

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 204/2020

Mrs. Madhavi Mahadev Murari,
R/o. H.No. 37/A, Sonyem,
Tuem, Pernem-Goa. 403512.

.....Appellant

V/S

1. Public Information Officer-I,
Town & Country Planning Department,
2nd Floor, Dempo Towers, Patto Plaza, Panaji-Goa.

2. The Chief Town Planner/ FAA,
Office of the Chief Town Planner (Admn),
Town & Country Planning Department,
2nd Floor, Dempo Towers, Patto Plaza, Panaji-Goa.

3. Shri. Shivprasad Murari,
Dy. Town Planner,
Town & Country Planning Department,
2nd Floor, Dempo Towers, Patto Plaza,
Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 02/12/2020

Decided on: 29/07/2022

FACTS IN BRIEF

1. The Appellant, Mrs. Madhavi Mahadev Murari, r/o. H.No. 37/A, Sonyem Tuem, Pernem-Goa by her application dated 15/07/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) of Town and Country Planning Department:-

"Be pleased to issue me the information regards to appointment of Shivprasad Prakash Murari on post of Deputy Town Planner pursuant to advertisement dated 11/01/2013 published on newspaper-The Navhind Times.

That the information I wish to obtained is as under:-

1. Degree in regional/town planning from recognised university or equivalent submitted by Shri. Shivprasad Prakash Murari to your department.

2. 2 years experience certificate produced by Shri. Shivprasad Prakash Murari and from which firm/institution/university or any other institution.

3. If any relaxation done by GPSC to Shri. Shivprasad Prakash Murari for doing his selection for post of Deputy Town Planner.”

2. The PIO transferred the said application to the another PIO, Office of the Town and Country Planning Department Head Quarters at Panaji Goa under section 6(3) of the Act on 11/09/2020.

3. The said application was replied by the PIO on 14/09/2020 in the following manner:-

"Your application under Right to Information Act 2005, has been considered Under Section 7(1) of RTI Act, 2005 and I am to inform you, as per information submitted by APIO Under Section 5(4) and 5(5) of the RTI Act as below:-

1) As regards to information sought at point No. 2 is personal in nature and does not serve any public purpose. Hence as per Supreme Court directions vide Order dated 03/10/2012 in Special Leave Petition (Civil) No. 27734 of 2012 filed by Girish Ramchandra Deshpande against Central Information Commission and others, the same cannot be made available to public.”

4. Being aggrieved with the reply of the PIO, the Appellant preferred first appeal under section 19(1) of the Act, before the Chief Town

Planner (Admn) at Patto Plaza, Panaji Goa being the First Appellate Authority (FAA).

5. The FAA by its order dated 19/10/2020 upheld the reply of the PIO and dismissed the first appeal of the Appellant.
6. Feeling aggrieved and dissatisfied with the order of the FAA, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.
7. Parties were notified, pursuant to which the PIO, Meenakumari Prasad appeared on 31/03/2021 and filed her reply. The FAA Shri. Ranjit M. Barkar appeared, however opted not to reply in the matter. The Respondent No. 3, (third party) Shri. Shivprasad Murari appeared and filed his reply on 08/07/2021.
8. According to the Appellant, her RTI application was rejected on the ground that information sought for is of personal in nature and does not serve any public purpose.

Further according to her the information sought for is part of records maintained by the Department and she denied the information without appreciating the true scope and nature of RTI Act and therefore she is entitled for the information as per her RTI application.

9. Opposing the contention of the Appellant, the PIO submitted that, the information sought was the Educational qualification, experience certificate and regarding the relaxation done by GPSC and the same is exempted under section 8(1)(j) of the RTI Act on larger public interest.
10. The Respondent No.3, the third party through his reply contended that the Appellant is the paternal aunt and close relative of the Respondent No. 3 and there was family dispute

pending between the family of Appellant and Respondents No.3 since long and for this sole reason the Appellant is trying to settle an old score by seeking his personal information which has no relation to public interest.

11. Perused the pleadings, replies, scrutinised the documents on record, considered the submissions of the rival parties and the judgement relied upon by them.
12. Adv. Nihal P. Kamat, learned counsel appearing on behalf of Appellant argued that, the information sought is educational qualification and experience certificate of public servant who is occupying the public office and its records are maintained by the Department and being said document is in public domain, the Appellant is entitled for the information. He also argued that an applicant making request for obtaining information shall not be required to give any reason.

He also further argued that the FAA failed to appreciate the true scope and nature of the RTI Act and emphasised that order of the FAA be quashed and set-aside being bad in law and to support his case he relied upon the judgement of **Mohd. Naushaduddin v/s PIO, CBSE, Ajmer (CIC/SA/A/2016/000591)**.

13. On the other hand, Adv. A. P. Mandrekar, learned counsel appearing on behalf of Respondent No. 3 (third party), submitted that vide letter dated 18/09/2020 he objected to disclose his personal information being said documents are personal and confidential in nature and it is invasion on his privacy.

