

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 64/2017

Shri. Narayan R. Gawas,
S/o. Shri Rama N. Gawas, Driver,
R/o. H. No. 114, Vancio Waddo, Guirim,
Bardez-Goa

...Appellant

V/s

1. The Public Information Officer (PIO),
Medical Superintendent Cum Dy. Director,
Asilo Hospital, Mapusa, Bardez-Goa.

2. First Appellate Authority (FAA),
Directorate of Health Services,
Campal, Panaji-Goa

.....Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Appeal filed on:-19/05/2017

Decided on: 28/02/2018

ORDER

- 1.** By an application dated 23/12/2016 filed under section 6(1) of Right to Information Act 2005, Appellant, Shri Narayan Gawas sought certified copies of the full file alongwith all medical Report of Miss Chinmaya Dhargalkar and of Mrs Lilavati Haldankar from the Public Information Officer (PIO) of District Hospital, North-Goa at Mapusa.
- 2.** The said application was responded by the Respondent No. 1 PIO on 6/01/2017 interms of section 7(1) thereby denying the information under section 8(1)(e) of the RTI Act, 2005 and also interms of regulation (7.14) of Indian medical council

(professional conduct, Etiquette and Ethics) Regulations , 2002. Vide said reply it was also informed to the appellant that the third party Miss Chinmaya Dhargalkar and Mrs Lilavati Haldankar has objected for the disclosure of said information .

- 3.** Being aggrieved by the said response, the appellant then approached the FAA on 8/02/2017 by way of first appeal under section 19(1) of the RTI Act 2005.
- 4.** The Respondent No. 2 First Appellate Authority (FAA) by an judgment dated 27/02/2017 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 appellant did not receive the information ,he approached this Commission by way of second appeal on 8/05/2017 with the prayer for direction for furnishing the information as sought by him , for setting aside the order passed by respondent NO.2 FAA and for invoking penal provisions.
- 6.** In pursuant to the notice, appellant was represented by Advocate Y. Mandrekar. Respondent No. 1 PIO Dr. Geeta Kakodkar appeared and filed her reply on 5/09/2017. On behalf of respondent No.2 Smt Rita Dias appeared and filed reply on behalf of Respondent No. 2 on 20/12/2017. The copy of the same was furnished to the appellant.
- 7.** A notice to third party Miss Chinmaya Dhargalkar and Mrs Lilavati Haldankar was also issued by this Commission under section 19 (4) of the RTI Act 2005. In pursuant to which they appeared and filed their respective replies on 04/01/2018.

8. Arguments were advanced by both the parties.
9. According to the Appellant he sought for the said information as the father of Miss Chinmaya Dhargalkar namely shri Motiram Dhargalkar had filed complaint against him at Mapusa police station which was registered under crime No.159/16. It is also contended that he has been falsely implicated in the said case due to personal enmity as such he had sought for said information in order to defend himself in criminal proceedings. It is his further contention that there was no fiduciary relationship between a doctor and the said victim girl. It is his further case that in fiduciary relationship one of the party is duty bound to act with utmost good faith for the benefit to other party but in this case the purpose of this information/Medical records is to treat the patient and to start the investigation. As such according to the appellant it does not come remotely under fiduciary relationship. According to appellant the said information was not given to police as well as hospital for safe keeping. According to him rules 7.14 of Indian Medical Council (professional conduct, Etiquette and Ethics) Regulations, 2002 is not applicable as there is no secret involved therein. It is his further grievance that PIO and first appellate authority has not given any reasoning how the relationship is fiduciary.
10. 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 and also under Indian medical council (professional conduct, Etiquette and Ethics) Regulations, 2002. It is further claimed that appellant had not

established any larger public interest that warrants disclosure of such personal and confidential information.

11. The third party namely Miss Chinmaya Dhargalkar and Mrs Lilavati Haldankar, vide their reply dated 4/01/2018 have objected for disclosure of the said information and have contended that investigation of crime No. 159/16 of Mapusa police station is still not completed and in support of said contention placed on record. Letter dated 15/12/2017 issued by Mapusa Police station. It was further contended that since the investigation is not concluded as such the medical records remains to be a secrete documents unless and until chargesheet is not filed and as such the same cannot be disclosed. It was further contended that there exist a fiduciary relationship between the victim girl and the doctor as she was taken to Government hospital for simple reason that there was a trust that whatever examination and treatment given to her by doctor will be done in a appropriate manner.
- 13 I have scrutinized the records available in the file .also considered the submissions made on behalf of both the parties .
- 14 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 medical examination and treatment, hurt certificates, all the investigation papers till the time of discharge of above named third party. The possibility of the doctors treating them recording the other details of the ailments suffered by the third party cannot be ruled out. Besides that the entire full file

may also contain the fine details and intricate involved in the patient. Such records if disclose may reveal the secret /confidential details of third party. The regulation 7.14 and regulation 2.2 of Indian medical council (professional conduct, Etiquette and Ethics) Regulations 2002 also prohibits disclosure of such information .

- 15 The Apex court in case of x V/s Hospital Z in civil appeal no 4641 of 1998 [1998 (9) Supreme 220] has held at para 1;

“ It is true that the doctor-patient relationship, the most important aspect is the doctors duty to maintaining secrecy. Doctor cannot disclose to a person any information regarding the patient which he has gathered in the course of treatment nor can the doctor disclosed to anyone else the mode of treatment or the advice given to the patients” .

At para 17 the Apex court has held :-

“Thus the code of medical ethics also carves out an exception to the rule of confidentiality and permits the disclosure in the circumstances enumerated above under which the public interest will override the duty of confidentiality , particularly where there is an immediate or future risk to others.

- 16 The injuries alleged in the present case is not the one which can effect community at large. The appellant also was not able to satisfy that the disclosure of the said information was required in the larger public interest.

17 Hence ,considering the provision of the law, 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) of the Act as I find that the Medical records and medical case paper 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 as such the basic protection afforded by virtue of exemptions enacted under section 8(1)(e) cannot be lifted or disturbed.

18 Further the clause (h) of section 8(1) reads as follows :

“ Information which would impede the process of investigation or apprehension or prosecution of offenders”

A bare reading of the above clause would indicate that any information which tend to impede the process investigation or apprehension or prosecution of offenders is not to be disclosed .

19 In the present case there is no dispute that the said case was registered as “medico legal case”. The third party has produced on record the letter of Mapusa police station dated 15/12/2017 where they are informed that said case still under investigation . The offences registered against said crime are of serious in nature as such in my considered opinion the release or divulgence of such information at this crucial stage would hamper the investigation or prosecution process.

20 In W.P. (civil) No. 7930 of 2009, Add Comm of Police (Crime) V/s C.I.C., the Hon’ble High Court of Delhi has observed at para 10.

“ However, disclosure of post mortem reports at this stage when investigation is in progress even without names of the doctors falls in a different category. It has been explained that post mortem reports contain various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used etc. *Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders.* It is the case of the petitioners that inquiries/investigation are in progress and further arrests can be made. *Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may made it difficult and prevent the state from effective and proper investigation and prosecution.*

- 21 By subscribing the above ratio laid down by Hon'ble High Court, I hold that the said information is also Qualified to be exempted u/s 8(h) of RTI Act. Hence the same is also barred from disclosure in terms of section 8(1)(h) of RTI Act.
- 22 There is not error or illegality in the orders passed by the first appellate authority seeking exemption under section 8(1)(e) of the Right to information Act nor any procedural illegalities can be inferred . Hence in my opinion the decision of the FAA and reply of PIO do not call for any inferences .
- 23 In the above circumstances I find no merits in the appeal, hence the same is dismissed.

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/-