

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 55/2007-08/GU

Shri. Gajanan Haldankar,
H. No. 760/26, Wadakade,
Near Chubby Cheeks,
Alto, Porvorim – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
The Registrar, Goa University,
Taligao Plateau – Goa.
2. First Appellate Authority,
The Vice Chancellor,
Goa University,
Taligao Plateau – Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 03/10/2008.

Adv. Shirodkar for the Appellant.

Adv. Ms. Agni for both the Respondents.

ORDER

In this appeal, an interim order was passed on 13/12/2007 directing the Respondents to produce the marks register of the Goa University containing the marks of Sushant G. Haldankar, son of the Appellant for all the three examinations answered by him in all the subjects of first LLB namely, conducted by the Goa University in April, 2000, October, 2000 and April, 2001 alongwith revaluation of marks of April, 2000, revaluation done suo moto by the Goa University of the October, 2000 papers of the son of the Appellant. Another order was also issued that a vakalatnama should be submitted signed by both the Respondents because the learned Adv. A. Agni was representing and arguing on behalf of both of them. Though the marks register was called for it was for the perusal by the Commission and not for perusal by the Appellant himself.

2. Against this interim order, both the Respondents have filed the Writ

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Petition No. 654/2007 in the Hon'ble High Court of Bombay, Panaji Bench. The High Court thereafter passed an oral order on 21/07/2008 directing the Commission among other things "to hear and dispose of the appeal on merits and in accordance with law." It is also directed that the Vice-Chancellor of Goa University being the first Appellate Authority need not appear through an Advocate. Even if he has instructed Goa University's lawyer to represent him, he is not required to be represented by lawyer and forward a vakalatnama, as he is not an adversary and is not required to appear and defend his action. The circumstances in which the Vice-Chancellor was asked to file the vakalatnama were that the Advocate appearing for him represented that she was arguing the matter on behalf of the Vice-Chancellor also who is a Respondent No. 2 in the present appeal.

3. On receipt of the High Court's order, an application was made by the Advocate for the Respondents that the Hon'ble Commission may be pleased to pass final order in the matter. The Hon'ble High Court in its order has mentioned "it was not necessary for it (Goa Information Commission) to have issued directions to summon the records as more particularly set out in para 3 of the impugned order. Calling for records and keeping them in custody of the Commission for perusal when the final decision is yet to be taken is something which should not have been done in the peculiar facts of this case."

4. When the second appeal was filed by the Appellant before this Commission on 23/08/2007, the Appellant has enclosed the correspondence he has made with the University which was attested by him, copy of the first appeal dated 28/06/2007, and self attested copy of the order of first Appellate Authority dated 25/07/2007. All these are self attested copies of the original documents submitted by the Appellant and not the Respondents. The originals are supposed to be with the Respondents. Accordingly, notices were issued to the Appellant and the Respondents informing the date for personal hearing by this Commission and giving an opportunity for all of them to remain present before the Commission in person or by duly authorized agent or pleader. The hearing thereafter proceeded and an interim order was passed by the Commission.

5. The Government of Goa, as the appropriate authority, has framed the Goa State Information Commission (Appeal Procedure) Rules, 2006

hereinafter referred to as the Appeal Procedures Rules, in exercise of the powers conferred by section 27 of the Right to Information Act, 2005 (hereafter referred as the RTI Act). According to these Rules, the contents of the appeal, the documents to accompany the appeal and procedure in deciding the second appeals are laid down. As a matter of practice, the Commission is not calling for the original records and proceedings either from the Public Information Officer or the first Appellate Authority. It is, however, relying on the documents produced by both the parties, including the written statements/affidavits filed by the parties before arriving at a decision. In this case also, no records were initially called for from the Respondents. However, during the course of the hearing, an allegation was made by the Appellant that the marks which were awarded to his son are not correct and though an application for revaluation has been made, the University has taken inordinate time in communicating the revised marks and when they were finally given, he had reasons to suspect the veracity of the marks so revised. In order to verify this allegation, the Commission had to call for the original documents from the Respondents' office. In giving such a direction, the Commission was guided by the Rule No. 5 of the Appeal Procedure Rules, which empowers among other things the Commission to take oral or written evidence, peruse and inspect the documents of public records, to hear the SPIO or such senior officer who has decided the first appeal etc. The senior officer who has decided the first appeal in this case is the Vice-Chancellor himself. We make it clear that we have not summoned the Vice-Chancellor but only called for the original marks register of the University to be produced by an authorized representative.

