

**GOA STATE INFORMATION COMMISSION**

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**Appeal No. 167/2021/SCIC**

Mrs. Aishwarya Salgaonkar,  
R/o. H.No. 294/G, Sonar Waddo,  
Verla Canca, Bardez-Goa.

.....Appellant

V/S

1. The Public Information officer,  
Joint Director of Accounts,  
Accounts Section,  
Goa Medical College and Hospital,  
Bambolim-Goa.

2. The First Appellate Authority,  
Goa Medical College and Hospital,  
Bambolim-Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 28/07/2021**

**Decided on: 19/09/2022**

**FACTS IN BRIEF**

1. The Appellant, Mrs. Aishwarya Salgaonkar r/o. H. No. 294/G, Sonar Waddo, Verla Canca, Bardez-Goa by her application dated 12/02/2021 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Goa Medical College and Hospital, Bambolim, Tiswadi-Goa.
2. The said application was transferred under section 6(3) of the Act by the PIO to other PIO's (i) the PIO, Medical Superintendent Office, Goa Medical College and Hospital at Bambolim-Goa and (ii) the PIO, Accounts Section, Goa Medical College and Hospital at Bambolim-Goa on 23/02/2021.
3. The PIO, Joint Director of Accounts from Accounts Section responded to the said application on 12/03/2021 and informed the Appellant to inspect the record/ documents at point No. 4,5,6(a)

and 7 on 22/03/2021 at 10:30 am and select the copies of record and also informed the Appellant that information at point No. 1,2,3 and 6 is not available in their records.

4. Not satisfied with the reply of the PIO, the Appellant preferred first appeal on 19/03/2021, before the Dean, Goa Medical College and Hospital at Bambolim-Goa being the First Appellate Authority (FAA).
5. During the pendency of first appeal, the other PIO, the Medical Superintendent of Goa Medical College, Bambolim responded and furnished the information to the Appellant on 24/03/2021 with regards to point No. 1,2,3 and 7.
6. The FAA by its order dated 19/04/2021 allowed the first appeal and directed both the PIO's to furnish the information within 15 days from the date of receipt of the order.
7. Since the PIO failed and neglected to comply the order of the FAA dated 19/04/2021, the Appellant landed before the Commission with this second appeal under sec 19(3) of the Act.
8. Notice was issued to the parties, pursuant to which the PIO, Mr. Pedro Vaz appeared and filed his reply on 12/08/2021. Dr. S.M. Bandekar, the Medical Superintendent of GMC appeared on 06/10/2021 and submitted that he has already furnished the information with regards to point No. 1, 2, 3 and 7 on 24/03/2021. However he was directed to place on record the letter of acknowledgment. Accordingly on 02/11/2021, the representative of the PIO, Shri. Deepak Satoskar appeared and filed his reply alongwith bunch of documents.
9. Perused the pleadings, replies, scrutinised the documents on record and considered the arguments of the rival parties and the judgement relied upon.

10. It is admitted fact that, responding to the call from the PIO, the Appellant carried out the inspection of records/documents on 03/05/2021. By making the requisite payment, the Appellant also obtained the information on 09/06/2021 with regards to audit report of GMC and CAG report for the year 2018-2019 viz information on point No. 4, 5 and 6(a). It is also not in dispute that Appellant has received the information on point No. 2, therefore the controversy remains with regards to information on point No. 1,3 and 7 of the RTI application which reads as under:-

*"1. Certified copies pertaining to Non-Goan patients registered on the casualty billing counter from 1<sup>st</sup> January 2018 to 31<sup>st</sup> October 2019.*

*3. Certified copies of the receipt books and register of Non-Goan patients registered on the casualty billing counter from 01/01/2018 to 31/01/2021.*

*7. Inspection of the respective documents, files registers etc be provided."*

11. The PIO, Medical Superintendent of GMC has replied the information at point No. 1,3 and 7 on 24/03/2021 as under :-

*"Cannot be disclosed as the matter is confidential."*

Therefore point for determination before the Commission is whether information of the Non-Goan patients taking medical treatment in Goa Medical College and Hospital at Bambolim, Goa can be disclosed under the RTI Act.

12. Adv. A. P. Mandrekar, learned counsel appearing on behalf of Appellant submitted that the information at point No. 1,3 and 7 is denied on wrong footing and without any legal bearing. He further argued that, under section 7 of the Act, the request of the

Appellant can be rejected only when the same is exempted from disclosure under section 8 and /or 9 of the Act, therefore the reply of the PIO is erroneous and misleading.

He also argued that, the PIO has miserably failed and neglected to comply the order of the FAA dated 19/04/2021. And to substantiate his case he relied upon the judgement of Bombay High Court Goa Bench in the case **Kashinath J. Shetye v/s Public Information Officer & Ors. (Writ Petition No. 1/2009)**.

13. On the other hand, Dr. S.M. Bandekar, the PIO, Medical Superintendent of Goa Medical College, Bambolim submitted that being the PIO he furnished all the available information which is oblige to access by the law. According to him, the information sought by the Appellant with regards to the Non-Goan patients registered on casualty billing counter he has stated that the, moment the patient is registered in casualty of Goa Medical College Hospital, it is imperative on the part of the hospital to collect all details of the patient like name, address, family background, copy of health card, history of treatment etc. Such information is collected and maintained in the digital format as a data file, so as to enable the doctor who works on rotation to locate the details of the diagnosis and treatment rendered to the patient without wasting time and more particularly to facilitate the doctor in the case of emergency. Such information cannot be segregated or separated so as to provide partial access of information to the Appellant.

Further, according to him, the said information is protected under professional secrecy as it pertains to sickness and the treatment offered to patient, therefore such sensible and confidential information cannot be placed in public domain on the

request of stranger/ third party and he reiterated that he cannot disclose the information to the Appellant as said information is personal information pertaining to third party and maintained by the public authority in most confidential manner.

14. Considering the nature of the information sought by the Appellant, same is related to the Non-Goan patients taking treatment in Goa Medical College at Bambolim. The Medical Council of India in its Code of Ethics Regulations protects confidentiality of patients. Protecting information gathered in association with the care of patients is a core value in health care. The Doctors cannot divulge any medical information about the patient to third person without the consent of the patient.

Some health conditions are stigmatising and if known, may cause an individual embarrassment or difficulty in interpersonal relations. Poor patients who seek care in government hospitals, similarly lack resources to go to other institutions that might better protect their interest, including their privacy interest in virtue of not being subject to the RTI Act.

15. Though the PIO, Medical Superintendent of GMC while denying the information did not specify the clause under which the information is rejected, the doctor holds such information in fiduciary capacity and disclosure of medical details amounts to an invasion on the privacy of an individual and therefore comes within the purview of section 8(1)(e) and 8(1)(j) of the Act. Besides disclosure of the information will not serve any larger public interest.

16. The doctor-patient relationship is fiduciary in nature, meaning that it is based on the patient's trust or confidence in the doctor, this relationship creates certain obligations or duties that doctor owes the patient. The object behind section 8(1)(e) is to protect

such information and ensure that the confidence, trust and confidentiality attached is not betrayed.

Section 8(1)(e) of the Act states that, information made available to a person in his fiduciary relationship shall not be disclosed unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. Hon'ble Supreme Court in **Central Board of Secondary Education and Anr. v/s Aditya Bandopadhyay and Others (2011 8 SCC 497)**. The expression fiduciary relationship was examined and explained as under:-

*"21. 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 (beneficiary) places complete confidence in another person (fiduciary) in regards to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party.*

22. *In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in [section 8\(1\)\(e\)](#) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, **a doctor or nurse with reference to a patient**, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer."*

17. While considering the provisions of section 8(1)(j), it reveals that, said section excludes from disclosure of information which relates to personal information, the disclosure of which (i) has no relationship to any public activity or interest or (ii) would cause unwarranted invasion of the privacy of the individual. However the

PIO or the Appellate Authority may order disclosure of such information, if they satisfied that the larger public interest justifies the disclosure.

The term 'personal information' has not been defined in the Act. However second part of Section 8(1)(j) deals with the scope of defence founded on the right of privacy of the individual. The right to privacy means the right to be left alone and the right of a person to be free from unwarranted publicity.