Further according to him, the Respondent No. 3 is working as a Deputy Town Planner in Town and Country Planning Department since last 9 years with full dedication and no dispute of whatsoever nature has arose in respect of his educational qualification or

experience either during recruitment process or his appointment in the public service. Application moved by the Appellant under section 6(1) of the Act seeking his personal particulars vis-a-vis his copy of Degree in regional / town planning of recognised university, copy of experience certificate and relaxation if any done by GPSC while recruiting for the post of Deputy Town Planner, is motivated only to harass the Respondent No. 3 to settle personal score and to take the revenge against him and his family.

He further argued that, merely because the information of the third party is held by the public authority, the Appellant does not become entitled to access it, unless the said personal information has a relationship to a public activity or to public interest. He also emphasised that the disclosure of information would cause unwarranted invasion of his privacy and to substantiate his claim he relied upon the judgement of High Court of Bombay in the case (i) **Deepak P. Vaigankar v/s Suryakant Babu Naik and Ors (Writ Petition No. 797/2018)** (ii) judgement of High Court of Bombay in the case **State Information Commissioner & Ors v/s Tushar Dhananjay Mandlekar (LPA No. 276/2012)** and also produced the copy of Order of Civil Court in Regular Civil Suit No. 45/2009, copy of Roznama order in Case No. DDPN/Tuem/PER/92/2009 and copy of order of Deputy Collector in case No. MAG/PER/CH-107/204/2021.

14. Considering the rival contention of the parties the issue that arises for determination before the Commission is:-

"(1) Whether information sought is personal information and hence exempted under section 8(1)(j) of the Act?"

15. The relevant provision of the Act, in the context of this case are extracted below:-

*"2. **Definitions.** – In this Act, unless the context otherwise requires, --*

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

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 reading of the above provision it is clear that, even though right of the citizen is statutorily recognised the same is not absolute but has reasonable restrictions. Personal information is exempted from disclosure, however such information can be disclosed only when it is in larger public interest and secondly

unwarranted invasion of the privacy of individual. In other words, a public authority shall refuse to disclose any record containing personal information when there is no relationship of the information requested to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.

16. To understand the scope of information which is protected from disclosure under the RTI Act, it is of relevance to identify the nature of information which may be regarded as "personal information". The Act does not put forth a definition of the term personal information. However, personal information has been broadly indicated by the Hon'ble Supreme Court in the case **Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (C.A. No. 10044/2010)** by referring the various judgement of Hon'ble Supreme Court viz **Girish Ramchandra Deshpande v/s Central Information Commissioner ((2013) 1 SCC 212); Canara Bank v/s C.S. Shyam and another ((2018) 11 SCC 426); R.K. Jain v/s Union of India and Another ((2013) 14 SCC 794); Central Board of Secondary Education & Anrs v/s Aditya Bandopadhyay (Civil Appeal No. 6454 of 2011)**, para No. 59 of the said judgement reads 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. Undisputedly the information sought by the Appellant is third party information and the third party vehemently objected to disclose the information being confidential and personal information. It is also matter of fact that the said information is available with the records of public authority. Therefore the question to be decided here is whether Educational qualification and experience certificate of the third party were justifiably withheld on grounds of lack of public interest and likelihood of invasion of privacy.

18. I have perused the judgement of High Court of Bombay relied upon by Adv. A.P. Mandrekar in the case of Mr. **Deepak Pandharinath Vaigankar v/s Mr. Suryakant Babu Naik (Supra)**, para No. 13,17,18 and 19 of the said judgement observed as under:-

"13. Therefore, on a bare reading of Section 8(1)(j) read with the proviso, it is apparent that there is an exemption from disclosure of information which relates to the public information of an individual, 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. Therefore, in view of this

specific bar, any person would not be entitled to seek the personal information about another, which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. The contention therefore, of the respondent No.1 that if this information can be furnished to the Parliament or the State Legislature, the same is available to him, cannot at all be countenanced by any stretch of the imagination.

17. *In the facts at large, it was found that the details called for by the petitioner, i.e. the copies of all the 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 Act. The petitioner in the instant case had not made out a bonafide public interest in seeking the information; the disclosure of such information would cause unwarranted invasion of the privacy of the individual under Section 8(1)(j) of the Act and in that view of the matter, dismissed the special leave petition. The respondent No.1 had not showed from the tenor of his application, what was the larger interest which was involved to seek the personal information of the petitioner, which he did before the Public Information Officer, and who rightly dismissed his application, and so too the first appellate authority dismissed the appeal, although the respondent No.4 in his wisdom allowed the appeal at the instance of the respondent No.1 and directed the furnishing of his personal information, although no such case had been made out of larger public interest.*

18. *In Canara Bank (supra), the Hon'ble Apex Court largely relying on Girish Deshpande (supra), held that the principle of law applies to the facts of the case at large on all fours. The information sought by the respondent No.1 of individual employees working in the Bank was personal in nature, secondly it was exempted from being disclosed under Section 8(1)(j) of the Act, and lastly, the respondent No.1 neither disclosed any public interest, much less larger public interest, involved in seeking such information of the individual employee, nor was any finding recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to the respondent No.1. In that view of the matter, the Apex Court held that the application made by the respondent No. 1 under Section 6 of the Act, was wholly misconceived and had been rightly rejected by the Public Information Officer and the Chief Public Information Officer, whereas it was wrongly allowed by the Central Information Commission and the High Court in allowing the appeal set aside the orders of the High Court and the Central Information Commission, restoring those passed by the Public Information officer and the Chief Public Information Officer.*

19. *The State Chief Information Commissioner i.e the respondent No. 4 unduly placed reliance in the judgement of a learned single judge in **Kashinath J. Shetye Versus Public Information Officer and 3 Others [Writ Petition No. 1 of 2009]** which would not apply considering the law laid down by the*

*Hon'ble Apex Court in **Girish Ramchandra Deshpande and Canara Bank** (supra). The respondent No. 1 has categorically failed to show what was the public interest or rather the larger public interest which was involved to furnish the personal information of the petitioner to him, and yet the respondent No. 4 had allowed his appeal, discarding the judgement of the Apex Court and relying on a judgement of the learned single Judge of this Court. The impugned order therefore warrants interference in exercise of the supervisory jurisdiction of this Court."*

19. A similar view has been taken by the High Court of Delhi in **Union Public Service Commission v/s Mahesh Mangalal (2015 Law Suit (Del) 1372)** in which it is held that:-

"19. It is a settled law that for seeking personal information regarding any employee of the public authority the applicant must disclose a "sustainable public interest". Even Section 8(1) (j) of the RTI Act was enacted to ensure that all information furnished to public authorities including personal information is not given free access to. As per this Section unless the CPIO or the State PIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies, the disclosure of any such information that invades the privacy of an individual is not permissible."

20. A careful perusal of the appeal memo, it reveals that, it does not contain even a whisper as to how disclosure of the information is going to serve a larger public interest. No specific reason has been provided by the Appellant which could establish before the

Commission that disclosure of the personal details such as copy of Degree in regional/ Town Planning from recognised university or experience certificate or if any relaxation done by GPSC etc are important for larger public interest. The Appellant also miserably failed to establish that there was dispute or controversy with regards to the appointment of third party as Deputy Town Planner of the public authority or with regards to his educational qualification or experience certificate. In the absence of any cogent reason brought on record to establish necessity of disclosure of the information sought by the Appellant, in the 'public interest' the Commission is not inclined to violate the right of privacy of a public officer, which is a fundamental right embedded in our Constitution.

On the other hand, Respondent No. 3 produced cogent evidence that in Regular Civil Suit No. 45/2009, the Hon'ble Civil Court at Pernem, Goa by its judgement and order dated 16/02/2013 directed the Appellant and her family to demolish the encroachment in the case filed by the father of the third party (Respondent No. 3). The Respondent No. 3 also produced on record the copy of chapter case which was initiated by the Deputy Collector and Sub-Divisional Magistrate, Pernem in case No. MAG/PER/CH-107/204/2021 showing the name of Appellant as a party to the litigation.

The Appellant did not deny the allegation that she is a close family member of Respondent No. 3 and there was a civil dispute with regard to illegal construction of the house at Pernem, at the available opportunity by filing the rejoinder or affidavit in the matter. From the above, Commission finds that there is force in the arguments of Adv. A.P. Mandrekar that in the, garb of seeking the information, Appellant is pursuing a personal vendetta and there found no larger public interest or activity.

21. Usually, private information cannot be put in public domain. The Commission also cannot be oblivious to the fact that the personal information, when allowed to be accessed by third parties has the potential to expose the owner of such information to mischief, harassment, intimidation, defamation and worse. Right to Information cannot be interpreted as to allow poaching the third parties in to personal domain. Therefore, protection of personal information, especially of a third party, is a valuable privilege which should not be lightly done away with or diluted.
22. It is a matter of fact that the Appellant has sought personal information in respect of third party. This information is ordinarily barred from disclosure under section 8(1)(j) and can be disclosed only in the larger public interest. Such larger public interest is to be established by the Appellant. The High Court of Delhi in the case **Vijay Prakash v/s Union of India (W.P. No. 803/2009)** has fortified above view in para No. 22 which reads as under:-

"22..... The onus of showing that disclosure should be made, is upon the individual asserting it, he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of section 8(1)(j)."

23. In another identical judgement the High Court of Karnataka at Bangalore in the case **H.E. Rajashekarappa v/s State Public Information Officer and Another (W.P. No. 10663/2006)** has held that:-

"5. The object of the Act is to provide right to information for citizens to secure access to information under the control of public authorities, in order to

promote transparency and accountability in the working of every public authority. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority. Therefore, the respondent No. 3 had no right under the Act to seek personal information of the petitioner. The respondent No. 2 / appellate authority has erred in directing the petitioner to furnish the information as sought for by the respondent No. 3. As the respondent's application is vexatious and it is an attempt made to settle scores with the petitioner."

The ratio in this judgement squarely applies in the present case. The Appellant is not entitled to seek personal information concerning the Government Officer without establishing the element of larger public interest. Therefore the issue is answered as 'negative'.

24. Considering the fact and circumstances as discussed above and in the light of legal precedent and position of law, I find no merit in the appeal and therefore the same is disposed off with the following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner