

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 654 OF 2007**

Public Information Officer & Anr. Petitioners
V/s
Gajanan Haldankar & Anr. Respondents

Mrs. A. Agni, Advocate for the Petitioners.
Ms. Aparna Shirodkar, Advocate for Respondent No.1.
Ms. Sapna Mordekar, Advocate for Respondent No.2.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 21st JULY, 2008

ORAL ORDER :

The Advocate for the Goa State Information Commission orally requests for discharge as the said Authority is performing quasi-judicial functions and exercises powers in the light of the provisions of the RTI Act. Its orders are under challenge before this Court under Article 226 and 227 of the Constitution of India. It is not expected of that Authority, in every case, to appear before the Court and justify its orders and conclusions. In such circumstances, the request is granted and the Advocate is discharged.

2. The petition is perused, so also the annexures thereto, including the impugned order. During the course of hearing of the appeal, the Goa State Information Commission has passed an order directing the Goa University to produce the marks register of the appellant's son Shri Sushant G. Haldankar. The Commission was seeking some details which are more particularly

specified in para 3 of the order. The Commission is yet to dispose of the appeal preferred by the first respondent before me. The Commission is considering the appeal of the said respondent who is aggrieved by the order of the Goa University in the matter of revaluation of the marks obtained by his son in the first year LLB examination held in April 2000. From a perusal of the order itself, it is apparent to me that the Commission was in doubt with regard to the exact prayer of the original appellant. The Commission has referred to the correspondence between the appellant and the Goa University. The matter was placed for arguments and during the course of the same, the impugned order has been passed.

3. In the peculiar facts of this case and when the Commission is yet to dispose of the appeal, it was not necessary for it to have issued directions to summon the records as more particularly set out in para 3 of the impugned order. It is not as if that the first respondent's appeal is allowed or any order adverse to him is passed. 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. The order itself discloses that the Commission is aware of the controversy before it. The order discloses that some information was given to the appellant. The order discloses that even the first appellate Authority was approached. In such circumstances, the proper course would have been to

take up the appeal itself for disposal on merits and in accordance with law instead of passing any interlocutory order and directions. In such circumstances, the order passed on 13/09/2007 in the pending appeal, copy of which is annexed to the petition paper book from pages 32 to 34 is quashed and set aside. The Commission is directed to now hear and dispose of the appeal on merits and in accordance with law. Needless to say that the original appellant would be at liberty to make all submissions including that the information provided is not complete and does not meet the statutory requirements. All contentions of both sides in that behalf are kept open. The writ petition is allowed in the above terms.

4. In the present case, the direction of the Goa State Information Commission to the Vice Chancellor, Goa University who is a party before it to file wakalatnama is not called for. The Goa State Commission is aware that second respondent is first appellate authority whose order is under challenge. The Vice Chancellor of Goa University and Registrar of Goa University who is respondent no. 1 are impleaded as parties. Once the Vice Chancellor is designated as first appellate authority really speaking there was no requirement of any notice being issued to him nor was he called upon to appear through an Advocate. Assuming he has instructed Goa University lawyer to represent him that does not mean that the Vice Chancellor as first appellate Authority is contesting the Proceedings or is required to appear and

defend his action. He was not an adversary who should be represented by a lawyer and forward wakalatnama or that it should be filed on record. The order of the first appellate Court and the records before it are part of the proceedings before the Goa State Commission. In my view, in the peculiar facts of this case, the first appellate Authority need not be represented by an Advocate or if represented, the Advocate need not file wakalatnama on its behalf.

S.C. DHARMADHIKARI, J.

NH/-