18. Usually, private information cannot be put in public domain. protection of personal information, especially the identity of the patient and disclosure of medical treatment rendered is a valuable privileged available to the individual, which should not be lightly done away with or diluted. Such information can be disclosed only in the larger public interest and said larger public interest needs 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 paragraph No. 22 which follows:-

*"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)."*

19. Privacy and confidentiality encompass a bundle of right including the right to protect identity and anonymity. Anonymity is where an individual seeks freedom from identification, even when and despite being in a public space. The Hon'ble Supreme Court in **Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (Civil Appeal No. 10044/2010)** has held that:-



"45. Referring to an article titled 'Reasonable Expectations of Anonymity' authored by Jeffrey M. Skopek, it is observed that distinction has been drawn between anonymity on one hand and privacy on the other as privacy involves hiding information whereas anonymity involves hiding what makes it personal by giving an example that **furnishing of medical records of a patient would amount to an invasion of privacy**, whereas a State may have legitimate interest in analysing data borne from hospital records to understand and deal with a public health epidemic and to obviate serious impact on the population. If the anonymity of the individual/patient is preserved, it would legitimately assert a valid State interest in the preservation of public health.

46. .... In the context of the [RTI Act](#), suffice would be to say that the right to protect identity and anonymity would be identically subjected to the public interest test.

47. Clause (j) to sub-section (1) of [Section 8](#) of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a distinction in its treatment of personal information, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. "

20. It is needless to mention that, the information sought by the Appellant is with regards to third party information. Hon'ble Supreme Court in the case **Union Public Service Commission v/s R. K. Jain (W.P.(c). No. 1243/2011)** has held as under:-

*"21. The expression "personal information" used in Section 8(1)(j) means information personal to any "person", that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure).*

*22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. "*

21. It is a consistent stand of the PIO that, information pertaining to Non-Goan patients registered on casualty billing and the receipt book cannot be segregated rather it would disclose the identity and medical records of the patients taking treatment in GMC, Bambolim. The Hon'ble Supreme Court of India in **Subhash Chandra Agarwal v/s Registrar, Supreme Court of India ((2018) 11 SCC 634)**, while deciding the issue of disclosure of information relating to the details of the medical facilities availed by the Judges of the Supreme Court and their family members the court observed as under:-

*"11. The information sought by the appellant includes the details of the medical facilities availed by the individual Judges. The same being personal information, we are of the view that providing such information would undoubtedly amount to invasion of the privacy. We have also taken note of the fact that it was conceded before the learned Single Judge by the learned counsel for the appellant herein that no larger public interest is involved in seeking the details of the medical facilities availed by the individual Judges. It may also be mentioned that the total expenditure incurred for the medical treatment of the Judges for the period in question was already furnished by the CPIO by his letter dated 30-8-2011 and it is not the case of the appellant that the said expenditure is excessive or exorbitant. That being so, we are unable to understand how the public interest requires disclosure of the details of the medical facilities availed by the individual Judges. In the absence of any such larger public interest, no direction whatsoever can be issued under section 19 (8) (a) (iv) of the Act by the appellate*

*authorities. Therefore on that ground also the order passed by the CIC dated 1-2-2012 is unsustainable the same has rightly been set aside by the learned Single Judge.”*

From bare reading of above, it revealed that medical information is classified as personal information. The question of whether such information must be disclosed has to be determined by the PIO on a case to case basis, depending on the public interest demonstrated in favour of disclosure.

22. I have perused the judgement relied upon by Adv. A.P. Mandrekar viz **Kashinath J. Shetye v/s Public Information Officer & Ors. (Supra)**, which is squarely not applicable, as in the said case the petitioner was government servant and applicant sought information regarding his leave application i.e paid, unpaid, sick, earned and casual leaves and the Court held that no question of privacy is involved in disclosing such information as application for leave is not a medical records. Therefore, the said judgement is irrelevant and distinguishable.

23. In present case records reveal that, the Appellant inspected the records/documents held by Accounts Section of Goa Medical College on 03/05/2021, and obtained the available information on 09/06/2021 including audit report and CAG report of Goa Medical College, Bambolim-Goa. She was also provided with the names and designation of the dealing hand /clerk who was looking after the casualty billing counter.

The available information which is oblige to access by law has been furnished to the Appellant. I find no malafide intention for non-disclosure of information on point No. 1 and 3.

24. Considering the facts and circumstances discussed hereinabove and ratio laid down by the Hon'ble Apex Courts, the appeal stands disposed with the following:-

### **ORDER**

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

Sd/-  
**(Vishwas R. Satarkar)**  
State Chief Information Commissioner