

GOA STATE INFORMATION COMMISSION
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Appeal No.148/2020/SIC-I

Joao Fernandes,
R/o. H.No. 229, Copelebhat,
Deao, Quepem,
Goa. 403705

.....Appellant

V/S

The Public Information Officer,
Joint Secretary,
Goa Board of Secondary and Higher Secondary,
Alto, Betim,
Bardez-Goa

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 23/09/2020

Decided on: 15/07/2021

FACTS IN BRIEF

1. This appeal is directed against the order dated 15th day of September 2020, made by the First Appellate Authority, Goa Board of Secondary and Higher Secondary Education in First Appeal No. GBSHSE/FAA/RTI-APPEAL/ 1/2020/1364 i.e Appeal No. 1/2020, partly allowing the appeal and directing the Public Information Officer to provide information at Point No. 2,7 and 9 free of cost to the Appellant within 10 days from the date of Order. The said Order also observed that information in regards to Point No. 1,3,4,5 and 8 need not be disclosed as said information has been exempted under Sec 8(1)J of the RTI Act, further the information at Point No.6 and 10 cannot be provided as the said information is not held by or is available under the control of Public authority.

- a) The case of the Appellant that, he sought the information under Sec 6(1) of the RTI Act on 04/08/2020 through Registered A.D. Post asking ten Point information from Public Information Officer, office of Goa Board Secondary and Higher Secondary Education, Alto, Betim Goa.
- b) Appellant further submits that PIO vide letter dated 10/08/2020 under No. GBSHSE/RTI/2020/1116 rejected the application stating that "the information sought by Appellant comes under Sec 8(j) of RTI Act, 2005".
- c) It is the case of the Appellant that information sought by the Appellant vide application dated 04/08/2020 comes very much within the ambit of Section 2(f) of Right to Information Act, as every citizen has a right to know that the act done or action taken by the Goa Board Secondary and Higher Secondary Education is fair and just and that PIO has misunderstood and misinterpreted the provision of law and denied the information to the Appellant.
- d) Appellant also submits that the PIO is intentionally avoiding to furnish information to the Appellant, with malafide intention to cover up the department's misdeed.
- e) The Appellant submits that he filed first appeal before the First Appellate Authority (FAA) Chairman of Goa Board on 17/08/2020. First Appellate Authority by its Order dated 15/09/2020 in Appeal No. 1/2020 partly allowed the appeal, being aggrieved by the Order of First Appellate Authority, Appellant preferred this Appeal, praying that Order passed by the FAA be set aside and

PIO may be directed to furnish all the information and also fine may be imposed on PIO under Sec 20 of RTI Act for intentionally denying the information sought for.

2. Notices were issued to the parties, PIO, Ms. Geraldina Mendes, Joint Secretary, Goa Board Secondary and Higher Secondary Education, Alto, Betim, Goa, appeared and file her reply. In her reply, she submits that the information sought by the Appellant comes under Section 8(1)(J).
3. It is also the contention of the PIO that, disclosure of the names of the paper setter, past or present would be breach of trust reposed by the paper setters while accepting their appointment and also breach their fiduciary relationship with the Board. She further submit that in case the names of the paper setters who were appointed for the past examination are disclosed the board would be bound to exclude them from consideration for appointment for future examinations thus it may result in Board being compelled to exclude the large number of teachers with disastrous consequences for the entire examination system. She also submits that, an utmost secrecy and confidentiality is the foundation and the essence of the Public examination system consisting of paper setting and assessment of answer paper conducted by the Board. All those who are part of the system have to maintain confidentiality for retaining the Public trust in the examination or else the entire system is bound to collapse. She also further states that, it is also essential to avoid the disclosure of names of paper setters may invite injury to their person from any frustrated element.
4. I have perused the contents of the Appeal Memo, reply filed by the PIO and Order of the FAA and scrutinised the records and considered the submission made by the parties.

5. The FAA by its Order dated 15/09/2020 directed to provide information at Point No. 2,7 and 9 free of cost to the Appellant within 10 days from the date of Order while information at Point No. 6 and No. 10 is not available with this Public Authority. Record shows that said information has been duly furnished to the Appellant and therefore there is no issue as far as information at Point No. 2,7 and 9.

6. Now remains the information sought for at:

Point No.1 : Certified copy of Boards appointment letters issued to the four teachers for setting the English controversial paper in academic year 2017-2018.

Point No. 3 : Certified copy of inquiry notices to English Paper Setting Team of four teacher of this year 2019-2020 SSC Board English Paper.

Point No. 4 : Certified copy of SSC English First Language Boards confidential Teachers Attendance sheet of Margao Assessment Centre of the year 2019-2020 which took place in June.

Point No. 5 : Certified copy of inquiry Committee Report of English controversial question paper.

Point No. 8 : Certified copies of final order issued to all 4 teachers informing them that they are debarred from Boards confidential duty.

7. It is to be noted that information sought by the Appellant vide Point No. 1,3,4,5 and 8 were pertaining to appointment, notice of inquiry / show cause notice, confidential teachers attendance sheet. Inquiry Committee report and disciplinary action in respect of four teachers for setting up the controversial English paper of SSCE examinations for the academic year 2017-2018.

8. Let us go through the provision of Section 8(1) and scope of clause (g) and (j) which reads as under:-

“8. Exemption from disclosure of information :-

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

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose;

(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.”

From the above readings it is evident that the exemption is attracted under two circumstances. First, if the information is personal in nature and has no relationship to any Public activity or interest.

9. The Hon'ble Supreme Court in **Girish Ramchandra Deshpande v/s Central Information Commr. & ors 2012 (6) ALL MR 442 (S.C.)** while dealing with the same issue observed in Para No. 13 as under:

“13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e copies of all memos issued to the third respondent, show cause notices and orders of censure / punishment etc are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization

is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."

10. Apart from that, information sought by the Appellant are in respect of those four teachers who are alleged to be involved in the setting of the English controversial paper of the SSCE for the academic year 2017-2018. It is also rightly pointed out by the PIO that names of the four English teachers cannot be disclosed as disclosure of their names endanger the life or physical safety of that English teacher who set the alleged controversial paper. By way of Sec 8(1)(g) protection has been granted by the Act, from exemption of such information.
11. The names of paper setters cannot be furnished to the Appellant since there is utmost secrecy and confidentiality is involved in public examination system, all those who are part of the system have to maintain confidentiality for retaining public trust in examination otherwise the entire system will collapse.

Besides that if names of the paper setters who were appointed for the previous examination are disclosed, the Board

would be bound to exclude them from consideration for appointment for future examinations. This may result in Board being compelled to exclude a large number of teachers with disastrous consequences for the entire examinations system.

12. While dealing with an issue of furnishing the information in respect of confidential and sensitive information the Hon'ble Supreme Court in case of **Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors, Civil Appeal No. 6454 of 2011** at para 33 and 34 thereof has observed:-

“ 33. Some High Courts have held that section 8 of RTI Act is in the nature of an exception to section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore section 8 should be constructed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be fetter on the right to information, but as an equally important provision

protecting other public interests essential for the fulfilment and preservation of democratic ideals.

34. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is section 8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the act, while interpreting section 8 and the other provisions of the Act.”

13. As far as the information pertaining to Point No. 6 and 10 the FAA in its Order held that the said information is not available with the Goa Board. It is to be noted that, Goa, Daman and Diu Secondary and Higher Secondary Education Board and Directorate of Education are two different legal entities govern by two different Acts. Legally these information is not held or under the control of Goa Board, therefore Goa Board is not legally bound to provide said information. The information which is not held or available under the control of this public authority cannot be supplied to the Appellant.
14. Considering the above position, the Appellant has not made out the case of bonafide public interest or larger public interest in seeking information, the disclosure of such information would

cause unwarranted invasion of privacy of individual and there is an imminent danger to the life and liberty of a person.

As I find no deliberate and intentional denial of information by PIO, I find no ground to invoke my right to impose penalty under sec 20 of the Act.

In the above given circumstances and in the light of the discussion above, I dispose the above appeal with the following order

O R D E R

The appeal stands dismissed.

Proceedings closed.

Pronounced in the open court.

Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner