

GOA STATE INFORMATION COMMISSION

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Mrs. Kanchanmala Deshpande,
R/o. Flat No. B-132,
BITS Pilani Goa Campus,
Mormugao, South Goa.

.....Appellant

V/S

1. Dr. Kashinath L. Dhumaskar,
Vithaldas Vado, Morjim,
Pernem Goa.

2. Assistant Registrar-Teaching,
Public Information Officer,
Goa University,
Taleigao Plateau-Goa.

3. Professor Rajendra Shirsat,
First Appellate Authority,
Goa University,
Taleigao Plateau-Goa.

.....Respondents

Appeal No. 127/2021/SCIC alongwith

Appeal No. 128/2021/SCIC

Appeal No. 129/2021/SCIC

Appeal No. 130/2021/SCIC

Appeal No. 131/2021/SCIC

Appeal No. 132/2021/SCIC

Appeal No. 133/2021/SCIC

Appeal No. 134/2021/SCIC

Appeal No. 135/2021/SCIC

Appeal No. 136/2021/SCIC

Appeal No. 137/2021/SCIC

Appeal No. 138/2021/SCIC

Appeal No. 139/2021/SCIC

Appeal No. 140/2021/SCIC

Appeal No. 141/2021/SCIC

Appeal No. 142/2021/SCIC

Appeal No. 143/2021/SCIC

Shri. Chirag S. Angle, Advocate for Appellant/s

Shri. P.N. Raikar, Advocate for Respondent No. 1

Ms. A. Agni, Advocate for Respondent No. 2 and 3.

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 21/06/2021

Decided on: 07/01/2022

FACTS IN BRIEF

1. Aforementioned seventeen appeals, filed by third parties under sec 19(2) and (3) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') with identical factual matrix giving rise to similar issue and common question of law, with the consent of the learned counsel for the parties, have been combined to be heard together and are herein decided by a common order.
2. For convenience, I refer to the facts of the leading case-viz Appeal No. 127/2021/SCIC, Mrs. Kachanmala Deshpande v/s Dr. Kashinath L. Dhumaskar & Ors.
3. The entire exercise in this proceedings start by the RTI application filed by Dr. Kashinath L. Dhumaskar, the Respondent No. 1 hereinabove dated 30/12/2020 under sec 6(1) of the Act, seeking information on 12 points from Public Information Officer (PIO), Assistant Registrar (Teaching), Goa University, Taliegao Plateau-Goa.
4. The said application was replied by PIO on 29/01/2021, thereby furnishing information on point No. 2,3,4 and information on point No. 1,11 and 12 are rejected being confidential as per section 8(1)(g) of the Act. Part of information on point No. 1 is rejected under sec 8(1)(j), information on point No. 6,7,8,9 and 10 are categorised as third party information therefore rejected by virtue of sec 11 of the Act.
5. Not satisfied with the reply of PIO, the Respondent No. 1 preferred first appeal before Prof. R.N. Shirsat, Assistant Registrar Teaching, Goa University, Taleigao Plateau, Goa being the First Appellate Authority (FAA).
6. The FAA by its order dated 05/04/2021 and revised order dated 09/04/2021 partially allowed the first appeal and directed the PIO to furnish information on point No. 1,2,5,6,7,8,9 and 10 and also

allowed inspection of file to the Respondent No.1 and directed PIO to obtain the say of candidates (third party) in the matter.

7. Not satisfied with the order of FAA, the third party filed this second appeal under sec 19(2) and (3) of the Act and prayed that order of FAA be quashed and set aside and consequently the first appeal No. 101/2021 be dismissed.
8. Notice was issued to the parties, pursuant to which, Respondent No. 1 appeared and filed his reply on 08/09/2021, Respondent No. 2 and 3 appeared through Adv. A. Agni and filed the reply on 07/10/2021.
9. According to Appellant, the information sought by the Respondent No. 1, being third party information, the Respondent No. 2, PIO called upon her consent for disclosing the said information. The Appellant vide her reply objected to the disclosure of information as the information sought is a personal information and disclosure of which would harm the position of third party and divulging the said information does not warrant any larger public interest. This would also cause harm the competitive positions of the third party, besides the information as sought for is held by the Goa University in its fiduciary relationship.

