

GOA INFORMATION COMMISSION

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

Appeal No. 76/SCIC/2008

Advocate N. B. Chodancar,
H. No. 55/A,
Small Guirim, Vancio,
Bardez – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
Shri. V. B. Saxena,
Deputy Director of H.B.I.,
Directorate of Health Services,
Panaji - Goa.

2. First Appellate Authority,
Dr. Rajananda Dessai,
Directorate of Health Services,
Panaji - Goa.

..... Respondents.

3. Smt. Sheila A. Talaulikar,
Directorate of Health Services,
Panaji - Goa.

..... Third Party.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 15/12/2008.

Appellant in person.

Respondent No. 1 also in person.

Authorized representative Shri. A. Talaulikar represented the

Respondent No. 2 and third party.

ORDER

This disposes off the second appeal filed by the Appellant on 12/08/2008 against the order dated 30/04/2008 of the Respondent No. 2 herein rejecting his first appeal as time barred without going into the merits. Earlier, the Appellant has filed a request for information on 28/12/2007 asking the Respondent No. 1 herein, as the Public Information Officer of the Public Health Department, Goa Government for certain information on 4 points relating to the third party, Smt. Sheila A. Talaulikar who is working in the office of the Respondent No. 2 as an Accountant. Earlier the Appellant also was working in the same Department as Asst. Accounts Officer. The Respondent No. 1 took the view that Smt. Sheila Talaulikar is a third party and therefore, consulted her as required under section 11 of the Right to Information Act, 2005

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(hereinafter referred to as the RTI Act for short) whether the required information can be disclosed. The third party has objected the disclosure of the information as it affects her privacy and no public interest is involved in seeking information about her. The Respondent No. 1, thereafter, has rejected the request for information on 15/01/2008. By this letter, he has not informed the Appellant that he is entitled for filing a first appeal within 30 days by his order and the name and designation of the First Appellate Authority as required under section 7(8) of the RTI Act.

2. Nevertheless, the Appellant has made a first appeal to the Respondent No. 2 on 26/03/2008. The Respondent No. 2 rejected the first appeal by a speaking order dated 30/04/2008. This order was sent to the Appellant on 14/05/2008. Thereafter, on 12/8/2008, he filed the present second appeal and prayed for a direction to be issued to the Respondents to furnish the information requested alongwith the certified copies of certain documents which he requested.

3. The Appellant has not made Smt. Sheila Talaulikar as a third party in the second appeal filed before this Commission. However, the Respondent No. 1 during the course of the first hearing before this Commission took objection that the third party is also a necessary party and has to be heard before the Commission takes any decision. This request is agreed to by the Commission and the third party is joined as a party and was given an opportunity of being heard. She also authorized Shri. A. Talaulikar as her representative for putting up her case.

4. During the course of the hearing before this Commission, the Public Information Officer represented himself, the Respondent No. 2 had authorized Shri. A. Talaulikar, as her authorized representative. The Appellant argued in person. The Appellant has objected to the authorization by the Respondent No. 2, Shri. Talaulikar as her representative when a number of other gazetted officers are available in her Department to represent her. The Rule 7(4) of Appeal Procedure Rules framed by the Goa Government permits the Complainant/Appellant to seek the assistance of any person as his/her authorized representative who need not be a legal practitioner. The Commission has extended this facility to the Public Information Officer and First Appellate Authority also. It is, therefore, the discretion of the First

Appellate Authority to authorize Shri. A. Talaulikar to represent her in preference to other gazetted officers. Accordingly, I find there is nothing wrong in such authorization and the objection of the Appellant is rejected.

5. The Public Information Officer, First Appellate Authority as well as the third party represented by Shri. Talaulikar have filed their written submissions and also argued themselves. Before we proceed further, it will be of relevance to quote, verbatim, the information sought by the Appellant by his request.

“(1) Whether Smt. Taulalikar has availed maternity leave benefits from Govt. of Goa three times? If affirmation a) Please issue certified copies of three leave sanction orders. B) How much gross amount was drawn during each time? Specifically during the third time. C) Issue certified copies of her applications for maternity leave (Tree applications) d) Certified Xerox copies of entries made in the service book?”

The question asked was whether Smt. Talaulikar has availed maternity leave benefits from Government of Goa three times. If she has not availed of the maternity leave benefits for a third time, further four questions do not arise because the Appellant wanted such information only if the reply is in affirmative.

6. The Public Information Officer rejected the information on the ground “she (the third party) has strongly opposed to supply the information in question as the disclosure of the same has no relation to any public activity or interest. That the disclosure of information would cause unwarranted invasion of the (her) privacy.” Thus, the information was rejected because it invades the privacy of Smt. Sheila Talaulikar as well as the disclosure of the information has no relationship to any public activity or interest. This falls under the exemption contained in section 8(1)(j) of the RTI Act. The First Appellate Authority did not decide the case on merits. The third party’s case is also on the same lines. In fact, the Public Information Officer and the third party have mentioned that the information is co-related to the “second marriage of the third party and is directly related with the personal and family life of the third party”. As to the non-compliance of the provision of section

7(8) of the RTI Act, the First Appellate Authority expressed surprise that the Appellant, himself an Advocate, does not know about the RTI Act and its provisions. I would like to mention at the beginning that the awareness, knowledge of the citizen about the provisions of section 7(8) of the RTI Act is irrelevant. It is, infact, surprising that the Public Information Officer is not aware of these provisions. It is enjoined on the Public Information Officer and it is responsibility of Public Information Officer to comply with these provisions, namely, to inform the reasons of rejection of rejection, inform the designation of the First Appellate Authority and time limit in which the appeal can be filed. Thus, the Public Information Officer has failed in his duty. The First Appellate Authority also has made a mention that the request for information would "harm the character of the lady and put her in anguish and agony making her irreparable loss of her reputation in the society since the information sought is regarding her grant of maternity leave which is directly related with personal life and marriage."

7. The third party has also submitted her arguments through her authorized representative in the same vein that request for information will lead to her character assassination and that revealing such information put "the entire women to dishonour". She has also mentioned a number of previous instances mentioning previous enmity and strained relations with her when the Appellant was working in the same Department and questioned the motives of the Appellant in seeking the information.

8. The Appellant has denied all these allegations and submitted that the information is not personal, it is not the disclosure of personal information, and it does not amount to character assassination of the third party. The rules of Goa Government are applicable to all its employees including the third party and no special exemption is given to her. The maternity leave taken by a Government servant is public information and is in the public domain because it involves the use of public funds.

9. The first issue is about the third party information. I have already held that Smt. S. Talaulikar is a third party because the definition of third party section 2(n) of the RTI Act is very wide to cover any authority/person other than the citizen requesting for information and the Public Information Officer. The Public Information Officer has to

follow certain procedure as laid down in section 11 before making up his mind whether to disclose the information or not. The section is very clear and states that "such submission of the third party shall be kept in view while taking a decision about disclosure of information". It does not say that objection of the third party is a sacrosanct and has to be upheld by the Public Information Officer. Infact, the Public Information Officer has to make up his mind whether the disclosure is in the public interest or not and whether the public interest overweighs the harm caused to the third party. One guiding factor is contained in the proviso to section 11(1) of the RTI Act itself which states as follows: -

"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."

It is very clear that the information requested is not about any trade and commercial secrets protected by law and the absence of which the law itself says that the disclosure should be made after weighing the public interest.

10. The next reason for the rejection of the request by the Public Information Officer is that it harms the reputation of the third party. I do not see how personal harm is caused. Neither it was explained by the Public Information Officer nor by the third party. In their lengthy submission, irrelevant information like the previous enmity, alleged sexual harassment caused by the Appellant etc. were mentioned. These are totally out of context and are irrelevant for the present for determining whether the disclosure of information would invade the privacy of the individual. The right of privacy is undoubtedly an extension of right to live in peace and is a fundamental right under the Constitution of India. It is also not codified as yet by the Government. However, a number of cases are already available to show what is invasion of the right of privacy. The mere question whether the maternity leave benefits was given to the third party a third time can never be invading the privacy of the third party. It is not connected with the second marriage of the third party nor it will harm the reputation of either third party or entire women folk as alleged by the third party and accepted by the Public Information Officer.

11. The right to exemption provided under section 8(1)(j) of the RTI Act is already clarified by the Hon'ble High Court of Bombay in its judgment Swaroop Singh Nayak V/s. State of Maharashtra and others in Writ Petition No. 157/07 decided on 23/03/2007 reported at [2008] 1 ID 185 (Mumbai High Court) of Shreeram's Information Decisions, the monthly journal of Right to Information Act. In the judgment written by Hon'ble Justice F.I. Rebello decided on 23/03/2007, the learned Judge has held that even if it is a personal information, it has to be disclosed in the public interest. The various other earlier decisions of the Apex Court are already referred in that judgment. First of all, I am of the opinion that the information requested is not personal information at all, though it might relate to the third party. The records of the service including the payments made to them from the public funds or public documents. Therefore, the documents requested like leave sanction orders, the leave applications, entries made in the service book, regarding payment of third maternity benefits to the third party are definitely matters in the public domain and cannot be called personal information. Even if by stretching the law of privacy to a great length, public interest is served better by the disclosure of information under the RTI Act which aims at providing accountability and transparency in the functioning of public authorities. Therefore, I reject the arguments of the Public Information Officer, third party and the First Appellate Authority about the invasion of privacy of the third party if the information asked by the Appellant, is disclosed.

12. The order dated 30/04/2008 of the First Appellate Authority and the letter dated 15/01/2008 of the Public Information Officer are set aside. The second appeal is hereby allowed. The information should be given within 10 days from the date of the pronouncement of this order.

Pronounced in the open court on this 15th day of December, 2008.

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

