

GOA INFORMATION COMMISSION

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

Appeal No. 44/SCIC/2008

Mr. Thomas X. Alvares,
C/o Wenceslau Fernandes,
H. No. 211/5, Chaudivaddo, Marna,
Siolim, Bardez – Goa.

..... Appellant.

V/s.

1. Public Information Officer,
St. Xavier's College,
Mapusa – Goa.
2. The first Appellate Authority,
St. Xavier's College,
Mapusa – Goa.
3. Mr. Jeremias Pereira,
H. No. 775, Comnavaddo,
Tivim, Bardez – Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner

(Per A. Venkataratnam)

Dated: 13/08/2008.

Appellant in person.

Adv. Vivek Rodrigues for the Respondents.

ORDER

This second appeal was filed by the Appellant against the impugned order dated 14/03/2008 of the first Appellate Authority, Respondent No. 2 herein under the Right to Information Act, 2005 (RTI Act for short). By his request, the Appellant has requested information from the Public Information Officer, Respondent no. 1 herein, on 19 points under 3 separate headings titled "(I) Information related to Mr. Thomas X. Alvares; (II) Information related to Mr. Jeremias Pereira; and (III) Correspondence related to the post of Head Clerk". The interesting feature of this appeal is that the Appellant himself has access to some information with him. He took out computer print outs from the college itself where he is working. He had enclosed these print outs to the very same request for information in order to obtain authentic documents. The Public Information Officer, Respondent No. 1, gave the information on all 6 points of category I and 3 points of category III. She refused the information relating to Mr. Jeremias Pereira 5 points in II category and 3 points in III category stating

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that it relates to third party and that the third party has an objection to give the information. In addition to giving this information, the Public Information Officer by the same letter has also issued him a show cause notice asking him to explain before the Principal within 15 days, as to how the papers submitted by the Appellant have come into his possession. The first Appellate Authority upheld the order of the Public Information Officer and refused the information relating to the third party. He further reiterated the show cause notice issued earlier by the Public Information Officer. The letter cum order refusing the information and upholding the contention of the Public Information Officer dated 16/04/2008, impugned order, mentions at 3rd para that the explanation submitted by the Appellant is not satisfactory and further accused the Appellant of theft of the records of institution.

2. Notices were issued. The Appellant represented himself in person and Adv. V. Rodrigues appeared on behalf of both the Respondents on different dates and filed reply on their behalf. During the hearing, the said Advocate has also submitted one closed envelope containing some documents without being asked to do so. These are not taken on record and should be returned back to the learned Advocate when he approaches the registry. The learned Advocate also submitted wakalatnama on behalf of Mr. Jeremias Pereira, third party to whom we have issued a notice for hearing.

3. The ground for rejection by the Public Information Officer of certain portion of the information as stated above is because of the objection raised by the third party that the Appellant might use it against the third party. All provisions regarding the disclosure of third party information as laid down in section 7(7) of the RTI Act read with section 11 were already explained in detail by us in our order dated 17/01/2008 in Appeal No. 51/2007 (Gajanan Phadte Vs. Under Secretary (Personnel – II), Secretariat). It is already on our website <http://goasic.gov.in>. I will again reiterate the provisions in so far as it relates to this case. It is provided under section 7(7) of the RTI Act that the Public Information Officer “ shall take into consideration representation made by the third party under section 11”. This is in pursuance to the opportunity given by the Public Information Officer to the third party after he has tentatively come to the conclusion prime facie that the information can be given. If he comes to a conclusion that it cannot be given, he need not give the notice to the third party. Again, he cannot wait indefinitely for the representation of the third party. Only ten day’s time is given to the third party to make a submission. The submission

is not binding on the Public Information Officer. If he upholds the objection of the Public Information Officer, naturally, the citizen should be informed the full grounds on which the information of the third party has been rejected. This would include the assessment of the Public Information Officer that public interest in disclosure does not outweigh in importance any possible harm or injury to the interests of such third party as provided in first proviso to section 11(1) of the RTI Act. Again the third party has to be necessarily be a party before the first Appellate Authority to reiterate his objection and the Appellant has to be given an opportunity to show how the public interest outweighs the injury to the third party. In this case, the Appellant contends that what he asked for is not third party information at all because the information, though is about Jeremias Pereira, it is about the service record of Jeremias Pereira and not about his personal matters nor it is the information of a commercial or trade secret. Be that as it may, even if he is treated as a third party, as I have stated above, the assessment has to be made by the Public Information Officer about the public interest versus injury or harm caused to the third party. This has not been done by the Public Information Officer. The learned Adv. Rodrigues contended that it is for the Appellant to raise such plea and only then the Public Information Officer or the first Appellate Authority will have to consider the public interest in disclosure. I am afraid that this is not correct interpretation of provision of section 7(7) and section 11. The Appellant has stated that he was taken by surprise by the stand of the Public Information Officer as well as the first Appellate Authority that the information relating to Mr. Jeremias Pereira is third party information and also that revelation of such information will cause harm to Jeremias Pereira as it could be used by the Appellant against Jeremias Pereira. The Appellant submitted that the Jeremias Pereira is not in service any more. Though he has retired, he has been visiting the college. Because of this, his own service prospect of promotion as Superintendent is affected. This point is not answered by the learned Advocate, that is, how could the Appellant utilize the information about the Jeremias Pereira against Jeremias Pereira when he is no longer in service. It is true that both the Respondents have not stated that Jeremias Pereira has retired but they have also not stated that Jeremias Pereira is in service now. I find that only if he is in service now, the information could be used if at all against the interest of Jeremias Pereira.

4. There is a further angle to the whole issue. It is not as if the information relating to or provided by the third party could be rejected based on the objection by the third party. In fact section 11(1) provides in order that the

information available with the public authority to be treated as the third party information, it should be first ascertained (i) that it relates to or has been supplied by the third party; (ii) that it has been treated as confidential by the third party; (iii) that the third party should be given an opportunity to make a submission; (iv) that the submission of the third party should be within 10 days and shall be kept in view by the Public Information Officer; (v) such a decision of disclosure has to take into consideration the public interest versus private harm. I find that the information requested by the Appellant and rejected by the Public Information Officer relates to Mr. Jeremias Pereira no doubt but it is not supplied by him because it relates to the correspondence of the college with the Directorate of Higher Education, minutes of DPC, the pay fixation statement etc. which are all the matters which were initiated either by the college or Government. It must be remembered that the third party information is not included as an exception to disclosure either under section 8 or section 9 of the RTI Act. The only clause which allows the rejection of the disclosure of the third party information is under the proviso to section 11(1) of the RTI Act when the injury is greater than the public interest in revealing the information and it is Public Information Officer and the first Appellate Authority who have to do such an exercise which they have not done. They have merely accepted the blind statement of objection of the third party that it will be used by the Appellant against the third party. I, therefore, do not find any merit in the rejection of the information withheld.

5. Before I part with the case, I would like to mention about some peculiar aspects of this case wherein the Appellant himself enclosed to his request for information the print outs of certain portion of information. This is because he has access to this information and he wanted to "facilitate the Public Information Officer in searching for and authentic the information to be given to him in his own words". This did not find favour with both the Public Information Officer and first Appellate Authority. That is why the Public Information Officer while giving part of the information has asked the Appellant to show cause, before Principal within 15 days, why action should not be taken against him for unauthorized access of the information. The Principal also in his appellate order upheld the Public Information Officer's view and termed this action of the Appellant as the theft of the official documents. While I have no objection to the disciplinary authority initiating a proper inquiry and taking action against its subordinate for whatever misconduct found by it, I consider that the request under the RTI Act for information will have to be disposed off on its own merit

without being influenced by the alleged misconduct of the Appellant. Otherwise, this would amount to intimidating the employees of the organisation from exercising their right to seek information from their own superior authorities. The learned Adv. Rodrigues went to justify the action of both the Public Information Officer and first Appellate Authority on the ground that the responsibility to discharge a duty cannot be separated from the power to discipline the staff. He wanted to rely on a case decided by the Apex Court which he could not immediately produce before me or give its citation. I do not see any such dichotomy in dealing with the request for information under the RTI Act posed by an employee of the organisation to his superiors. It is true that the Public Information Officer is not the custodian of all the records of the organisation and he has to obtain the necessary information from the different functionaries of the public authorities. In the normal course, the Appellants' request could have been passed on to the Appellant himself as the records are kept by the Appellant himself according to him. However, I would not like to express any opinion on the propriety or the otherwise of the Appellant's action in taking out information himself even before asked by the Public Information Officer to do so.

6. With the above discussion, I direct the Public Information Officer to give the information withheld from the Appellant on all the 5 points of category II and points 1, 2, 4 and 8 of category III. Regarding the point No. 3 of category III, the learned Adv. Rodrigues said that the records of DPC are not available with the college as they relate to 01/02/1987. However, the DPC minutes need not be given to the citizens, as they do not serve any public purpose.

7. I, therefore, set aside the letter dated 22/01/2008 of the Public Information Officer and impugned order dated 14/03/2008 of the first Appellate Authority. The prayer of the Appellant regarding the quashing of para 7 and 8 of the first Appellate Authority is also granted as the entire order is set aside. The appeal, therefore, is partly allowed. All information withheld by the Public Information Officer except for query 3 of category III should be given to the Appellant within 10 days from today.

Pronounced in the open court, on this 13th day of August, 2008.

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