6. The Public Information Officer while rejecting the request for information and the Advocate for the Respondent No. 1 who rejected the information stated that the "examination papers are stored for 6 months only after the revaluation as per the University rules". However, the University has communicated the revaluation marks from the "results register/marks register". Hence, the marks register was called for. The attested copy of the Appellate order is also really not an order by the first Appellate Authority but is in the form of a letter signed by the Public Information Officer who himself decided the information request in the first instance. The letter dated 24/07/2007 (Ex 1) makes a reference to the first appeal made by the Appellant dated 28/06/2007 and gives further information signed by the Public Information Officer. However, it neither

mentions that first Appellate Authority has decided first appeal nor was any hearing given for the Appellant nor was the Registrar authorized by the first Appellate Authority to communicate the appellate order. We have held earlier in a number of cases that though separate procedure is not prescribed by the appropriate Government to be followed by the first Appellate Authority, the same rules framed for the second Appellate Authority (i.e. Commission) should be followed by the first Appellate Authority as far as possible. The procedure, appears to have not been followed. Further, when the matter was argued and the reply was filed by the learned Advocate for the Respondents, it is not clearly mentioned that the first Appellate Authority has indeed heard the matter and decided the case. Even if hearing was not given by the first Appellate Authority, copy of the decision taken by the first Appellate Authority was not submitted before us. Therefore, the Commission draws the inference that first Appellate Authority has not taken any decision on the first appeal filed by the Appellant.

7. When the Hon'ble High Court set aside the interim order dated 13/12/2007 of this Commission, the records of the Respondent No. 2, the first Appellate Authority was not before the Commission. The order of the High Court states "the order of the first Appellate Authority and the records before it (first Appellate Authority) are part of the proceedings before the Commission". As discussed above, no such records are produced before the Commission or are available with the Commission. Hence, an opportunity was given to the learned Advocate for the Respondents to submit all the records and proceedings of the first Appellate Authority and the Respondent No. 1, Public Information Officer. The learned Advocate for the Respondents submitted in writing " that all the records pertaining to this are already produced before this authority and are on record for perusal of this Hon'ble Commission". As already mentioned, apart from the written statement and written arguments submitted by the Advocate for the Respondents, no original records are submitted by the Respondents. Therefore, we take that the allegation made by the Appellant in second appeal has not been effectively and properly met with by the Respondents.

8. The original application before Public Information Officer contains following request: -

"(i) Kindly intimate name of examiner and also name 2nd examiner with qualification, date of joining and post held. Kindly

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produce mark sheet register of April 2000 for scrutiny and also exam papers". The Public Information Officer has replied on --/06/2007 that no additional information other than what was furnished earlier on 16/05/2007 is available for this point. Regarding the query about counter signature on the revaluation form by the Principal, Law College of Miramar, the Appellant was referred back to the Principal. Finally, the marks secured by Sushant Haldankar after revaluation of April, 2000 examination in the 4 papers were given in a tabular form containing initial marks as well as revaluation marks. After revaluation, the revised marks in all the subjects are less than the original marks.

9. The revised marks were not communicated to the Appellant's son in response to the request for revaluation of marks. They were communicated to the Appellant for the first time in response to his request under the RTI Act. It is the contention of the Appellant that in similar cases other candidates were informed of their revised marks soon after their applications for revaluation are accepted by the University. He has submitted self attested photocopies of the revised marks in respect of some other candidates who have appeared for the October, 2000 examination. It is also because of non-communication and revising of the marks down ward in all the 4 subjects for which the revaluation was applied for, the Appellant apprehended "manipulation of the marks" in respect of his son. It is also in this context that this Commission has asked to produce the marks registers maintained by the University in the absence of the original written papers. This order was set aside by the Hon'ble High Court.

10. In the reply of the Public Information Officer in an earlier letter dated 16/05/2007, the Public Information Officer has informed that the students whose performance has not improved, his/her seat number has not figured in the consolidated revaluation sheet sent to the college. The candidates also are not informed individually as per their practice. As the Public Information Officer has submitted that this is the practice of the University, and is applicable to all students, there is sufficient compliance with the first request. As to the marks register's, an extract of the relevant page should be given to the Appellant as there is no exemption sought for this document. We do not, however, grant the request for disclosure of the names and qualifications of the examiners.

11. On the second request dated 23/05/2007, as already mentioned

above, the Appellant was referred to Principal of Law College, Miramar to confirm whether the Principal has countersigned revaluation form on 10/04/2001. The University is the custodian of the records of the applications for the revaluation. As such, it should be available with the University authorities and should be able to give this information to the Appellant. There is no exemption claimed by the Respondents nor available in the RTI Act. The question of directing the Appellant to the Law College, Miramar, therefore, does not arise. The Public Information Officer is directed to give this information.

12. The third request is regarding the time taken for revaluation. The examination was conducted on October, 2000 and it is the allegation of the Appellant that they were not examined in time. The Public Information Officer has informed that the result of the batch of the students of October, 2000 examination was declared on 20/02/2001. The result of Sushant Haldankar was declared on 30/03/2001 as the Goa University suo motto revised the result. The delay was justified by the Public Information Officer as the results were announced as per schedule. This cannot be said to be seeking information but is a grievance by the Appellant. No further action lies from the Respondents on this point.

13. The fourth request is about revealing all the names of the examiners of the first valuation as well as second and third revaluation. The Public Information Officer did not reveal the names of the examiners. However, he has also not given any reasons for not informing the names of the examiners. In the written statement, the learned Advocate submitted that this information cannot be given as it would amount to disclosure of answer papers and the identity of the examiners cannot be disclosed. She has placed reliance on a decision of the Central Information Commission. We have made it clear that the decisions of the Central Information Commission are not binding on this State Information Commission. However, we agree with the view of the learned Advocate that neither the copies of answer sheets nor the names of the examiners can be revealed to the citizens under the RTI Act. The fifth request is about the production of "examination sheet" of law of torts of October, 2000 and April, 2001 for scrutiny. The Appellant requested for this information because the marks awarded for both examinations in that subject were identical. To examine this allegation, we have earlier passed an interim order directing University to produce the marks register for our scrutiny.

14. As this order was set aside by the Hon'ble High Court, the said marks register was not produced by the University. However, in the absence of the evidence to the contrary, we believe the possibility of awarding same marks for the same subject in two different examination April, 2001 and October, 2000. The University communicated that the student secured 31 marks in the subject law of torts in both the October, 2000 examination and also in April, 2001. The Respondents mentioned that though the answer papers are destroyed, the marks were communicated as per the result register maintained by the University. The University refused to show this register to us and the Hon'ble High Court has set aside our order. These documents are not exempted under section 8 of the RTI Act. Hence, the relevant pages of the result register for both the April, 2001 and October, 2000 examination of "law of tort" of the Appellant's son should be given to the Appellant on payment of fees.

15. The other points regarding the evaluation/revaluation of answer books were adequately informed and addressed by the Public Information Officer and no relief lies.

16. In view of above discussion, the appeal is partly allowed and Public Information Officer is directed to give the information request No. 1, 2 and 5 as mentioned above in the next 15 days. The other requests regarding the names/qualifications of the examiners is rejected.

Pronounced in the open court on this 3rd day of October, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner