

**GOA STATE INFORMATION COMMISSION**

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Appeal No. 108/2022/SIC**

Narayan D. Naik,  
H.No. 278/1 (3),  
Savorfond, Sancoale-Goa 403710.

-----Appellant

**v/s**

1. Mr. Ramesh Parsekar, PIO,  
Mormugao Planning & Development Authority,  
Vasco-Da-Gama, Goa.

2. The Member Secretary &  
First Appellate Authority,  
Mormugao Planning & Development Authority,  
Commerce Centre, 2<sup>nd</sup> Floor,  
Vasco-Da-Gama, Goa.

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 20/12/2021
PIO replied on	: 10/01/2022
First appeal filed on	: 27/01/2022
First Appellate Authority order passed on	: 01/03/2022
Second appeal received on	: 12/04/2022
Decided on	: 03/07/2023

**ORDER**

1. The second appeal filed by the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), against Respondent No. 1, Shri. Ramesh Parsekar, Public Information Officer (PIO), came before the Commission on 12/04/2022. The appellant later during the proceeding vide application dated 06/06/2022 requested the Commission to add First Appellate Authority (FAA) of Mormugao Planning and Development Authority, as Respondent No. 2. The said request was allowed and the FAA was added as Respondent No. 2.
2. It is the contention of the appellant that, since the application was partly denied by the PIO, he filed first appeal before the FAA. Appellant further contends that, PIO even after direction from the FAA avoided compliance and did not furnish the information. That, vide letter dated 09/03/2022, the PIO has contradicted his own reply dated 10/01/2022. At first instance, he had requested the appellant to collect information on point no. 2 to 8 after paying the requisite charges, however, later, changed the stand by denying the information.

3. Notice was issued pursuant to which, appellant appeared alongwith Advocate Athnain Naik and Advocate Guruprasad Naik. Shri. Ramesh Parsekar, PIO appeared alongwith Advocate Jennifer Miranda and Advocate Meghana Prakash Kamat. Advocate Durga Sawant and Advocate S. Shirodkar appeared on behalf of FAA. Appellant filed rejoinder dated 14/06/2022, written argument dated 01/02/2023 and on 28/03/2023 filed application for production of additional documents and upon Commission's approval filed additional documents. PIO filed reply on 01/06/2022 and later arguments and additional arguments on 28/03/2023 and 20/04/2023. Reply was filed on behalf of the FAA on 08/12/2022.
4. PIO stated that, he had replied the appellant within the stipulated period and later furnished all the information except point no. 1. That, the appellant under point no.1 had requested for copy of legal opinion of Additional Government Advocate on the objection filed by Attorney of Sancoale Comunidade and the same was rejected under Section 8 (1) (e). Also that, the appellant has not disclosed what is the grievance with regards to information already furnished.
5. FAA submitted that, he had heard and disposed the first appeal as provided by the Act. PIO was directed to furnish the remaining information on point no. 2 to 8 and with respect to the information on point no. 1, it was explained to the appellant that the legal opinion is between the authority and the advocates, as such the same cannot be furnished under Section 8 (1) (e) of the Act.
6. Appellant stated that, PIO by filing contradictory replies has denied him the information. Though initially no information was furnished, PIO later furnished partial information on point no. 2 to 8. However, information sought under point no. 1, i.e. copy of legal opinion of Additional Government Advocate was denied by stating that the same cannot be issued under Section 126 of Indian Evidence Act. Appellant contended that, Section 22 of the RTI Act gives overriding effect and with this provision he should get the information pertaining to copy of legal opinion of Additional Government Advocate.
7. Advocate Jennifer Miranda and Advocate Meghana Prakash Kamat while arguing on behalf of the PIO stated that, the appellant has approached the Commission with unclear hands by concealing material facts. That, the PIO has always maintained that the copy of legal opinion cannot be furnished as per Section 126 and 129 of the Evidence Act. Also, the said information falls within the purview of Section 8 (1) (e) of the Act, being the relationship between the

Additional Government Advocate and the public authority of a fiduciary nature. Also, the contention of the appellant that the PIO / public authority provided the copy of legal opinion to Zuari Agro Chemicals /Zuari Group of Companies is baseless and appellant has no where brought the same on record /substantiated his contention.

8. Appellant argued stating that, the PIO cannot take shelter of the Evidence Act to evade the disclosure of legal report since Section 22 of the RTI Act gives overriding effect. Thus, Section 126 of the Indian Evidence Act does not apply to the PIO. Appellant further argued that, the PIO has deliberately not furnished the said report only to safeguard Zuari Agro Chemicals / Zuari Groups of Companies from getting exposed of their illegalities. Hence, he prays for direction to the PIO to furnish the remaining information.
9. Upon perusal, it is seen that the appellant vide application dated 20/12/2021 had sought for information on 8 points. Though the PIO replied the said application within the stipulated period, appellant was aggrieved by the said reply and filed first appeal and later second appeal before the Commission. Broadly, the application can be divided into 2 parts. Part one is point no. 1 of the application and Part two is point no. 2 to 8 of the application.
10. It is further seen that, the PIO had requested the appellant to collect the information on point no. 2 to 8 after paying the requisite charges. Appellant contends that only partial information on point no. 2 to 8 was furnished by the PIO. However, the appellant has not appeared with documental evidence to bring it on record that what part of the information is not furnished to him. On the other hand, PIO has stated that, information on point no. 2 to 8 has been furnished. Thus, in the absence of any evidence to substantiate the contention of the appellant, the Commission holds that the PIO has furnished information on point no. 2 to 8 of the application dated 20/12/2021, meaning part two of the application has been complied by the PIO.
11. This being the case, issue before the Commission which remains is whether information on point no. 1, i.e. copy of legal opinion of Additional Government Advocate, as mentioned in the application which is denied by the PIO, is required to be furnished or the same is exempted from disclosure under Section 8 (1) (e) of the Act or /and can be denied under Indian Evidence Act.
12. Appellant under point no. 1 of his application had sought following information :-

- 1) Kindly furnish me copies of your Authority letter refer to Ld.Adv. General for legal opinion / Advice on the objection filed by Attorney of Sancoale Comunidade vide letter dated 02/11/2020 under your office inward no. 884 dated 04/11/2020 and also furnish me copy of the Legal opinion received by your office from Add. Government Advocate on said subject matter.

Section 8 (1) (e) of the Act states as under:-

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 above provision means any information existing in the records of the PIO, if generated within the fiduciary relationship, then the same cannot be disclosed unless the larger public interest warrants the disclosure of such information.

13. Appellant, while seeking information on point no. 1 has relied on some cases decided by the Central Information Commission. Similarly, PIO, while claiming exemption has relied on cases decided by the Central Information Commission, High Court of Kerala and Hon'ble Supreme Court. The Commission has carefully perused these authorities relied upon by the appellant as well as respondent PIO.
14. The Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 (arising out of SLP (c) no. 7526/2009), Central Board of Secondary Education & Anr. v/s Aditya Bandopadhyay & Ors. has defined 'fiduciary relationship' as per Black's Law Dictionary (7th edition, Page 640) as "A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship."
15. Further, the Apex Court in V.C. Rangadurai v/s D. Gopalan and other (1979 KHC 489) has held that the relationship between a lawyer and his client is fiduciary in nature. Para 31 of the said judgment holds:-

*"31. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and*

*try to protect the interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the complainants."*

16. In a similar matter Hon'ble High Court of Kerala, in Secretary to Advocate General and Others v/s State Information Commissioner and Another (WP (c) No. 7240 of 2013), while stating that the lawyer client relationship is a fiduciary relationship, has held in Para 18:-

*"18. From the above discussions, it is clear that the lawyer-client relationship is a fiduciary relationship. There may be delicate and confidential communications between a lawyer and his client. All communications between the lawyer and his client are to be protected because these communications are confidential. The same is protected as per Section 8 (1) (e) of the Act 2005. The Advocate General is the advisor of the Government. As I mentioned earlier, there may be delicate and sensitive issues, in which the Government wants the opinion of the Advocate General. Those are confidential communications between the Government and the Advocate General. The legal opinion given by the Advocate General to the Government should always be confidential. That is protected under Section 8 (1) (e) of the Act 2005. If it is protected under Section 8 (1) (e) of the Act 2005, the overriding effect of Section 22 of the Act to the Evidence Act will also not be available. In such circumstances, Section 126 of the Indian Evidence Act is also applicable as far as a legal opinion given by the Advocate General to the Government is concerned. Therefore, I am not in a position to agree with the orders passed by the State Information Commission in these two writ petitions to disclose the legal opinion given by the Advocate General to the Government."*

17. From the ratio laid down in the above mentioned judgements, it is amply clear that the relationship between lawyer and client is a fiduciary relationship and legal opinion/ report given by the Advocate General or Additional Government Advocate to any public authority should not be disclosed under the Act. Similarly, it is completely clear that such opinion is protected under Section 8 (1) (e) of the Act 2005, the overriding effect of Section 22 of the Act to the Indian Evidence Act is not applicable in the context of information sought on point no. 1 of the application. Thus, the information with respect to the legal opinion received by the public authority / PIO's office from Additional Government Advocate is exempted from disclosure under

Section 8 (1) (e) of the Act. Also, the disclosure cannot be justified since the appellant has not explained any public interest in seeking the said information.

18. In the background of the findings as mentioned above, the Commission concludes that, the PIO has furnished information sought on point no. 2 to 8 of application dated 20/12/2021 and information requested under point no. 1 of the said application is exempted from disclosure under Section 8 (1) (e) of the Act, hence, PIO cannot be directed to furnish the same. With these conclusions, nothing survives in the present appeal and the same needs to be disposed accordingly.
19. Thus, the appeal is disposed as dismissed and the 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.