

GOA INFORMATION COMMISSION

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

Appeal No. 71/SCIC/2008

Shri. Dinesh Vaghela,
Navagauri Apartments, 2nd Floor,
Alto Porvorim, Bardez – Goa. 403521.

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Appellant.

V/s.

1. Public Information Officer,
The Superintendent Engineer – II(N),
Electricity Department, Panaji – Goa.
2. First Appellate Authority,
The Chief Electrical Engineer,
Electricity Department, Panaji - Goa.
3. Shri. Kashinath J. Shetye,
Junior Engineer (Civil),
O/o The Assistant Engineer (Civil),
Under the Executive Engineer,
Division – IX, Tivim – Goa.

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Respondents.

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Third Party.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 31/12/2008.

Appellant in person.

Adv. K. L. Bhagat for both Respondents.

Adv. Ryan Menezes for third party.

ORDER

The Appellant has requested by his letter dated 18/04/2008 under the Right to Information Act, 2005 (for short the RTI Act) to the Respondent No. 1 to give him copies of all the leave applications of Shri. Kashinath J. Shetye from January, 2004 till the date of his application. The Respondent No. 1 refused this information as it is objected to by the third party, Respondent No. 3 herein, Shri. Kashinath Shetye who is a Junior Engineer of the Electricity Department. The rejection by the Public Information Officer under section 8(1)(j) of RTI Act was upheld by the First Appellate Authority, Respondent No. 2 herein, by his order dated 10/7/2008.

2. Notices were issued to the Appellant and Respondents No. 1 and 2. During the course of the hearing, a preliminary objection was raised by Adv. K. L. Bhagat on behalf of both the Respondents that the third party is

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not joined by the Appellant, therefore, the appeal may be dismissed for non-joinder of the third party. An order was passed on 24/10/2008 by this Commission joining Shri. Kashinath J. Shetye as a third party and issuing a notice to represent his case as required under section 19(4) of the RTI Act. Both the Respondents have submitted their written replies and the third party also has submitted his reply. Besides they have argued their case. The exact request is reproduced below: -

- “(i) How many paid and unpaid leave including sick leave, earned leave and casual leave were applied and enjoyed by him and granted by the department. (date, month and year wise)
- (ii) Xerox copies of the “Application for Leave” applied by him.”

3. During the arguments, Adv. Ryan Menezes, who represented the third party, insisted once again that as the third party was not added as a third party by the Appellant, the appeal should be dismissed. This matter has already been gone into by the Commission and an opportunity has been given to the third party as required under section 19(4) of the RTI Act. The question of dismissing the appeal at this stage does not arise. It is not necessary for the Appellant himself to add the third party as long as an opportunity was afforded to the third party by both the Public Information Officer, First Appellate Authority and this Commission. No grievance can be made out by the third party. The provisions of the Civil Code are applicable only to certain procedural matters before this Commission. The rejection of the second appeal for non-joinder of the third party by the Appellant does not arise as an opportunity was already given by all three authorities to represent his case. The Appellant has submitted his reply. He has not claimed any relief from the third party. He has nothing to do with the third party as he has only asked for copies of certain records from the Public Information Officer and these records are public records and are in the public domain. The preliminary objection raised for the second time by the third party is, therefore, rejected a second time.

4. The brief arguments on behalf of the Appellant are that the intention of the citizen for asking any information from the public authority is irrelevant as the RTI Act does not require the purpose of the

request under the RTI Act to be disclosed by a citizen. He has also submitted that he has neither had any strained relationship with the third party nor any enmity with him. The records requested by him are public documents and accessible to the other citizens. It is the duty of the Public Information Officer to collect the information already available in the Department and provide the documents to him. In another case, similar information regarding muster roll details of the staff was given to Shri. Raul Roncon by the same public authority. The present documents are not different from the muster rolls. The third party is a Government employee and is paid from public funds. There is no invasion of his privacy if the requested documents are given. Both the Public Information Officer and First Appellate Authority have tried to bring this request under exemption clause of section 8(1)(j) of the RTI Act which exempts disclosure of personal information which has no relationship to any public activity or which causes unwarranted invasion of the privacy of the individual and that the public authority is not satisfied that larger public interest justify the disclosure of such information.

5. The Advocate for the third party also argued that the information requested is personal information and right to privacy is a fundamental right arising out of right to life and that the RTI Act cannot supercede the provisions of Constitution, that satisfaction of the public authority should be "larger public interest and not public interest simpliciter".

6. There is no doubt that the definition of third party under section 2(n) of the RTI Act is wide enough to include Shri. Kashinath Shetye. This is already decided by my interim order dated 24/10/2008 but it is to be seen whether all information relating to or given by a third party is exempted from disclosure. The third party information and its disclosure procedures are laid down under section 11(1) of the RTI Act. There are three essential ingredients in this section. Firstly, the information should either relate to or should have been supplied by the third party. The information requested by the Appellant relates to the third party though it cannot be treated as supplied by the third party simply because every time the third party has abstained himself from duty by applying for leave (either sick leave or other kind of leave) he has submitted an application. This cannot be treated as information supplied voluntarily by the third party. The leave application is a matter of procedure and has to be

applied by the Government servant as per the rules. This is not information voluntarily supplied by the Government servant either for the benefit of Government or the public. The second ingredient of the section is about the request of the third party to treat this information as confidential. There is no such request made by the third party and none of the Respondents have mentioned so. The objection to the disclosure of the documents relating to the Respondent No. 3 is under a different ground, namely, personal information. There is no evidence produced that it was requested by third party to treat leave application as confidential at the time of applying for leave. Infact such a request cannot be made by any Government servant. The third ingredient is that the Public Information Officer "has to only keep in view the submission of the third party (objection to the disclosure) while taking a decision about the disclosure of the information". It is, therefore, clear that it is not mandatory for the Public Information Officer to accept the third party's contention and refuse the information. It is the discretion of the Public Information Officer who has to exercise his discretion judicially by weighing public interest of disclosure against any possible harm or injury to the interest of the third party. Not only this is laid down in clear terms in section 11(1) of the RTI Act, the proviso to the same sub-section (1) of section 11 makes it very clear that it should be a norm rather than an exception to disclose the information unless it is a case of trade or commercial secret protected by law. The present request is not a trade or commercial secret protected by law. On the other hand, I agree with the contention of the Appellant that the leave applications submitted by the third party to his employer are public documents and are in the public domain. Therefore, none of the ingredients of the section 11(1) and its proviso are satisfied in this case.

7. The next contention of the third party as well as the Respondents No. 1 and 2 is about the nature of information which according to them is a personal information. The third party as well as both the Respondents No. 1 and 2 in their replies have elaborately brought a number of examples to show that the leave applications contain personal information like the sickness of the applicants. The sickness can be of secret nature like HIV/AIDS, infectious diseases, contagious diseases or mental disorder of either himself or his family members which Government servant would not like to disclose to anyone else. It is enough to say that all these

diseases are hypothetical and it is not claimed either by the Public Information Officer or by the third party that third party or his family members are indeed suffering from such diseases. Therefore, the contention that the leave applications are personal information is rejected.

8. Having said so, the question of weighing larger public interest vis a vis the harm likely to be caused to the third party does not arise. No doubt, the law of privacy is a necessary ingredient of the right to life and to live in peace. Nevertheless, this law is not yet codified. However, there is a vast body of case law on the subject. The private conduct of a public servant ceases to be private once he assumes the public office. Definitely, the disclosure of the leave applications of a Government servant cannot be said to invade the privacy of the Government servant, much less an unwarranted invasion. Even if this argument is stretched too far, the invasion is warranted to ensure that the public servant acts with responsibility and his conduct is above reproach.

9. Lastly the Advocate for the third party brought in a concept of larger public interest as opposed to public interest simpliciter. According to him, larger public good should follow the disclosure. The disclosure of the leave applications of the Government servants definitely satisfies this, criterion. It is for the larger public good that a Government servants absence from duty should be available for scrutiny by the public because it is the public which pays the public servant for his leave salary from public funds. The public should be satisfied that the absence of the Government servant is for genuine reason. It is nobody's case that the Government servant cannot take leave or abstain from duty but the public have a right to know whether such absence is justified, was sanctioned properly by following the Government rules because the expenditure is from public funds. The law is settled by the Bombay High Court in Writ Petition No.157/2007 in the case of Swaroop Singh Nayak V/s. State of Maharashtra by its order dated 23/03/2007. It is held therein that the disclosure of medical history of Swaroop Singh Nayak was justified to know whether Shri. Singh was admitted to a private hospital because of a genuine health problem or to just to avoid his detention in a jail. Therefore, there is no substance in the arguments advanced by either Respondents No. 1 and 2 or the third party.

10. For the above reasons, the appeal succeeds and is allowed. The information requested should be supplied by the Public Information Officer alongwith all the documents on payment of fees within the 10 days from the date of this pronouncement of this order.

Pronounced in the open court on this 31st day of December, 2008.

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

