

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1004 OF 2019

C. Radhakrishnan ...Petitioner
Versus
1. Public Information Officer and 3 Ors. ...Respondents

Mr. Vibhav Amonkar, Advocate for the Petitioner.

Mr. A. D. Bhobe and Ms. Annelise Fernandes, Advocates for the Respondent nos.1 and 2.

Mr. Ryan Menezes, Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Respondent no. 4.

CORAM : MANISH PITALE, J
Reserved on : 2nd September 2021
Pronounced on : 8th September 2021

ORDER

1. The Petitioner, before this Court, is aggrieved by an order dated 17.10.2019, passed by the Respondent no. 3-State Information Commissioner of the Goa State Information Commission, whereby concurrent orders passed by the Public Information Officer and the First Appellate Authority under the provisions of The Right to Information Act, 2005 (for short, 'said Act'), have been set aside and a direction is given to provide information sought by the Respondent no. 4 under the provisions of the said Act.

2. According to the Petitioner, the Respondent no. 3 has erred in passing the impugned order, because the direction to give such information is in the teeth of Section 8(1)(j) of the aforesaid Act and the position of law clarified by the Hon'ble Supreme Court

in that context. The Petitioner contends that the information sought by the Respondent no.4 falls within the exemption specified in Section 8(1)(j) of the said Act, as it relates to personal information, the disclosure of which has no relationship to any public activity or interest.

3. The facts leading up to the filing of the present Writ Petition are that Respondent no.4 had moved an application on 23.01.2010 before the Public Information Officer of V. M. Salgaonkar College of Law. The Respondent no.4 sought certain details about the admission of the Petitioner to the LLB course and other information related to the said course completed by the Petitioner from the said College. The Respondent no.1 proceeded on the basis that the information sought pertained to personal information relating to the Petitioner and informed that the Petitioner had raised an objection under Section 8(1)(j) of the said Act for grant of such information. On this basis, the application filed by Respondent no.4 was rejected.

4. Aggrieved by the same, Respondent no.4 filed an appeal before Respondent no.2 i.e. the First Appellate Authority. The appeal was dismissed, as Respondent no.2 agreed with the reasoning of Respondent no.1 that the information could not be given as it pertained to personal information relating to the Petitioner and that such an application was hit by Section 8(1)(j) of the Act.

5. On a further appeal filed by Respondent no.4 before the Respondent no.3-Commission, the impugned order came to be passed, which allowed the appeal, set aside the orders of

Respondent nos. 1 and 2, and concluded that in the facts of the present case, it could not be said that the application was hit by Section 8(1)(j) of the aforesaid Act. Accordingly, the information sought by Respondent no.4 was directed to be forwarded.

6. This Court entertained the present Writ Petition and on 22.11.2019, while issuing notice, granted interim stay of the impugned order, specifically recording that the learned Counsel appearing for the Petitioner relied upon the Judgment of the Hon'ble Supreme Court in the case of *Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors.*¹.

7. The Respondent no.4 entered appearance through Counsel and filed a detailed reply, along with documents to oppose the present Writ Petition.

8. Mr. Vibhav Amonkar, the learned Counsel appearing for the Petitioner, submitted that the information sought by Respondent no.4 was clearly personal information pertaining to the Petitioner and it had no nexus with any public activity or interest. It was submitted that there was a background to the said application being preferred by Respondent no. 4. Attention of this Court was invited to proceedings initiated by the Petitioner and Respondent no.4 against each other before different fora and that there was an ongoing rivalry and dispute between the parties. It was submitted that the application was not concerned with any public interest and that Respondent no. 4 had filed the said application, as part of his desire to wreak vengeance on the Petitioner. It was submitted that Respondent no. 4 was least

¹ (2013) 1 SCC 212

interested in information that could be said to be in public interest, much less larger public interest and that since the details sought by Respondent no.4 concerned personal information, the impugned order deserved to be interfered with.

9. The learned Counsel placed specific reliance on the aforesaid Judgment of the Hon'ble Supreme Court in the case of ***Girish Ramchandra Deshpande*** (supra), as also the Judgment of Hon'ble Supreme Court in the case of ***Canara Bank, Represented by its Deputy General Manager vs. C. S. Shyam & anr.***², apart from placing reliance on judgment of this Court in the case of ***Mr. Deepak Pandharinath Vaingankar vs. Mr. Suryakant Babu Naik & Ors.***³, decided on 12.04.2019 passed in ***Writ Petition No. 797 of 2018***.

