

GOA STATE INFORMATION COMMISSION

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Appeal No.187/2021/SCIC

Shri. Nitin Mantri,
Supervisor,
Directorate of Settlement & Land Records,
Panaji-Goa.

.....Appellant

V/S

1. Smt. Rupali Lotlikar,
Head Surveyor,
Office of the Inspector of Survey and Land Records,
Margao-Goa.

2. Kum. Domiana Nazareth,
The Public Information Officer,
The Superintendent of Survey and Land Records,
Panaji -Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 11/08/2021

Decided on: 17/11/2021

FACTS IN BRIEF

1. The Appellant, Shri. Nitin Mantri, Supervisor, Directorate of Settlement & Land Records, Panaji-Goa, filed this appeal being the third party under sec 19(3) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') challenging the order of First Appellate Authority (FAA) dated 02/08/2021, alongwith the application for stay of the effect and operation of the said order.
2. According to Appellant, Respondent No. 1, Smt. Rupali Lotlikar, Head Surveyor from the office of the Inspector of Survey and Land Records, Margao Goa, vide her application dated 21/05/2021 applied for certain information of Appellant from Respondent No. 2, Public Information Officer (PIO), the Superintendent of Survey and Land Records at Panaji the following information:-

"Kindly provide me information regarding extraordinary leave availed by Shri. Nitin Mantri, presently working as a Supervisor in the Department of Settlement and Land Records, Panaji, since the time he has joined the department, with or without availing them.

I may kindly be provided certified copies of orders by virtue of which the extraordinary leave has been sanctioned to Shri. Nitin Mantri since the period of his joining the Department of Settlement and Land records, Panaji. The same is required for my personal records and the fees towards the same will be paid by me. I am citizen of India."

3. Further according to Appellant the PIO followed the process of law and issued notice to the Appellant under sec 11 of the Act, and rejected the information being exempted under sec 8(1)(J).
4. Not satisfied with the reply of PIO, the Respondent No. 1 preferred a first appeal before Deputy Director (Administration), Directorate of Settlement and Land Records at Panaji Goa, being the First Appellate Authority (FAA).
5. The FAA by order dated 02/08/2021 allowed the first appeal and directed to furnish information to Respondent No. 1. Aggrieved with the order of FAA (Respondent No. 2), the Appellant preferred this second appeal under sec 19(3) of the Act before the Commission.
6. Notice was issued to the parties, pursuant to which PIO appeared and filed her reply on 31/08/2021, Respondent No. 1 appeared through her legal representative, Adv. Chirag Angle and filed reply on 31/08/2021.
7. Perused the pleadings, reply and scrutinised the documents on records and heard the submission of parties.

8. Learned counsel, Adv. J.A. Lobo appearing on behalf of Appellant argued that information sought by Respondent No. 1 is a personal information and it cannot be divulged as per sec 8(1)(J) as furnishing this information would amount to unwarranted invasion of his privacy and that information is in no way connected to larger public interest.

He further contended that, Respondent No. 1 filed first appeal before FAA, however the Appellant is not made a party in the said proceeding so also the FAA also did not follow the mandate of sec 11 of the Act, by issuing notice to Appellant and instead passed the order on 02/08/2021 directing the PIO to furnish the information.

Further according to him the said order of FAA suffers from the patent defect as it violates the principles of natural justice and prays that order of FAA be quashed and set aside and remand back the proceeding before the FAA to hear the first appeal in accordance with law. In support of his case he relied upon the judgement of Hon'ble High Court of Bombay at Goa in Mario Diniz v/s the Goa State Information Commission and Ors (Writ Petition No. 141/2012).

9. On the order side, learned counsel, Adv. Chirag Angle argued on behalf of Respondent No. 1. He submitted that the information sought for is already well within the public domain being held by the public authority, thus warranting statutory disclosure and no prejudice will be caused to the Appellant if information is disseminated.

Further according to him the order of FAA dated 02/08/2021 is well reasoned and judicious order requiring no interference of this Commission and he relied upon the Judgement of Hon'ble High Court of Bombay at Goa in case of

Kashinath J. Shetye v/s Public Information Officer and Ors (Writ Petition No. 1/2009) and judgement of the Hon'ble High Court of Bombay at Goa in C. Radhakrishnan v/s Public Information Officer and 3 Ors(Writ petition No. 1004/2019) to support his argument.

10. PIO through her reply submitted that on receipt of the RTI application on 21/05/2021, she vide letter No. 1/202/DSL/EST/RTI/12/1616 dated 31/05/2021 issued notice to Appellant (third party) under provision of sec 11 of the Act, the Appellant by his reply dated 16/06/2021 objected to divulge the said information being it is his personal information. Accordingly on 18/06/2021, she informed the Respondent No. 1, that information cannot be provided since the same is exempted under sec 8(1)(J) of the Act.
11. It is a strange case where all the parties in the proceeding are working in the same Department i.e Department of Settlement and Land Records.
12. The entire exercise in the proceeding starts by the RTI application dated 21/05/2021 by which Respondent No. 1 seeks information pertaining to extra ordinary leave availed by the Appellant.
13. The whole proceeding is full of contradictions and omissions and suffers from many infirmities like FAA did not join Appellant as party in first appeal. The Appellant in this second appeal did not join FAA as a party in the proceeding. The PIO in her RTI reply has not mentioned about the third party notice issued under sec 11 of the Act etc.
14. Be that as it may, the issues that arise for consideration before this Commission are:-
 - 1) Whether information sought is personal information and hence exempted under sec 8(1)(J) and

2) Whether proceeding need to remanded for non-complying of sec 11 of the Act.

15. Sec 8(1)(J) 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,___

(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."

From the above reading it is evident that the exemption is attracted under two circumstances, first the information is personal in nature and has relationship to a public activity or interest.

16. The Hon'ble Supreme Court in case of **Central Public Information Officer, S.C. v/s Subhash Chandra Agarwal (C.A.No. 10045/2010)** has held in para No. 59 as under:-

"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.”

17. The Hon'ble High Court of Bombay at Goa in case **Kashinath J. Shetye v/s Public Information Officer and Ors.** In para No. 7 has held that:-

"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."

18. Referring to the Kashinath J. Shetye v/s Public Information Officer & Ors, the Hon'ble High Court of Bombay at Goa in **C. Radhakrishnan v/s Public Information Officers & 3 Ors** has held that:-

"24. The proviso to Section 8(1)(j) of the aforesaid Act is crucial for the reason that being a public servant if the State Legislature was to call for such information pertaining to the Petitioner, the Information Officer could not have denied the same. This is for the reason that the Petitioner, as a public servant, is paid salary from the public exchequer and the State Legislature would certainly be entitled to call for such information. If the State Legislature could not be denied the aforesaid information, by operation of the proviso to Section 8(1) (j) of the said Act, Respondent no. 4 also could not have been denied such information.

25. XXX XXX

26. XXX XXX

27. There cannot be any doubt about the fact that invasion of privacy has to be construed in the facts of each case and, in any case, when it is found that divulging of such information can be said to in larger public interest, the exemption under Section 8(1) (j) of the said Act, would not be available."

In the present case the available information sought pertains to extra ordinary leave availed by the Appellant and which is certainly not personal information as per the ratio laid down by above judgements, therefore issue number one is answered as 'negative'.

19. While deciding the issue no. 2, it is relevant to deal with sec 11 of the Act which reads as under:-

*"11. **Third party information.**____ (1) Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

This section deals with disclosure of information in relation to third party. If the PIO intends to disclose any information which is related to third party, the PIO is under the obligation to give written notice to such third party within five days from the receipt of request for information.

It may be appropriate here to refer to the definition of the term "third party" in section 2(n) of the Act which reads as under:-

"2(n)- "third party" means a person other than the citizen making a request for information and includes a public authority."

Section 11 prescribes the procedure to be followed when a PIO is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the State Information Commissioner relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided.

In this case it is admitted fact that PIO vide letter dated 31/05/2021 issued notice to the Appellant (third party) under sec 11 of the Act and decided the RTI application using her wisdom to reject the application. Therefore the PIO has decided the matter in fair and just manner.

20. Adv. J.A. Lobo relied upon the judgement of Hon'ble High Court of Bombay at Goa in Mario Diniz v/s the Goa State Information Commission and Ors (W.P. No. 141/2012), the para no. 6 of said judgement reads as under:-

"6. Considering the facts and circumstances of the case and taking note of the Judgment of the learned Single

Judge of this Court reported in AIR 2012 Bom. (1) in the case of Reserve Bank of India, Mumbai, vs. Rui Ferreira, & Ors., I find that it is well settled that before supplying the information sought by the WP-141-12 -3- Respondent no.2, the Petitioner was entitled for a notice within the provisions of Section 11 of the Right to Information Act.”

This judgement cannot be of any help to the Appellant, as in the present case notice under sec 11 was issued by the PIO and the say of Appellant was obtained prior to take decision.

This view is also fortified by Hon'ble High Court of Bombay in Skill Infrastructure Private Limited v/s State Information Commissioner, the Maharashtra State Information Commission & Ors [2010 (3) MAH. LJ 193].

Considering the above ration laid down by the Hon'ble High Court, and since the third party was heard before taking decision by the PIO, the issue number 2 is also answered as negative.

21. Considering the nature of the information sought by Respondent No. 1, same is generated by public authority in exercise of its duties and functions. This information cannot be considered as personal information and would not cause unwarranted invasion in his privacy, objection of the Appellant do not justify the non-disclosure. The Appellant has not substantiated that disclosure of information would cause injury to him.
22. I am therefore unable to grant the relief prayed by Appellant (third party) and disposed the appeal with following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner