

GOA STATE INFORMATION COMMISSION

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Appeal No.277/2021/SCIC

Shri. Ulhas Bhaje,
TR Residency, C-2, Flat No. S1,
Taleigao-Goa. 403002.

.....Appellant

V/S

1. The Public Information Officer,
Institute of Psychiatry & Human Behaviour,
Bambolim-Goa. 403202.

2. The First Appellate Authority,
Institute of Psychiatry & Human Behaviour,
Bambolim-Goa. 403202.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 29/10/2021

Decided on: 05/05/2022

FACTS IN BRIEF

1. The Appellant, Shri. Ulhas Bhaje, r/o. TR Residency, C-2, Flat No. S1, Taleigao-Goa, by application dated 25/06/2021 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) of Institute of Psychiatry and Human Behaviour (IPHB), Bambolim-Goa.
2. The PIO responded to the said application on 23/07/2021 in the following manner:-

1	Attendance report of Mr. Uday Chari, Staff Nurse of IPHB from, 1 st February 2021 till date.	Information sought cannot be disclosed in under section of 8(1)(j).
2	Copies of permission/N.O.C. granted to him on his various request for the last 5 years alongwith copy of the application.	-do-

3. Not satisfied with the reply of PIO, the Appellant preferred first appeal before the Director/Dean, IPHB, Bambolim-Goa, being the First Appellate Authority (FAA).

4. The FAA by order, upheld the reply of the PIO and dismissed the first appeal on 21/09/2021.
5. Being aggrieved with the order of FAA, the Appellant landed before the Commission with this second appeal under sec 19(3) of the Act, with the prayer to direct the PIO to furnish the information free of cost, to impose the penalty on PIO and to award the compensation to the Appellant for suffering caused to him.
6. Notice was issued to the parties, pursuant to which the representative of PIO and FAA, Mr. Sebby Dias appeared and filed reply on behalf of PIO and FAA on 01/12/2021.
7. Perused the pleadings, replies, rejoinder, scrutinised the documents on records and considered the written and oral arguments and judgement relied upon by the rival parties.
8. Mr. C. Radhakrishnan, the representative of the Appellant submitted that the Appellant sought information with regards to the attendance report of Mr. Uday Chari, who is a government servant and working as a staff nurse in Institute of Psychiatry and Human Behaviour (IPHB) Hospital at Bambolim-Goa. The Said record is generated by the public authority and the said are in public domain, therefore the said information being not submitted by the third party cannot be treated as personal information.

Further according to him, Mr. Uday Chari being the public servant, every member of the society get a right to know about the working, his honesty, integrity and devotion to duty, besides no harm and injury will be caused to the third party if information is disseminated and claims that he is entitled for the information and to substantiate his case he relied upon the judgement of **Hon'ble Supreme Court in the case of Central Public Information Officer v/s Subhash Chandra Agarwal (C.A. No. 10044/2010).**

9. According to PIO, the information sought for by the Appellant is a service related matter of the third party and since it is personal information of Mr. Uday Chari the same is exempted from disclosure under section 8(1)(j) of the Act.

10. According to FAA, he heard the first appeal and upon noticing that, PIO did not follow the procedure under section 11 of the Act, issued notice to the third party on 21/09/2021 to obtain his consent and dispose off the first appeal on same day.

11. Considering the above contention raised by the rival parties, the issue that arise for the determination before the Commission is:-

1. Whether information sought by the Appellant is personal information and hence exempted from disclosure under section 8(1)(j) of the Act."

12. Provisions of Section 8(1)(j) of the Act are produced 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 bare reading of the above provision, it is revealed that the exemption for personal information is attracted under two circumstances, one if it is related to public activity or interest or disclosure of such information would cause unwarranted invasion of the privacy of the individual.

13. Considering the nature of the information sought by the Appellant, i.e the attendance of the public servant on the duty, admittedly same is part of public records, generated by the public authority in exercise of its statutory duty. Every citizen of this country has got right to know what government and their functionaries are doing with the tax payers money, their working hours, their honesty, integrity, their conduct and devotion to the duty etc. Since Mr. Uday Chari is a public servant he is exercising the public duties and therefore his attendance in duties is certainly a public activity.

Apart from that, since he is drawing his salary from the public exchequer, his information towards the duty cannot be denied to the State Legislature.

The High Court of Madras in the case **A.C. Sekar v/s Deputy Registrar of Co-operative Societies, Thiruvannamalai District and Others (2008 (2) MLJ 733)** held that an information even relating to the attendance put in by the third party was considered to be relevant and such information cannot be denied on the ground that it is coming under private domain.

14. On perusal of judgement of the Hon'ble Supreme Court relied upon by the Appellant in the case of **Central Public Information Officer, S.C. v/s Subhash Chandra Agarwal (C.A. No. 10045/2010)** the court has held in para No. 59 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."

15. The Hon'ble High Court of Bombay at Goa in case **Kashinath J. Shetye v/s Public Information Officer and Ors**, in para No. 7 has held that:-

"7. The first thing that needs to be taken into consideration is that the petitioner is a public servant. When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing

remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/ misconduct of a public servant even in private, ceases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know."

16. Referring to the Kashinath J. Shetye v/s Public Information Officer & Ors, the Hon'ble High Court of Bombay at Goa in **C. Radhakrishnan v/s Public Information Officers & 3 Ors** has held that:-

"24. The proviso to Section 8(1)(j) of the aforesaid Act is crucial for the reason that being a public servant if the State Legislature was to call for such information pertaining to the Petitioner, the Information Officer could not have denied the same. This is for the reason that the Petitioner, as a public servant, is paid salary from the public exchequer and the State Legislature would certainly be entitled to call for such information. If the State Legislature could not be denied the aforesaid information, by operation of the proviso to Section 8(1) (j) of the said Act, Respondent no. 4 also could not have been denied such information.

25. XXX XXX

26. XXX XXX

27. There cannot be any doubt about the fact that invasion of privacy has to be construed in the facts of each case and, in any case, when it is found that divulging of such information can be said to in larger public interest, the exemption under Section 8(1) (j) of the said Act, would not be available.”

17. In an another identical judgement the High Court of Allahabad in the case **Praveen Varma v/s High Court of Judicature at Allahabad & Ors. (2008 (1) RTI 137)** has held that:-

“The disclosure of information in regards to the functioning of Government must be rules and secrecy must be an exception”.

In the present case the information sought pertains to attendance report and permission / N.O.C. granted to Uday Chari, Staff Nurse of IPHB, Bambolim, Goa and which is certainly not a personal information as per the ratio laid down by above judgements, therefore above issue is answered as 'negative'.

18. Considering the facts and circumstances and the above precedent laid down by various courts, I am of the opinion that the Appellant is entitled for the information sought for. I find merit in the appeal and consequently the same is allowed with the following:-

ORDER

- The PIO, Dr. Pooja M. Madkaikar, Dy. Director (Admn) of Institute of Psychiatry and Human Behaviour (IPHB), Bambolim, Goa shall furnish to the Appellant, free of cost, the information as sought by the Appellant vide his application dated 25/06/2021 within the period of **FIFTEEN DAYS** from the date of receipt of the order.

- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

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