of India can seek the information as defined u/s 2(f) of the Act from Public Authority and in support of his said contention he relied upon judgment passed by Hon'ble High Court of Punjab and Haryana in Civil Revision no. 1051 of 2001; Punjab Public Service Commission V/s Rajiv Kumar Goyal. The appellant in his written arguments have also relied upon several orders of various commission and various courts but the facts in the said cases may be dehorse the facts involved in the present case. Beside the fact that the orders of CIC are not binding on the commission and this commission is required to decide each and individual case independently.

12. Written arguments filed by respondent no. 1 and 3 on 4/06/2018 reaffirming the facts stated by them in their earlier reply. Advocate A. Fernandes submitted to consider their written synopsis as their arguments.
13. No any written synopsis filed by Respondent no , 2 despite of giving him opportunity
14. I have scrutinize the records available in the file. The appellant since during the proceedings has prayed and pressed for the

direction to furnish the information at point No, 1,2, and 5 of his application dated 23/2/2015, hence I restrict my findings only on this three points .

15. The notification issued by the Department of Information and publicity have declared V. M, Salgaonkar Law College as Public Authority. The PIO has been also appointed for the said College. The affairs of the said college is also regulated and controlled by the govt. thorough university as such the said college comes within the purview of definition of public authority as contemplated u/s 2(h)(d) of the RTI Act.
16. Vide point No. 1, the appellant has asked for the copy of admission made by Respondent No.2 and his year of joining the college and at point No. 2 and 5 he had sought the copies of attendants showing the timing of the classes. The said procedure is require to be adopted by the College.
17. It appears from the letter dated 19/3/2015 addressed to the Respondent No. 2 by Respondent No. 1 that the said information is available with Respondent No. 1 and they were willing to furnish the same since according to them it was not coming within fiduciary relation ship.
18. In other wards the information sought by the appellant in his application dated 22/3/2015 at point No. 1,2, and 5 contains the records available with the college .
19. The one of the contention raised by the Respondent No. 2 is that the LLB course undergone by his is self financed. However nothing has been placed on record by him in support of his above statement. So also respondent No. 1 and 3 have not come out with such an case.

20. The emoluments, patterns, duties conditions of services of teaching and non teaching staff of this college is prescribed by the university. The qualification for admission of students of various courses of studies and do the examination and condition under which exemption may be granted are also prescribed by the university . Selection for admission of the students has to be done in accordance with the guidance rules and ordinances of the university .

21. The Hon'ble High Court of Kerala at Ernakulum in writ petition © 4668 of 2007 (e) :- M.P. Varghese V/s mahatma Gandhi University. has held –

“ When these colleges are financed and controlled by the Government and Universities and they are privy to information relating to students and staff, those information do not have the character of private or sensitive information and the public have a right of access to such information so as to ensure transparency in the conduct of the management of the colleges in which the public are vitally interested. Denial of such information would be against the very object of the statute. Essentially much of these information relate to students, teachers and staff of these colleges, and not to any information to any private activities of the managements of the colleges. That being so, these colleges would certainly answer the definition of "public authority" under [Section 2\(h\)](#) of the Act.”

22. In the landmark judgment incase of “reserve Bank of India” and others V/s Jayantilal N. Mistry and others; (Civil) Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of transfer petition (Civil) No. 707 of 2012)” The Apex court held at para 62 :-

“ the exemption contained in section 8(1)(e) applies to exceptional cases and only with regards to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regularity agency not in

fiduciary relationship there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship.”

23. Yet in another decision in writ petition No. (MD) No. 5427, V.V. Minerals V/s Director of Zoology at relevant para 12 has held that:-

“ When the third Respondent as an information Officer, ordering notice to the petitioner and taking their objections and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the state and such information is in exclusive custody of the state, the question of seeking any opinion from the third party on such issues may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On other hand, such a disclosure may help any party to act upon those documents and take appropriate steps”.

Further at para 17, it has been held “Therefore, no total immunity can be claimed by any so-called third party. Further, if it is not a matter covered by section 8(1)(d) of the Act, the question of any denial by the information Officer does not arise.”

24. Hon’ble Delhi High Court in case of Bhagat Singh Vs. Chief Information Commissioner has held at para 13:-

“ Access to information, under section 3 of the act, is the rule and exemptions under section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself”

25. Based on the ratio laid down in above judgments and taking into consideration the facts of the present case, I am of the opinion that the information at point no. 1, 2 and 5 does not qualify to be

personal information. As such I find merits in the appeal and of the opinion the same are required to be furnished as it appears to have been sought in larger public interest.

26. The appellant in the appeal had also prayed for penalty u/s 20(2) of the Act as against Respondent No. 1 and 3 and compensation. In the present case the information was not denied by Respondent No. 1 PIO. The application u/s 6(1) was timely responded too. The PIO have forwarded the copy of the correspondence exchanged between him and third party to the appellant . As such there are no grounds to hold the malafide on the part of PIO.

27. In the above given circumstances following order is passed:-

Order

- a) The Respondent No. 1 Public Information Officer (PIO) is hereby directed to furnish information at point no. 1, 2, and 5 as sought by the appellant vide his application dated 23/02/2015 free of cost, within three weeks from the date of the receipt of the order.
- b) Rest prayers not granted.

Appeal disposed accordingly. 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 against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

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

Kk/-