

GOA STATE INFORMATION COMMISSION

Kamat Towers, Seventh Floor, Patto, Panaji, Goa

Appeal No. 39/SCIC/2016

CORAM : Shri. Prashant S. P. Tendolkar State Chief Information
Commissioner

Smt. Pratima K. Vernekar, State Information Commissioner,

Shri Bandhagit Nadaf,
No.9,3rd floor.Paes Avenue Bldg.,
F.L.Gomes Road,
Vasco Da Gama.

-----Appellant

V/S

1.The State Public Information Officer,
O/o Mamlatdar SPIO, Vishal C. Kundaikar,
Margao Taluka,
Shri Mathany Saldana Admn Bldg.,
Margao Goa.

2. First Appellate Authority,
Dy. Collector & SDPO, Salcete,
Shri Mathany Saldana Admn Bldg.,
Margao Goa.

-----Respondent

Appeal filed on:9/3/2016
Decided on:15/9/2016

FACTS:

a) The Appellant by his application, dated 18/5/15 filed under section 6(1) of Right to Information Act (Act) sought following information from Respondent No. 1, PIO viz:

- i) Certified copy of full file with all its enclosures of documents of Mr. Pandurang Parsapa Kattimani as submitted by him to procure Residence Certificate for registering his name in employment exchange, Margao-South Goa.

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- ii) Certified copy of file notings and all the other such documents as submitted by applicant i.e. Mr. Pandurang P.Kathimani and maintained by their office pertaining to residential certificate as issued to applicant Mr. Pandurang P. Kattimani
- b) The said Application was replied by Respondent No. 1 PIO on 15/6/2015 interalia requested appellant to give proper verification number or outward number of the Residence certificate/Document in order to trace out the document. The appellant promptly responded to the said letter and submitted Xerox copy of Residence Certificate, dated 11/9/2009 issued to said Mr. Pandurang Parsapa Kattimani. The Respondent No. 1 PIO again by an letter ,dated 10/8/15 informed the appellant that the said Documents are not traceable in their office.
- c) Being not satisfied with the reply of Respondent No. 1, PIO the appellant then preferred first appeal on 25/8/15 before Respondent No. 2, FAA. Since Respondent No. 2, FAA did not dispose the matter within specific time, reminder dated 1/12/15 was sent by appellant to the Respondent No. 2 FAA Despite of same the FAA did not hear the matter nor passed any order.
- d) Being aggrieved by the action of both the Respondent. The present appellant came before this commission by way of second appeal on 8/3/16.
- e) In Pursuance to a notice issued by this commission, Smt. Rubina Beigh appeared on behalf of appellant . On behalf of Respondent No. 2 Shri Vishal Kundaikar appeared , however Respondent No. 2 FAA opted to remain absent despite of due service of notice to him. A reply came to be filed on behalf of Respondent No. 1 on 4//7/16.

f) Arguments were advanced by both the parties we have duly considered argument and the records available in the file.

g) It was submitted on behalf of Respondent No. 1 that the documents pertaining to the said certificate were verified by them from the records of their office and found that the documents were not available. He further submitted that the validity of Residence Certificate is valid for 3 years and upon expiry the incumbent is required to apply fresh. In other words Respondent No. 1 Submitted that their records are maintained for three years only. He further submitted that the documents which was sought by the appellant is of the year 2009 i.e. more than 3 years, as such the documents might be either discarded and or disposed off as per the prevailing procedure.

h) The Respondent No. 1 PIO has relied upon the report, dated 4/12/14 in relation to weeding out of records on account of space constraint and a part of Swachh Bharat Nital Goem Mission and pointed out the guidelines no.11/139/84-Est/Col(vol.II, dated 1/12/15 issued by the Addl. Collector North Goa, to destroy the record which are not much significant to be reserved by posterity. It is seen from the said report that the time limit for preserving the Residence Certificate is for 3 years.

i) Said guidelines were issued much prior to the filing of present application u/s 6 of RTI Act as such we find force in the submissions of PIO that the concerned records have been weeded out in view of the above guidelines and as such on the date of the application under section 6(1) the said information was not available with the office of the Respondent no.1. Respondent No. 1 PIO further submitted that since the information is not in existence the same cannot be provided to the appellant.

j) When the matter was posted for order the appellant appeared in person on 18/8/16 and made further submission. He submitted that the data are stored by the Respondent in their computer and the same could be made available to him.

He further submitted that even personally approached Respondent No. 2 FAA with a request to hear his first appeal and that his request has been fallen on deaf ears. He further submitted that he had to travel from Vasco to Margao in order to pursue his first appeal and as such a great mental agony has been caused to him besides monetary loss.

The commission is of the view that the inconvenience and hardship caused to the appellant in pursuing the matter could have been avoided if First Appellate Authority have stepped out to dispose off the appeal within a stipulated time. The FAA has nothing to say on the said allegation of the appellant. In spite of due service the Respondent No. 2 First Appellate Authority did not remain present before the commission nor taken any pains to reply. Thus the conduct of First Appellate Authority cannot be brushed aside and it has to be viewed seriously.

K) Though the appellant submits that the Data is stored in computers, we find no supporting evidence on record nor the same is confirmed by PIO.

However on going through the records, we find that the FAA in this case has remained totally inactive and indifferent to the grievance of the appellant. Such an attitude is not in conformity with the designated officers under the act. This bench expresses its displeasure over this conduct of the FAA, i.e. the respondent no.2 herein.

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l) While dealing with the extent of information under the Act the Hon'ble Apex Court in "**Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others**" in **Appeal No. 6454 of 2011** at para 35 has held 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."

m) In the present case the PIO has convincingly cleared that the information as was sought is not available being weeded out. The said statement is supported by the relevant order under which it is so

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weeded out. Hence we find no reason to disbelieve the same. The appellant claims that the said records are stored in computer. Though said statement is not supported by any evidence, in ordinary course under the act the appellant would be entitled to obtain the same as such information constitutes information under the act. Considering the above we dispose the present appeal with the following:

ORDER

The appeal is disposed being infructuous in view of weeding out of the records. However the appellant shall be entitled to seek the information if stored in the computer by the office of Mamlatdar Margao, Goa by filing separate application as provided under section 6(1) of the Act.

Respondent No. 2, First Appellate Authority is hereby directed hence forth to be vigilant in performing its obligation under the act with the true spirit of the act.

Parties to be intimated

Pronounced in the open proceedings.

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

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