

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 212/2021/SIC

Smt. Sneha D. Korgaonkar,
C/o. Wath, 17 P.& T. Colony,
Pratap Nagar, Nagpur,
Maharashtra 440022.

-----Appellant

v/s

1. The Public Information Officer,
The Mamlatdar,
Mormugao, Vasco-da-Gama, Goa.

2. The First Appellate Authority &
Dy. Collector & S.D.O. Vasco,
Mormugao-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 03/03/2021
PIO replied on	: 05/04/2021
First appeal filed on	: 03/05/2021
First Appellate Authority order passed on	: 20/09/2021
Second appeal received on	: 26/08/2021
Decided on	: 27/10/2022

ORDER

1. Being aggrieved by the denial of the information and non hearing of the first appeal within the mandatory period, 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), before the Commission.
2. It is the contention of the appellant that, vide application dated 03/03/2021 she had requested for copy of nomination in service records and first page of service book of Shri. Dattaram D. Korgaonkar, her husband. PIO vide reply dated 05/04/2021 denied the information under Section 8 (1) (j) of the Act. Appellant further contended that she filed appeal under Section 19 (1) of the Act, dated 03/05/2021, however the same was not decided within the mandatory period, hence she has approached the Commission by way of second appeal.
3. Notice was issued to the concerned parties and the matter was taken up for hearing. Pursuant to the notice, appellant vide a submission received in the registry on 08/10/2021 requested the Commission to allow her

not to be present for the hearing. Rule 7 (2) of the Goa State Information Commission (Appeal Procedure) Rules, 2006 provides for the discretion of the appellant to opt not to be present at the time of hearing. Accordingly, the present proceeding is conducted on merit, in the absence of the appellant. Written submissions from the appellant received in the registry on 11/10/2021, 03/03/2022, 29/04/2022 and 02/05/2022 are considered by the Commission. On the other hand, Respondent PIO and his authorised representative appeared before the Commission. Respondent FAA was represented by his representative under authority letter. PIO filed reply dated 06/04/2022 and a submission dated 27/09/2022.

4. Appellant submitted that, she had requested for information regarding copy of nomination in service records and first page of service book of Shri. Dattaram D. Korgaonkar, her husband, against whom domestic violence and maintenance case is pending in the Court at Nagpur, Maharashtra. Simultaneously, case for dissolution of marriage filed by her husband Shri. Dattaram D. Korgaonkar is decided by the Family Court no. 2 at Nagpur on 16/08/2017 as dismissed in default, hence the marriage is not dissolved and she continues to be the wife of Shri. Dattaram D. Korgaonkar. Thus, as wife she has every right to seek the said information and that the said information cannot be classified as third party information.
5. Appellant further submitted that, the said information was denied to her by the PIO under Section 8 (1) (j) stating that, the same is personal information of third party. However, the said section cannot be applied in the present case since she is not the public, but legally wedded wife of Shri. Dattaram D. Korgaonkar and that, it is her right to seek the said information. Appellant also submitted that wife seeking information cannot be termed as invasion of privacy of husband.
6. PIO stated that, the information sought by the appellant pertains to the personal information of third party, hence, under Section 11 Shri. Dattaram D. Korgaonkar, was requested to file his say on the application. It is informed by Shri. Dattaram D. Korgaonkar that since cases related to domestic violence and maintenance and dissolution of marriage are pending before the appropriate forum and as per his opinion the appellant is third party and by giving such information to third party may cause unwarranted invasion of his privacy under Section 8 (1) (j) of the Act. Accordingly, PIO informed the appellant that the information sought cannot be furnished.

7. PIO further stated that, the appellant has not made a bonafide case for public interest in seeking the said information, nor has established that the information sought is for public interest. Therefore, he held that the disclosure of such information would cause unwarranted invasion of privacy of the third party. PIO further submitted that the FAA vide order dated 20/09/2021 has dismissed the appeal while upholding the decision of the PIO.
8. The Commission has perused the replies and submissions filed by both the sides. Considering the rival contentions of the parties herein, the points which arise for determination are as follows:-
- a) Is the information sought by the appellant, i.e. details of service nomination records of her husband Shri. Dattaram D. Korgaonkar, a third party information?
 - b) If yes, whether the information sought is eligible for exemption from disclosure under Section 8 (1) (j) of the Act?.
9. For the purpose of considering point 8 (a) above, it is necessary to look into the term 'third party' as defined in the Act. Section 2 (n) of the Act states :-

2. Definitions – In this Act, unless the context otherwise requires,-
(n) 'third party' means a person other than the citizen making a request for information and includes a public authority.

The above definition makes it clear that any person other than the appellant, about whom the information is sought under the Act becomes the third party. The Act does not mention any relations while defining a third party. However, it is important to see how the High Court and Apex Court in similar matters have analysed the topic of third party information.

The Hon'ble High Court of Bombay at Aurangabad bench, in the Central Public Information Officer, Aurangabad v/s. The Central Information Commissioner & Anr. (Writ Petition No.10690 of 2017) has held:-

"18. It cannot be lost sight of in this case that the relation between the person seeking information of the lady, who is employed in a private company, is that of a husband and wife. On account of a marital discord, the wife has dragged the husband before the District Court. For the purposes of his litigation, the husband requires the information about the salary and provident fund accumulations of the wife. Such information could also be acquired by the husband by making an application before the District Court. Rather than perpetuating

the hardship of the husband, the CIC has found it fit to direct the petitioner to disclose the said information."

The Hon'ble High Court further held:-

"19. In this backdrop, it is imperative that the petitioner must first come to a conclusion, either under sub-clauses (e) or (j) of Section 8 (1) that the information is confidential and cannot be disclosed. It is only when the competent authority justifies the nondisclosure under the first part of sub-clause (e) or (j) that the second part in the said sub-clauses would have to be considered to the extent of whether the information is required to be disclosed in larger public interest. In my view, the petitioner has failed in the first place to justify its refusal to disclose the information. The husband seeking information cannot be said to be a stranger or a third party. The information sought by him also cannot be said to be confidential."

The above judgment states that the husband/ wife cannot be termed as a third party citizen with respect to the disclosure of information pertaining to each other. In the instant case, appellant is the wife of the person, information of whom she is seeking and the information is pertaining to his service nomination records.

In another matter, the Hon'ble Supreme Court, in R.K. Jain v/s. Union of India (2013 (14) SCC 794), has concluded that it is the prerogative of the public authority to decide whether information held as confidential by a third person is required to be disclosed to the appellant and the competent authority has to decide whether the disclosure of such information would open gates of privacy to a third party.

The above description makes it clear that it is the authority/ PIO who decides whether the information, disclosure of which is objected by a person in relation to whom information is sought, is to be disclosed or not. Meaning, the authority/ PIO should not blindly accept the objection raised by the third person, on the contrary the authority /PIO has to make a decision on merit. It appears in the instant case that the PIO has blindly accepted the objection raised by the person who happens to be the husband of the appellant. More so, the appellant is fighting cases of domestic violence and maintenance, against her husband, as stated by her. The information sought will help courts to come to just decision.

Thus, in the considerate opinion of the Commission, the information sought by the appellant, i.e. details of service

nomination records of her husband Shri. Dattaram D. Korgaonkar, cannot be classified as third party information.

10. In the background of the findings as mentioned above, point 8 (b) becomes inconsequential. Once it is concluded that, the information sought by the appellant is not third party information, the question of exempting the same under Section 8 (1) (j) of the Act does not arise.

Hon'ble High Court of Punjab and Haryana, in the case of Vijay Dheer v/s. State Information Commission, Punjab and Ors. (LNIND 2013 PNH 2263) has held:-

"While examining the scope of an exemption clause under Section 8 of the Act, it would be useful to refer to the statement of object and reasons of the Act itself. The object and reasons of the Act recite that the provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further the Act has been enacted in order to promote transparency and accountability in the working of every public authority".

The above judgment speaks about the statement of object and reasons of the Act and makes it clear that the Act has been brought to ensure maximum disclosure. Public authority and PIO and FAA must remember that they need to work towards promoting transparency and not towards evading the disclosure of eligible information. These authorities must apply their mind accordingly since it is their prerogative to decide on the exemption.

11. Section 8 (1) (j) of the Act reads:-

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 above mentioned section provides for exemption from disclosure of personal information which has no relevance to any public activity or interest. Meaning, information of personal nature, pertaining to third person can be denied, however has to be furnished if the disclosures in larger public interest.

The appellant in the instant case has stated that, she requires this information for the purpose of seeking justice in the cases of domestic violence and maintenance against her husband Shri. Dattaram D. Korgaonkar, pending in appropriate Courts at Nagpur, Maharashtra. As per the reply of the PIO, Shri. Dattaram D. Korgaonkar also has stated that cases against the appellant related to domestic violence and maintenance are pending in appropriate courts, hence the information should not be disclosed. Here, it is important to note that Shri. Dattaram D. Korgaonkar has not denied to be the husband of the appellant. As per the contentions of the appellant and Shri. Dattaram D. Korgaonkar, both appear to be husband and wife, though are fighting cases of domestic violence and maintenance, hence the information pertaining to either party cannot be considered as confidential information in terms of each other. As a wife, the appellant could be a nominee of her husband and disclosure of this information may help court to come to just decision.

12. In another observation, the Commission finds that, Shri. Dattaram D. Korgaonkar, whose information is sought by the appellant, is a Government servant, working as Talathi and appellant has made some allegations against Shri. Dattaram D. Korgaonkar. Though Shri. Dattaram D. Korgaonkar has raised objection to disclose the information pertaining to his nomination details in service records, he has nowhere denied that he is not the husband of the appellant. Rather, he has stated that cases against the appellant related to domestic violence and maintenance are pending in the Courts. The Commission, in the present matter has already held that husband or wife seeking information of his / her partner cannot be said to be a stranger or a third party and the said information cannot be classified as confidential, if sought by the partner.
13. It is also noted that the appellant is seeking justice in the cases of domestic violence and maintenance against her husband, in appropriate courts at Nagpur, Maharashtra. Cases of domestic violence and maintenance, though appears to be as private matter between husband and wife, such issues have repercussions on the society as a whole. Disclosure of correct information will help to settle these matters and will do justice to the person undergoing unjust situation.
14. In the instant case, PIO had denied the information under Section 8 (1) (j) and FAA had upheld the decision of PIO. Both these authorities, while denying the information to the appellant should have applied their mind in the true spirit of the Act, which they failed to do.
15. In the light of the above discussion, the Commission is of the firm opinion that the information sought by the appellant is neither personal,

nor confidential, since she is the wife of the person whose service nomination details are sought by her. Hence, she deserves to get the said information. Thus, the present appeal is disposed with the following order:-

- a) PIO is directed to furnish the information sought by the appellant vide application dated 03/03/2021, within 10 days from the receipt of this order.
- b) PIO is directed to dispatch the said information to the appellant by Registered A.D. Post and file compliance report alongwith appropriate evidence, within 15 days from the receipt of this order.
- c) 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