

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No.234/SCIC/2010

Shri Joao C. Pereira,
H. No.40, Acsona Utorda,
Majorda, Salcete-Goa.

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Appellant

V/s

1) The Public Information Officer,
Supdt. of Police (South),
Margao-Goa.

2) The First Appellate Authority,
Police Head Quarters,
Panaji-Goa.

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Respondents

CORAM

Shri Prashant S.P. Tendolkar, State Chief Information
Commissioner,

Smt. Pratima K. Vernekar, State Information Commissioner

Filed On:12/10/2010

Disposed on: 29/9/2016

1) FACTS IN BRIEF:

a) The appellant herein, by his application, dated 4/8/2010, filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO on his four points.

b) The said application was replied on 28/8/2010 and PIO furnished information at point (d) and refused to give any information regarding (a),(b) and (c) thereto.

c) Aggrieved by said reply the appellant filed first appeal to the first appellate authority, i.e. respondent no.2 herein.

d) The First Appellate Authority (FAA) by order, dated 30/9/2010 , dismissed the said appeal.

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- e) The appellant has therefore approached this commission in this second appeal u/s 19(3) of the act.
- f) Notices were issued to the parties, pursuant to which they appeared. The PIO on 4/2/2011 has filed a reply to the appeal .
- g) When the matter was posted for arguments the appellant filed written arguments however the PIO did not advance any arguments.

2) FINDINGS:

- a) We have perused the records. As the controversy rests only on the replies to points (a) (b) and (c) of the application dated 04/08/2010, we would deal with said requirements only.
- b) By his application, the appellant at point (a) has sought to know the name and designation of police officers who have to take action against the concerned PI for preparing a report, dated 06/5/2005, which according to the appellant, as per his said application, is false, fabricated and bogus. The answer to this requirement of the appellant involves two aspects. If the same are answered in the same way as it is sought, it may amount to admission of allegations that report is false, fabricated or bogus. By answering this query words may be put in the mouth of PIO that the said report is false, fabricated and bogus this is not intent of the RTI Act.
- c) Coming to question (b) of the application, it would also involve admission of the allegation. Said query also refers to an opinion of the PIO as to in what capacity the said report was prepared. The intent of the author preparing the report is not an information in custody of PIO.
- d) Regarding question (c) the appellant has sought to know whether the SDPO Vasco has accepted and verified the contents of the report. This information, unless it is in recorded form would

be beyond the custody of the PIO to be classified as information
e) Section 2 (f) and (j) of the RTI Act reads:

"(f) "information" 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;

Section 2(j) of the Act define Right to Information as under:

(J) "right to information" 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;*

f) A joint reading of the above provisions reveals that the right of the seeker to information are restricted only through inspection, taking notes, certified copies, certified samples and information in electronic mode or printouts. For exercising such right the information should exist with the PIO.

g) While dealing with a similar situation, Hon'ble Supreme Court of India in Civil appeal No.6424 of 2011(Central Board of Secondary Education and another v/s Aditya Bandopadhyay and others) has held at para 35 as under:

".....This is clear from a combined reading of section 3 and the definitions of 'Information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' is section 2(f) of the Act, only refers to such material available in the records of the public authority.

h) By applying the said ratio to the case in hand we find that the requirements of the appellant pertaining to his information were in respect of non existing information or which would exist in future and in the form of opinion. The appellant is seeking compilation of inferences of such information. Being beyond the purview of information under section 2(f) read with 2(J), is not custody of PIO. Hence, to our mind, no illegality can be found in the order passed by the PIO or by the First Appellant Authority.

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i) In the circumstances we find that the present appeal cannot survive and hence we proceed to dispose the same with the order as under:

O R D E R

The appeal is dismissed. Notify the parties.

Proceeding closed.

Pronounced in the open proceedings.

Sd/-
(Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa