

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 797 OF 2018

Mr. Deepak Pandharinath Vaingankar,
son of late Pandharinath H. Vaingankar,
45 years of age, married,
service, Indian National,
resident of H.No. 222, Oxel, Siolim,
Bardez – Goa.

... Petitioner

Versus

1. Mr. Suryakant Babu Naik,
Son of late Babu Naik, major in age,
married, Indian National,
Resident of H.No. 25W/1,
Cuchelim, Mapusa, Bardez – Goa.

2. The Public Information Officer,
Dy. Director of Panchayats, North Goa,
3rd Lift, 3rd Floor, Junta House,
Panaji – Goa.

3. The First Appellate Authority,
Director of Panchayat, North Goa,
3rd Lift, 3rd Floor, Junta House,
Panaji – Goa.

4. The State Chief Information Commissioner,
Goa State Information Commission,
Second Appellate Authority,
Kamat Towers, Seventh Floor,
Patto, Panaji – Goa.

.... Respondents

Shri. Ganesh Naik, Advocate for the petitioner.

Respondent No.1 in person.

Shri. A. Jamadar, Additional Government Advocate for the respondent Nos.2 and 3.

Coram : Nutan D. Sardesai, J.

Reserved on : 04th April, 2019

Pronounced on : 12th April, 2019

Judgment (Per Nutan D. Sardesai, J.) :

The petitioner is invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, assailing the order passed by the respondent No.4 under the Right to Information Act, 2005, (the Act for short hereinafter).

2. Heard learned Counsels for the parties and the respondent No.1 in person. Rule. Rule made returnable forthwith with the consent of the learned Counsels appearing for the parties. Learned Counsel appearing for the respondent Nos. 2 and 3 waives service.

3. Shri. Ganesh Naik, learned Advocate on behalf of the petitioner contended that the Order dated 05.07.2018 passed by the respondent No.4 was challenged by the petitioner in the present petition, being a nullity in law, and seeking it to be quashed and set aside. It was his contention that an application was moved by the respondent No.1 under Section 6(1) of the Act, seeking the personal

particulars of the petitioner, vis-a-vis his date of appointment, working hours, educational qualifications, details of higher education, so on and so forth in that connection. The petitioner had filed a reply to the respondent No.2 whereby he had raised serious objection to the furnishing of this information to the respondent No.1, and otherwise spelt out that the application was motivated at the instance of the respondent No.1 only to harass him and to settle personal scores. The Public Information Officer had passed the order on 11.10.2017 whereby he had declined the information as claimed by the respondent No.1. The respondent No.1 had preferred an appeal and the Appellate Authority, i.e. the respondent No.3, had by its Order dated 04.01.2018 dismissed his appeal after considering the citations relied upon on behalf of the petitioner, and considering his case. The respondent No.1 did not rest easy thereafter but had instead preferred a second appeal before the respondent No.4 who had passed the order which was assailed in the present petition. He adverted to the provisions of Sections 6, 8, 11 and 19 of the said Act, placed reliance in **Girish Ramchandra Deshpande Versus Central Information Commissioner and Others**, [(2013) 1 SCC 212]; **Canara Bank Versus C.S. Shyam and Another**, [(2018) 11 SCC 426]; and **Kashinath J. Shetye Versus Public Information Officer and 3 Others**, [Writ Petition No. 1 of 2009], to substantiate his contention. It was his further contention that no public interest was

disclosed by the respondent No.1 in pursuing the application under the Act, and therefore this was a fit case to quash the order under challenge.

4. The respondent No.1 addressed arguments in person and submitted that the objections raised by the petitioner dated 24.10.2017 were not in consonance with the predicates of Section 11 of the Act which require the Central Public Information Officer or the State Public Officer, as the case may be, to give a written notice to such third party within five days from the receipt of the request and thereupon in terms of sub-section (2), the third party was required to raise the objections or make a representation within ten days thereof. There were no notices issued to the petitioner within five days, nor any objections were raised by the petitioner within ten days.

5. It was next his contention that no reason was required to be given for seeking information on a proper reading and construction of Section 6, sub-section (2) of the Act. He next adverted to Section 8(1)(j) of the Act and more particularly the proviso thereto, and submitted that there was no reason not to furnish the information as sought for by him, when the same could otherwise be disclosed to the Parliament or the State Legislature, as the case may be. In his contention, the petition was misplaced and had therefore to be

dismissed.

6. i would consider the contentions of Shri. Ganesh Naik, learned Advocate for the petitioner and the respondent No.1 in person, examine the relevant provisions of the Act, and the judgments relied upon (supra), and in the light thereof, proceed to decide the petition appropriately.

7. Section 2(f) defines what is “information” and means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

8. “Public Authority” has been defined in Section 2(h) and reads thus:

(h) “public authority” means any authority or body or institution of self-government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any –

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

9. While the “right to information” is defined in Section 2(j) and means, the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to – (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

10. Section 6 deals with the request for obtaining information and contemplates that a person who desires to obtain any information under the Act, is required to make a request in writing or through electronic means, as the case may be, either to the Central Public Information Officer or State Public Information Officer, as the case may be.

