

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880, 2437908 E-mail: spio-gsic.goa@nic.in Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 101/2020

Shri. Oswald H. Pinto,
Editor of Debates,
Goa Legislature Secretariat,
Porvorim – Goa

..... Appellant

v/s

1)Ms. Namrata Ulman,
Secretary,
Goa Legislative Assembly,
Secretariat, Porvorim – Goa
First Appellate Authority, under RTI Act, 2005

2)Shri. U.D. Bicholkar,
Asst Public Information Officer/
Committee Officer,
Goa Legislature Secretariat,
Porvorim – Goa.

3)Shri. Mohan Gaonkar,
PIO/Under Secretary,
Goa Legislature Secretariat,
Porvorim – Goa.

.... Respondents

Filed on : 02/07/2020

Decided on : 26/10/2021

Relevant dates emerging from appeal:

RTI application filed on	: 24/04/2020
PIO replied on	: Nil
First appeal filed on	: 28/05/2020
FAA order passed on	: 29/06/2020
Second appeal received on	: 02/07/2020

ORDER

1. The Appellant Shri. Oswald H. Pinto vide application dated 24/04/2020 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act), sought information from the Public

Information Officer/Under Secretary, Goa Legislature Secretariat, Porvorim Goa, the information, as mentioned in the said application.

2. It is the contention of the Appellant that Respondent No. 2, Assistant Public Information Officer (APIO) received his application but did not reply within 30 days. The Appellant preferred first appeal dated 28/05/2020 before Respondent No. 2, First Appellate Authority (FAA). The FAA vide order dated 29/06/2020 dismissed the appeal, denying the information to the Appellant. Being aggrieved, the Appellant filed second appeal before this Commission with following prayer (a) Directions to Respondents to furnish information, (b) Penalty under Section 20 to be imposed on Respondents, (c) Disciplinary action against Respondents under Civil Service Rules, (d) Any other order as the Commission deems fit and proper.
3. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, Appellant appeared before the Commission. Subsequently Shri. Hercules Noronha, Joint Secretary, Legislature Secretariat, appeared on behalf of the FAA, under authority letter and submitted that the FAA does not desire to file reply to the present proceeding. Shri. U.D. Bicholkar, APIO submitted that the then PIO has retired and the appointment of new PIO is in process. Subsequently the present PIO Shri. Mohan Gaonkar filed reply dated 10/09/2020 stating he has been appointed as PIO on 28/08/2020. The present PIO was admitted as Respondent No. 3 in the cause title of this appeal and filed reply dated 15/12/2020. The Appellant also submitted counter reply.
4. The PIO, vide reply dated 10/09/2020 and 15/12/2020 stated that the information sought by the Appellant is of service matter of various officers and other staff, which falls within the ambit of section 8(1)(e) and (j) of the Act, and therefore exempted from disclosure. That disclosure of such information of fellow staff is not in the

interest of the Goa Legislature Secretariat and that basic protection under Section 8 of the Act should not be disturbed.

5. The FAA, as stated during the proceedings did not file any submission.
6. The Appellant, vide counter reply dated 07/10/2020 claimed that the reply of PIO is not maintainable as the PIO is hand in glove with the APIO and the FAA to deny the information. The said reply deserves to be discarded and the Appellant is ought to get the information as the claim of exemption under Section 8(1)(e) and (j) is not sustainable.
7. Arguments were advanced by Shri. Hercules Noronha, Joint Secretary, on behalf of respondent. It is the contention of Shri. Noronha that the information sought by the Appellant is related to service matter of many employees, in the Legislature Secretariat including some officers. This information is not in public domain and exempted under section 8(1)(e)and (j), therefore need not be furnished. Shri. Noronha argued that no injustice is done to the Appellant, who is his colleague in the Legislature Secretariat and he is filing applications under the RTI Act only to harass the Respondents.
8. On the other hand, the Appellant insisted on getting the information. The Appellant claimed that injustice is done to him by depriving him of promotion and by giving undue favours to other staff in the same office, therefore information he is seeking is important to him in his fight for justice. Also, that the information cannot be classified under section 8(1)(e) and (j).
9. It is seen that the Appellant has sought information about recruitment rules, appointment, promotion, upgradation of his colleagues; notings/correspondence in these matters, etc. PIO has

claimed this information as exempted under section 8(1)(e), information available to a person in fiduciary relationship and under made section 8(1)(j) - information which relates to personal information.

10. While deciding the scope of exemption Hon'ble Punjab & Haryana High Court in Vijay Dheer v/s. State Information Commission, Punjab & Ors. (LNIND 2013 PNH 2263) has held that :-

"While examining the scope of an exemption clause under Section 8 of the Act, it would be useful to refer to the statement of objects and reasons of the Act itself. The object and reasons of the Act recite that the provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further the Act has been enacted in order to promote transparency and accountability in the working of every public authority.

The State Information Commission while passing the impugned order has attempted to strike a balance between public interest as also the privacy of the individual concerned i.e. the petitioner. The Public Information Officer concerned has been directed to provide such part of the information sought by respondent no.3 which primarily relates to the mode of appointment and promotion of the petitioner to a public post. The basis of passing the impugned order by the State Information Commission stands disclosed in the impugned order itself in the following terms:-

It is necessary in order to understand as to what is the larger public interest vis-a-vis personal information which would cause unwarranted invasion of the privacy of the individual. After considering all relevant aspects in the instant case, I find that the stand/order of the PIO Office ADC (D), Roop Nagar is not tenable. The PIO concerned has unnecessarily stretched the information sought as personal information about third party as unwarranted invasion on the privacy of the individual. A part of information/documents sought by the complainant, relates to the mode of appointment/promotion of a person on a public post, therefore, information/documents to that extent fall under the domain of larger public interest. The documents on the basis of which a person has sought an appointment in a public office becomes the documents of larger public interest.”

11. The Respondents have relied upon judgements of Girish Ramchandra Deshpande v/s. Central Information Commission (SC), Canara Bank v/s. C.S. Shyam & Anr. (SC) and some other Judgements of High Court and Central Information Commission. Present appeal under section 8 (1) (e) and (j). Government of India in its guidelines issued to that effect on 29/06/2015 has suggested for suo-moto disclosure under section 4 of the Act, the information relating to recruitment, promotion and transfer and the same should be brought in to public domain.

12. Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 arising out of SLP (c) No. 7526/2009, C.B.S.E & Anr. v/s Aditya Bandopadhyay & Ors. has stated in para 24 :-

"24 – We may next consider whether an examining body would be entitled to claim exemption under section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship".

13. In another matter of Central Public Information Officer, SC v/s. Subhash Chandra Agarwal (C.A. No. 10045/2010), Hon'ble Supreme Court has held in para 53 and para 59.

"53. While clause (j) exempts disclosure of two kinds of information, as noted in paragraph 47 above, that is "personal information" with no relation to public activity or interest and "information" that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the later kind. This, means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean

personal information, that is, which is not having co-relation with public information”.

"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive."

14. Considering the ratio laid down in the above orders of Hon'ble Apex Court, claim of Respondents regarding exemption under section 8(1) (e) and 8(1)(j) do not sustain. In the backdrop of above discussion refusal to provide information is not acceptable. In view of the above finding, the appeal is disposed with the following order :-

- (a) The appeal is partly allowed.
- (b) FAA's order dated 29/06/2020 is set aside.
- (c) The PIO is directed to furnish the information to the Appellant sought vide application dated 24/04/2020, within 10 days from the receipt of this order, free of cost.

(d) All other prayers are rejected.

15. Hence the appeal is disposed accordingly and proceedings stand closed.

Pronounced in the open court.

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.

Sd/-

Sanjay N. Dhavalikar
State Information Commissioner
Goa State Information Commission
Panaji - Goa