

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. : 17/2020/SIC-II

Shri. Sagar A.Naik,
C/o. Ankush V.Naik,
R/o. House No.271,
Margao Road, Dhawalimal,
Ponda Goa. 403 401

..... Appellant

v/s

1. Public Information Officer (PIO),
Goa Public Service Commission,
EDC House, 1st Floor,
Dada Vaidya Road,
Panaji – Goa. 403 001.

2. First Appellate Authority (FAA),
Goa Public Service Commission,
EDC House, 1st Floor,
Dada Vaidya Road,
Panaji – Goa. 403 001.

.... Respondents

Filed on : 15/01/2020
Decided on : 20/12/2021

Relevant dates emerging from appeal:

RTI application filed on	: 06/11/2019
PIO replied on	: 20/11/2019
First appeal filed on	: 29/11/2019
First Appellate Authority Order passed on	: 24/12/2019
Second appeal received on	: 15/01/2020

ORDER

1. The second appeal filed by the appellant under section 19(3) of the Right to Information Act, 2005 (for short, the Act) against Respondent No. 1 Public Information Officer (PIO) and Respondent No. 2 First Appellate Authority (FAA) came before this Commission on 15/01/2020. The Appellant prayed for quashing the order of FAA, directions to PIO to furnish the information and penalty be imposed on PIO.
2. The brief facts leading to this appeal, as contended by appellant are that vide application dated 06/11/2019 he sought certain information from PIO. The PIO vide letter dated 20/11/2019 denied the information under section 8(1)(g) of

the Act. Appellant filed appeal dated 29/11/2019 before the FAA, however FAA dismissed the appeal vide order dated 24/12/2019. That the appellant has preferred writ petition bearing No. 1130/2019 before the High Court of Bombay, Panaji bench, wherein the Respondent No. 2 is a party and that the respondents have denied the information as it would expose its wrong doing. Being aggrieved, appellant preferred this appeal.

3. The appeal was registered in the Commission and the concerned parties were notified. Pursuant to the notice, both the parties appeared before the Commission. PIO filed affidavit in reply dated 22/07/2021 and written arguments on 14/10/2021, whereas appellant submitted written arguments dated 21/09/2021.
4. The Commission has perused all replies, scrutinized the documents on record, considered the judgment relied upon by both the sides and heard the arguments delivered on behalf of appellant as well as respondents.
5. The PIO stated vide affidavit in reply that the appellant vide application dated 07/03/2019 had sought the same information and the information was not furnished under section 8(1)(g) of the Act as the documents consists of the names and views of the experts and disclosure would ex facie endanger the life and safety of the experts. Appellant had not preferred appeal against the said decision then, and later after 8 months vide application dated 05/11/2019 sought the same information. Upon refusal to furnish the information he preferred appeal before the FAA and second appeal before this Commission. Hence, the present appeal is barred by

limitation since the information sought for is exactly similar to the earlier RTI application by the appellant which was rejected and no appeal was filed against the same. That the PIO denied the information with respect to the minutes of the meeting of the Departmental Selection Committee as the same consist of the names of experts and their views and any disclosure of their names and views would endanger their lives and physical safety. Furthermore, the disclosure would also amount to disclosing the information with respect to other candidates.

6. The Appellant stated in written arguments that he has not sought the information on names of the experts/panelists, but has sought information only on the minutes of the meeting of the Departmental Selection Committee. The information can be provided by removing, covering or otherwise severing the information which would disclose the identity of the experts/panelists. That the appellant is a law abiding citizen and has preferred to take legal course to challenge the selection process by preferring Writ Petition No. 1130/2019 before the High Court of Bombay at Panaji Bench. The only intention of appellant seeking this information is to secure the basis on which the appointment was done. Also, the appellant submits that the present appeal is not on application dated 07/03/2019 but on application dated 06/11/2019, hence well within the time and the respondent has denied the information with the intention to conceal their illegal Act.
7. Advocate Suggit Mordekar, arguing on behalf of the appellant relied on the judgment of Honorable Supreme Court in Civil Appeal No. 6454 of 2011 in the case of Central Board of Secondary Education and Anr. V/s Aditya Bandopadhyay and Ors. By citing this judgment Advocate Mordekar insisted that

the appellant is not asking the disclosure of the names and identity of the experts/panelists, rather he is asking only the information pertaining to minutes of the meeting and the same may be furnished by withholding/covering the names of the experts/panelists.

8. Advocate Jay Mathew, while arguing on behalf of respondents cited judgment of Honorable Supreme Court in K. K. Modi V/s K. N. Modi (1998)3 SCC 573. Advocate Mathew stated that the present appeal is barred by Res Judicata and the Honorable Supreme Court in above mentioned judgment has held that it is an abuse of process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. Further Advocate Mathew invited Commission's attention to yet another judgment of Honorable Supreme Court in Bihar Public Service Commission V/s Saiyyed Hussain Abbas Rizwi and Another (2012) 13 SCC 61. The said judgment held that the disclosure of the details of the members of the interview board would ex facie endanger their lives or physical safety and held that the Commission is not bound to disclose the details of interviewers.
9. Contesting the claim regarding Res judicata, Advocate Suggit Mordekar stated that the same is not applicable in the present appeal. The Commission is in agreement with the appellant in stating that Res Judicata cannot be applied to this appeal since the matter has not been deliberated by this Commission. The matter which has been adjudicated by a court/authority is not to be re-litigated; However, in this matter the application of the appellant was rejected by the PIO, but it did not reach a logical end as the appellant did not file appeal against the then decision of the PIO. The present proceeding is based on

another application dated 06/11/2019 and replied by the PIO dated 20/11/2019

10. Advocate Mordekar also claimed that judgment cited by the PIO in Bihar Public Service Commission V/s Saiyed Hussain Abbas Rizwi and Anr. is not relevant here since the appellant is asking only the minutes and not the identity of the experts. However, here the Commission has a different opinion. The appellant is seeking only the minutes and not the names of experts as he already has knowledge of the names of some of the members of the selection committee. Hence in the considered opinion of the Commission, appellant will be in a position to relate the minutes and views of the experts/members with the names of the experts he already knows, which may endanger the lives or physical safety of such expert members/panelists.

11. The Commission finds merit in the arguments of Advocate Jay Mathew that the minutes of the selection Committee cannot be furnished under section 8(1)(g) of the Act, as the respondent has fiduciary relationship with the expert members. These expert members are called upon to assist the respondent in the selection process and in such a situation, disclosure of the minutes may lead to the breach of safety and privacy of the expert individuals. Hence the Commission believes that the minutes of the meeting of the Selection Committee wherein views of the experts are recorded should not be made public. The Commission endorses the apprehension of respondent that if such information is disclosed, it would have chilling effect on other similar matters in future and experts may not agree to register their views fearing risk for their life and safety.

12. The PIO has cited Para 29 of the judgment of Honorable Supreme Court in Bihar Public Service Commission V/s Saiyyed Hussain Abbas Rizwi and Anr. In this context para 21 and 30 of the judgment (supra) have to be also looked into. Para No. 21 reads:-

"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 judgment 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."

13. The Honourable Supreme Court, by referring to Judgement of CBSC V/s Aditya Bandopadhyay (Supra) and Reserve Bank of India v/s Jayantilal N. Mistry in the case of Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (C.A. No. 10045/2010) has held in para No. 34:-

"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 behavior"

14. In yet another similar matter Hon'ble Supreme Court in case of Kerala Public Service Commission v/s State Information Commission & Anr. (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."

15. In the light of above discussion and considering the facts of this case and the ratio laid down by the Honorable Apex Court, the Commission conclude that the information sought by the appellant cannot be disclosed and therefore the PIO's stand to deny the information to the appellant is completely as per the provisions of the Act. Hence the appeal is bereft of merit and the same needs to be disposed accordingly.

16. Hence the appeal is dismissed and proceeding 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