

**GOA STATE INFORMATION COMMISSION**  
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**Appeal No. 237/2022/SCIC**

Adv. Aires Rodrigues,  
C/G-2, Shopping Complex,  
Ribandar-Retreat,  
Ribandar-Goa.

.....Appellant

V/S

1. Ms. Namrata Ulman,  
Secretary Legislature Secretariat,  
First Appellate Authority,  
Goa Legislature Secretariat,  
Porvorim-Goa.

2. Mr. Mohan J. Gaonkar,  
Public Information Officer,  
Goa Legislature Secretariat,  
Porvorim-Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 30/08/2022**

**Decided on: 13/02/2023**

**FACTS IN BRIEF**

1. The Appellant, Adv. Aires Rodrigues r/o. C/G-2 Shopping Complex, Ribandar-Retreat, Ribandar Goa vide application dated 28/06/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Goa Legislature Secretariat, Alto-Porvorim, Goa.
2. The said application was responded by the PIO on 29/07/2022 in the following manner:-

Sr. No.	Information requested by the Applicant	Reply
1	A copy of the entire file notings and correspondence pertaining to the holding of the two day	The information relating to the notings and other correspondence is exempt from disclosure since it falls within the ambit of Section 8(1)(c) of the R.T.I. Act and Rule 37(16) of

	<p>training workshop on 27<sup>th</sup> and 28<sup>th</sup> June, 2022, at Taj Vivanta in Panaji</p>	<p>the Rules of Procedure and Conduct of Business of Goa Legislature Assembly.</p> <p>Under Section 8(1)(c) of the RTI, which states that:-</p> <p>“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, the information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature, Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”</p> <p>The same is read with rule 37(16) of the Rules of Procedure and Conduct of Business of Goa Legislative Assembly which states as under:-</p> <p>37(16) Form and content of Questions:-</p> <p>No questions may be asked which does not satisfy the following conditions namely:</p> <p>37(16) states that it shall not deal with matter before a Committee or with matters within the jurisdiction of the Chairman of a Committee or the Authorities of the House.</p>
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3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Secretary, Legislature Secretariat, Alto-Porvorim-Goa being the First Appellate Authority (FAA).
4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 29/08/2022.
5. Being aggrieved and dissatisfied with the order of the FAA dated 29/08/2022, the Appellant landed before the Commission with second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and to impose penalty on the PIO for denying the information.

6. Notices were issued to the parties, pursuant to which Respondent No. 2, PIO, Shri. Mohan Gaonkar appeared on 20/09/2022 and placed on record his reply through entry registry on 11/11/2022. Representative of the FAA, Shri. Hercules Noronha appeared on 20/09/2022, however, opted not to file any reply in the matter.
7. It is the case of the Appellant that, Goa Legislature Secretariat, Porvorim conducted two day training workshop on 27<sup>th</sup> and 28<sup>th</sup> June 2022 at the Taj Vivanta in Panaji and in order to know the detail expenditure incurred on the above event, the Appellant sought information from the public authority on 28/06/2022. However, the PIO refused to divulge the information by virtue of exemption under Section 8(1)(c) of the Act.

Further, according to the Appellant, the right to information is an intrinsic part of the fundamental right to freedom of speech and expression guaranteed under Article 19(1) of the Constitution and therefore, reply given by the PIO is unsustainable by law. The Appellant also alleged that Respondents deliberately denied the information to cover with veil of secrecy on the affairs of the public authority.

8. On the other hand, the PIO contended that, Appellant had asked for copy of the entire file and notings and correspondence pertaining to two days workshop on 27<sup>th</sup> and 28<sup>th</sup> June 2022 held at Taj Vivanta, Panaji and sought details of expenditure incurred on the event. According to the PIO, Rule 37(16) of the Rules to Procedure and Conduct of Business of the Goa Legislature Assembly, which have been framed in terms of powers conferred under Article 208 of the Constitution of India, provides that no question may be asked if it deals with matters before a committee or with matters within the jurisdiction of the Chairman of a committee or the authorities of the House.

According to the PIO, Rule 295 of the said Rules further provides that the Secretary shall have custody of all records, documents and papers belonging to the House or any of its Committee or Legislature Secretariat and shall not permit any such records, documents or papers to be taken from the precincts of the House without the permission of the Speaker.

He further contended that, application of the Appellant has been dealt with in terms of law and there is no violation of the provisions of law.

9. I have perused the pleadings, reply, scrutinised the documents on record and heard the submissions of the rival parties.

10. Considering the rival contention of the parties, the issues that arises for determination before the Commission are:-

*"(i) Whether information sought is exempted under Section 8(1)(c) of the Act?*

*(ii) Whether Goa Legislature Secretariat can refuse information under Rule 37(16) of Rules of Procedure and Conduct of Business of the Goa Legislature Assembly?"*

11. Therefore it is relevant to go through Section 8(1)(c) of the Act, 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,\_\_\_*

*(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;"*

From the plain reading of above, it is clear that breach of privilege refer to some of the distinct rights that are enjoyed by the

legislature in a Parliament or an Assembly without which they cannot discharge their functions efficiently and effectively. This exemption protects the public interest in maintaining independence of action and efficiency of a Legislature.

12. Article 194 of the Constitution of India relate to the Privileges, Powers and Immunities of the House of Legislatures and of the Members and Committee thereof. Being relevant same is reproduced as under:-

***"194. Powers, privileges, etc, of the House of Legislatures and of the members and committees thereof:-***

*(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State*

*(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings*

*(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined.*

*(4) The provisions of clauses ( 1 ), ( 2 ) and ( 3 ) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and*

*otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature'*

From the bare reading of above, Article expressly mentions two privileges (i) freedom of speech and (ii) freedom of Publication of proceeding. Clause (2) of Article 194 further provides that no member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any Committee thereof. Therefore, what is guaranteed is that speech and action are free from external interference.

13. It is a matter of fact that, the Goa Legislature Secretariat conducted two day training workshop to the members of Goa Legislative Assembly on 27<sup>th</sup> and 28<sup>th</sup> June 2022 at Hotel Taj Vivanta at Panaji-Goa. The Appellant through his RTI application sought the details of expenditure incurred on the above event alongwith the bills and also the file notings and correspondence.

The application of the Appellant was rejected under Section 8(1)(c) of the Act, as such an act would be breach of privilege. It is also to be noted that, the PIO specify the basis of privilege as per Rule 37(16) of the Rules of Procedure and Conduct of Business of Goa Legislative Assembly.

14. Adv, Deep D. Shirodkar, learned counsel appearing for the PIO, Respondent No. 2, submitted that, Rule 37(16) of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly, which have been framed in terms of powers conferred under Article 208 of the Constitution of India, provides that no question may be asked if it deals with matters before a Committee or with matters within the jurisdiction of the Chairman of a Committee or the authorities of the House.

He also submitted that Rule 295 of the said Rules further provides that the Secretary shall have custody of all records, documents and papers belonging to the House or any of its Committee or Legislature Secretariat and he shall not permit any such records, documents or papers to be taken out from the precincts of the House without the permission of the Speaker.

He further submitted that, information sought by the Appellant was earlier sought by one of the Hon'ble Member of Legislative Assembly during the sitting in July, 2022. However, the Speaker disallowed the said question and refused to provide the said information, in exercise of power vested in him *inter alia* under Rule 57 of the said Rules. He further argued that once the information of similar nature has been disallowed by the Hon'ble Speaker, the PIO cannot interfere or adjudicate upon the decision of the Speaker.

15. As per norms and convention, the Speaker is the overall administrative head of the Secretariat of the House of the people. However, main responsibility of the Speaker is to protect the right of the Members and to ensure that all reasonable amenities are provided to them. The Secretary Legislature enjoys hierarchical position and heads the administrative, secretarial and executive wing, who functions under, on behalf of and in the name of the Speaker.
16. The Speaker of the House, while being an elected member of Legislative Assembly enjoys a unique, dual position of primacy. On one hand the Speaker is the moderator of Parliamentary proceeding and debate and on the other hand he is also head of the entire administration that supports the functioning of the House. These two roles are different and distinct, one is parliamentary functions and other is administrative functions.

17. The High Court of Delhi in the case **Subhash Chandra Agarwal v/s Lok Sabha Secretariat in (Writ Petition (c) No. 3491/2013)** on the above issue has observed as under:-

*"41. Whatever the Speaker does in discharge of his 'parliamentary office' and the role and responsibilities he performs towards, in relation to and in connection with parliamentary proceedings, that is proceedings which are the core and essential legislative function of the House, enjoys immunity from being answerable outside the House. Even matters that are adjunct to the parliamentary function of the Speaker, for instance, communications between a Member of Parliament and the Speaker in relation to any proceedings, debates, discussions, voting or other actions arising from or pertaining to the legislative function of such Member would enjoy immunity so that the Member, as also the Speaker, are able to effectively discharge their legislative and parliamentary function for which they hold office. It is to such parliamentary function that 'parliamentary privilege' would attach.*

*42. On the other hand, in discharge of his 'administrative office' as the head of the administrative establishment of the House, the Speaker performs several functions of administrative and executive nature when he oversees the "running" of the Secretariat as it were, which Secretariat functions as the "back office" and performs a supportive and ancillary role to enable the House to perform its legislative function. In this role, the Speaker would inter alia administer, manage and oversee the cadre of officers and employees that work for the House. To my mind, the Speaker's role as*



*the administrative head of the Secretariat does not partake of the character of legislative function in any manner. I say so for the reason that while administering the Secretariat, the Speaker does not engage in any legislative or parliamentary role; the Speaker does not moderate any parliamentary debate; nor does he receive any bills or motions tabled in the House; nor does he call to vote any bills or motions so moved; nor does he discipline, disqualify or otherwise monitor the actions or omissions of any Members of the House; **nor does he perform any role that is directly related to the core function of the House, namely the law-making function.** In his role as head of administration of the Secretariat, the Speaker oversees the cadre that in- turn performs all administrative, secretarial and executive support functions to enable the House to discharge legislative function; and for that reason alone, if not for other reasons, **the administrative function of the Speaker is distinct from his parliamentary function.** In my view, 'parliamentary privilege' would not apply to such administrative function.*

**43.** *As noticed above, **parliamentary privilege is available to protect and maintain the sanctity, purity and integrity of parliamentary function. Parliamentary privilege does not offer any overarching or umbrella protection for all and any action of a parliamentarian.** Every parliamentarian, including the Speaker who enjoys a position of primacy, has a persona and an identity other*

*than that of a parliamentarian, to which avatar parliamentary privilege is simply not available."*

18. In the present case, the information sought with regards to the expenditure incurred on the two day training programme of the MLAs and related notings and correspondence and bills, which has nothing to do with the Speakers parliamentary functions, therefore the Appellant is entitled for the information sought for. The issue number one therefore is answered in 'negative'.
19. While deciding the issue No. 2, it is relevant to deal with Rule 37(16) of the Rules of Procedure and Conduct of Business of Goa Legislative Assembly 1992, which reads as under :-

*"37 . Form and content of Questions*

*No questions may be asked which does not satisfy the following conditions namely*

*(16) It shall not deal with matters before a Committee or with matters within the jurisdiction of the Chairman of a Committee or the authorities of the House."*

The Speaker, who is the Presiding Officer of the house, decides admissibility of a question of the Parliamentarian that can be entertained in that session. The above rule is one of the Rule of the House framed in order to maintain the House in order, manages its proceedings and govern the administration of its business, Manual etc.

20. Considering the reply of the PIO, it would be proper to go through the relevant provisions of the RTI Act. Section 3 of the Act reads as under:-

*"3. Right to Information – Subject to the provisions of this Act, all citizens shall have the right to information."*

From bare perusal of the above, it is clear that, every person who is citizen of India can apply for information irrespective of age, gender or location within India. The right to information, which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution.

21. The Appellant, Adv. Aires Rodrigues has relied upon the Judgement of Hon'ble Supreme Court in the case the **State of Uttar Pradesh v/s Raj Narain (AIR 1975 SC 865)**, in the said Judgement the court held that:-

*"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transactions in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transaction which can at any rate, have no repercussion on public security. To cover with veil secrecy the common routine business, is not in the interest of the public. "*

22. In the recent past after enactment of Right to Information Act, 2005, Hon'ble Supreme Court in the case **Chief Information Commission & Anrs. v/s State of Manipur and Anr. (AIR 2012 SC 864)** has observed that:-

*"11..... Right to Information which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. The said Act was thus, enacted to consolidate the fundamental right of free speech."*

It is very clear from the provisions of the Act and the judgement of the Supreme Court that, the right to information has now acquired the status of fundamental right of a citizen of India.

