

# **GOA STATE INFORMATION COMMISISON**

**“Shrama Shakti Bhavan”, Ground Floor, Patto Plaza, Panaji – Goa.**

**CORAM:** Smt. Leena Mehendale, State Chief Information Commissioner

**Appeal 54/SIC/2013**

**Decided on 22/08/2014**

Shri Neville Pinto,  
H.No. 19/8, Olaulim,  
P.O. Carona, Bardez, Goa.

----- Appellant

V/s

- 1) Dr. Sham Talwadkar,  
Public Information Officer/Asst. Public Information Officer,  
O/o. District Hospital (ASILO),  
Peddem, Mapusa – Goa.
- 2) Dr. Sanjeev G. Dalvi,  
First Appellate Authority/Director of Health Services,  
Panaji – Goa.

Appellant absent.

Dr. M. Mohandas, Dy. Director/Medical Superintendent/PIO, alongwith Adv. K.L  
Bhagat present.

Maria L. Menezes, Head Clerk for FAA present.

## **ORDER**

Original RTI application dated 06/12/2012

Reply given 04/01/2013 (Nil information)

Appeal to FAA filed 24/01/2013

FAA order in appeal no. 6/2013 01/04/2013 (allowed with directions)

Compliance of FAA's order dated 17/04/2013 (claiming 3<sup>rd</sup> Party exemption)

Second Appeal dated 15/05/2013

- 1) This second appeal arises from RTI application filed before the PIO and Medical Superintendent/Deputy Director of the said District Hospital , Asilo, Peddem, Mapusa. The appellant asked 3 questions in regard of disability certificate No. 114 dated 22/09/2009 issued by Asilo Hospital, Mapusa Goa. A reply was given on 04/01/2013 stating that the information was not available.
- 2) A first appeal was made and during the hearing of the appeal, it was disclosed by the appellant that the said certificate was issued to one Shri Ramkrishna Hadfadkar. During the 1<sup>st</sup> appeal the PIO took the plea that the information

asked for pertained to Third Party. The FAA therefore passed the order in Appeal No. 6/2013 directing the PIO to proceed as per Section 11 of RTI Act 2005 and reply within the time limit of 20 working days as requested by the PIO.

3) *Section 11 deals the **Third party information**:- (1)Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer, or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.*

*Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.*

4) The PIO informed the Third Party on 01/04/2013 who filed his objection on 15/04/2013. The appellant was accordingly informed.

5) Aggrieved, the appellant has filed the second appeal mainly on following grounds.

a) The Respondent No. 1 has replied point blank by its letter no. AH/ADM/R.T.I- 49/2012-13/2937 dated 07/01/2013 that the information is not available as per the records of the office.

b) Accordingly, the First appeal was filed with Respondent No. 2 which was heard on different dates and finally on 08/03/2013, the Respondent No. 2 mentioned to Respondent No. 1 that the said information pertains to third party information.

c) The Respondent No. 2 passed an order dated 25<sup>th</sup> March 2013 under no. DHS/VC/67-114/2013-14/03 dated 01/04/2013, directing Respondent No. 1 to proceed as per Section 11 of the RTI Act 2005 and reply within the time frame of 20 working days.

- d). Thereafter Respondent No. 1 writes a letter under no. AH/ADM/R.T.I-49/2013-14/287 dated 17/04/2013, stating that the information sought pertains to a third party and therefore could not be furnished/disclosed.
- e). Aggrieved by the said lackadaisical attitude of the Public Information Officer in collusion with the First Appellate Authority, the Appellant herein prefers the Second Appeal on the following grounds.
- i) That the decision/order has been passed by the First Appellate Authority on 25<sup>th</sup> March 2013 under no. DHS/VC/67-114/2013-14/03 dated 01/04/2013, whilst Respondent No. 1 PIO addresses a letter under no. AH/ADM/R.T.I-49/2013-14/287 dated 17/04/2013 which was received on 18<sup>th</sup> April 2013.
- ii) That there is no proper application of mind to the definition of “third party.” The Respondent No. 1 and Respondent No. 2 have failed to understand the basic ingredients of the Section 11 of the RTI Act 2005.
- iii) Having once conveyed as “ information not available”, the PIO is debarred from taking a “third party” plea.
- 6) A reply of the then PIO Dr. Sham Tanwadkar is filed on 23/10/2013. It is claimed that the PIO could approach the concerned 3<sup>rd</sup> party only after his name was disclosed by the appellant before the FAA. The said 3<sup>rd</sup> party namely Shri RamKrishna Hadfadkar has requested to the PIO through his letter dated 15/04/2013 that the information asked for is his personal information and the same should not be disclosed.
- 7) The appeal is filed mainly on the ground that there was no application of mind while claiming that the information sought pertains to 3<sup>rd</sup> party. The plea of “third party” cannot be allowed once the first appeal is filed. Therefore information cannot be held back.
- 8) I have gone through the record specially the original RTI application. It simply gives disability certificate numbers and no other clue about the person whose information sought. I am aware of the manual system of various Government departments in maintaining such information. Most Government Departments have been manually maintaining a register of important documents such as Disability Certificates in the instant case. However, when such a register is maintained, it is

generally by the name of the applicant and date of his application and the information regarding actual certificate number and date of issue appear in much subsequent columns. Hence it is generally not possible to find out such information from the Registers, unless the name of applicant is known. The PIO in his first reply could have explained this position rather than making a briefest possible statement, that the information was not available. But he cannot be held as “technically incorrect”. It is other aspect that now we are in the age of computerization and e-data processing, so all the PIO’s are advised to ensure that such important registers are now kept as computerized data bank so that there is a quick access to information required about any column when asked under RTI Act.

9) However the argument of the appellant that PIO is debarred from taking the plea of third party is not correct. A Third Party information is not a matter of right of the PIO but of the Third Party himself. Once it is known that the information belongs to the Third Party, the PIO and all other authorities dealing with RTI who intend to disclose the information are duty bound to protect the right of such third party. In the instant case the PIO has written a letter to the said third party to enquire if he has any objection. In my opinion even this is not always required. There is a presumption that disclosure of 3<sup>rd</sup> party information infringes on their privacy and hence the objection to its disclosure is an inherent part of section 11(1) which is quoted above. It is clear from its reading that the PIO, if he intends to disclose the information pertaining to third party, then he has to give written notice to such third party and seek his response. The section gives some discretion to the PIO to decide Suo Moto that the third party information should not be given. Hence there appears another side to the whole issue. The RTI applicant who is seeking disclosure of third party information, must indicate as to the nature of public interest which is being served by asking such information. In the instant case the RTI applicant had not even disclosed the name of the third party. Hence the PIO is justified to initiate the process of Sec. 11 after he knows the identity of the third party.

10) After the notice for hearing of Second Appeal was issued by the commission fixing hearing on 31/07/2013, the appellant remained present only on 2 occasions but has failed to remain present on subsequent occasions. He has not filed any rejoinder to the reply of respondent No. 1, filed in this commission on 23/10/2013. His argument about Third party is not acceptable as it was directed by FAA himself that PIO should

comply with provision of Sec 11. Even his second appeal memo does not state what public purpose he seeks to achieve by the information. I agree with the merit of FAA's direction, as explained in para 9 Supra.

11) I have perused the 2<sup>nd</sup> appeal memo. The appellant mainly relies on that since the PIO/Respondent No. 1 initially replied as "Information not available", he cannot subsequently approach the 3<sup>rd</sup> party. On the same grounds, he has also objected to the decision of the FAA. He has also raised the point of some delay by the PIO in complying the order of the FAA. But I find it is within time. Thus he has not discussed the merit of his questions against the disabled 3<sup>rd</sup> party. The information sought by him is about disability certificate, file notings discussing his disability and medical opinions of the board. These issues surely infringe on privacy of the 3<sup>rd</sup> party and therefore the onus comes on the Appellant to state the grounds of sufficient public purpose, in view of which information should be disclosed. Since no public purpose has been indicated. I therefore find no merit in his request.

12) In view of above the case lacks merit . Due to non-persuasion by the second appellant, there is also reason to believe that this matter has no relevance to him anymore.

**---O R D E R --**

The Appeal is dismissed as lacking merit. Declared in open court. Inform Parties.

Sd/-

**(Leena Mehendale)**

Goa State Chief Information Commissioner  
Goa State Information Commission  
Panaji-Goa