

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri. M. S. Keny, State Chief Information Commissioner

Appeal No. 93/SIC/2010

Shrikrishna Ramakant Bhosle,
H. No. 96/3, Palmar Vaddo,
Pomburpa,
Bardez - Goa ... Appellant

V/s.

1) Director of Health Services,
Campal,
Panaji - Goa ... Respondent No. 1.

2) Public Information Officer,
Medical Superintendent/Dy. Director,
Asilo Hospital,
Mapusa - Goa ... Respondent No. 2.

3) Smt. Sneha Shrikrishna Bhosle,
Alias Surekha Mayekar,
R/o. Gateswar Nagar,
Asilo Quarters, Khorlim,
Mapusa - Goa ... Respondent No. 3.

Adv. Shri V. S. N. Alornekar for Appellant.
Adv. Smt. Harsha Naik for Respondent No. 2.
Respondent No. 3 absent.

J U D G M E N T
(30.11.2011)

1. The Appellant, Shrikrishna Ramakant Bhosale, has filed the present Appeal praying that the impugned orders passed by the Public Information Officer dated 04.11.2009 denying the information sought by the Appellant which is confirmed by the First Appellate Authority vide order dated 06.01.2010 be set aside and cancelled; that the Respondent No. 1 and 2 be ordered and directed to furnish the information called by the Appellant and other reliefs.

2. The brief facts leading to the present Appeal are as under:-

That the Respondent No. 3 soon after her marriage with the Appellant in the year 2007 started behaving abnormally and therefore she was taken to the Primary Health Centre at Aldona on 04.12.2007 where it was diagnosed that Respondent No. 3 is suffering from some mental problem and as such Appellant was advised to take her to Psychiatric Department for examination and treatment but she declined to go and instead she went to the residence of her sister Manisha Pednekar, who is employee of Asilo Hospital, on the pretext of brining some clothes and never more returned to the matrimonial house. That on account of some abnormal behavior and on the suggestion of her relation she was taken to her mother's place but instead of mother's place she was admitted as indoor patient in the Asilo Hospital for about a week where her sister Manisha Pednekar works. That the Appellant on realizing the fraud played on him by the Respondent No. 3 and her relatives for obtaining his consent to the marriage without disclosing her mental problem filed a Matrimonial Petition for annulment of marriage or in the alternative for Divorce for causing harassment. However, he could not get information/certificate about the diagnosis made about illness made and treatment given to her by concerned doctors from the Asilo Hospital, Mapusa. That as such, the Appellant, vide application dated 07.10.2009, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Respondent No. 2. That though not required the applicant had stated the purpose for which the said document was required. That on receipt of the said application the Respondent No. 2 shot

back a letter dated 08.10.2009 to the Appellant which was received by him on or about 11.11.2009, asking him to furnish the residential address of the Respondent No. 3, the said patient Mrs. Sneha Bhosale nee Surekha Mayekar whose information was sought for without assigning any reason. That this action was unwarranted and uncalled for. That the Appellant furnished the said information called for by the Respondent No. 2. That on 05.11.2009 the Appellant received a reply dated 04.11.2009 informing him that the access to the information sought for has been refused on the ground that (1) the third party has requested to refuse the disclosure of the information in writing; (2) Right to Information Act, 8(1) (e) and (3) Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (7.14). That the said decision was challenged before First Appellate Authority (F.A.A.) Respondent No. 1. By order dated 06.01.2010 the F.A.A. dismissed the Appeal. Being aggrieved by the said order the Appellant has preferred the present Appeal on various grounds as set out in the Memo of Appeal.

3. The Respondent No. 2 resists the Appeal and the reply of the Respondent No. 2 is on record. In short, it is the case of the Respondent No.2 that the information sought pertains to the third party. That in view of the doctor-patient relationship, i.e. in fiduciary capacity the information cannot be disclosed and that in terms of provision of Indian Medical Council Rules (Professional Conduct Etiquette and Ethics) Regulations, 2002 the said information cannot be disclosed. The Respondent No. 2 denies the case of the Appellant

as set out in the Memo of Appeal. That the letter dated 08.10.2009 was not signed by Respondent No.2 and that the same was signed by Dr. Rajiv Kamat. That the Respondent No. 2, Dr. Dalvi, was deployed at Canacona to manage the Canacona Flood Disaster at the relevant point of time. That by letter dated 04.11.2009 it was informed to the Complainant that the information sought for is rejected for the reason stated in the said letter. That the grounds (a) to (l) are denied being false, vexatious and not maintainable in law. According to Respondent No. 2 Appeal is liable to be dismissed.

