

BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.
CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner

Appeal No. 101/SCIC/2014

Deu N. Jalmi Kerkar,
C/o. H. No. K-01, Kelas ,
Ponda, Keri-Ponda-Goa

.....Appellant

V/s

1. The Assistant Public Information Officer,
Inspector of Boilers, Institute of Safety,
Occupational Health and
Environment, Altinho-Panaji
2. FAA, Chief Inspector of Factories and Boilers,
Panaji-Goa

.....Respondents

Appeal Filed on . 10/09/2016

Disposed on. 29/06/2016

ORDER

1. By an application dated 18/03/2014 the Appellant Shri Devu Jalmi Kerkar, sought under Right To Information Act 2005 from Respondent No.1/PIO certified copies of the annual return in form No. 34 for the year 2010 , 2011 & 2012 alongwith the list of workman who were granted Earned Leave and also the list of non granted earned leave with the MRF Ltd, Usgao-Goa
2. The Respondent No. 1-PIO (Public Information Officer) by their reply dated 15/04/2014 furnished the copy of the Annual return in form No. 34 for 3 years as requested and failed to provide the information regarding list of workman who were granted Earned Leave (E.L.) and non granted E.L. on the ground that the said information is not maintained by the Department.
3. Being not satisfied with the reply the Appellant preferred First Appeal under section 19(1) before the Chief Inspector of Factories and Boilers being the First Appellate Authority on the ground that similar information was earlier provided by PIO (Public Information Officer) in Appeal No. 15/2010/2044 dated 3/11/2010

preferred by Shri Rohidas Naik, Appeal No. 16 of 2011 dated 4/07/2011 preferred by Sushant Shinde for the year ending 2010 and in Appeal No. 18/2012 for the year ending 2011 to Shri Sudhakar Naik. Appellant thus had prayed in First Appeal to issue direction to Inspector of Boiler and APIO and to Sr. General Manager Goa Plant MRF Ltd to furnish the information.

4. The First Appellate Authority by an Order dated 15/05/2014 allowed the Appeal, and directed concerned Officer to furnish the information by calling from MRF Ltd. The above direction were given by making observation that providing such information will not prejudice the Right of MRF Ltd as on earlier occasion also information were issued pursuant to the directions of said Office.
5. A letter dated 02/06/2014 was made by the Inspector of Factories to the Occupier/Manager of MRF Ltd Usgao Ponda intimating them regarding the direction issued to him by FAA and told them to furnish the said information within 7 days. Sr. General Manager of MRF Ltd. replied to them, that the letter dated 02/06/2014 was unwarranted as the RTI Act contemplates information which is available on record and it does not go far as to require an authority to first carry out an inquiry and there by create information. Vide their said letter they also made clear that individual E.L records are made available to an individual and gave the details of number of Earned leave taken by applicant during the year 2010 to 2012.
6. The Respondent No. 1-PIO then intimated the present applicant vide his letter dated 02/07/2014 regarding numbers of days of leave obtained for the period of 2010 to 2012 and further informed him that list of workman who were granted Earned leave and also list of non granted Earned Leave has not been provided by the management of MRF Company.

7. Being not satisfied with the reply of the Respondent No. 1 dated 02/07/2014 the Appellant preferred the second Appeal before this Commission on 10/09/2014 on 12 grounds as stated therein in appeal memo and prayed for the direction to provide the information and also to invoke section 20 of RTI Act.
8. After notifying both the parties the matter was listed on board and was taken up for hearing. During the hearing Appellant was present in person and on behalf of Respondent Shri Marathe alongwith Rohidas Korgaonkar was present. Reply came to be filed by Respondent No. 2-FAA on 16/06/2016. However no reply came to be filed on behalf of Respondent No. 1- PIO.
9. Arguments were advanced by both the parties, Respondent No. 2-FAA Shri Vivek Marathe during the arguments submitted that the information sought by the Appellant is not available with their department in any form u/s 2(f) of RTI Act 2005 and that the concern party MRF Ltd. is a private factory and has refused to provide the said information and submitted that it is beyond their control and power to secure the same and as such they showed their inability to provide the said information to the Appellant. The Respondent No. 2, during the arguments, further have categorically stated that as per the rules the annual returns in form No. 34 are required to be submitted to their Office by the Factories and Establishments. And only the number of the workers and the particulars of the employments and their leave period has to be mentioned in form No. 34 and the name of the particular worker and the other particulars are not required to be submitted to their Office as per the prevailing laws, regulations, and that the information at point No. 2 of RTI application is not required to be maintained by their office as such this Commission is declined to direct to provide information at point No. 2 as the Act does not cast an obligation upon the public authority to collect or

collate such non available information and then furnish it to the Appellant.

10. Perused the records and also considered the arguments the Appellant herein has requested from the Respondent No. 1 the information in the form of certified copies of form No. 34 for the year 2010 to 2012 alongwith list of workmen who were granted Earned Leave and also who were not granted Earned Leave by MRF Ltd.

It is not in dispute that the establishment MRF Ltd. is not a public Authority within the meaning of section 2(h) of the Right to Information Act 2005 (RTI Act). Hence the records, even if are maintained by said company cannot be sought under the Act. Section 2(f) defines information as under:

“ 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.”

Thus any information pertaining to a private body like MRF Ltd., in this case, and can be assessed by a Public Authority under the other law can be the only information which can be sought under the Labour Law governing MRF Ltd. It is only the form No. 34, which is assessable to the PIO and hence such form No. 34 only constitutes information under the Act

11.The Honorable Supreme Court in the matter of Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others in Appeal No. 6454 of 2011 while dealing with the extent of information under the Act has held at para 35 as under:

“ 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 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."

12. By applying the same ratio as form No. 34 is the only information assessable by the PIO, only such form can be furnished as information. Public Information Officer is not supposed to create information or call the private body to file the information which cannot be assessed by it under any law.

13. Considering the above position I am of the opinion that whatever information available with PIO have been furnished to the Appellant within stipulated time and as regards to other information at point No. 2, it is beyond the competence of PIO to collect though they have made the efforts to secure the same from the concern private party. As such I am not inclined to grant both the prayers as sought for in the present Appeal.

14. In view of above I dispose the present appeal with following:

ORDER

Appeal stands dismissed.

Notify the parties.

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

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./-

(Pratima K. Vernekar)

**State Information Commissioner
Goa State Information Commission**