11. Sub-section (2) thereof provides that an applicant making a request for information shall not be required to give any reason for

requesting the information or any other personal details, except those that may be necessary for contacting him. In other words, a bare reading of sub-section (2) contemplates that a person making a request for information shall not be required to give any reason for requesting the information of any person, but shall not be entitled to seek his personal details, except those that may be necessary for contacting him.

12. Section 8 contemplates exemption from disclosure of information and reads as below:

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

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the strategic scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j) information which relates to the personal information, the disclosure of which has no

relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

13. Therefore, on a bare reading of Section 8(1)(j) read with the proviso, it is apparent that there is an exemption from disclosure of information which relates to the public information of an individual, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. Therefore, in view of this specific bar, any person would not be entitled to seek the personal information about another, which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. The contention therefore, of the respondent No.1 that if this information can be furnished to the Parliament or the State Legislature, the same is available to him, cannot at all be countenanced by any stretch of the imagination.

14. Section 11 deals with the third party application and contemplates that 'where a Central Public Information Officer or a State Public Information Officer, 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 the 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 the 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 the disclosure of information.'

15. Although it has been the contention of respondent No.1 that the State Public Information Officer ought to have given a notice to the applicant in terms thereof, it is apparent from the records that no such notice was given to the applicant within five days, as contemplated under Section 11, nor had the petitioner raised his objections within ten days, and rightly so, since no such notice was

issued to him. It is another matter that the petitioner had filed his objections to the furnishing of his personal information to the respondent No.1 as being a harassment tactic to settle personal scores, and that the information as sought for by him had no relationship with public activity or public interest, and therefore his personal information had not to be furnished to the respondent No.1. It is another matter that the Public Information Officer, i.e. the respondent No.2 had not furnished the information to the respondent No.1 and for that matter, the first appellate authority, i.e. the respondent No.3, but the respondent No.4 in its wisdom, had, despite the judgments relied upon on behalf of the petitioner, had directed the Public Information Officer to furnish the information sought for by the respondent No.1, with which the petitioner felt aggrieved, and rightly so.

16. In **Girish Deshpande** (supra), the Hon'ble Apex Court held that 'the performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest and on the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. The details disclosed by a person in his

income tax returns are “personal information”, which stand exempted from disclosure under clause (j) of Section 8(1) of the Act. Of course, in given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed, but the petitioner cannot claim those details as a matter of right’.

17. In the facts at large, it was found that the details called for by the petitioner, i.e. the copies of all the memos issued to the third respondent, show cause notices and orders of censure/punishment etc., are qualified to be personal information, as defined in clause (j) of Section 8(1) of the Act. The petitioner in the instant case had not made out a bonafide public interest in seeking the information; the disclosure of such information would cause unwarranted invasion of the privacy of the individual under Section 8(1)(j) of the Act and in that view of the matter, dismissed the special leave petition. The respondent No.1 had not showed from the tenor of his application, what was the larger interest which was involved to seek the personal information of the petitioner, which he did before the Public Information Officer, and who rightly dismissed his application, and so too the first appellate authority dismissed the appeal, although the respondent No.4 in his wisdom allowed the appeal at the instance of

the respondent No.1 and directed the furnishing of his personal information, although no such case had been made out of larger public interest.

18. In **Canara Bank** (supra), the Hon'ble Apex Court largely relying on **Girish Deshpande** (supra), held that the principle of law applies to the facts of the case at large on all fours. The information sought by the respondent No.1 of individual employees working in the Bank was personal in nature, secondly it was exempted from being disclosed under Section 8(1)(j) of the Act, and lastly, the respondent No.1 neither disclosed any public interest, much less larger public interest, involved in seeking such information of the individual employee, nor was any finding recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to the respondent No.1. In that view of the matter, the Apex Court held that the application made by the respondent No.1 under Section 6 of the Act, was wholly misconceived and had been rightly rejected by the Public Information Officer and the Chief Public Information Officer, whereas it was wrongly allowed by the Central Information Commission and the High Court in allowing the appeal set aside the orders of the High Court and the Central Information Commission, restoring those passed by the Public Information Officer and the Chief Public

Information Officer.

19. The State Chief Information Commissioner i.e. the respondent No.4 unduly placed reliance in the judgment of a learned single Judge of this Court in **Kashinath J. Shetye Versus Public Information Officer and 3 Others [Writ Petition No. 1 of 2009]**, which would not apply considering the law laid down by the Hon'ble Apex Court in **Girish Deshpande and Canara Bank** (supra). The respondent No.1 had categorically failed to show what was the public interest or rather the larger public interest which was involved to furnish the personal information of the petitioner to him, and yet the respondent No.4 had allowed his appeal, discarding the judgment of the Apex Court and relying on a judgment of the learned single Judge of this Court. The impugned order therefore warrants interference in exercise of the supervisory jurisdiction of this Court.

20. In the circumstances therefore, i pass the following order:

Rule is made absolute.

The Writ Petition is allowed, whereby the impugned order is quashed and set aside.

Nutan D. Sardesai, J.

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