Further according to third party, she was neither aware of the first appeal, as Respondent No. 3, FAA did not issue notice to the third party under section 11 of the Act, therefore Respondent No. 3 has committed manifest error in passing the order thereby violating the principles of natural justice and violating a statutory right of the third party.

10. According to Respondent No. 1, no personal interest is involved in the information sought by him vide his RTI application dated 30/12/2020 and in fact larger public interest is involved in the disclosure of information as the information sought is in favour

of maintaining transparency and probity in the recruitment made to the public post, there is also no link between the fiduciary relation and the information sought by the Respondent No. 1.

11. Respondent No. 2 and 3 through their reply submitted that, vide the email dated 24/04/2021 it was informed to third party about the order of FAA, and consent of third party was obtained under sec 11 of the Act.

12. Perused the pleadings, replies, scrutinized the documents on record, heard the advocates of the rival parties, considered the written arguments placed on record and the judgement relied upon.

13. Considering the rival contention of the parties, the issue that arises for determination before the Commission are:-

1) Whether information sought is personal information and hence exempted under sec 8(1)(J) of the Act?

2) Whether proceeding is required to be remanded back to FAA for non-complying the provision of sec 11 of the Act?

3) Whether names of the Selection Committee Members are confidential and exempted under sec 8(1)(g) of the Act?

14. Now let us have a glance at Sec 8(1)(J) of the Act:-

"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."

A perusal of the above would make it clear that the exemption is attracted under two circumstances first - the information is personal in nature and has relationship to the public authority or interest and second – if it would cause unwarranted invasion of the privacy of the individual, which unless that larger public interest is justified.

Provision clause lay out that the information which cannot be denied to the Parliament or a State Legislature cannot be denied to any person.

15. It is the matter of fact that the Appellant, Mrs. Kanchanmala Deshpande is newly recruited Assistant Professor in Biochemistry in the School of Chemical Sciences in Goa University. The Selection Committee after interviewing the candidates and after taking into consideration their qualification, teaching and other research experience, publication etc and considering their performance at the interview, decided the merit list and recommended to the Executive Council for the appointment and after the approval of Executive Council of Goa University, she was appointed and later joined in the Goa University for the post of Assistant Professor.
16. The Respondent No. 1 vide his application dated 30/12/2020 sought details of candidate selected for the said post like Application form submitted by each candidate appointed, residence certificate, OBC certificate etc submitted by the each candidates who are selected for the post of Assistant Professor in Goa University.

17. It is admitted fact that, Respondent No. 1 who sought the information from the Respondent No. 2, Goa University was one of the candidates who had applied for the said post and was not selected.
18. The information sought for was with respect to selection/recruitment for the post of Assistant Professor of Goa University which is a public authority discharging public functions. It is also admitted fact that, information sought for is available with the said concerned public authority. Therefore documents submitted by the candidates in the process of his/her appointment to a public office falls in public domain. The salary of the selected candidate is paid from public exchequer, hence the said information cannot be considered as personal information and therefore exemption as provided under sec 8(1)(J) of the Act is not applicable.

Hon'ble Delhi High Court in **Union Public Service Commission v/s N. Sugathan in LPA 797/2011** has held that:-

"The information submitted by an applicant seeking a public post, and which information comprises the basis of his selection to the said public post, cannot be said to be in private domain or confidential. We are unable to appreciate the plea of any secrecy there around. An applicant for a public post participates in a competitive process where his eligibility/suitability for the public post is weighed/compared vis-à-vis other applicants. The appointing/recommending authorities in the matter of such selection and expected to act objectively and to select the best. Such selection process remains subject to judicial review.

*We are unable to fathom the secrecy/confidentiality if any as to the educational qualification and experience of the selectee to a public post: **such information ordinarily also is in public domain and educational qualifications and experience are something to be proud of rather than to hide in a closer.***"

19. In an identical judgment, the Hon'ble High Court of Jharkhand at Ranchi in **Geeta Kumari v/s The State Of Jharkhand & Ors. In W.P. (S) No. 5875/2014** has held that:-

"In the present case, the information being sought for from the petitioner relates to her appointment to a Govt. job, and the educational qualification of the petitioner. In my considered view, these are not the personal information of a person who is appointed to a Govt. job and the people at large are entitled to have the information about the appointment of such person and the fact whether the person concerned is holding the required educational qualification for the same or not. As such the information, which are sought for from the petitioner, are not the personal information which could not be furnished under the [RTI Act](#). "

This view is also fortified by Hon'ble Punjab and Haryana High Court in **Vijay Dheer v/s State Information Commission Punjab & Ors. (LN IND 2013 P&H 2263)**. The Court has observed that:-

"While examining the scope of an exemption clause under Section 8 of the Act, it would be useful to refer to the statement of objects and reasons of the Act itself. The object and reasons of the Act recite that the

provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further the Act has been enacted in order to promote transparency and accountability in the working of every public authority."

