

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 252/2022/SIC

Mr. Sudesh M. Velip,
R/o. F-403, St. Francis Xavier Residency,
Phase-II, Ella, Old Goa 403402.

-----Appellant

v/s

1. The Public Information Officer,
Office Superintendent,
Administration Branch,
Police Head Quarters,
Panaji-Goa 403001.

2. The First Appellate Authority,
Superintendent of Police,
Head Quarters,
Panaji-Goa 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 29/04/2022
PIO replied on	: 30/05/2022
First appeal filed on	: 24/06/2022
First Appellate Authority order passed on	: 15/07/2022
Second appeal received on	: 23/09/2022
Decided on	: 28/11/2022

ORDER

1. Being aggrieved by non furnishing of the information and by the order of the appellate authority, appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') filed second appeal against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), which came before the Commission on 23/09/2022.
2. The brief facts of the appeal as contended by the appellant are that vide application dated 29/04/2022 he had sought certain information from the PIO. The said information was denied under Section 8 (1) (e) and 8 (1) (j) of the Act by the PIO, hence, appellant filed appeal dated 24/06/2022 before the FAA. FAA vide order dated 15/07/2022 upheld PIO's decision and disposed the appeal. Aggrieved by the said order, appellant appeared before the Commission by way of second appeal.
3. The matter was taken up on board and notice was issued to the concerned parties. PIO appeared on 19/10/2022 and filed written

submission, whereas, appellant appeared in person pressing for the information.

4. PIO stated that, the appellant had requested for information regarding DPC, however, the said information is exempted from disclosure under Section 8 (1) (e) and 8 (1) (j), hence the same is not furnished. PIO further submitted that, the FAA while disposing the first appeal had upheld PIO's decision.
5. Appellant, while arguing for the information stated that, the PIO and the FAA has failed to give due consideration to the mandate of the Act and that he requests the Commission to direct the PIO to furnish the information. The requested information is sought in larger public interest and the same is not eligible for exemption.
6. Upon perusal of the records of the instant case it is seen that, the appellant vide application dated 29/04/2022 had sought minutes of the DPC meeting held by PEB for promotion of Police Sub Inspector to the post of Police Inspector in Goa Police Department in October 2012, wherein the appellant was one of the candidate. PIO informed the appellant that the said information is exempted under Section 8 (1) (e) and 8 (1) (j) of the Act.
7. The stand taken by the PIO to deny the information under Section 8 (1) (e) and 8 (1) (j) of the Act was upheld by the FAA, which resulted in non furnishing of the information to the appellant, hence he has sought the intervention of the Commission. Considering these aspects, the point which arise for determination are as follows:-
 - a) whether the information sought by the appellant qualifies for exemption under Section 8 (1) (e) of the Act?
 - b) Whether the said information is eligible for exemption under Section 8 (1) (j) of the Act?
8. For the purpose of considering point 7 (a) above, it is necessary to look into the provision under Section 8 (1) (e):-
 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 this fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

The Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 (arising out of SLP (c) No. 7526/2009), C.B.S.C. & Anr. v/s. Aditya

Bandopadhyay & Ors. has described the term 'fiduciary' in following words:-

"21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and candour, 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 regard 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 regards 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."

In the instant case, appellant had sought for copy of minutes of the DPC meeting held for promotion of PSI to PI in Police Department. As explained by the Hon'ble Supreme Court in the above-mentioned judgment, the authority conducting the process of promotion of police officers cannot be held to be in fiduciary relationship with the candidates appearing for the promotion. Also, the minutes of the said DPC meeting, held in October 2012 must have been written and registered then, hence the same is available in public domain. The decision regarding the said promotion must have been taken by the Department on the basis of the minutes of the DPC meeting. Therefore, the said information is required to be part of public document.

9. In the background of the findings mentioned above, the Commission holds that the information sought by the appellant does not qualify for the exemption under Section 8 (1) (e) of the Act.

10. For the purpose of considering point 7 (b) above, let us go to Section 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.

The information sought by the appellant pertains to the minutes of the DPC meeting in which process of promotion of PSI to PI was held. Here, considering the object and reasons of the Act, the Commission holds that the provisions of the Act are to ensure maximum disclosure when the disclosure is in larger public interest. The act has been enacted to bring transparency and accountability in the working of public authority.

Hon'ble Supreme Court, in the case of Central Public Information Officer, Supreme Court v/s. Subhash Chandra Agarwal (C.A. No. 10045/2010) has discussed the scope of Section 8 (1) (j) of the Act and held in para 53 and 59:-

" 53. While clause (j) exempts disclosure of two kinds of information, as noted in paragraph 47 above, that is "personal information" with no relation to public activity or interest and "information" that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information".

"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, finding 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."

11. Subscribing to the ratio laid down by the Hon'ble Supreme Court in the above mentioned judgment, it is clear that the disclosure of personal information, if, in larger public interest, is justified and required under the Act. The Commission in the present matter holds that the information sought by the appellant is in larger public interest, hence is not eligible for exemption under Section 8 (1) (j) of the Act.
12. In the light of above discussion and with respect to the findings as mentioned in para 9 and para 11, the Commission concludes that the information sought by the appellant neither qualifies for exemption under Section 8 (1) (e) of the Act, nor is eligible for exemption under Section 8 (1) (j) of the Act. Hence, the appellant deserves to get the said information.
13. Thus, the present appeal is disposed with the following order:-
 - a) PIO is directed to furnish information sought by the appellant vide application dated 29/04/2022, within 20 days from receipt of this order, free of cost.
 - b) All other prayer 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

