

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.153/SCIC/2011

Balkrishna D. Barde,
Asst. Teacher,
Sateri Vidya Mandir,
Ibrampur, Pernem, Goa

... Appellant.

V/s.

1. The Director,
First Appellate Authority,
Directorate of Education,
Panaji - Goa
2. The Public Information Officer,
Incharge Headmaster,
Sateri Vidya Mandir,
Ibrampur, Pernem, Goa

... Respondent

Appellant present.

Respondent No.1 absent.

Respondent No.2 present.

Shri Rui Ferreira representative of appellant present.

Adv. A. Kansar for respondent No.2/P.I.O. present.

J U D G M E N T
(14/06/2012)

1. The Appellant, Shri Balkrishna J. Barde, has filed the present appeal praying that the respondent may be directed to furnish the remaining information sought by the appellant vide his application dated 9/12/2010.

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

That the appellant is a teacher of Sateri Vidya Mandir, Ibrampur, Pernem, Goa. That the appellant, vide application dated 9/12/2010, 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 the respondent denied to give information vide letter dated 28/12/2010. Being not satisfied the appellant preferred an appeal dated 20/1/2011 before the First Appellate Authority(F.A.A.) The appellant has stated in detail about the facts in preferring the appeal. That after hearing both the parties the F.A.A. passed the order on 24/5/2011. That the F.A.A. stated in the said order that point No.1, 2, 5 and 6 are with respect to the third party. 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 respondents resist 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 institution from which the information is requested is a private institution recognized by the Government of Goa under the Goa Education Act 1984 and the rules framed thereunder. That the institution from which the information sought is not a "public authority" as defined under R.T.I. Act. Though the government has notified the Headmasters as the Public Information Officers, the Head Master does not hold the document, records etc and only the documents which are of academic work remain with the Headmaster and other documents remain with the Headmaster and other documents remain with the management. The documents which are to be under the control or to be held by the Headmaster are stated in the rules framed under the Goa Education Act, 1984 and every teacher has access to his private personal records and not to the records of other staff members. That the government has relationship as regards the finances as the grants are paid. That since the grants are paid from the public fund the information can be given as regards the aid received and utilization of the aid. That the appellant is not entitled to each and every document of the school.

According to the respondent No.2 the appeal is not maintainable. That the correspondence under the Right to Information and the correspondence under the Goa Education Act,

1984 and rules 1986 are two different matters. That the right to appeal is provided under the Right to Information Act which does not require to be routed through the management. The show cause notice which was issued in respect of the correspondence under Goa Education Act, 1984 and Rules 1986. That presently Asst. Teacher has been appointed as in-charge Headmaster and “whether he can be a P.I.O. as the notification does not state that in the absence of the Headmaster the Incharge shall be the P.I.O. The respondent No.2 denies the contents of para 11 to 19 of the appeal memo as superficial. According to the respondent No.2 no ground have been made out for the present appeal and that clauses(a) to (j) do not disclose any grounds for preferring the appeal. According to the respondent No.2 appeal is liable to be dismissed.

4. Heard the arguments. Shri Rui Ferreira representative of the appellant argued on behalf of appellant and the learned Adv. Shri A. Kansar argued on behalf of the respondent No.2.

Appellant as well as respondent No.2 have filed the written submissions which are on record.

5. I have carefully gone through the records of the case and also considered the arguments advanced as well as written submissions 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 vide application dated 9/12/2010 the appellant sought certain information. By reply dated 28/12/2010 the Headmaster informed the appellant that they are not duty bound to furnish the information sought vide his application dated 9/12/2010. It appears that being not satisfied the appellant preferred an appeal. By order dated 24/5/2011 the F.A.A. observed as under :-

“ The appeal is allowed with the directions to the P.I.O. to furnish the information relating to point Nos.3, 4, 7,

8, 9 and 10 of the application dated 9/12/2010 to the appellant free of cost by 31/5/2011. Point No.1, 2, 5 and 6 are with respect to the third party.

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During the course of the arguments Shri Rui Ferreira submits that information in respect of point No.3, 4, 7, 8, 9 and 10 has been furnished. He also submitted that in respect of point No.8 part information is furnished. It is also on record that at point No.8 the register of remedial teaching of the year 2009-2010 is not furnished on the ground that the same is misplaced.

It is to be noted here that under R.T.I. only available information is to be furnished. However respondent No.2 should make efforts to search and trace the said records.

6. It is the contention of the representative of the appellant that information in respect of point No.1, 2, 5 and 6 ought to have been furnished.

Point No.1, 2, 5 and 6 relate to service book of Shri Venkatesh N. Natekar and Shri Subhash V. Sawant and also their personal files. In other words the information sought is of third parties.

Sec.11 of the Act relates to the third party information. Third party has been defined under sec.2(n) to mean a person other than the citizen making a request for information required to be disclosed as confidential that the authority is required to give a written notice to such third party of the request. Section 7(7) and Sec.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 an information is taken.

The information sought is information in respect of personal file and service book. However, the third party was not heard nor given an opportunity of hearing. In para 6 of the written

submissions of the appellant it is mentioned about this aspect. Normally in such a situation the third party ought to have been heard. In para 4 of the written submission of respondent No.2 also this aspect is mentioned.

Representative of the appellant submits that notice be issued to the third party.

I have given a considered thought to this aspect. The R.T.I. Act speaks of transparency. Supposing this Commission issues notice or hears third party/parties again there would be problem as third party/parties would be losing their statutory right of preferring First Appeal and even second appeal. In any case it would not be proper and would be against principles of natural justice.

7. In the case before me some information is furnished and some i.e. of third party is not furnished. Instead of remanding the case back it would be better if appellants seeks the said information afresh. Under R.T.I. he can file such an application. In case such an application is filed P.I.O. can deal such application under sec.7 of the R.T.I. Act only after following the procedure prescribed U/sec.11(1) of the R.T.I. Act and also keeping in mind Sec.7(7) of the R.T.I. Act.

8. I have also considered para 14 of the written submissions of the appellant and paras 2, 3 and 4 of the written submissions of the respondent No.2. No doubt Head-Master is the P.I.O. Incharge head master acts as Head-Master. In any case it is stated that order date 24/5/2011 is followed. In any case I need not touch this aspect herein.

9. In view of all the above, I pass the following order :-

ORDER

No intervention of this Commission is required as available information is furnished.

The appellant is at liberty to file a fresh application in respect of point No.1, 2, 5 and 6 of the application dated 9/12/2010. In case the application is filed the P.I.O. to dispose the same strictly in accordance with law.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 14th day of June, 2012.

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