4. Heard the arguments. The learned Adv. Shri V. S. N. Alornekar argued on behalf of Appellant and the learned Adv. Smt. Harsha Naik argued on behalf of Respondent No. 2/P.I.O. Both the advocates advanced elaborate arguments.

Adv. Shri Alornekar narrated in detail the facts of the case. According to him what is sought is information regarding his wife which has been denied to him. He also submitted about admission in hospital, etc. He then referred to the application seeking information and submitted that the information is required and very much important to him. He referred to the letter asking address, etc. He next submitted that if information is not furnished he would not be able to seek remedy. He next referred to Section 8(1) (e) and submitted that it is not attracted. He attacked the order of F.A.A. Advocate for Appellant submitted that the document is very much necessary and without it the Appellant cannot prove its case. If information is denied it would be denial of justice. According to

Advocate for Appellant Appeal be allowed and request be granted in the interest of justice.

During the course of her arguments the Advocate for Respondent No. 2 submitted that whether information can be given in terms of R.T.I. Act is to be seen. That the Commission cannot go beyond the Act and that the Commission is not concerned with the purpose. Advocate for Respondent No.2 denied the facts which were narrated by Advocate for Appellant. According to her if proceedings are pending then the same are immaterial. She also referred to third party. According to her third party also does not wish to disclose information. Advocate for the Respondent No. 2 also referred to fiduciary relationship between Doctor and Patient. She also referred to Indian Medical Council Rules. She also submitted that no larger public interest is involved. According to the Advocate for the Respondent No. 2 no information can be provided and that the Appeal be dismissed.

In reply Advocate for the Appellant submitted that the argument that information cannot be given is not applicable to the Appellant who is the husband and that there cannot be any way to deny the information to a legally married husband. He also referred to para 4 and 5 of the reply. According to him information sought for be provided and that restrictions are for citizens not for relations.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the Advocates of the parties.

The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant vide his application dated 07.10.2009 sought certain information. The information was in respect of Smt. Sneha Shrikrishna Bhosale alias Surekha Mayenkar and in connection with her medical papers/certificate, etc. By letter dated 08.10.2009 Medical Superintendent-cum-Dy. Director, Public Relations Officer requested that Appellant to give details regarding Smt. Sneha Shrikrishna Bhosale alias Surekha Mayenkar, i.e. her present residential address. By letter dated 21.10.2009 the Appellant furnished the information. By reply dated 04.11.2009 the P.I.O. rejected the request on three grounds i.e. (1) Third party has requested to refuse the disclosure of information in writing; (2) Right to Information Act 8(1) (e) and (3) Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (7.14). Being aggrieved the Appellant preferred the Appeal before F.A.A. However, the Appeal was dismissed.

According to the Advocate for Appellant the information sought ought to have been furnished and he attacked the order on various grounds.

6. Section 8 of the R.T.I. Act lays down as under:-

“8. Exemption from disclosure of information –

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –

(a) -----

(b) -----

(c) -----

(d) -----

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants disclosure of such information.

(f) -----

(g) -----

(h) -----

(i) -----

(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 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.”

It is to be noted here that the R.T.I. Act exempts from disclosure of certain information and contents. Ordinarily all information should be given to the citizen, but there are certain information which have been protected from disclosure.

7. As mentioned above the information is refused on three grounds. Firstly because third party has requested to refuse. In the case before me the information sought is of third party. Of course third party was impleaded but she remained absent. After conclusion of arguments against the third party through her Advocate appeared, took time to file written arguments but did not appear thereafter.

Section 7(7) and Section 11(1) of the R.T.I. Act enjoin that third party, if involved in a particular matter, must be heard before a decision on disclosure or non-disclosure of information is taken. In short the information held by Public Authority which pertains to third party is not liable to be disclosed unless that third party concurs in the disclosure, or if the Public Authority chooses to disclose it in public interest regardless of third party's objection.

Secondly it is rejected under Section 8(1)(e). Where any information is in possession of any person in his fiduciary relationship like a trustee or otherwise, such information cannot be disclosed unless the public authority is satisfied that in larger public interest disclosure becomes necessary. If no larger public interest criteria is satisfied, disclosure cannot be compelled by the statutory authority.

In the instant case information is in connection with admission in hospital, nature of illness, etc. of Respondent No. 3.

The short point that arises is whether such information can be given. The eloquent reply to the same is found in the decisions of C.I.C. which are mentioned hereinbelow:-

- (i) In Arjesh Kumar Madhok v/s. Centre for Finger Printing & Diagnostic, Hyderabad (Appeal No. CIC/WB/A/2007/00008

dated 26.10.2007) the Appellant sought to know from the Centre for D.N.A. Fingerprinting and Diagnostics, Hyderabad the result of DNA Test, if any, that had been done in respect of his five year old son who was living in his wife's custody. The C.P.I.O. declined the information under Section 8(1)(j). The Appellate Authority held that the results of the test cannot be provided as the tests were not conducted at the request of the Appellant. The Commission held that relationship between a doctor and patient or a lawyer and client falls squarely within the definition of fiduciary relations. In this case even if Section 8(1)(j) were not to apply Section 8(1) (e) will. The disclosure of diagnostic information to a private citizen can only be supplied by the party concerned directly and not by the confidante. The decision of P.I.O. upheld.

(ii) In *Nivas Chander Gaur v/s. Department of Education* (Decision No. CIC/SG/A/2009/002230/5295 DATED 30.10.2009 Appl.No.CIC/SG/A/2009/002230) it was held:-"Thus information provided by individuals in fulfillment of statutory requirements or when applying for a job will not be covered by the exemption under Section 8(1)(j). However the Medical Certificates and character certificates of the candidates can be considered as personal information disclosure of which may constitute an invasion on the privacy of an individual and hence need not be given"

(iii) In *Kapil Thakur v/s. Institute of Human Behaviour Allied Science* (Decision No. CIC/SG/A/2010/000809/7780 dated

19.05.2010 Appeal No. CIC/SG/A/2010/000809 the gist of the Order is as under:-

“The Appellant has sought medical records relating to himself and his wife Mrs. Babita. The P.I.O. has refused to give this information on the grounds that this is exempt under Section 8(1)(e) and (j) of the R.T.I. Act. The Commission agrees with the P.I.O. that the information relating to Mrs. Babita would be exempt under Section 8(1) (e) and (j) since a doctor holds the information in fiduciary capacity and disclosure of medical records can certainly be considered an invasion on the privacy of an individual. However, the Commission is not able to understand the refusal to give the Appellant information of his own medical records. The P.I.O. has stated that the records relate to psychiatric evaluation of Mr. Kapil Thakur. The P.I.O states that in psychiatric evaluation there are instances where disclosing the information to a patient may be damaging to the patient if he is not in the mental state of mind to take the information in a proper manner. The Commission directs the P.I.O. that if it is felt based on the available records that Mr. Kapil Thakur cannot handle the information in a mature manner based on the doctor’s evaluation this should be stated. Alternately if there is no such evidence with the doctors the information of medical records of a

person must be given to him since no exemption under R.T.I. Act would apply.”

(iv) In Shri Ajit Lakhani v/s. Bhabha Atomic Research Centre, Mumbai (Appeal No. CIC/W.B/A/2006/00378 dated 27.06.2006 it was observed as under:-

“We cannot agree that information regarding a possible abortion has any relationship to any public activity or interest. The denial of information regarding abortion, therefore, is justified, both under Section 8(1)(j), since disclosure would amount to invasion of privacy, and 8(1)(e) since it would directly transgress the fiduciary relationship between doctor and patient.”

The Appellant has stated the purpose for which the information is required. It appears that the information is intended to be used in a matrimonial dispute between the parties for which the Commission is not the appropriate forum. The parties can get the said information through the process of the Court. It is pertinent to note here that as per rule 7.14 referred in the ground (iii) of the reply “The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his/her profession except –

- (i) in a Court of law under Orders of Presiding Judge.
- (ii) -----
- (iii) -----

8. I need not mention about the third ground on which information is rejected as under R.T.I. request is to be rejected only on the grounds as provided in Section 8 and/or 9.

9. Now coming to the information sought, to my mind some information can be furnished which does not affect the third party nor Section 8(1)(e). Item No. 1 i.e. 1. Whether Mrs. Sneha Shrikrishna Bhosale alias Surekha Mayenkar was admitted in your hospital at Mapusa between the period 20.11.2007 and 27.11.2007 and name of the Doctor who attended her during this period. These could be given.

10. In view of all the above, I pass the following Order:-

ORDER

Appeal is partly allowed. The Respondent No. 1 is hereby directed to furnish information to the two items mentioned in para 9 hereinabove i.e. "Whether Mrs. Sneha Shrikrishna Bhosle alias Surekha Mayenkar was admitted in your hospital at Mapusa between the period 20.11.2007 and 27.11.2007" and "Name of the doctor who attended her during this period" within 20 days from the receipt of this Order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 30th day of November, 2011.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

