

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

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website:www.gsic.goa.gov.in

Appeal No.113/2021/SCIC

Mr. Shivaji M. Shet,
Resident of H.No. 931/3,
Khadap Wada,
Kumbharjua-Goa. 403107.

.....Appellant

V/S

1. The Public Information Officer,
Goa Public Service Commission,
Panaji-Goa.

2. The First Appellate Authority,
The Secretary,
Goa Public Service Commission,
Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 02/06/2021

Decided on: 30/11/2021

FACTS IN BRIEF

1. The Appellant, Mr. Shivaji M. Shet, Resident of H.No. 931/1, Khadap Wada, Kumbharjua-Goa, by his application dated 15/02/2021, filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information on 9 points from the Public Information Officer (PIO), Goa Public Service Commission, at Panaji-Goa.
2. The said application was responded by the PIO on 05/03/2021, stating that as regards to information at point No. 1, the same is rejected under sec 8(1)(g) of the Act, with respect to information at point No. 2,3 and 4 the request is rejected as it would impede the process of recruitment, as far as information at point No. 5 and 8 is concerned , the Appellant was asked to collect the information by depositing requisite fee in Account Section of the public authority. Further with reference to point No. 6,7 and

9, the applicant was informed that the said information is not available in the records of public authority.

3. Not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Secretary, Goa Public Service Commission at Panaji-Goa being the First Appellate Authority (FAA).
4. The FAA by its order dated 29/04/2021 partly allowed the first appeal and directed the PIO to furnish the information on point No. 2,3 and 4 immediately on completion of recruitment process.
5. Aggrieved with the order of FAA, the Appellant preferred this second appeal before the Commission, under sec 19(3) of the Act.
6. Parties were notified, pursuant to which Adv. Jay Mathew appeared on behalf of PIO and filed affidavit in reply on 17/09/2021, FAA duly served opted not to appear and file the reply in matter.
7. Perused the pleadings, reply, scrutinised the documents on record, considered the arguments of the parties and judgement relied upon by the rival parties.
8. The PIO through her affidavit in reply submitted that at the time of filing the second appeal, the process of recruitment was not over and thus the disclosure of information sought by the Appellant before the completion of selection process would have impeded the recruitment process.

Since the selection process is now complete, the PIO complied with the order of FAA and furnished the information on Point No. 2,3 and 4 and part information on point No. 1, i.e statement of marks obtained by each candidates for the interview for the post of Principal in Goa College of Art.

9. It is an admitted fact that relevant information has been collected by the Appellant by paying the prescribed fee. The

controversy therefore is only with respect to information at point No. 1 of the application i.e the copy of the minutes of the Selection Committee.

10. Learned Adv. Vithal Naik appearing for Appellant submitted that, FAA by its order directed the PIO to release information pertaining to minutes of Selection Committee and individual and final grading /marksheet of the Selection Committee of the candidates interviewed for the post of Principal by not disclosing the names of the member of the Selection Committee. If the said information is not furnished it will defeat the very purpose. He further argued that the manner in which the process of selection has been conducted only reveal favouritism and partial and biased selection which is against equality and fairness in public employment. He further emphasised to give direction to PIO to furnish the copy of minutes of Selection Committee to promote transparency and accountability in the public sphere.

11. Learned Adv. Jay Mathew appearing on behalf of PIO, submitted that the recruitment process for the post of Principal in Goa College of Art has been completed and name of selected candidate was recommended by the public authority to the Government. The Government has rejected the recommendation, thus entire process is cancelled and information sought at this relevant time is uncalled for and has no relevance.

He further submitted that, he has complied with the order of FAA and furnished all the information to the Appellant vide letter dated 17/09/2021 as well as offered him inspection of file by letter dated 02/09/2021. In support of his contention he also produced on record both the above letters.

He further submitted that, the copy of the minutes of the Selection Committee cannot be furnished, as the same contains the

names of the expert and their views and the disclosure of names of the experts on interview committee would ex-facie endanger their life and physical safety. Therefore the disclosure of such sensitive information is barred under provision of section 8(1)(g) of the Act.

He emphasised that the Goa Public Service Commission has a fiduciary relationship with the advisors who come to assist the interview committee. The public authority (GPSC) has reposed trust on the advisor of interview committee that they will examine with utmost care, honesty and impartially and similarly the interview committee have mutual faith that they will not be facing any unfortunate consequences for doing their job. If their views are allowed to be disclosed, the unsuccessful candidates may try to take revenge from the committee member for performing their professional duty.

12. Sec 8(1)(e) and 8(1)(g) of the Act 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,____

(a) XXX XXX

(b) XXX XXX

(c) XXX XXX

(d) XXX XXX

(e) information available to a person in this fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) XXX XXX

(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;”

From the reading of above provision, it is clear that, even though the right of the citizen is statutorily recognised, the same is not absolute but reasonably restricted. Certain safeguards have been built into the Act in order to ensure that divulgence of information does not conflict with other public interest. The object behind section 8(1)(e) is to protect the information because it is furnished in confidence and trust reposed. It serves public purpose and ensures that the confidence, trust and the confidentiality attached is not betrayed. Similarly section 8(1)(g) provides that, if the disclosure of information would endanger the life or physical safety of any person or identify the sources of information, such information is exempted from disclosure.

13. It is a consistent stand of the PIO that, the minutes of the Selection Committee cannot be furnished as the same contain the names of the experts and their views and disclosure of names of experts on the interview committee would ex-facie endanger their life and physical safety.
14. The PIO has relied upon the judgement of Hon'ble Supreme Court in **Bihar Public Service Commission v/s Saiyad Hussain Abbas Rizwi and Anrs. (2012, 13 SCC 16)** with specific reference to para No. 21 and 30, in support of its contention that information held in fiduciary capacity cannot be furnished. Said para No. 21 and 30 reads as under:-

“21. Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In

terms of [Section 8\(1\)\(g\)](#), the public authority is not obliged to furnish any such 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 and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is obliterated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. This aspect has been discussed in some detail in the judgment of this Court in the case of **Central Board of Secondary Education (supra)**. [Section 8\(1\)\(e\)](#), therefore, carves out a protection in favour of a person **who possesses information in his fiduciary relationship**. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction.

30. The disclosure of names and addresses of the members of the Interview Board would ex-facie

endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgement under appeal that element of bias can be traced and would be crystallised only if the names and addresses of the examiners/ interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against party making an application to which exemption under Section 8 is pleaded as a defence.”

15. By referring the judgement of **Aditya Bandopadhyay (Supra) and Reserve Bank of India v/s Jayantilal N. Mistry (Supra)**. The Hon'ble Supreme Court in case of **Central Public Information Officer, Supreme Court of India v/s Subhash Agarwal (C.A. No. 10045/2010)** in para No. 34 has observed as under:-

"34. Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary

to act in good faith and for the benefit of and to protect the beneficiary and not oneself. Section 8(1) (e) is a legal acceptance that there are ethical or moral relationships or duties in relationships that create rights and obligations, beyond contractual, routine or even special relationships with standard and typical rights and obligations. Contractual or non-fiduciary relationships could require that the party should protect and promote the interest of the other and not cause harm or damage, but the fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self-interest. A fiduciary's loyalty, duties and obligations are stricter than the morals of the market place and it is not honesty alone, but the punctilio of an honour which is the most sensitive standard of behaviour"

16. While arguing Adv. Jay Mathew has invited attention to order passed by FAA dated 29/04/2021, which observed at para No. 9 as under:-

"The Public Service Commission has a fiduciary relationship with the advisors who come to assist the interview committee and therefore I believe that putting the advisors to hardship to face litigation and threat to life and liberty is not at all at public interest. Therefore, to resolve the issue the respondent can furnish the marks obtained by each candidates without disclosing the names of the advisors on completion of recruitment process."

The FAA has clearly pointed out the danger that could be faced by the expert who assist the GPSC and therefore their views and identity requires to be protected.

- 17.** In another judgement Hon'ble Supreme Court in case of **Kerala Public Service Commission v/s State Information Commission & Anrs. (2016 (2) ALL MR 962 (SC))** in para No. 10 has held that:-

10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing

their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam."

18. In the present case in hand, the recruitment process has been cancelled. By a letter dated 17/09/2021, the PIO has furnished the part information i.e statement of marks obtained by each candidate for the interview. PIO has also complied with the order of FAA, thus providing entire information as regards to information on point No. 2,3 and 4, besides by offering inspection of a file to the Appellant. The Commission is convinced that the entire permissible information has been furnished to the Appellant.
19. Considering the principles laid down by Hon'ble Supreme Court and facts and circumstances as discussed above, I find no merit in the appeal and consequently the present appeal is disposed with the following:-

ORDER

- The appeal is dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner