

# GOA STATE INFORMATION COMMISSION

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**Shri.. Sanjay N. Dhavalikar**, State Information Commissioner

## Appeal No. 64/2020/

Smt. Bhagyashri J. Parsekar,  
R/o. Police Qrts. No. B-33-2,  
Alto Porvorim, Bardez Goa.  
v/s

..... Appellant

1)Public Information Officer(SDPO),  
Headquarters (N),  
Porvorim, Bardez Goa.

2)First Appellate Authority,  
Superintendent of Police (North),  
Porvorim – Goa.

.... Respondents

Filed on : 18/02/2020

Decided on : 22/10/2021

### **Relevant dates emerging from appeal:**

RTI application filed on	: 25/11/2019
PIO replied on	: 17/12/2019
First appeal filed on	: 14/01/2020
FAA order passed on	: 13/02/2020
Second appeal received on	: 18/02/2020

## **ORDER**

1. The Appellant Bhagyashri J. Parsekar vide application dated 25/11/2019 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act), sought information on 14 points as mentioned in the application from Public Information Officer (PIO), Sub Divisional Police Officer, Porvorim Goa. The said PIO transferred the application under section 6(3) of the Act to Respondent No. 1, Public Information Officer, (PIO), Deputy Superintendent of Police Headquarters (North), Porvorim – Goa.

2. The PIO vide letter dated 17/12/2010 furnished information from point no. 4 to 9 and denied information on Point 1 and 2 under section 8 (1)(h) and (j) and intimated that information on point Nos. 3, 10, 11, 12, 13 is nil.
3. On being aggrieved due to incorrect reply and denial of part information, Appellant filed first appeal dated 14/01/2020 before Respondent No. 2, First Appellate Authority (FAA), Superintendent of Police (North), Porvorim Goa. The FAA vide order dated 13/02/2020 upheld the stand of PIO and dismissed the appeal. The Appellant preferred second appeal before this Commission against the order of FAA with prayers that (i) PIO be directed to furnish information at Point Nos. 1, 2, 3, 10, 11, 12, 13 free of cost and, (ii) PIO be penalised for denying the information.
4. The Appeal was registered, concerned parties were notified and the matter was taken up for hearing. Shri. Edwin M.S. Colaco, Deputy Superintendent of Police, and PIO in this matter appeared and filed reply. Shri. Jairam Parsekar, husband of the Appellant represented the Appellant. The Appellant and PIO filed number of submissions in the form of reply, counter reply, written arguments and rejoinders. The main contention of PIO is that the information at Point No. 1 and 2 is denied under section 8 (1)(j) of the Act, being personal information of Shri. Dilip Nagesh Rao Mutkunde. The PIO has relied upon the judgement of **Hon'ble Supreme Court in the case of Girish Ramchandra Deshpande v/s. Central Information Commission.** That the information on remaining points is nil, and that the departmental enquiry against Shri. Dilip Nagesh Rao Mutkunde is pending hence the said information cannot be furnished under section 8(i)(h). Stating this, the PIO prayed for dismissal of the appeal.

5. The Appellant, Bhagyashri J. Parsekar through her husband argued that the office of PIO is in possession of the information sought by Appellant on point 1, 2 and 12 and that the same should be furnished to her. That the information, though personal, related to Shri. Dilip N. Mutkunde, the same has arisen out of the complaint filed by the Appellant and the Appellant has established larger public interest in order to disclose the information. Also that preliminary enquiry and departmental enquiry of Shri. Dilip Mutkunde is completed and that the matter is currently subjudice in the High Court, therefore the information has to be furnished by the PIO.

6. The Commission has perused the submissions and records carefully and considered the submissions of Appellant and PIO. It is seen that initially PIO furnished information from point no. 4 to 9 and denied the rest. During the proceeding Appellant narrowed down to information on point no. 1, 2 and 12. However the PIO claimed exemption under section 8 (1)(h) and 8(1)(j) with reference to Point No. 1 and 2 and maintained that information at point no. 12 is nil.

7. Section 8(1)(h) reads :-

8. Exemption from disclosure of information (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen , -  
(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

In the present matter though the PIO has claimed exemption under section 8(1)(h) he has not brought to the notice of the Commission, how the disclosure would impede the investigation. Also, at what stage, the enquiry is pending is not mentioned by the PIO anywhere during the proceeding. On the contrary, the Appellant has contended that the preliminary enquiry and later, departmental enquiry of Shri. Dilip Mutkunde, against whom Appellant has filed complaint, is completed and the information is in the office of the PIO. This contention of the Appellant is not contested by the PIO.

8. Section 19(5) of the Act reads :-

19. Appeal – (5) in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer of State Public Information Officer, as the case may be, who denied the request.

9. The above mentioned provision has been reiterated by the Hon'ble High Court of Delhi in the case of **State Bank of India v/s Mohd. Shahjahan (W.P. No. 9810/2009) in Para 22:-**

*"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden therefore is entirely on the Public Authority to show why the information sought from it should not be disclosed".*

Considering the ratio laid down in the above order of Hon'ble Delhi High Court and as per the provision of the Act, it is necessary for the PIO to show satisfactory reasons for withholding the information from the seeker.

In the present case incident has occurred in 2019 and enquiry was initiated in the same year as stated in by the PIO. Any enquiry has to attain its logical conclusion at certain point and cannot be continued indefinitely, and on this pretext the information cannot be denied.

10. It is seen from the records that the information at Point No. 1 and 2 is denied under section 8 (1)(j).

Section 8(1)(j) reads :-

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.

The above provision of law makes it clear that personal information is not exempted from disclosure having larger public interest. The Commission is of the opinion that in the present case Appellant has successfully established that the said information need to be disclosed in the larger public interest.

11. The PIO has cited the case of Girish Ramchandra Deshpande v/s. Central Information Commission (Supreme Court) for his defence. However referring the case of Girish Ramchandra Deshpande v/s. Central Information Commission and few other cases, the **Hon'ble Supreme Court in Central Public Information Officer, Supreme Court of India v/s. Subhash Chandra Agarwal (C.A. 10045/2010)** in para 59 has held :-

*"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."*

12. In view of above discussion and based on the records of this case, the Commission has arrived at a conclusion that the refusal to provide information is inappropriate and therefore requires intervention of the Commission. However malafide cannot be attributed to the decision of PIO as the said decision was based on incorrect interpretation of section 8(1)(h) and (j) of the Act. Hence, the appeal is disposed with the following :

- (a) The appeal is partly allowed.
- (b) The PIO is directed to furnish information on Point No. 1, 2 and 12 sought by the Appellant vide application dated 25/11/2019, within 15 days from the date of the receipt of this order, free of cost.
- (c) Prayer for imposing penalty on PIO is rejected.

Proceeding 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