

GOA STATE INFORMATION COMMISSION

Seventh Floor, Kamat Towers, Patto, Panaji –Goa.

**CORAM: Shri Prashant S. P. Tendolkar,
Chief Information Commissioner
Smt. Pratima K. Vernekar,
State Information Commissioner**

Appeal No.60/SIC/2014

Santosh V. Shetye,
H. No. 131, Near Gomantak Press,
Panaji-Goa Appellant

V/s

1. The Public Information Officer (PIO),
The Dy. Collector (DRO),
Office of the Collector,
North, Panaji-Goa

2. The First Appellate Authority (FAA)
The Additional Collector-I,
Collectorate North, Goa
Panaji-Goa Respondents

Appeal filed on :16/06/2016

Decided on : 11/08/2016

FACTS

1. Brief facts of the case are that Appellant vide his application, dated 06/08/2013 filed u/s 6(1) of The Right to Information Act 2005 (ACT for short) sought information at queries No. 1 and 2 in respect of his case bearing No. FRO/N/3/15/08/EDC/PNJ from Respondent No. 1, being Public Information Officer (PIO).

2. Said application was replied by Respondent No.1, PIO on 16/08/2013 requesting Appellant to remain present in her office to clarify certain ambiguities in the said application. Due to non compliance of the request by the Appellant the Respondent No. 1

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PIO vide letter dated 02/09/2013 disposed the application of the Appellant by informing that there is no case file under case No. FRO/N/3/18/EDG/PNJ.

3. On the receipt of the reply from the Respondent No. 1, PIO the Appellant vide his letter dated 12/09/2013 intimated the Respondent No. 1 PIO that due to inadvertence and oversight the case No. was wrongly typed as FRO/N/3/18/EDC/PNJ instead of DRO/N/3/15/08/EDC/PNJ and therefore requesting to reconsider his RTI application dated 06/08/2013 and to provide the desire application concerning case No. DRO/N/3/15/08/EDC/PNJ.

4. The said request was considered by Respondent No. 1 and thus provided him information by her letter dated 24/09/2013.

5. Being not satisfied with the reply dated 24/09/2013 given to him by Respondent No. 1 PIO appellant preferred 1st Appeal to the Respondent No. 2 herein and by order dated 05/05/2014 Respondent No. 2, dismissed the Appeal of the Appellant.

6. Being aggrieved by the order of Respondent No. 2, the present second appeal is filed before this Commission seeking prayers for direction as against Respondent No. 1, PIO to provide the certified copies of the correct and proper information and also for invoking penal provision.

7. Pursuant to the notice, the Appellant appeared in person. Respondent No. 1 Public Information Officer (PIO), Smt. Sheru Shirodkar was present. A reply filed by Respondent No.1 on 02/05/2016 and additional reply was filed by Respondent No. 1 on 30/05/2016.

FINDINGS

8. Arguments were advanced by both the parties. We have duly considered a arguments, and the documents relied by both parties in support of their contention.

9. On perusal of the said application, dated 6/8/2013, it is seen that the Appellant has sought the information as under:

a) *Under which provision of law the said notices served through Panjim Police station inspite of the present case pertains to civil matter.*

b) *Under which provision of law though he has filed the detail reply to previous notice under which provision of law second notice can be issued and more particularly through Panaji Police.*

c) *Under which provision of law, once the panchanama is done in said case how warrant of destraint of moveable property can be issued and in this case was issued on 17/1/2013.*

10. Section 2(f) of the act which classifies information reads:

2(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;

and

Section 2(j) of the act gives the extent of right to the seeker as under:

2(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-

...4/-

A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specifies in section 2(j) in respect of the records as specified in section 2(f)

11. A perusal of queries put forth by the appellant in his application under section 6 (1) of the Act, if carefully analyzed, shows that the seeker wants to know the provision of law under which certain acts were done by the Public Authority. In other words the appellant has sought for opinion as to under which law certain acts were done by public authority.

12. It is to be noted that a public authority has the information and PIO is designated to furnish the same to public. In other words the PIO is the custodian of the information to be posted to applicant seekers. Only powers are granted to PIO to decide at time of dispensing information is that it does not come under the exemptions as specified in section 8 of the Act. Thus the PIO has to furnish the information in his custody unless exempted.

While requiring PIO to furnish the information, he cannot be called upon to create information for being furnished. He also cannot be expected to give the background under which certain information was created or held by public authority. PIO is not supposed to know the views, logic and reasons of the author of information.

13. In the present case the appellant had sought from PIO the reason or legal bases on which the notices were issued. Such information was not in existence and secondly it is beyond the scope of PIO to know such bases. The requirements of the appellant were thus beyond the scope of section 2(J) of the act as he has not sought

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for inspection notes, extracts etc., certified samples or diskets, floppies etc stored in computer. The query of the appellant was of hypothetical in nature in the form of rather an opinion or a reason.

14. Hon'ble supreme Court in "***Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)***", while dealing with the extent of information under the Act at para 35 has abserved:

“ At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. 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 analyzed 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, 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’ in section 2(f) of the act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

15. By applying the same ratio to the present Appeal, we find that the information sought by appellant under section 6(1) of the act vide his application dated 06/08/2013 is in the form of advise and hence does not come within purview of definition of information. Hence we find no irregularity or perversity in the reply of PIO or in the order of the first appellate authority. Consequently we are declined to grant prayer (a) of the present appeal.

16. Now coming to other prayers as regards to imposing of Penalty we do not find any lapses on the part of the PIO as contemplated under section 20(1) of the act. In fact it is seen from the records PIO was cooperative in dealing with the entire issue and even by going out of way she brought it to the notice of the Appellant that he has mentioned wrong file Number and called for clarifying the same. Such help, though extended was not availed by the appellant till he realized that he had committed error by giving wrong file number resulting in delay for the PIO to dispose the same u/s 7 of the act. Thus we do not find any ground for granting of relief of penalty as prayed by the appellant.

In the above circumstances we dispose the present appeal with the order as under:

O R D E R

Appeal stands dismissed.

Notify the parties.

Authenticated copies of the Order be given to the parties free of cost.

...7/-

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Proceedings closed.

Pronounced in the open court.

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