

GOA STATE INFORMATION COMMISSION
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Appeal No. 277/2022/SCIC

Rajiv N. Naik,
H.No. 252, Cardoz Waddo,
Taleigao, Tiswadi-Goa.

.....Appellant

V/S

1. The Public Information Officer,
Personnel-I,
Department of Personnel-I,
Government of Goa,
Secretariat, Porvorim-Goa, 403521.

2. The First Appellate Authority,
Personnel-I,
Department of Personnel-I,
Government of Goa,
Secretariat, Porvorim-Goa, 403521.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 28/10/2022

Decided on: 26/06/2023

FACTS IN BRIEF

1. The Appellant, Shri. Rajiv N. Naik r/o. H.No. 252, Cardoz Waddo, Taleigao, Tiswadi-Goa vide his application dated 09/08/2022 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), Collector of North Goa at Panaji-Goa.
2. The said application was transferred by the Office of Collector North Goa, Panaji to the PIO, Department of Personnel, Secretariat, Porvorim-Goa under Section 6(3) of the Act.
3. The said application was responded by the PIO on 13/09/2022 in the following manner:-

"I am to refer to your RTI application dated 11/08/2022, transferred by the Superintendent / PIO (EST), Collectorate North, vide letter No. 11/26-RTI/2021/EST/ Col/4444 dated 18/08/2022, received in this Department on 19/08/2022, seeking information under RTI Act, 2005 and to request you to pay an amount of Rs. 130/- (Rupees One Hundred and thirty only) towards the fees of information sought under point No. 'D' as available with this department in Cash Section of General Administration Department, Secretariat, Porvorim between 10.00 am to 1.00 pm and 2.00 pm to 4.00 pm on any working day and collect the relevant documents from this Department by producing before the undersigned receipt of fees paid.

Further, it is to inform you that the information sought under point No. 'B' relates to personal information and is exempted from disclosure in terms of Section 8(1)(j) of RTI Act, 2005 and hence cannot be provided."

4. Being aggrieved and not satisfied with the reply of the PIO, the Appellant filed first appeal under Section 19(1) of the Act, before the Joint Secretary (Personnel), Secretariat, Porvorim-Goa, being the First Appellate Authority (FAA).
5. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 07/10/2022.
6. Aggrieved and dissatisfied with the order of the FAA, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act.
7. Notices were issued to the parties, pursuant to which the Appellant

appeared in person on 20/12/2022, the PIO Ms. Swapnita Naik appeared and filed her reply on 20/12/2022, the FAA duly served opted not to appear in the matter.

8. It is not in dispute that, the Appellant has collected the information at point No. A, C and D by paying the requisite fee. The main controversy remains with regards to the information at point No. B of the RTI application which reads as under:-

"B. Documents/ Details available with your office regarding assets submitted by the all revenue officers of class A and class B, including their family members, as provided under service rules."

9. It is the case of the Appellant that, by his application filed under Section 6(1) of the Act, he sought information with regards to the assets of the Revenue Officers of class A and class B category. However, the PIO refused to disclose the said information by virtue of exemption clause under Section 8(1)(j) of the Act. The Appellant further contended that order of the FAA dated 07/10/2022 is arbitrary, cryptic and passed without application of mind. According to him, information sought for has been denied on false ground and same is not tenable by law and prayed that direction may be issued to the PIO to furnish the said information free of cost.

10. On the other hand, the PIO through his reply dated 20/12/2022 contended that, the information as available was furnished to the Appellant on 15/09/2022, however, information sought under point No. B was not provided being personal information as the same is exempted from disclosure under Section 8(1)(j) of the Act.

11. Considering the rival contentions of the parties, the issue that arise for the determination is:-

"Whether details of Assets declared by the Revenue Officers of class A and class B under the service rules can be treated as personal information, and hence exempted from disclosure under Section 8(1)(j) of the Act."

12. In this context, it would be appropriate to refer to Section 8(1)(j) 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,___

(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 the individual.

13. Insofar, the nature of information sought for at point No. 4 by the Appellant are the details of the assets declared by the Revenue Officers of Class A and Class B under Service Rules.
14. Under Rule 18(1) of the Central Civil Services (conduct) Rules, 1964 read with note III, provides that every Government servant needs to declare a return of his assets and liabilities to the Government. Such a declaration of assets and liabilities is the part of his fulfilment of statutory requirements in performing the duty. The obligation to disclose above information is to check the propensity to abuse a public office, for personal gain. In disregard of furnishing such declaration, the defaulting officer may be denied vigilance clearance and consequently he is not considered for promotion and other benefits.
15. It is a matter of fact that, said information is generated by the public authority in carrying out statutory obligation, admittedly the information concerning to the assets of Revenue Officers of Class A and Class B is available with the public authority. In other words said information fully belongs to the public authority and same is in public domain.
16. The High Court of Delhi in the case **Union Public Service Commission v/s R.K. Jain (W.P. No. (c) 1243/2011)** in paragraph No. 20, 21 and 24 has observed as under:-