23. Full Bench of the Delhi High Court in **AIR 2010 Delhi 159-Secretary General Supreme Court of India v/s Subhash Chandra Agarwal** has observed:-

*"60..... The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19((1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed."*

24. Section 2(e) of the Act defines competent authority as under:-

**"2. Definitions. –**

**(e)** "competent authority" means----

**(i)** *the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State.*

(ii)	XXX	XX	XXX
(iii)	XXX	XX	XXX
(iv)	XXX	XX	XXX
(v)	XXX	XX	XXX"

The competent authority is another important entity under the Act. Under the Act, the appropriate Government has been defined in relation to public authorities which are established by Central Government or State Government whereas the term 'competent authority' has been used in relation to constitutional authorities such as The Speaker, The President, the Governor, or the Chief Justice of India etc. Under provisions of Section 28 of RTI Act competent authority has been given the power to make rules to carry out the provisions of the Act. But mere fact that since the Speaker is the authority mentioned in above clause i.e. Section 2(e)(i) of the Act, would not exclude from the definition of 'public authority'.

25. Under Section 24 of the Act, the RTI Act is not applicable to certain organisations. The Parliament and State Legislature are not excluded from the applicability of the RTI Act. Therefore, the Parliament / State Legislative Assemblies are not included in the organisations to which the RTI Act does not apply under Section 24 of the Act. Hence, in my opinion information relating to Parliament is exempted from disclosure only if it results in breach of privilege available under Section 8(1)(c).

26. In the present case, the reason cited by the PIO in denying the information under Section 8(1)(c) on the basis of Rule 37(16) of the Rules of Procedure and Conduct of Business of Goa Legislative Assembly is untenable by law. As the information sought by the Appellant has nothing to do with the Parliamentary functions of the Speaker and therefore, not protected under Parliamentary privilege. Therefore the issue No. 2 also answered as 'negative'.

27. Now, the question arises that, whether this Commission has power to decide the information with regards to breach of privilege. For that purpose it is relevant to go through the Section 19(8)(a) of the Act, which reads as under:-

**“ 19. Appeal.\_\_\_\_**

**(8)** *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to\_\_\_\_*

**(a)** *require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including\_\_\_\_”*

From the above provision, it is clear that while deciding the appeal, the Commission is empowered to take such steps as may be necessary to secure compliance with the provisions of the Act. Hon'ble Supreme Court in the case **Subhash Chandra Agarwal v/s Lok Sabha Secretariat (Supra)** it is held that:-

**"62.** *....., on the basis of settled legal principles of parliamentary privilege, it was permissible to disclose the information sought, was required to be decided by the CIC. If the CIC was of opinion that the information was covered by parliamentary privilege, then the CIC ought to have denied disclosure. If however, in the CIC's view, the information was not protected by parliamentary privilege, the CIC ought to have directed its disclosure.*

**64.** *When the statute itself casts a specific obligation on the CIC to decide whether or not any of the exemption under Section 8 apply in a given case. The CIC is mandated to decide all or any of the grounds of*

*Parliamentary privilege. Nowhere does the statute say that if the exemption under [section 8](#) relates to parliamentary privilege, the decision thereof shall lie with the Speaker and not with the CIC.*

*.....Accordingly, the CIC is enjoined to decide all exemptions to disclosure, including the exemption contained in [section 8\(1\)\(c\)](#)."*

28. Another issue raised by Adv. Shirodkar regarding issue to citizenship of the Appellant and claimed that, Appellant has obtained Portuguese citizenship. However, the said issue is pending before the Hon'ble High Court of Bombay at Goa Bench bearing Writ Petition No. 96/2020 and interim relief has been granted to the Appellant by the High Court. I therefore, not inclined to deal with the said issue at this stage.

29. In view of foregoing discussion, I find that the purported information has been denied on wrong footing and not sustainable by law. In the backdrop of above fact, I find merit in the appeal and consequently the appeal is allowed with the following:-

## **ORDER**

- The appeal is allowed.
- Shri. Mohan J. Gaonkar, the Public Information Officer (PIO), Goa Legislature Secretariat, Alto, Porvorim-Goa is directed to provide the information free of cost to the Appellant as per his RTI application dated 28/06/2022, within the period of **FIFTEEN DAYS** from the date of receipt of the order.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner