

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 179/2019

Miss Parimal Gauns Desai,
Sai Asara Federation Hsg. Colony,
Rawanfond, P.O. Navelim Goa,
403707.

..... Appellant

v/s

The Public Information Officer,
(Asst. Registrar (Colleges)/PIO),
Goa University,
Taleigao Plateau, Goa 403206.

..... Respondent

Filed on : 07/06/2019

Decided on : 28/01/2022

Relevant dates emerging from appeal:

RTI application filed on	: 05/02/2019
PIO replied on	: 01/03/2019
First appeal filed on	: 08/03/2019
FAA order passed on	: 01/04/2019
Second appeal received on	: 07/06/2019

ORDER

- 1) The brief facts of this appeal are that the appellant vide application dated 05/02/2019 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act) sought information on three points from Respondent Public Information Officer (PIO). The PIO vide letter dated 01/03/2019 denied the information on point no. 1 and 2 under section 8(1)(h) and section 11 of the Act and with respect to point no. 3 stated that no correspondence is available in the PIO's section. Being aggrieved, the appellant preferred appeal dated 08/03/2019 before the First Appellate Authority (FAA). The FAA vide order dated 01/04/2019 dismissed the appeal. Aggrieved by the said dismissal, the appellant filed second appeal before the Commission praying for quashing the

- order of FAA and directions to PIO to provide certified copies of the information.
- 2) The appeal was registered and the concerned parties were notified. Pursuant to the notice, appellant Miss. Parimal Gauns Desai appeared alongwith her Advocate Vallabh Gauns Desai. Respondent PIO is represented by Sneha Talekar, Legal Assistant and team of Advocates led by Smt. A. Agni. The appellant filed written submission dated 04/02/2020 and additional submission on 24/02/2020. PIO filed reply dated 23/09/2019, written submission dated 24/01/2020, affidavit dated 04/02/2020 and another submission on 10/02/2020.
 - 3) The appellant stated that the information under point no. 1 and 2 of her application has been denied by the PIO claiming exemption under section 8(1) (e) and 8(1)(h) and also under section 11 of the Act. However it is the contention of the appellant that the said information does not come under these sections. There is nothing confidential or sensitive in the information sought, rather the same is in the interest of students and the appellant has every right to get the said information. Also that the FAA has not given any elucidation about the disposal of first appeal but by merely relying upon the face value of PIO's reply. Further, the appellant stated that the respondent has not brought any correspondence on record while denying the information under section 11 of the Act. In a similar matter earlier, the same FAA had overruled objection of the PIO to furnish the information and the information was furnished to the appellant as per the directions of FAA.
 - 4) The PIO vide different submissions stated that the appellant has requested for the information related to correspondence exchanged between Goa University and the institution i.e. VVM's

Govind Ramnath Kare College of Law, and the college has requested the PIO that the same may be treated as confidential. Hence the information has been denied under section 8(1)(e) and 8(1)(h) alongwith section 11 of the Act. Also that there is no record of granting any exemption to any student, therefore the question of furnishing information on point no. 3 of the application does not arise, as the said information does not exist. Further, PIO denied the allegation of appellant that the PIO/Goa University is trying to protect vested interest of the Principal of the said Law College. That there is no record available regarding any intimation from the college about any student seeking exemption on account of having attended any activities which amounts to be on duty as envisaged in the University Ordinance 17.4. Hence there is no record available with the university of granting any exemption on that count to any student.

- 5) The Commission has perused the records of this appeal. It is seen that the appellant vide application dated 05/02/2019 sought information on three points, from the PIO. (i) Certified copies of all show cause notices issued to VVM's Govind Ramnath Kare College of Law and Vidya Vikas Mandal from October 2018 to February 2019, (ii) Certified copies of replies received by Goa University, in respect of show cause notices issued to Vidya Vikas Mandal and VVM's Govind Ramnath Kare College of Law, from October 2018 to February 2019, (iii) Certified copies of all correspondence exchanged between Goa University and VVM's Govind Ramnath Kare College of Law, in relation to granting exemption for minimum attendance requirement, for students participating in extra-curricular activities for academic year 2017-18 and 2018-19.

The PIO under section 8(1)(e) and/or section 8(i)(h) and section 11 of the act initially denied the information sought under point

no. (i) and (ii) and the FAA upheld the decision of PIO while dismissing the first appeal.

Under the Act the information can be denied, if it falls only under certain categories. Just because the information/documents is marked 'confidential', the information cannot be withheld from disclosure. It must be clear the test of section 8 and/or section 9 of the Act to withhold, if not the same has to be disclosed. Moreover, the proviso mentioned under section 8(1)(j) allows very wide scope, which states that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. In the present case, the PIO has invoked section 8(1)(e) and section 8(1)(h), which is, reproduced below :-

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

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

The information sought is correspondence between the Institute and the Goa University. Both the Institutions are public authorities and there cannot be said to any fiduciary relationship with respect to conduct or functioning of public authorities. Further section 8(1)(h) cannot be invoked without giving proper reasons, as to how the disclosure of information would impede the investigation has to be specified.

The Commission is therefore of the view that the above mentioned information sought under point no. (i) and (ii) does not

come under section 8(1)(e) and/or section 8(1)(h) of the Act. Also, in the case of third party information, the PIO is required to issue notice to the third party and seek submission regarding furnishing of the information. However the PIO has not brought any record of such correspondence with the third party. Considering these facts, the PIO is required to furnish the information under point no (i) and (ii) of the application.

- 6) Regarding information requested under point no. (i) and (ii), the PIO vide submission dated 10/02/2020 brought on record that the said information was not furnished as the entire matter pertaining to the show cause notice issued by Goa University and the reply of the college was kept pending by the E.C. of Goa University, on account of pendency of the Writ Petition. Nevertheless, in view of the change of situation the college itself has furnished the appellant the reply to the show cause notice, hence information at point (ii) has been furnished to the appellant. Further, the PIO has undertaken to provide the copy of the show cause notice to the appellant.
- 7) However, the appellant brought to the notice of the Commission that the PIO has not provided her the copy of the show cause notice issued by Goa University to the college. The appellant states that the postal envelope received by her did not contain any copy of any show cause notice. This being the case, the information sought under point no. (i) is not yet furnished to the appellant and the PIO is required to comply with the same.
- 8) With reference to the information sought under point no. (iii) as mentioned in para 5 above, the PIO has stated that no such correspondence in this regard is available in his records. Later, in an affidavit dated 04/02/2020, the PIO has reiterated his stand stating the same and that the said information is not available

with the authority. Perceiving the facts mentioned in this para, the Commission concludes that the information sought under point no. (iii) does not exist and hence the Commission is unable to issue direction to the PIO to furnish the same.

9) Hence the Commission concludes that the appellant vide application dated 05/02/2019 had sought information on three points, of which information under point no. (ii) has been furnished, information under point no. (iii) is not available and the PIO is required to furnish the information under point no. (i).

10) The appellant has prayed for compensation from PIO under section 19(8)(b) for delaying the information, which according to her should have been furnished within the stipulated period of thirty days. However, the PIO has elaborated the situation under which the information was withheld by him and the Commission accepts the contention of the PIO. Also, the appellant has not argued on the nature of compensation she wishes to claim vis-a-vis monetary or other losses suffered. Thus, the prayer for compensation cannot be considered.

11) In the light of above discussion, the present appeal is disposed with the following order :-

(a) The PIO is directed to furnish the information sought by the appellant under point no. (i) of the application dated 05/02/2019, within 10 days from the receipt of this order, free of cost.

(b) All other prayers are rejected.

Proceeding stands 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

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