10. By relying on various paragraphs of the aforesaid Judgments, the learned Counsel emphasized that the information sought by the Respondent no.4 was relevant only for the employer-employee relationship between the Petitioner and his employer, apart from being without any public interest, thereby showing that the concurrent orders passed by Respondent nos. 1 and 2, ought not to have been set aside by Respondent no.3. Much emphasis was placed on the background in which Respondent no. 4 had moved the said application and it was submitted that the application of Respondent no.4 was actuated by malice and enmity against the Petitioner, which had no shade of public interest at all.

2 (2018) 11 SCC 426

3 WP No. 797 of 2018

11. On the other hand, Mr. Ryan Menezes, appearing on behalf of the contesting Respondent no.4, submitted that the information sought in the present case did have the element of public interest because, according to the Respondent no. 4, the Petitioner had undertaken LLB course while working full time in a Government establishment. According to Respondent no.4, the Petitioner had pursued the course and attended classes in the aforesaid Law College during office hours in public employment and that, therefore, the information had direct nexus to the question of efficiency in performing duties by a public servant like the Petitioner. It was submitted that the nature of the information sought had nothing to do with personal information pertaining to the Petitioner and instead it had everything to do with his public activity, which had a bearing on public interest. While inviting the attention of this Court to Section 8(1)(j) of the aforesaid Act, the learned Counsel emphasized that information regarding the manner in which the Petitioner had pursued the said course was certainly in the larger public interest, for the reason that upon acquiring the said qualification, specific duties were assigned to the Petitioner in public employment. The learned Counsel also emphasized upon the proviso to Section 8(1) (j) of the aforesaid Act to contend that the information sought by Respondent no. 4 could certainly not be denied to the Parliament or State Legislature because it concerned the manner in which the Petitioner, being a public servant, was performing his duties and it was a matter concerning public exchequer. In this context, specific reliance was placed on the Judgment of this Court in the case of *Kashinath J. Shetye vs. Public Information Officer & Ors.*⁴ decided on 20.01.2009, passed in *Writ Petition No. 1 of*

4 WP No. 1 of 2009

2009. The learned Counsel further placed reliance on a judgment of Hon'ble Supreme Court in the case of ***R. Rajagopal alias R. R. Gopal & anr. vs. State of Tamil Nadu & Ors.***⁵. It was submitted that although the said Judgment was rendered prior to the enactment of the aforesaid Act, certain observations made therein, in the context of the right of privacy of public officials, were relevant for the present case. On the aspect of alleged disputes and bitterness between the parties, it was submitted that the said aspect was wholly irrelevant in the present case because if Respondent no. 4 was justified in contending that the information sought in the present case was not hit by Section 8(1)(j) of the aforesaid Act, the said information was necessarily required to be divulged. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

12. Although this Petition was heard finally and it was closed for orders on 31.08.2021, the learned Counsel appearing for the Respondent no.4 mentioned the matter on 01.09.2021 and sought permission of this Court for further hearing, in order to place before this Court Judgment of the Constitution Bench of the Hon'ble Supreme Court reported in the case of ***Central Public Information Officer, Supreme Court v. Subhash Chandra Agarwal***⁶. Therefore, this Petition was further heard on 02.09.2021 on the said aspect of the matter.

13. The learned Counsel appearing for the Petitioner as well as the contesting Respondent no.4, invited attention of this Court to various paragraphs of the said Judgment and sought to contend

5 (1994) 6 SCC 632

6 (2020) 5 SCC 481

that the judgment supported their respective points of view.

14. The crucial question that arises for the consideration is, as to whether the information sought in the present case could be said to be personal information pertaining to the Petitioner and hence exempted under Section 8(1)(j) of the aforesaid Act. Before considering the said aspect of the matter in the context of the facts of the present case, it would be appropriate to consider the judgments relied upon by the rival parties.

15. In the case of *Girish Ramchandra Deshpande* (supra), the Hon'ble Supreme Court was considering the effect of Section 8(1)(j) of the said Act in the context of information pertaining to the service career of an individual. After referring to the aforesaid provision, the Hon'ble Supreme Court found that information pertaining to the salary of the said person, deductions from the salary, memos and show cause notices issued to the said person, details of investment, inquiry proceedings initiated against such person, all amounted to personal information of the individual and that divulging such information would amount to unwarranted invasion into the privacy of such person. The Court emphasized on the aspect of the necessity of public interest or larger public interest in providing such information and in the facts of the said case, concluded that the aspects regarding which information was sought, necessarily concerned employer/employee relationship and that the same would be governed by the service rules. On this basis, it was found that the exemption under Section 8(1)(j) of the said Act applied.

16. In the case of *Canara Bank* (supra), the Hon'ble Supreme Court referred to *Girish Ramchandra Deshpande* (supra) and again found that the information sought in the said case concerned personal information of individual employees of the Bank and that the same could not be supplied as it was hit by Section 8(1)(j) of the aforesaid Act.

17. The said judgments of the Hon'ble Supreme Court were followed by this Court in the case of *Deepak Pandharinath Vaingankar* (supra). In this judgment, a contention pertaining to the proviso to Section 8(1)(j) of the Act was also dealt with and in the facts of the said case, it was found that the proviso could not come to the aid of the person seeking information, because the information sought was in the nature of personal details of the Petitioner therein. On this basis, the Writ Petition was allowed.

18. The judgment in the case of *Kashinath J. Shetye* (supra) deals with the status of a public servant and information sought in the context of a public servant. In the said judgment, much emphasis was placed on the proviso to Section 8(1)(j) of the said Act and the Court held that when information had to be provided to the Parliament or the State Legislature or in other words when such information could not be held back from the Parliament or the State Legislature, there was no reason why information pertaining to the public servant could be denied on the ground that the same amounted to supply of personal information. According to the Court, in the said case, any information pertaining to the conduct/misconduct of a public servant ceased to be private information and, therefore, the exemption under Section 8(1)(j) of the said Act, did not apply.

19. Insofar as *R. Rajagopal alias R. R. Gopal* (supra) is concerned, it is an admitted position that the said judgment was rendered before the aforesaid Act was enacted. A perusal of the same shows that when a question arises regarding information pertaining to public officials, the right to privacy may not be available where the information sought pertains to the acts and conduct of the public officials relevant to discharge of official duties.

20. In the judgment in the case of *Central Public Information Officer, Supreme Court* (supra), a Constitution Bench of the Hon'ble Supreme Court, *inter alia*, considered the scope of the exemption under Section 8(1)(j) of the aforesaid Act. Three Hon'ble Judges of the Supreme Court have rendered their opinions in the said judgment. After referring to Section 8(1)(j) of the said Act, it has been held that, even if there is exemption from providing personal information under Section 8(1)(j) of the said Act, the said exemption is qualified in nature. By referring to the said provision, it is specifically laid down that even where information sought about an individual is found to be personal in nature, the same can still be provided if it is found to be in larger public interest to divulge such information. The Hon'ble Supreme Court has emphasised on the test of proportionality, wherein the concerned authorities under the provisions of the said Act, are to perform a balancing act between the right to privacy of the individual in respect of whom the information is sought and the larger public interest in giving such information to the applicant, in terms of the object and purpose of the aforesaid Act. The parameters of determining whether such personal information can be given and the factors to be taken into

consideration regarding “public interest”, have been enumerated in the said judgment. It is relevant that the Hon’ble Supreme Court has emphasised on information pertaining to accountability of officials, performance of public duties and inefficiency in public administration, as information satisfying the test of public interest. Any information that may be necessary in the context of the accountability and efficiency of a person holding public office has been held to be covered under public interest and reference is made to Section 6 of the Act to hold that information cannot be withheld only because the person seeking the information does not state as to for what purpose such information is sought. The judgments in the case of ***Girish Ramchandra Deshpande*** (supra) and ***Canara Bank*** (supra), relied upon by the learned Counsel appearing for the Petitioner, have been referred to and after considering the said Judgments, the Court has enumerated information that could be said to be personal information.

21. It is also relevant to mention here that the Statement of Object and Reasons pertaining to the enactment of the said Act emphasizes that the erstwhile legislation i.e. Freedom of Information Act, 2002, was required to be replaced by the said Act to enact provisions to ensure maximum disclosure and minimum exemptions, for effectuating the right to information recognized under Article 19 of the Constitution of India. Thus, the emphasis is on maximum disclosure of information.

22. Applying the said position of law to the facts of the present case, it is found that Respondent no.4 sought information pertaining to the admission of the Petitioner to the LLB course,

the attendance of classes and the timing of the classes, migration certificate issued by the University and No Objection Certificate granted by the Government to pursue the LLB course. The said information does appear to be personal information pertaining to the Petitioner. But it is significant that as per Section 8(1)(j) of the aforesaid Act, the exemption does not operate merely because the information sought appears to be personal information, but the other limb of the said provision pertains to lack of any relationship of such information to any public activity or interest. It needs to be examined whether such information causes unwarranted invasion of the privacy of the individual and whether larger public interest would justify the disclosure of such information. The proviso, as noted above, does provide that the information shall not be denied to any person if it cannot be denied to the Parliament or State Legislature.

23. In the present case, the crucial factor is that the Petitioner is admittedly in public employment and, therefore, the information regarding the aforesaid aspect pertains to his pursuing the LLB course while being in public employment. The information sought includes details as to whether the Petitioner, being an Engineer in the Public Works Department, pursued the LLB course with the consent of the concerned department and as to what were the timings of the classes of the said course. Such information is relatable to the aspect as to whether the Petitioner, as a public servant, pursued the LLB course with due permission and whether it conflicted with the timings and duties of his office. This aspect certainly has a nexus with the performance of public duties by the Petitioner and it is relatable to the efficiency of the Petitioner as a public servant. This is significant in the

backdrop that upon completing the said course, the Petitioner was indeed given specific duties by his office, further indicating that completing such course led to a certain manner in which his services were utilized. Such information was in public interest from the point of view as to whether the Petitioner, as a public servant, had pursued the said course in such a manner that it did not interfere with the public duties he was expected to perform, thereby indicating that the information did relate to a public activity or interest and that, in any case, the information Officer could certainly divulge such information on the ground that larger public interest justified disclosure of such information.

24. The proviso to Section 8(1)(j) of the aforesaid Act is crucial for the reason that being a public servant if the State Legislature was to call for such information pertaining to the Petitioner, the Information Officer could not have denied the same. This is for the reason that the Petitioner, as a public servant, is paid salary from the public exchequer and the State Legislature would certainly be entitled to call for such information. If the State Legislature could not be denied the aforesaid information, by operation of the proviso to Section 8(1)(j) of the said Act, Respondent no. 4 also could not have been denied such information.

25. Merely because the information sought by Respondent no. 4 referred to the question as to whether the Petitioner had sought No Objection from his office for pursuing the said course, it would not mean that service rules would start operating and that the ratio of the judgments of the Hon'ble Supreme Court in the cases of Girish ***Ramchandra Deshpande*** (supra) and ***Deepak***

Pandharinath Vaingankar (supra), would inure to the benefit of the Petitioner.

26. In the present case, the information sought does not pertain to either details of salary, leaves enjoyed by the Petitioner, details of any disciplinary proceedings initiated against him, and other such information. Therefore, this Court is of the opinion, that on facts the present case is distinguishable from the cases decided by the Hon'ble Supreme Court and this Court in the aforesaid judgments.

27. There cannot be any doubt about the fact that invasion of privacy has to be construed in the facts of each case and, in any case, when it is found that divulging of such information can be said to in larger public interest, the exemption under Section 8(1) (j) of the said Act, would not be available.

28. Insofar as the aspect of the Respondent no.4 having filed the said application under provisions of the said Act due to personal vendetta and vengeance against the Petitioner, this Court has refrained from going into the said aspect of the matter because the application filed by the Respondent no. 4 is to be strictly dealt with as per the provisions of the said Act. Even otherwise, under Section 6(2) of the said Act, the respondent no.4 is not required to give any reason while requesting for the information. Lastly, the Petitioner is not justified in contending that he had indeed a No Objection Certificate issued by his employer for pursuing the said course or that he had a document to indicate that he had worked extra hours to make good his absence from duties while pursuing the said course. The present

proceedings are not concerned with these aspects, because the only narrow question that arises for consideration before this Court is as to whether the exemption under Section 8(1)(j) of the aforesaid Act operated in favour of the Petitioner. It is found on facts that the said exemption did not operate in favour of the petitioner.

29. Therefore, this Court is of the opinion that Respondent no. 3-Commission did not commit any error in passing the impugned order and giving consequential directions for the supply of information.

30. Hence, the Writ Petition is dismissed.

MANISH PITALE, J.

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