

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

Appeal No. 96/2019/SIC-I

Shri Balkrishna Chandrakant Dalvi,
r/o H.No. 323 Thakurwada,
Honda Sattari Goa.

....Appellant

V/s.

1. The Public Information Officer,
Institute of Psychiatry & Human Behaviour
Government of Goa,
Bambolim, Tiswadi Goa.
2. The First appellate Authority,
The Director/Dean, Institute of
Psychiatry & Human Behaviour
Government of Goa,
Bambolim, Tiswadi Goa.

.....Respondents

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

Filed on: 12/4/2019

Decided on: 25/10/2019

ORDER

1. By this appeal the Appellant assails the order dated 21/1/2019 passed by the Respondent No. 2 , First Appellate Authority (FAA), in first appeal filed by the Appellant herein.
2. The brief facts leading to the present appeal are that ;
 - (a) By an application dated 2/11/2018 filed under section 6(1) of Right to Information Act 2005, Appellant, Shri Balkrishna C. Dalvi sought from the Public Information Officer (PIO) of Institute of Psychiatry and Human Behavior, Bambolim-Goa. certified copies of the case papers vide No. 97916 dated 16/7/2016 and 23/7/2016 of Smt. Ravita M. Sawant Resident of Sarvan, Bicholim Goa.
 - (b) The said application was responded by the Respondent No. 1 PIO on 22/11/2018 interms of section 7(1) of RTI Act, thereby denying the information under section 8(1)(e)and 8(1)(j) of the RTI Act 2005.

- (c) Being aggrieved by the said response, the appellant then approached the Respondent no. 2 Director/Dean by way of first appeal under section 19(1) of the RTI Act being first appellate authority .
- (d) The Respondent No. 2 First Appellate Authority (FAA) by an judgment dated 21/1/2019 dismissed the said appeal by upholding the say of the Respondent No. 1 PIO.
- (e) Being aggrieved by the action of both the Respondents and as he did not receive the information, he approached this Commission by way of second appeal on 12/4/2019 with the prayer for direction for furnishing the information as sought by him and for quashing aside the impugned order and judgment dated 21/1/2019 passed by the Respondent No. 2 First Appellate Authority .
3. In pursuant to the notice, of this commission appellant was present in person alongwith Adv. S. Y. Thali. Respondent No. 1 PIO Dr. Shilpa Waikar appeared and filed her reply alongwith enclosures on 6/5/2019 there by resisting the appeal. The copy of the same was furnished to the appellant. The Respondent No. 2 First Appellate Authority opted to remain absent neither any reply came to be filed by Respondent No. 2.
4. Since the information sought was pertaining to third party Smt. Ravita Mahadev Sawant, notice was also issued by this Commission under section 19 (4) of the RTI Act 2005 to her to make her submission. The 3rd party Smt. Ravita Mahadev Sawant, filed her written submissions on 18/6/2019 in the registry of this commission vehemently objecting for release of her information. Additional written submission were also filed by third party on 28/6/2019 alongwith the enclosures. The copy of the written submission of the third party were furnished to the appellant and the Respondent No.1 herein.

5. Written arguments were also filed by the appellant on 18/6/2019.
6. Arguments were canvassed by appellant and Respondent No. 1 PIO. Third party submitted to consider her written submission as her argument .
7. It is the contention of the appellant that information was sought was not of the third party but of his own wife and under Portuguese law both husband and wife form one personality so also under personal law nothing remains confidential and the disclosure of medical records of wife to her legally married husband cannot be construed as not in public interest. It was further contended that he was the part of family of third party and was entitled as matter of right to know the medical status of his wife. It was further contended that activity which are performed by the doctors in discharged of their duties as public servant are public activities and not private activity and as such the information of the third party was not the private information of the doctor concerned but information forming part of the record of the institute .i.e. public authority. It was further contended that under 76 of Indian evidence act, the record maintained by public authorities are public documents and also in normal circumstances the petitioner is entitled for the same. It was further contended that information was in the public interest as a mental health of one person in a family/community can affect so many relations and persons and therefore disclosing such medical information to close family members could have not been considered as a unwarranted invasion for privacy of the individual. It was further contended that section 11 is attracted in the present case and not the section 8 and the rejection of application u/s 8(1)(e) and (j) of the act was without jurisdiction and the denial of the information amount to gross failure and defeat the noble and cherish object and purpose of the act. It was also contended the notice was

issued to third party after 7 days and not 5 days as mandated u/s 11. It was further contended that the third party without disclosing incurable mental defect had entered into matrimonial alimony and such an act on the part of third party amounts to criminal offence. It was further contended that said information was necessary and relevant for purpose of settling legal issues of mental sanity or offence connected criminal breach of trust in relation to misrepresentation of facts amounting to fraud, cheating, which was civil as also criminal wrong. It was further contended that the third party, who is in this case was wrong doer and as such never would have consented for disclosure of the information as discloser was not in her sinister interest. It was further contended that the third party has played fraud not only on the appellant as regards her mental health status before entering into contract of marriage, but also his family as also on sub-registrar who had registered the marriage based on the declaration of the third party and therefore larger public interest justified disclosure of such information. It was further contended that Mental Health Care Act, 2017 would not be applicable as the information pertains to the period prior to coming in force of the Act. The appellant also relied upon the judgments of the Central Information Commission, (i) Vigar Ahmad V/s Institute of Human behavior and allied sciences and (ii) Jyoti Jeana V/s PIO in support of his contention. The appellant also relied upon Judgment in (i) Civil Appeal No. 823-854 of 2016, and in (ii) Reserve bank of India V/s Jaintilal and Mistry and submitted that the information cannot be denied on the ground of fiduciary relationship.

8. The appellant also came heavily on Respondent no.2 and submitted to quash this order for want of proper reasoning. He further submitted that the first appellate authority is quasi judicial authority should have give reasoned order to ensure clarity,

objectivity, transferecy and fairness in decision making process and in support of this said contention, he relied upon the decision given by the Hon'ble Apex court in civil appeal No. 2225 of 2010.

9. The appellant also submitted that the authority relied by the PIO is not applicable to the facts of the present case as in that case medical expenses were submitted by the parties to the authorities and hence it was considered as personal but in the present case those are public records maintained and generated by the public authorities.
10. The PIO in her reply dated 06/05/2019 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 provoke serious reactions on patient including suicide. It was further contended that the mental health treatment information is a personal information which is required to be maintained by the medical practitioner in confidential under his professional ethics and in case the interest of public at large Prejudiced by withholding the information, in such event the same is required to be shared in the interest of community. It was further contended that the third party Smt. Ravita Sawant have been examined by the instituted being her individual requirement and that she is neither accountable to the public authority nor has relations with the public authority. It was further contended that her illness has no implication on the society as a whole and as such in case the information disclose the same would amount to invasion of privacy of the third party. It was further contended that the third

party has also objected for the dispensation of her information to the appellant. It was further contended that as per section 120 of Mental Health Care Act, 2017 which came into force from 29/05/2018 has over riding effect. It was further contended that even an nominated representative or spouse does not have absolute right over the case records of treatments/decision of the mentally ill person. It was further contended that as per section 23 of the mental health care act, 2017 a person with mental illness has right to confidentiality in respect of his mental health, mental health care, treatment, physical health care so also a duty cast on all Health Officers to keep such information confidential which has been obtain during care or treatment. It was further contended 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 is her further contention that under ethical code of conduct in Psychiatry and the law, safeguarding confidentiality is a pre-requisite in a doctor-patient relationship. In support of her contention she relied upon a judgment passed by this commission in similar case bearing appeal no. 16/SCIC/2017. It was further contented that the judgment relied by the appellant are not applicable to the facts of the present case. She further contended that the Apex Court in case of Kerala public service commission V/s State information Commission relied by the appellant, the information which was kept in fiduciary relationship was not dispensed. She further contended that the Apex Court in case of registrar, Supreme Court of India V/s Subhaschandra Agarwal maintained the judgment of the Hon'ble Delhi High in w.p.(c) No. 1842/2012 and CM No. 4033/2012 wherein the details of medical facilities availed by the individual judges and also expenses on private treatment in India or abroad were rejected and disallowed and were not provided to information seeker .

11. The third party vide her reply dated 28/06/2019 have contended that she has intimated her objection earlier to the PIO and to FAA for furnishing her information relating to her medical history to the appellant. It was further contended that the information sought by the appellant is her personal information and the disclosure of which has no relationship with any public activity or interest and would cause unwarranted invention for her privacy. It was further contended that person asking her personal information may misuse the same against her. She relied upon the judgment passed by the Hon'ble High Court in writ petition no. 797/2018, Deepak Vaigankar v/s Suryakant Naik.
12. I have perused the records available in the file so also considered the submissions of the parties.
13. 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 of the third party. The third party have objected for disclosure of her information. The Mental Health Care Act, 2017 allow the nominated representative appointed by mentally ill person to have limited access to the information to serve the purpose of the act and that to, only when the patient ceases to have capacity to make mental health care or treatment decision. It is no one's case that the third party Smt. Ravita Mahadev Sawant had ceased to such capacity. There is also no record that any nominated representative was appointed for taking health care decisions for her. Further as per section 23 of the mental health care act, 2017 the patient has right to confidentiality with respect to their treatment and all the health professionals are duty bound to keep all such information confidential which have been obtained during care or treatment. 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 almost which can effect with another individual with reference to the behavior.

14. Section 120 of the Act of the mental health care Act 2017 has also overriding effect not withstanding anything in consistence therewith contained in any another law for the timing in force or in any instrument having any effect by virtue of any law other then this act also considering the other provisions of the Mental Health Care Act, 2017 which came into force on 29/05/2018, I am in agreement with the submission of PIO that the medical secrets are forbidden from the disclosure unless larger public interest warrants.
15. Appellant has not be able to justify how the disclosure of information would be in public interest. It was also not his case that he is trying to seek the same information in the best interest of the third party and that he is concerned about her health. On the contrary it is his own case that he wants the information for a purpose of settling legal issue of mental sanity or offence connected to criminal breach of trust in relation to misrepresentation of facts amounting to fraud, cheating etc. Hence I find some truth in the contention of the third party that he may misuse the same against her.
16. The Appellant though he has claimed in the memo of Appeal that he is legally wedded husband of Smt. Ravita Mahadev Sawant and entitle to get information, he has not produced the marriage certificate in support of such contention/averments. Even assuming without admitting that ,he is husband of Smt. Ravita Mahadev Sawant, 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 an 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.

17. The decision relied by the appellant of the Apex Court given Reserve bank of India V/s Jaintilal Mistry doesn't come to his rescue as in the said case it was held that RBI is not in fiduciary relationship with other bank but in the present case third party has made medical papers in her individual capacity and the larger public interest is not shown by the appellant. This commission is not inclined to accept the Judgment of Central Information Commission relied upon by the appellant as legal precedence for this commission, this being a forum with concurrent jurisdiction.
18. While dealing with similar issue the Hon'ble Apex Court in Civil Appeal No.4641 of 1998, Mr. "X" V/s Hospital "Z" reported in (1998)(9) Supreme 220, has held;

"Doctor Patient relationship, the most important aspect in the doctors duty of Maintaining secrecy and doctor cannot disclose to person any information regarding his patient which he has gathered in the course of treatment of advice given by him to his patient".

It has further held that "code of medical ethics also canvas out an exemption to the rule of confidentiality and permits disclosure in the circumstances in which the public interest would override the duty of confidentiality, particularly where there is an immediate or further risk to others".

19. Be that as it may be, in the present case the 3rd party Smt. Ravita Mahadev Sawant have been examined by the Institute of

Psychiatry and Human Behavior being her individual requirement. she is neither accountable to public authority nor has relationship to the functioning of the Public authority, nor her 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.

20. While dealing with the similar issue the Hon'ble High Court of Bombay at Goa in 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".
21. Similar issue was dealt by this commission in appeal no. 16/SCIC/2017 and also in appeal no. 166/16/SIC-I wherein the prayer seeking the medical records of the third a party were rejected and had given a finding that only relation recognize under the RTI act is that the information seeker is a citizen of Indian and the relations of the party interest is redundant under the RTI Act.
22. Considering the above provision of the law, ratio laid down by Bombay High Court in Kashinath Shetye (Supra) case, by the Apex Court in case of Registrar, Supreme Court of India (Supra) and the limitation under the Act, 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 nor the illness alleged in the present case is not the one which can effect community at large.
23. Considering the circumstances of the case and the purpose for which the information is sought by the appellant herein I am in agreement with the PIO that no larger interest is disclosed by the

appellant and that the information sought will come under exception under section 8(1)(e)(j) of the Act.

24. 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 21/01/2019 passed by the first appellate authority 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