

GOA STATE INFORMATION COMMISSION

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Appeal No. 182/2020

Dr. Padmaja V. Kamat,
Associate Professor & Head,
Department of History,
PES Ravi. S. Naik College of Arts & Science,
Farmagudi-Ponda, Goa.

.....Appellant

V/S

1. Public Information Officer,
Mr. Kirti K. Muurgaonkar,
Asst. Registrar Administration (Teaching),
Goa University,
Taleigao Plateau-Goa.403206

3. Dr. Varsha V. Kamat, Professor,
Department of History,
PES Ravi. S. Naik College of Arts & Science,
Farmagudi-Ponda, Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 15/10/2020

Decided on: 23/02/2022

FACTS IN BRIEF

1. The Appellant, Dr. Padmaja V. Kamat, Associate Professor & Head, Department of History, PES Ravi S. Naik College of Arts & Science, Farmagudi-Ponda, Goa by her application dated 11/02/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought the information on seven points from the Public Information Officer, The Registrar, Goa University, Taleigao Plateau-Goa.
2. The said application was replied by the PIO on 12/03/2020 thereby declining to provide information being third party information.
3. Not satisfied with the reply of PIO the Appellant preferred first appeal under sec 19(1) of the Act before Prof. S. Krishnan, the First Appellate Authority (FAA) of Goa University at Taleigao Plateau Goa.

4. The FAA by its order dated 08/09/2020 upheld the reply of PIO and dismissed the first appeal of the Appellant.
5. Aggrieved with the order of FAA the Appellant landed before the Commission by this second appeal under sec 19(3) of the Act.
6. Notice was issued to the parties, pursuant to which, Respondent No. 1 PIO appeared through her counsel, Adv. M. Kavlekar and filed reply on 27/01/2021, Adv. S. Rawool appeared on behalf of Respondent No. 2 (third party) and filed her written synopsis on 23/03/2021.
7. It is admitted fact that, information with regards to point No. 1,2 and 4 has been received by the Appellant through PIO of PES Ravi S. Naik College of Arts and Science and from PIO of Directorate of Higher Education, Panaji Goa. The controversy therefore remains with regards to information at point No. 3,5,6 and 7 of the application.
8. On perusal of records, it indicates that Appellant is presently working as Associate Professor of History in PES Ravi Naik College of Arts & Science at Farmagudi, Ponda-Goa who applied for promotion from Associate Professor to Professor Grade under Career Advancement Scheme (CAS) alongwith other applicants and since she has been denied promotion, she sought information of the selected candidates from the public authority, Goa University.
9. According to the Appellant, her RTI application was rejected purportedly being section 11 of the Act, stating that third party information could not be disclosed, therefore she filed first appeal before FAA. However the FAA upheld the reply of the PIO and denied the information with the reasoning that said information has been exempted from disclosure under section 8(1)(J) of the Act.

10. On the other hand, Respondent No. 1, PIO contended that the information sought was third party information, therefore she informed third party and since the third party objected to disclose the information, she could not provide the information.
11. According to Respondent No. 2, third party, the Appellant desire to obtain personal and confidential information under the guise of RTI Act and no larger public interest shown in seeking the information.
12. Perused the pleadings, reply, written submissions, scrutinised the documents on record, considered the arguments of rival parties and the judgement relied upon by them.
13. Adv. Vilas Thali, Senior Counsel instructed by Adv. S.V. Kamat argued that section 11 of the Act is a procedural section and not an exemption section, therefore PIO was erred in declining the information under sec 11 of the Act. The request of the Appellant can be rejected only if the same are exempted from disclosure under sec 8 and/or 9 of the Act, therefore reply of the PIO suffers from perversity in as much as the same is devoid of any judicious reasoning for arriving at the said conclusion.

He further argued that without there being any relevant documentation on record to substantiate the claim of the Respondent No. 2, the PIO sought the consent of third party.

He further argued that the order of FAA dated 08/09/2020 suffers from a patent error of law as the impugned order has failed miserably to elicit/show as to how the information sought for by the Appellant could qualify to be one that constituted to be exclusively the personal information of the third party concerned and prima facie refused under section 8(1)(J) and section 11 of the Act.

He further argued that the PIO and FAA failed to weigh the information in the context of public interest and prospective privacy harm being caused in the event of disclosure of the information and both the orders are passed without assigning any reasons. Therefore impugned order suffers from patent illegality, he claims that impugned order will have serious consequences on the Appellant as the same would result in depriving the Appellant of her statutory right as is envisaged in section 6 of the Act, and to substantiate the same he relied upon the order of CIC in case of Mr. Chayan Ghosh Chowdhury v/s Central Information Commission (CIC/WB/A/2010/000712/SG /18370), Order of CIC in case of Dr. M. Haroon v/s Mr. S. Padmanabha (CIC/SM/A/2011/000610/SG/18357), Judgement of High Court of Delhi in Arvind Kejriwal v/s Central Public Information Officer (AIR 2010 Delhi 216), the Judgement of Hon'ble Supreme Court in Central Public Information Officer v/s Subhash Chandra Agarwal (2019 8 MLJ 222), judgement of High Court of Allahabad (D.B) Surendra Singh s/o Shanker Singh v/s State of U.P (2008 L.S. (A11) 1303), judgement of Hon'ble Supreme Court in R.K. Jain v/s Union of India & Anrs. (2013 LS (SC) 329), the Order of CIC in Meeta Sharma v/s ARID Forest Research Institution (CIC/SA/A/2014/001213).

14. On the other hand, Adv. S.N. Joshi, Senior Counsel argued on behalf of Respondent No. 2 (third party), he submitted that Appellant has failed miserably to substantiate her claim of public interest as the Appellant was a contestant for the post for which third party has got selected due to her academic merit and order of seniority. The Appellant is seeking the personal information of the third party, being an unsuccessful contestant.

He further argued that Appellant has no locus standi and failed to assign any reason for seeking information. The

information sought by the Appellant is only to serve her private interest, including settling of personal scores, and to substantiate his case he relied upon the judgement of Hon'ble Supreme Court in case of Girish Ramchandra Deshpande v/s Central Information Commission and Ors (SLP No. 27734/2012), judgement of Supreme Court, Bihar Public Service Commission v/s Saiyad Hussain Abbas Rizwi and Ors. (C.A. No. 9052/2012), judgement of Supreme Court in case of Institute of Chartered Accountant of India v/s Shaunak H. Satya and Ors. (2011 (8) SCC 781), another judgement of Supreme Court in case of Thalappalam Service Co-operative Bank Ltd and Ors v/s State of Kerala and Ors (MANU/SC/1020/2013), judgement of High Court of Delhi in case of Union of India and Ors. v/s Central Information Commission and Ors. (MANU/DE/3138/2009), judgement of High Court in case of Shailesh Gandhi v/s the Central Information Commission and Ors (MANU/Misc/0991/2015), judgement of Delhi High Court in case of Union Public Service Commission v/s Mahesh Mangalat (MAUN/DE/0825/2015), judgement of High Court of Bombay in Surupsingh Hrya Naik v/s State of Maharashtra and Ors (MANU/MH/0170/2007), judgement of High Court of Bombay at Goa in Y.V. Reddy and Ors. v/s Sakharay Naik and Ors (MANU/MH/1956/2018), judgement of Delhi High Court in Har Kishan v/s President Secretariat through its Secretary and Anrs. (W.P.No. 7976/2020) and judgement of Hon'ble Supreme Court in R. Rajagopal and Ors. v/s State of Tamil Nadu and Ors. (MANU/SC/0056/1995).

15. Ms. M. Kavlekar, learned advocate appearing for respondent No. 1, PIO, submitted that she does want to argue the matter orally, however her written submissions on record may be considered.

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

- 1) *Whether PIO can deny the information being third party information under sec 11 of the Act?*
- 2) *Whether information sought is personal information and hence exempted under sec 8(1)(J) of the Act?*

17. While deciding the issue No. 1, 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure."

As can be seen from the above provision of law, that disclosure of information in relation to third party would need a PIO to give written notice to such third party.

It may be appropriate here 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 treated as confidential by said third party. The PIO is under obligation to give written notice to such third party within five days from the receipt of the request for information.

The Act stipulates that the third party shall within 10 days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure before PIO. After receipt of submission, the PIO has to evaluate whether information given by the third party has been treated as confidential and whether any public interest gets served with

disclosure of information as also the possible harm or injury to the interest of the third party is there or not. The PIO may give an opportunity of hearing to both the parties to meet the requirements of Principles of natural justice. This procedural requirement gives the third party an opportunity.

18. On going through the order and judgement relied upon by Adv. Thali in the case of **Mr. Chayan Ghosh Chowdhury v/s Vijay Bhall (CIC/WB/A/2010/000712/SG/18370)** has held that:-

"The PIO has refused to give the information under section 11 of the RTI Act. This refusal was erroneous since section 11 is only a procedure which requires the PIO to inform the third party of his intention to disclose the information, if the information was received in confidence. After receiving any objection from the third party, if the information is exempted as per provisions of section 8(1)(J) or 9 the information may be denied by the PIO after giving reasons."

19. Adv. V. Thali also pointed out para 23 of the judgement of Supreme Court in the case of **R.K. Jain v/s Union of India**, it reads as under:-

"23. What is, however important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIO or the State Commission as the case may be , to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIO or the State Commission, whether or not to order disclosure of such information. The third party may plead a privacy

defence, such defence may for good reasons, be overruled. In other words, after following the procedure outlined in section 11 (1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information."

Keeping in view the above observation made by the Apex Court it indicates that sec 11 does not give a third party an unrestricted veto to refuse disclosing information, it only gives the third party an opportunity to voice its objection to disclosing information.

20. In the present case, an outright refusal of information without taking the recourse to the provision of the section 11 (1) of the Act is not sustainable in the eyes of law. Therefore the issue number (1) is answered as negative.

21. while deciding issue No. 2, it is relevant to read sec 8(1)(J) which reads as under:-

"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 the right of the citizen is statutorily recognised the same is not absolute but reasonably restricted. Personal information is exempted from disclosure, however such information can be disclosed only when it is in larger public interest. And secondly that disclosure of information would cause unwarranted invasion of the privacy of an individual.

22. During the hearing the Adv. S.N. Joshi submitted that he is not disputing the information on point No. 3 i.e Inward Register of Goa University.

23. The controversy therefore is only with respect to information at point No. 5,6 and 7 which reads as under:-

"5) Photocopy of the full CAS Summary Form submitted by Dr. Varsha V. Kamat including the Part A, Part C (Other Relevant Information), the List of Enclosures, and the Final Sheet bearing the Table denoting Total API Score of the Appellant for Each Academic Year for the Assessment Period.

6) Photocopies of full 5 research papers bearing ISBN/ISSN Numbers submitted by Dr. Varsha V. Kamat along with /in support of her Application Letter for the post of the Professor of History under CAS.

7) Information about the ISBN/ISSN No. assigned to each research paper of Dr. Varsha V. Kamat."

Considering the nature of information sought, it pertains to the CAS Summary submitted by Respondent No. 2, the final sheet

bearing the table denoting total API score for each academic year for the Assessment period, the research paper bearing ISBN/ISSN number submitted by Respondent No. 2 in support of her application letter and information relating to ISBN/ISSN number assign to each paper submitted for the post of Professor of History under CAS. In fact, this information is routinely collected by public authority and routinely provided by individual in fulfilment of statutory requirement and once said information reached with public authority it becomes public record.

24. Admittedly the above information submitted by the Appellant with respect to attain the promotion for the post of Professor Grade under CAS Scheme in Goa University. It is also admitted fact that Appellant is one of the candidate who had applied for said post and therefore she is not stranger to selection process. It is also admitted fact that, information sought is available with the public authority. Therefore documents submitted by the candidate in the process of her promotion to a public office falls in public domain. The salary of the selected candidates is paid from the public exchequer and hence the said information cannot be denied to the Parliament or State Legislature and therefore exemption as provided under section 8(1)(J) of the Act is not applicable.

25. I have perused the judgement of High Court of Allahabad relied upon by Adv. V. Thali in case of **Surendra Singh s/o Shanker Singh v/s State of U.P. (2009 AIR (All.) 106)** para No. 8,9,10 and 11 of the said judgement observed as under:-

"8. Section 11 of the Act relates to Third party Information. Third party has been defined under Section 2(n) to mean a person other than the citizen making a request for information and includes a public authority. It is only when the third party treats the information required to be disclosed as confidential that

the authority is required to give a written notice to such third party of the request. In case such information is not held as confidential no written notice is required to be given. Such provisions in Section 11 appear to be for the purpose of preventing the Act from becoming a tool in the hands of a busy body only for the purpose of settling personal scores or other oblique motives.

9. The information sought by the appellant in the present case relates to six Assistant teachers of the institution in question and the educational certificates submitted by them for being appointed as Assistant teachers. Since the institution in question and the Committee of Management managing the institution is a public authority as defined in the Act the Assistant teachers working therein are also performing the duties of imparting education to the society. Consequently when the Assistant teachers are performing public activity the information sought by the applicant is with relation to such activity and it cannot be said that the teaching work done by the six Assistant teachers has no relationship to any public activity or interest.

10. The information sought by the appellant cannot also be said to cause unwarranted invasion of the privacy of such Assistant teachers in the institution inasmuch as their educational certificates are matter of record of the institution on the strength of which they have obtained appointments as Assistant teachers and are performing public activities by imparting education in the institution. By no stretch of imagination can it be held that the information regarding their appointment

and educational certificates would be an unwarranted invasion of their privacy.

11. Their educational qualifications are not privy to them but are records available with the institution which is a public authority within the meaning of the Act.

The information sought in the present case cannot also be brought within the meaning of being confidential to the third party. The records of educational certificates of the six Assistant Teachers are available with the public authority and have relationship to their performing their duties as such. They were appointed by virtue of their qualifications and hence such qualifications have direct relationship to their duties. As such the exemption from disclosure of information under Section 8(j) is not available in the present case."

26. A similar view has been taken by 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.***"

27. I have also perused another judgement of CIC, relied upon by Adv. V. Thali in case of **Meeta Sharma v/s PIO, ARID Forest Research Institution (CIC/SA/A/2014/001213)** has held that:-

"4. The Commission, having heard the submission and having perused the entire record thoroughly, states that the thesis submitted to a University is not private or personal information of the Candidate who submitted it, but the property of the University which has to discuss and decide whether it deserves the award of Ph.D or not. One of the purpose of seminar of per-submissions and viva-voice of Ph.D candidate is to ascertain whether research work of candidate is original and the work done by the candidate only. It is not third party information, moreover there is a public interest in knowing the originality of otherwise of the thesis, especially when a serious allegation of appropriating the research work is made by the co-researcher, it is duty of the academic institution to clear the allegation after due verification.

5. The Commission hereby direct the Nodal CPIO, FRI, Dehradun to furnish the copy of the thesis of Ms. Anchal Sharma to the Appellant...."

28. The Respondent No. 1 through her written submission contended that there is no larger public interest justifies the disclosure of the information and she relied upon the judgement of Hon'ble Supreme Court in the case of Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (SCC 2020 Page 418). However the ratio laid down by the Apex Court in the said judgement is contrary to the defence taken by Respondent No. 1 (PIO). Para No. 112 of the said judgement reads as under:-

"112. Once the information sought has been identified as "Personal Information" the information officer must identify the actual rights being claimed in the individual case. In setting out the substantive content of 'public interest' and 'privacy' various facts of these concepts have been set out. In any given case, the Information Officer must identify the precise interests weighing in favour of 'public interest' disclosure and those interests weighing in favour of 'privacy' and non-disclosure. The Information Officer must then examine the justification for restricting each right and whether they are countenanced under the scheme of RTI Act and in law generally the ground of confidentiality simpliciter is not a ground to restrict the right to information under the RTI Act or Article 19(1)(a) of the Constitution."

29. Learned Advocate Mr. S.N. Joshi argued that Appellant is not a social worker and a unsuccessful candidate and the RTI application filed by her is with ulterior motive and only to harass the third party and that the Appellant has not disclosed any public interest while seeking the information. However in view of section 6(2) of the Act it endorse that while entertaining the application for information made under the Act, the locus standi or the intention of the applicant cannot be questioned. However his arguments are

not in consonance with the provision of 6(2) of the Act. It is therefore relevant to reproduce section 6(2) which reads as under:-

"6(2). *An applicant making request for information shall not be required to give any reason for requesting the information or any of the personal details except those that may be necessary for contacting him."*

The Hon'ble High Court of Bombay in the case of the Board of Management of the Bombay properties of the **Indian Institute of Science v/s the Central Information Commission & Ors. (2011 (1) ALL MR 1)** has held that:-

"7. As per Section 3 of the Act, subject to the provisions therein, all citizens shall have the right to information. Section 6(1) of the Act states that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means specifying the particulars of the information sought by him/her. Sub-Section (2) of Section 6 of the Act states that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. It is thus clear that while entertaining an application for information made under the Act, the locus standi or the intention of the applicant cannot be questioned and is required to furnish all the information sought by him except what has been exempted under Section 8 therein."

This view also endorsed by Hon'ble Delhi Court in the case of Har Kishan v/s President Secretariat and Ors (MAUN/DE/1523/2021) which is relied upon by the Respondent No. 2 (third party).

30. I have perused the judgement relied upon by the Adv. Joshi i.e Girish Ramchandra Deshpande v/s Central Information Commission & Ors (Supra) is squarely not applicable as in the said judgement, in the said case the Appellant sought copies of all memos, show cause notice, punishment awarded by employer to the employee, details about movable and immovable properties, investment, lending and borrowing from Banks etc considering the facts of the said case, Court concluded that the aspect regarding which information was sought necessarily concerned employer/employee relationship and that the same would be governed by the service rules. Therefore said judgement is irrelevant and distinguishable. Other judgement like Bihar Public Service Commission v/s Saiyed Hussain Abbas Rizwi & Anrs (Supra), Thalappalam Service Co-operative Bank Ltd and Ors. v/s State of Kerala and Ors (Supra) are also distinguishable with the facts and circumstances of the present case.

31. Sec 19 (5) of the Act reads as under:-

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

From the readings of above provision, it is clear that, burden to prove that the purported information is exempted shall be on PIO.

Hon'ble High Court of Delhi in the case of **State Bank of India v/s Mohad. Shahajan (W.P. No. 9810/200)** has held as under:-

"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 the 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 be normally be disclosed. The burden therefore is entirely on public authority to show why the information sought from it should not be disclosed.”

Therefore in my considered opinion the Respondents have failed to substantiate that purported information is personal information and exempted under section 8(1)(J) of the Act.

32. On perusal of Order of FAA dated 08/09/2020, the FAA categorically observed that on 03/03/2020, the PIO issued notice to third party and in the reply to the same the third party informed the PIO not to disclose the information on 07/03/2020.

However the PIO, who is Respondent No. 1 in the present appeal in her reply dated 27/01/2021 did not categorically mentioned the dates of correspondence nor produced any document on record. Mere general statement is not enough. Even in her written submission no explanation has been given in counter or at the time of hearing. The third party herein also failed to produce anything on record, this is adversely effecting the case of the Respondents.

A plain reading of sec 11 of the Act indicate that, the occasion to issue a notice by the PIO to the third party shall arise only after the PIO intends to disclose the information which relates to third party. Merely because the information sought is of a person other than applicant does not by itself attracts the procedure as contemplated under sec 11 of the Act. Unless the information has

been treated as 'confidential information' by the third party concerned, question of issuing notice does not arise, the respondents have failed to produce iota of evidence to that effect.

33. Adv. Joshi also relied upon another judgement of Hon'ble Supreme Court in the case of the **Institute of Chartered Accountant of India v/s Shaunak H. Satya & Ors. (C.A.No. 7571/2011)** has held that:-

"25..... Public authorities should realize that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furnishing information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the Civil Society and the Parliament. In its wisdom, the Parliament has chosen to exempt only certain categories of information from disclosure and certain organizations from the applicability of the Act."

Moreover the issue laid down in the above judgement is more helpful to the Appellant than to third party.

Considering the above position, I find that the information sought by the Appellant does not relate to personal information which could cause unwarranted invasion of the privacy of the individual. In the backdrop of the above fact, I find merit in the appeal and consequently the present appeal is partly allowed with the following:-

ORDER

- The PIO directed to provide the information on point No. 5,6 and 7 of the application dated 11/02/2020, free of cost to the Appellant within **FIFTEEN DAYS** from the receipt of the order.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

(Vishwas R. Satarkar)
State Chief Information Commissioner