

GOA STATE INFORMATION COMMISSION
‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner

Appeal No.25/2018/SCIC

Shri Uday A. Chari,
H. No.C/5/55,
Mala, Panaji –Goa.
Pin 403001.

..... Appellant.

V/S

- 1) The Public Information Officer/
Dy. Director (ADM.) IPHB,
Babolim.
- 2) The First Appellate Authority,
Director/Dean I.P. H. B,
Bambolim.
- 3) Shri Sairaj Ullas Bhaje,
C-2-S1, TR. Residency Market,
Taleigao –Goa. Respondents

Filed on :22/1/2018

Disposed on:9/4/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 18/9/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several four points therein.

b) The said application was replied on 16/10/2017 furnishing the copies at points 1,2 and 4 and in respect of point 3 it was intimated that the information was exempted u/s 8(1)j of the act. However according to

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appellant the information as sought was not fully furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

- c) According to appellant the first appeal was not decided within the stipulated time and hence the appellant has landed before this commission in this second appeal u/s19(3) of the act.
- d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 27/2/2018 filed her reply to the appeal. The FAA also filed the reply on the same date. Arguments were heard.
- e) It is the contention of PIO that the information at point (3) was not furnished being personal. It is according to PIO the information pertaining to the list of assets was held under rule 18 of The CCS conduct Rules and every returns shall be handled as secret document.
- f) It is the contention of FAA that the first appeal which was filed by the appellant herein was heard after giving notice to the appellant. However the appellant failed to appear inspite of opportunities and before the final order was passed the appellant filed the second appeal.
- g) Arguments of the appellant and the PIO were heard. By relying on the judgment passed by the Hon'ble High Court of Bombay at Goa Bench the appellant submitted that the information as sought by him cannot be personal as the same is filed during his public activity. According to him the information to which parliament has an access the same can be furnished.

2. FINDINGS:

a) Perused the records and considered the arguments. The information at points (1),(2) and (4) have been furnished by giving copies as enclosures. It is the contention of appellant in the appeal memo that the information at point (4) is false, misleading incomplete and gross violation of the act. The appellant has not commented or elaborated as to why he says it as incomplete, misleading or gross violation of the act. On perusal of the information it is found that the PIO has furnished the copies of the applications filed under RTI. According to appellant the third party should have been given the notice u/s 11 of the act. However I am unable to subscribe to this view. The applications filed under RTI are in the custody of the PIO and the part of functioning of the public office. Such applications forms public records and hence no notice thereof is required to be given to the applicant of such applications. Even in the memo of first appeal the appellant has admitted that the information at point (4) has been received by him. Being so I don't find any reason to deal with the said point no.(4) as the same is duly furnished.

b) Information at point (3) requires the list of moveable's and immoveable properties submitted by employees and notices issued by office for failure to submit such list. Said request was rejected by invoking section 8(1) j of the act, which reads:

“8. Exemption from disclosure of information.

_____ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___

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*(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 or 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.”

K) -----”

c) The information sought by the appellant herein are the records from the public office. As fairly pointed out by the PIO such records are to be generated and recorded by the public authority in the course of and as condition for the service in the public authority. Thus the documents so filed are not for private use but the same are generated only during the public activity with the public authority as its employee. The salaries received by the employees are from the public funds and hence the same are subject to public scrutiny.

d) The appellant has relied upon the judgment passed by Hon'ble High Court of Bombay, Goa bench at Panaji in *writ petition no.1 of 2009* wherein a similar view is adopted. In the said case the seeker had sought for leave records of the employee which was objected to by the concerned employee on the ground that the same is private information. On the bases of said objection the PIO of the concerned authority refused to furnish the

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information under the exemption of section 8(1) j of the act. The said matter ultimately landed before the Hon'ble High Court. The High Court while disposing the which held :

“7. The First thing that needs to be taken into consideration is that the petitioner is a public servant. When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/misconduct of a public servant even in private, ceases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know.

8.It was contended that under Section 8(1)(j), the information cannot be supplied. In this regard, it would be necessary to read proviso to that section. If the proviso is read, it is obvious that every citizen is entitled to have that information which the Parliament can have. It is not shown to me as to

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why the information as is sought, cannot be supplied to the Parliament. In fact, the Parliament has a right to know the ground for which a public servant has taken leave since his salary is paid from the public exchequer. In the circumstances, I do not find that the Information Commission committed any error in directing such information to be supplied. There is no substance in the writ petition. It is dismissed.”

e) Considering the ratio as laid by the High court, I am satisfied that a larger public interest justifies the disclosure of such information as sought by the appellant. The order of the PIO in rejecting the application was erroneous and the same cannot be sustained. Consequently the order dated 12/2/2018 passed by the FAA is also liable to be set aside. In the above circumstances appeal is bound to succeed and the same is therefore disposed with the following:

O R D E R

The appeal is partly allowed. The PIO is directed to furnish to the appellant the information at point (3) of the appellant's application, dated 18/9/2017 free of cost, within FIFTEEN DAYS from the date of receipt of this order. Rest of the prayers are rejected. Parties to be notified. Proceedings closed.

Pronounced in the open hearing.

Sd/-

(Mr. Prashant S. P. Tendolkar)
State Chief Information commissioner
Goa State Information Commission
Panaji-Goa

