

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.47/SIC/2013.

Mr. Nevil B. Furtado,
R/o H. No.51, Copelwaddo,
Sernabatim, Salcete –Goa.

..... Appellant

V/s

- 1) The Civil Registrar-cum-Sub Registrar,
(HQ), PIO, O/o The State Registrar-Cum-
Head of Notary Services, Panaji.-Goa.
- 2) Shri Jose Joey Rodrigues,
Adv./Notary,
Mamat Commercial Center,
Margao-Goa.

..... Respondent

Filed on: 15/4/2013

Decided on: 5/12/2016

FACTS:

a) By his application, dated 23/7/2012, under section 6(1) of The Right to Information Act 2005 (act for short) the appellant herein sought from the PIO the certified copy of the notarial book of Adv. Jose Joey Rodrigues, Margao pertaining to registration No.6740/8/2005.

b) The same was requisitioned by the PIO from the said notary, who is arrayed as respondent no.2 herein and was furnished to the appellant on 4/9/2012.

c) Being not satisfied with the said information the appellant preferred the first appeal which was finally decided on 12/12/2013 and the PIO was directed to obtain the relevant register from the said notary in order to issue copies of the same to appellant.

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d) According to the appellant the information was accordingly furnished to the appellant, but the appellant does not accept the same as the information as was required and has approached this commission in second appeal u/s 19(3) of the act.

e) Notices of the appeal was issued to the parties pursuant to which they filed the appearance. The parties were heard. The appellant submitted that the certified copy of extract which was sought was pertaining to document of date 8th June 2005 and what is furnished is of date 8th August 2005.

The PIO submitted that the application seeking information does not contain the full details of the information as in contended now. On going through the file it was noted by us that though a certified copy of extract of notarial book pertaining to registration No.6740/8/2005 is sought, no specific date thereof, is mentioned. On pointing out the same to the appellant he volunteered to file another amendment for clarifying the requirement. Accordingly on 15/9/2016 the appellant filed another memo clarifying the requirement and the PIO was directed to furnish the information after considering the clarification in the said application, dated 23/07/2012 read with the clarification dated 15/09/2016

e) Accordingly on 4/10/2016 the PIO furnished the reply but according to the appellant the same is not the information as was sought. Hence further Arguments were heard.

f) In his arguments the appellant submitted that he does not dispute that the copy furnished is that of the original register but according to him the original register is tempered with by the notary. He submitted that when he was submitted with the copy of the said document by the notary the signature at column No.(11) thereon

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was missing. According to him, presently i.e. as on today on the copy as also on the original register there exist a signature at said column. Hence according to him there is tempering with the records by the notary. He further submitted that on this aspect of tempering, the notary is in a better position to explain and that it is only after the first appeal that the notarial register was transferred.

g) The PIO in her submissions submitted that the information so submitted by her is the same as it exist in original register. She admitted that on the face of the records it appears that there is tempering with records and for which an inquiry was conducted and the notary was penalized. According to her the document at registration no.6740 pertains to date of 8/8/2005 and there is no document registered under said No.6740 on 8/6/2005 and that she has filed the letter clarifying this. According to her as the information, as is available, is furnished and nothing survives to be decided.

FINDINGS:

a) We have perused the records. The application u/s 6(1) of the act, as clarified on 15/9/2016 was for seeking the certified copy of the document at serial No.6740, dated 8/8/2005. The PIO has furnished the copy of the said document at said serial no.6740 of 8/6/2005. Alongwith the said information the PIO has also filed a clarification by letter, dated 20/09/2016 stating that the documents at Sr. No.6740 pertains to 8/06/2005 and that no document is found recorded said under Sr. No.6740 on 08/08/2005.

On 31/10/2016, during the hearing, PIO brought the original register, in respect of which the information in the form of certified copy was issued. On comparing the said original register with copy furnished to appellant we find that the same is the actual true copy of the original.

b) It is the contention of the appellant that the said document under Sr. No.6740 was never recorded on 08/08/2005 and that there is tempering of date by the concerned notary. On the face of the records it appears to be true and there we find on the register an overwriting/correction of serial number and hence said suspicion, on the face of it, appears to be correct. However the present proceeding are under the Right to Information Act, where the appellant is a seeker and is entitled to the information as it exist with the public authority and which is in the custody of PIO. Under section 2(f) of the act, the information to be parted is the one which is held by a public authority. The right of the seeker to seek such information is the one which is held by and under the control of the public authority.

c) In the present case it is not in dispute that the information as furnished is the same which is held by the respondent PIO in original. Thus it is only this information to which the appellant can have access and which is rightly furnished by the PIO. Though it is contended that the said notary has tempered with the records, which as on face of it appears to be so, but investigation and rectification of the document is beyond the competence of the authorities under the act. Hence we are unable to deal with the same.

d) The appellant by his application, dated 31/10/2016 has also prayed for a direction to the notary to file an affidavit in evidence as contemplated under section 18(3) (c) of the Act. We are unable to consider this request in view of our above finding that investigation into fraud is beyond the competence of the Commission. Section 18(3) (c), though grants powers to the Commission to accept the evidence in the form of affidavit, the same pertains only to

proceedings conducted under the jurisdiction vested in the commission. Thus the commission can seek the affidavit only for the purpose of inquiry which can be conducted by the commission. As held above the inquiries into the fraud or tempering of the records is not within the purview of the act and hence the said request cannot be granted.

e) In the appeal the appellant has also sought for the penalty. On going through the application under section 6(1) it is found that the information as sought for was pertaining to document registered under No.6740/8/2005 and date of such document was not furnished. It is according to the PIO that in view of lack of details, the information could not be furnished with clarity. No doubt this clarification is furnished by the appellant in the course of this appeal vide application, dated 15/09/2016 and pursuant to which the information is furnished.

f) The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (**Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others**) has observed:

"11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

g) No doubt there is a delay in furnishing the information but considering the circumstances as we find above, such delay cannot be attributed singly to the PIO and the cause of delay is contributory as in the original and application, the date of document was not mentioned.

- h) Applying the above principal as laid down by the Hon'ble High court of Bombay, no case is made out for imposing penalty against PIO, vide prayers (2) and (3) of the appeal memo.
- i) In view of the above, findings we dispose the present appeal with the following:

ORDER

No further intervention of Commission is required for the purpose of grant of information. The relief for penalty vide prayers (2) and (3) of the appeal memo stands dismissed. Appeal disposed accordingly.

Notify the parties.

Proceeding closed.

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 Commission
Goa State Information Commission,
Panaji-Goa