Therefore the exemption under sec 8(1)(J) would cover information which is in the nature of personal information and the disclosure of which would have no relationship to any public activity or interest or the disclosure of which would cause unwarranted invasion of the privacy of the individual.

In the present case the PIO concerned has unnecessarily stretched the argument that the information sought is personal information about the third party and would cause unwarranted invasion on the privacy of the individual. A part of information sought by the Appellant relates to the mode of appointment of the candidate on public post. Therefore information to that extend fall under the domain of larger public interest.

Besides this, the proviso to section 8(1)(J) of the Act states that if the information cannot be denied to State Legislature shall not be denied to the seeker. In this case, information is accessible to State Legislature as the third party is a public servant, therefore the issue No. 1 is answered as negative.

20. 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."

As can be seen from the above quoted rule, the disclosure of information in relation to third party would need a PIO to give written notice to such third party and clear this test.

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 divulge 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 finally decided.

21. Adv. Chirag Angle appearing on behalf of third party relied upon the judgment 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)**, the para No. 6 of said judgment 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) Mumbai, V/s Rui Ferreira & Ors, I find that it is well settled that before supplying the information sought by the Respondent No. 2, the Petitioner was entitled for a notice within the provision of sec 11 of the Right to Information Act."

This judgment cannot be of any help to the Appellant (third party), as in the instant case notice under sec 11 was issued by the PIO (Respondent No. 2) and say of the Appellant was taken.

The third party also relied upon the judgment of Hon'ble Gujarat High Court **B.J. Dhandha v/s State Chief Information Commission (AIR 2008 Guj. 37)** and another judgment of Hon'ble High Court of Bombay in **SKIL Infrastructure Private Limited v/s State Information Commissioner, The Maharashtra State Information Commission & Ors. (2010 (3) Mn.LJ 193)**. Both the above judgments have held that third

party must have an opportunity of being heard in proceeding either by the first appellate or by the second appellate authority. Therefore this judgment cannot be of any support to her.

Considering the principles laid down by the judgement referred to herein above and that the third party was heard, the second test is also not satisfied and the issue number 2 is answered as negative.

22. As far as issue No. 3 is concerned, the information sought by Respondent No.1 on point No. 11 and 12 in respect of details of the Selection Committee (full name, designation and addresses of the Committee Members) present for the interview. The said information was rejected by the PIO, as the same is exempted under sec 8(1)(g) of the Act. Therefore it is relevant to read sec 8(1)(g) of the Act:-

"8. Exemption from disclosure of information. ___
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___

(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;"

It is clear now that, if disclosure of information would endanger the life or physical safety of any person or identity the source of information, such information is exempted from disclosure.

23. Hon'ble Supreme Court in **Bihar Public Service Commission v/s Saiyad Hussain Abbas Rizwi and Anrs. (2012, 13 SCC 16)** in para No. 30 has held that:-

"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 correlated 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."

24. 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 emphasised 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.”

Considering the above legal position, the issue number 3 is answered as affirmative.

25. In the present appeals, the recruitment process has been completed. The Appellants / Third parties have been appointed as a Assistant Professor in Goa University, therefore there is no harm in furnishing the information, even otherwise the recruitment process is amenable to the judicial review. There is no merit in the challenge to the order of FAA and therefore this Commission is unable to interfere with the order passed by FAA on 09/04/2021 in first appeal No. 101/2021, which is under challenge. The Respondent No.1 is entitled for the information on point

No. 1,2,3,4,5,6,7,8,9 and 10 and information on point No. 11 and 12 are exempted from disclosure. The ad-interim order granted to the Appellant is hereby vacated.

26. In the light of the above legal position and considering the facts and circumstances as discussed above, I find no merit in the appeals and the Appellant are not entitled for the reliefs prayed for. Consequently, the appeals referred in the title are disposed with the following:-

ORDER

- The appeals are dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner