

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.13 OF 2020

CARMINIA DIAS MANDOLY ...Petitioner
Versus
THE PUBLIC INFORMATION OFFICER ...Respondents
AND ANR.

Petitioner present in person.
Ms. Ashwini Agni, Advocate for the respondent.

CORAM: MANISH PITALE, J.
DATED: 7th September, 2021.

ORAL ORDER:

1. In this Writ Petition, the petitioner who is appearing in person is aggrieved by orders passed by the Authorities under the Right To Information Act, 2005. The grievance of the petitioner appears to be that while she was pursuing the course of Law, she was declared as having not passed in one paper pertaining to Mohammedan Law in the first year of the said course. It is the case of the petitioner that she had applied for revaluation before the respondent – University and she had also paid the requisite fees. According to her, there was no satisfactory response to the said application for revaluation and that she was completely unaware about what action was taken on her grievance.

2. The petitioner initially sent a communication in November, 2008 to the Hon'ble Governor of the State of Goa in respect of her grievance. Thereafter on 25/07/2009, the petitioner wrote an application under Right to Information Act, 2005, to the Vice-Chancellor of the

Respondent- University raising a grievance about she was not informed about the fate of her revaluation request and specifically posed a query as to whether any action was taken by the University in respect of her complaints. On 21/08/2009, the Registrar i.e. the Public Information Officer of the University sent a letter to the petitioner stating that on receipt of her letter, the Principal of the concerned College had called the petitioner for discussion, but the petitioner did not come forward to discuss the matter. It was also stated in the said letter that if the petitioner had any further query she could make a communication upon which a response would be given. On 18/08/2009 the Principal of the concerned College sent a letter to the petitioner reiterating the fact that the petitioner had not responded to the offer of the College to discuss her grievance.

3. The petitioner was not satisfied by the aforesaid action of the University and the Principal of College and hence, she approached the First Appellate Court under the aforesaid Act with regard to her grievance. The First Appellate Authority called for a response from the respondent and after taking into consideration the said response, by order dated 27/11/2009, disposed of the appeal by giving an opportunity to the petitioner to ask specific and clear questions under the provisions of the said Act. The petitioner was dissatisfied with the order passed by the First Appellate Authority and she filed appeal No.40/SIC/2010/1477 before the Second Appellate Authority i.e. the Goa State Information Commission. By judgment and order dated 26/07/2011, the State Information Commission i.e. the Second Appellate Authority found that

the concerned Public Information Officer of the University ought to have furnished proper information in respect of action taken on the specific letter as mentioned in the application dated 25/07/2009. Liberty was given to the petitioner to seek information on points agitated specifically and clearly and also to seek inspection, if so advised.

4. In pursuance of the said order passed by the State Information Commission on 27/10/2011, the petitioner submitted a fresh application before the Public Information Officer of the respondent – University. On this occasion she sought specific information on six points. These included copies of revaluation results of the said subject pertaining to the year 1996, information about the Officer responsible for declaring the result/revaluation results and reasons for not declaring revaluation results. On 25/11/2011, the respondent-University, through the Controller of Examinations gave a reply on each of these points on which information was sought. On the aspect of revaluation and copies of the revaluation result, it was stated that since there was no change in marks after the revaluation result, there was no information to be provided. Reference was made to a Circular stating that the retention period of the answer papers was 5 years.

5. The petitioner was not satisfied with the response given and hence, she once again knocked the doors of the First Appellate Authority under the provisions of the said Act. On 13/01/2011, the First Appellate Authority disposed of the appeal by holding that in the facts and circumstances of the case, the Public Information Officer of the University had disclosed information that was available and that he had

not willfully suppressed or denied any information to the petitioner. However, it was on record that since the matter pertained to the year 1996, the Public Information Officer was directed to file an affidavit with regard to declaration of revaluation results of the petitioner and non-availability of answer books of the petitioner. It is an admitted position that the said affidavit was indeed placed on record on behalf of the respondent - University by its officiating Controller of Examinations.

6. The petitioner was not satisfied with the said order of the First Appellate Authority and thereupon she again approached the State Information Commission i.e. the Second Appellate Authority by filing Second Appeal No.41/SCIC/2012. By the impugned dated 04/02/2019, the State Information Commission dismissed the appeal. While dismissing the appeal the State Information Commission directed the respondent- University to strictly comply with the requirements of Section 4 of the aforesaid Act, within a period of four months from the date of order. The said direction pertained to the necessity on the part of the University to immediately place in the public domain on its website the relevant Circulars pertaining to, inter alia, policy for maintenance and destruction of records.

7. The petitioner appeared in person and contended that she has been denied proper information by the respondent - University and that the Authorities under the aforesaid Act including the State Information Commission, have not been able to appreciate her grievance in the proper perspective. According to her when she had submitted an application for revaluation along with the requisite fees, the revaluation

result ought to have been declared and she ought to have been given copies of her answer sheet. She was deprived of such information and relief which went to the very root of the matter and which was not appreciated by the Authorities under the Right to Information Act. According to the petitioner, grave injustice was done to her by depriving her of information regarding revaluation results and non-furnishing of copies of answer books, despite the fact that she had paid the requisite charges.

8. Ms. Agni, learned Counsel appearing on behalf of the respondent - University submitted that in the first place the information sought was vague and yet the University had provided the necessary information. Thereafter when specific queries were made, the University had come forward and responded to each query independently. It was submitted that insofar as copies of the answer book were concerned, as per the policy of the University the answer books were to be retained for a maximum period of 5 years and in case of revaluation, the answer books were to be retained only for 6 months. In any case, it was pointed out that the grievance of the petitioner, if any, pertained to the year 1996 and she had knocked the doors of the Authorities under the said Act, for the first time in the year 2009. It was submitted that the passage of time and extant policy of the University was taken into consideration in the correct perspective by the State Information Commission and therefore, the petition deserved to be dismissed.

9. This Court has perused the petition and the documents filed therewith. Since the petitioner is appearing in person, this Court granted

ample opportunity for the petitioner to make her submissions. She kept on harping on the injustice done to her for the reason that despite having made requisite payment for revaluation, her result was never declared and she was denied access to her answer sheet, which she was entitled to, having applied for the revaluation.

10. The documents on record show that the petitioner had indeed applied for revaluation in the context of the first year result where she had been unsuccessful in passing one particular subject. The requisite charges for revaluation were also paid by the petitioner. It is significant that there is a letter dated 27th/ 28/06/1997 sent by the Registrar of the Respondent - University to the petitioner which specifically states that the petitioner appears to have failed in the concerned subject due to academic performance and she was advised to reappear for the examination after due preparation. There is a document filed by the petitioner herself on record showing that the Registrar of the respondent University had responded to letters submitted by the petitioner regarding the aforesaid grievance. There is nothing on record to show as to what steps the petitioner took after having received the letter. There is another letter 19/09/2000 sent by the Controller of Examinations of the respondent -University to the petitioner stating that the Registrar and the Controller of Examinations had re-examined the facts of the case of the petitioner and that there was no reason for her failure other than academic performance and she was once again advised to reappear for the paper/examination after due preparation. Again there is nothing to show as to in what manner the petitioner took her grievance forward, despite

specific communications received from the respondent - University with regard to her grievance about having applied for revaluation in the context of having failed in the particular subject.

11. Thereafter, as noted above, the petitioner raised her grievance for the first time on 27/11/2008 i.e. after a gap of about 12 years before the Governor of the State. The said letter was marked by the Secretary of the Governor to the University. Thereafter, the petitioner invoked the provisions of the aforesaid Act for the first time on 25/07/2009 i.e. about 13 years after she had applied for revaluation, for information from the respondent - University. In this application, the only information that the petitioner sought was, as to what was the action taken on her complaints. As noted above, the respondent - University responded to the said application made under the provisions of the Act and this culminated in the order of the State Information Commission dated 26/07/2011 passed in Appeal No. 40/SIC/ 2010. The appeal was partly allowed and apart from directing the respondent - University to give information as sought by the petitioner in her application dated 25/07/2009, liberty was further given to the petitioner to seek specific information from the respondent - University. There is nothing on record to show that the petitioner had any grievance in respect of the said order. The record shows that the respondent - University did take action in compliance with the said order.

12. In fact, the petitioner herself again applied to the respondent - University on 27/10/2011 in terms of the liberty so reserved by the State Information Commission. On this occasion, the petitioner sought

specific information on six points. The same was forwarded to her by letter dated 25/11/2011, sent on behalf of the University. As noted above, the petitioner was not satisfied and ultimately the matter again reached the State Information Commission and it is on the appeal filed in the second round that the impugned order dated 04/02/2019, was passed by the State Information Commission. A perusal of the order shows that the said Commission has recorded the facts of the case and the grievance of the petitioner in great detail. Every aspect of the matter has been considered, including the first round of litigation which had reached up to the State Commission. The State Commission has taken into consideration the law laid down by the Hon'ble Supreme Court in the case of ***Central Board of Secondary Education & Anr v/s Aditya Bandopadhyay & Ors.*** (C.A.No.6456 of 2011) particularly paragraph 30 thereof pertaining to policies of public authorities regarding preservation and destruction of records. It was specifically laid down that the provisions of the aforesaid Act would not prevail over the Rules and Regulations governing the period for which record of the documents or information would be preserved by a public authority. In other words, it was laid down by the Hon'ble Supreme Court that the provisions of the aforesaid Act will not prevent the destruction of such records in accordance with the Rules.

13. Taking into consideration the settled position of law, the respondent - State Information Commission found that in the present case the respondent - University was required to maintain the record for a period between 6 months to 5 years. In the present case, since the

petitioner was insisting on information pertaining to her application for revaluation, the policy of the respondent - University mandated the record to be preserved only for a period of 6 months. After taking into consideration all these aspects of the matter, the said Commission dismissed the appeal and upheld the order of the First Appellate Authority. Even while doing so the Commission directed the respondent - University to comply with the requirements of Section 4 of the said Act, so as to place such Circulars reflecting the policy of the University pertaining to maintenance and destruction of the records in the public domain, including on the website of the University.

14. This Court has taken into consideration the entire record available with the Writ Petition. The orders passed by the Authorities under the said Act, including the State Information Commission, cannot be said to be erroneous in any manner. The record shows that the petitioner had applied for revaluation way back in the year 1996, in response to which she had received a letter from the Registrar of the University as far back as in June, 1997 and a further communication in September, 2000. Yet she did not bother to take any steps in the matter. The petitioner sought to invoke the provisions of the aforesaid Act for the first time on 25/07/2009 and in the two rounds of litigation that she pursued up to the State Information Commission. The respondent University did provide information as was available in the records. The respondent - University cannot be directed to provide information which is not existing and such contention raised on behalf of the University deserves to be accepted. It is not only because the petitioner has been late in

approaching the concerned Authorities but when the information sought is not available on record and cannot be available in terms of the policy of maintenance and preservation of the records of the University, it cannot be said that the petitioner has been meted out injustice or that the respondent - University has not complied with the mandate of the aforesaid Act.

15. It appears that the petitioner could have raised her grievance well in time in order to seek relief of being supplied copies of the answer book or the revaluation result. The fate of application for revaluation was clear from the letter dated 27th/28th/06/1997 and yet the petitioner chose not to take any further steps in the matter.

16. After the aforesaid Act was enacted in the year 2005, for the first time on 25/07/2009, the petitioner woke up to invoke the provisions of the said Act and seek information pertaining to the year 1996. This Court is of the opinion that in the facts and circumstances of the present case, it cannot be said that a case is made out for exercise of writ jurisdiction in favour of the petitioner. It cannot be said that orders passed by the Authorities under the aforesaid Act, including the State Information Commission deserve any interference. Consequently, the writ petition is found to be without any merits and accordingly, it is dismissed.

MANISH PITALE, J.