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GOA STATE INFORMATION COMMISSION

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Appeal No. 145/2021/SCIC

Dr. Kashinath L. Dhumaskar,
H.No. 833, Vithaldas Vado, Morjim,
Pernem Goa. 403512.

.....Appellant

V/S

1. The Public Information Officer,
Goa University, Taleigao Plateau,
Taleigao-Goa. 403206.

2. First Appellate Authority,
Goa University, Taleigao Plateau,
Taleigao-Goa. 403206.



.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 29/06/2021

Decided on: 07/01/2022

FACTS IN BRIEF

1. The Appellant, Dr. Kashinath L. Dhumaskar, r/o. H.No. 833, Vithaldas Vado, Morjim, Pernem Goa, by his application dated 30/12/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Goa University, Taleigao Plateau, Goa.
2. The said application was replied by the PIO on 29/01/2021, thereby furnishing information on point No. 2,3,4 and part of information on point No. 1 rejected under sec 8(1)(J) and information on point No. 1 (part), 11 and 12 are rejected being confidential information as per sec 8(1)(g) of the Act and information on point No. 6,7,8,9 and 10 are replied that said information is a third party information therefore cannot be furnished by virtue of sec 11 of the Act.
3. Being aggrieved with the reply of the PIO, the Appellant filed first

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appeal before Prof. R.N. Shirsat, Assistant Registrar, Teaching, Goa University, Taleigao Plateau, Goa being the First Appellate Authority (FAA).

4. The FAA by its order dated 05/04/2021 and revised order dated 09/04/2021 partially allowed the said first appeal and directed the PIO to furnish the information on point No. 1,2,5,6,7,8,9 and 10 and also allowed the inspection of relevant file and also directed PIO to obtain say of the third party (candidates) who are selected for the interview.
5. Despite of the order of FAA, the PIO failed and neglected to furnish the information, the Appellant preferred this second appeal under sec 19(3) of the Act before the Commission with the prayer that direction be issued to PIO to provide information free of cost and penalty be imposed on PIO at the rate of Rs. 250/- per day for wilful delay in furnishing the information.
6. Notice was issued to the parties, pursuant to which the PIO appeared through her counsel Adv. A. Agni and filed her reply on behalf of PIO, FAA duly served appeared however opted not to file any reply in the matter.
7. I have perused the pleadings, reply of the PIO; scrutinised the documents on record and heard the advocates of the rival parties and also considered the written submissions.
8. Considering the rival contention of the parties, the issue that arises for determination before the Commission are:-
 - 1) *Whether information sought is personal information and hence exempted under sec 8(1)(j) of the Act?*
 - 2) *Whether proceeding is required to be remanded back to FAA for non-complying the provision of sec 11 of the Act?*
 - 3) *Whether names of the Selection Committee Members are confidential and exempted under sec 8(1)(g) of the Act?*



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9. The Appellant vide his 4 applications dated 30/12/2020 sought the details of the recruitment procedure adopted by Goa University for filing of various posts of Assistant Professor of Bio-Chemistry, Physical Chemistry, Analytical Chemistry and Organic Chemistry, list of candidates selected, their appointment letter, copy of application form, copy of residence certificate, copy of OBC certificate of the candidates who are appointed for the said post.
10. The information sought for was with respect to selection/recruitment for the post of Assistant Professor of Goa University. It is also matter of fact that the Appellant was one of the candidate who had applied for the post and was not selected. It is admitted fact that information sought for is available with the public authority. Therefore documents submitted by the candidates in the process of his/her appointment to public office falls in public domain. Goa University receives the grants from Government and the salary of the post of Assistant Professor is paid from the public exchequer and their appointment is considered as to the public office and the same are in public domain, therefore the said information cannot be considered as personal information and hence exemption as provided under sec 8(1)(J) of the Act is not applicable.


Hon'ble Delhi High Court in **Union Public Service Commission v/s N. Sugathan in LPA 797/2011** has held that:-

"The information submitted by an applicant seeking a public post, and which information comprises the basis of his selection to the said public post, cannot be said to be in private domain or confidential. We are unable to appreciate the plea of any secrecy there around. An applicant for a public post participates in a

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competitive process where his eligibility/suitability for the public post is weighed/compared vis-à-vis other applicants. The appointing/recommending authorities in the matter of such selection and expected to act objectively and to select the best. Such selection process remains subject to judicial review.

*We are unable to fathom the secrecy/confidentiality if any as to the educational qualification and experience of the selectee to a public post: **such information ordinarily also is in public domain and educational qualifications and experience are something to be proud of rather than to hide in a closer.***

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11. In an identical judgment, the Hon'ble High Court of Jharkhand at Ranchi in **Geeta Kumari v/s The State Of Jharkhand & Ors. In W.P. (S) No. 5875/2014** has held that:-

"In the present case, the information being sought for from the petitioner relates to her appointment to a Govt. job, and the educational qualification of the petitioner. In my considered view, these are not the personal information of a person who is appointed to a Govt. job and the people at large are entitled to have the information about the appointment of such person and the fact whether the person concerned is holding the required educational qualification for the same or not. As such the information, which are sought for from the petitioner, are not the personal information which could not be furnished under the RTI Act. "

This view is also fortified by Hon'ble Punjab and Haryana High Court in **Vijay Dheer v/s State Information Commission Punjab & Ors. (LN IND 2013 P&H 2263):-**

"While examining the scope of an exemption clause under Section 8 of the Act, it would be useful to refer to the statement of objects and reasons of the Act itself. The object and reasons of the Act recite that the provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further the Act has been enacted in order to promote transparency and accountability in the working of every public authority."

Therefore the exemption under sec 8(1)(J) would cover information which is in the nature of personal information and the disclosure of which would have no relationship to any public activity or interest or the disclosure of which would cause unwarranted invasion of the privacy of the individual.

In the present case, the PIO concerned has unnecessarily stretched the arguments that the information sought is personal information about the third party and would cause unwarranted invasion on the privacy of the individual. A part of information sought by the Appellant relates to the mode of appointment of a person on public post. Therefore information to that extent falls under the domain of larger public interest.

Besides this, proviso to section 8(1)(J) of the Act states that if information cannot be denied to State Legislature shall not be denied to seeker. In this case the information is accessible to State Legislature as third party is a public servant, therefore the issue No. 1 is answered as negative.

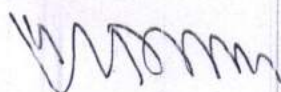
12. While deciding the issue no. 2, it is relevant to deal with sec 11 of the Act which reads as under:-

"11. Third party information. (1) Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

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."

As can be seen from the above quoted rule, the disclosure of information in relation to third party would need a PIO to give written notice to such third party and clear this test.

It may be appropriate here to refer to the definition of the term "third party" in section 2(n) of the Act which reads as under:-



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"2(n)- **"third party"** means a person other than the citizen making a request for information and includes a public authority."

Section 11 prescribes the procedure to be followed when a PIO is required to divulge information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the State Information Commissioner relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is finally decided.

In the present case in hand, notice under section 11 of the Act was issued by the PIO and the say of the third party was taken, therefore issue No. 2 is answered as negative.

13. As far as issue No. 3 is concerned, the information sought by Respondent No.1 on point No. 11 and 12 is in respect of details of the Selection Committee (full name, designation and addresses of the Committee Members) present for the interview panel. The said information was rejected by the PIO, as the same are exempted under sec 8(1)(g) of the Act. Therefore it is relevant to read sec 8(1)(g) of the Act:-

"8. Exemption from disclosure of information. —

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose;"

It is clear now that, if disclosure of information would endanger the life or physical safety of any person or identify the source of information, such information is exempted from disclosure.

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14. Hon'ble Supreme Court in **Bihar Public Service Commission v/s Saiyad Hussain Abbas Rizwi and Anrs. (2012, 13 SCC 16)** with specific reference to para No. 30 has held that:-

"30. The disclosure of names and addresses of the members of the Interview Board would ex-facie endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgement under appeal that element of bias can be traced and would be crystallised only if the names and addresses of the examiners/ interviewers are furnished is without any substance. The element of bias can hardly be correlated with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against party making an application to which exemption under Section 8 is pleaded as a defence."

15. In another judgement Hon'ble Supreme Court in case of **Kerala Public Service Commission v/s State Information Commission & Anrs. (2016 (2) ALL MR 962 (SC))** in para No. 10 has held that:-

10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public

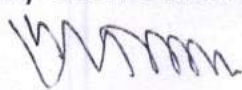


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authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam."

Considering the above legal position, the issue number 3 is answered as affirmative.

16. In the present appeal, the recruitment process has been completed. The candidates have been appointed as Assistant Professors in Goa University, therefore there is no harm in furnishing the information, even otherwise the recruitment process



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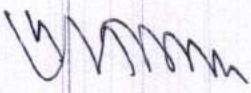
is amenable to the judicial review. There is no merit in the stand taken by the PIO. Therefore this Commission is of the view that PIO must implement the order of FAA. The Appellant is entitled for the information on point No. 1,2,3,4,5,6,7,8,9 and 10 and information on point No. 11 and 12 are exempted from disclosure.

17. In the light of the above legal provision and considering the fact and circumstances, mentioned hereinabove, PIO is directed to furnish the information and present appeal is disposed with the following:-

ORDER

- The appeal is partly allowed.
- The PIO directed to comply the revised order of FAA dated 09/04/2021 and furnish the information to the Appellant free of cost within **fifteen days** from the date of receipt of this order.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Authenticated Copy
20/11/2021
Under Secretary cum Registrar
Goa State Information Commission
Panaji - Goa


(Vishwas R. Satarkar)
State Chief Information Commissioner