"20. The term "personal information" under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure

personal information, including that which would cause "unwarranted invasion of the privacy of the individual". If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. Further, the personal information cannot be that of a "public authority". No public authority can claim that any information held by it is personal to it. There is nothing "personal" about any information held by a public authority in relation to itself. The expression "personal information" used in Section 8(1)(j) means information personal to any "person", that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure). The use of the words "invasion of the privacy of the individual",

instead of "an individual", shows that the legislative intent was to connect the expression "personal information" with the word "individual".

22. XX XXX XX

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24. *"Public activity" qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act. Such information could include information relating to his physical and mental health, his qualifications etc., as the said information has a bearing on the discharge of his public duty, but would not include his other personal information such as, his taste in music, sport, art, his family, his family background etc., which has no bearing/relation to his act of performing his duties as a surgeon."*

17. The CIC in the case **Mr. Sat Prakash Tyagi v/s Delhi Jal Board, Government of N.C.T. Delhi (CIC/SG/A/2009/001436/4247)** has held as under:-

".....disclosure of information such as assets of a Public servant, - which is routinely collected by the Public authority and routinely provided by the Public servants,- cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone- tapping. Any other exceptions would have to be specifically justified. Besides the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only logical that the details of assets of those who are public servants must be considered to be disclosable. Hence the exemption under Section 8(1) (j) cannot be applied in the instant case."

18. The High Court of Madras in the case **V. Madhav v/s The Tamil Nadu Information Commission and Anrs. (W.P. No. 551/2010)** has held that:-

"6.....An information relating to private duty which is not accessible by the public authority is an information as provided under [Section 8\(1\)\(j\)](#), that is a right of privacy. Nevertheless, if a government servant furnishes assets details to the Government and if he is accountable to file such assets details as required under

the rules, such information relating to the assets cannot be considered to be public information which are inaccessible by the Government. Hence, the information relating to the assets declaration of I.A.S. Officers cannot be said to an information which could not be accessed by the public authority, as those information are either no more confidential or private information.

13. The Government has many duties including accountability to the people and showing efficiency in governance. As has been classified, the efficiency in relation to the Government are administrative efficiency, policy efficiency and service efficiency. The administrative efficiency could be achieved only by transparency and access to the assets details documents furnished by its officers including I.A.S. Officers, though in sealed covers, to the applicant on his request. Disclosure of such information under the provisions of the Act will ensure the "culture of openness" rather the "culture of secrecy". If that is followed, a sound administrative system leading to efficiency and effectiveness could be achieved. It would further result in involving a better form of Government."

19. The five members of Constitution Bench of the Hon'ble Supreme Court in the case **Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (C.A. No. 10045/2010)** and while referring the matter to a larger bench had framed the issue, whether the information about declaration of assets by the Judges of Supreme Court is exempted from disclosure under the provisions of Section 8(1)(j) of the Act. With great deliberation and discussion, the Apex Court, upheld the

order passed by the Chief Information Commissioner with the following words:-

"89. In view of the aforesaid discussion, we dismiss Civil Appeal No.2683 of 2010 and uphold the judgment dated 12th January, 2010 of the Delhi High Court in LPA No. 501 of 2009 which had upheld the order passed by the CIC directing the CPIO, Supreme Court of India to furnish information on the judges of the Supreme Court who had declared their assets. Such disclosure would not, in any way, impinge upon the personal information and right to privacy of the judges. The fiduciary relationship rule in terms of clause (e) to [Section 8\(1\)](#) of the RTI Act is inapplicable. It would not affect the right to confidentiality of the judges and their right to protect personal information and privacy, which would be the case where details and contents of personal assets in the declaration are called for and sought, in which event the public interest test as applicable vide [Section 8\(1\)\(j\)](#) and proviso to [Section 11 \(1\)](#) of the RTI Act would come into operation."

20. Considering the above legal precedents and position of law, I find that the exemption from disclosure of information under Section 8(1)(j) is not available in the present case, therefore, I answer the issue in favour of the Appellant. Consequently the appeal is allowed with the following:-

ORDER

- The PIO, Ms. Swapnita Naik, Section Officer (Personnel-I), Department of Personnel, Secretariat, Porvorim-Goa is hereby directed to provide the information at point No. 'B' of the RTI

application dated 09/08/2022, free of cost to the Appellant within **FIFTEEN DAYS** from the receipt of the order.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner