

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

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

Appeal No. 04/2017

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

..... Appellant

V/s

- 1) The Public Information Officer,
Under Secretary, Law, (Estt.),
Secretariat, Porvorim-Goa.
- 2) The First Appellate Authority,
Joint Secretary, Law,
Secretariat, Porvorim-Goa.

..... Respondents.

Filed on : 10/1/2017

Decided on:19/9/2017

FACTS:

a) The appellant by his application, dated 03/08/2016, filed u/s 6(1) of the Right to information Act 2005 (Act for short) sought certain information pertaining to the cases before Human Rights Commission and fees paid to Government Counsels. The said application called for information on five points marked as points (a) to (e). said information was sought from PIO, under Secretary (Home), who in exercise of rights u/s 6(3) of the act transferred the part of the application on points (b) and (e) to the Under Secretary (Law-Estt) with a request to furnish the information at points (b) and (e) to the applicant directly.

b) According to appellant as per para (2) of the appeal memo, the information a point (b) was refused and hence he filed

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first appeal to the respondent No.2. By order passed in said first appeal on 20/09/2016, the respondent No.2 as the First appellate Authority (FAA) directed the appellant to inspect the file and to furnish the copies as may be required by appellant.

c) Aggrieved by the said order of FAA i.e.the Respondent No.2 herein, the appellant has approached this Commission by this second appeal u/s 19(3) of the Act.

d) After notifying the parties they appeared. The PIO, the respondent No.1 herein filed his reply. Arguments of the parties were heard. Shri Chandrashekhar Naik Legal Officer, representing PIO submitted that he is adopting his reply as his arguments. Appellant orally submitted his arguments.

e) In his arguments appellant submitted that his prayer in this appeal is only in respect of information at point (b). By narrating the sequence of events, appellant submitted that the information at point (b) was malafide denied to him. According to him if the information is not available as requested this commission by exercising rights u/s19 of the act should direct the authority to maintains information in the form as is required by him and thereafter dispense it to him.

f) For the purpose of verification as to in what format the information is existing with the Authority and as submitted by the representative of PIO the accountant of the concerned authority was called before me alongwith the books. Accordingly Mrs Prananjali Pole, accountant from the office of Law and Judiciary appeared and produced the file of bills paid to various advocates. According to her the accounts are

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maintained advocate and not forum or court wise, including that for High Court and Supreme Court cases. I perused the files alongwith the appellant who was also present then.

2) FINDINGS:

a) As the relief sought by appellant in this appeal is in respect of information at point (b) I am restricting my finding only to said requirement. Point (b) of application u/s 6(1) reads:

"Kindly furnish me details of fees paid to the Government Counsel to defend Government officials in proceedings filed before Goa Human Rights Commission from its inception till date, each separately."

Thus the appellant wanted the information regarding the fees paid to all the Counsels pertaining to proceedings before one forum i.e. Human Rights Commission.

b) According to the PIO the accounts of fees are maintained per advocate and not per forum or Court. This fact is also verified by me alongwith the appellant from the records produced by PIO through his accountant. In said books the details of the fees paid to respective advocate is recorded. Said details of fees contains fees paid to him/her for appearing before all forum/courts including appearances before the Human Rights Commission.

c) This fact is confirmed by appellant and he submitted that in such case by exercising powers u/s 19 of the Act the Commission should issue directions to said authority to maintain the records in the way sought by him.

In other words the appellant wants this Commission to direct the PIO to prepare another records forum/court wise and then dispense such information to him.

d) section 2(f) which defines "Information under the act reads:

"2. Definitions. __ In this Act, unless the context otherwise requires, __

(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;"

Thus from the above definition the information sought should be such that it is held by the authority.

e) The Hon'ble Supreme court while emphasizing the nature of information which can be furnished under the act, in the case of **CIVIL APPEAL NO.6454 OF 2011[Arising out of SLP [C] No.7526/2009] Central Board of Secondary Education & Vs. Aditya Bandopadhyay & Ors** has observed as under:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is

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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 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' 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. (emphasis supplied)

f) In the present case it is not in dispute that the information as is sought is not in the same form as is sought. The appellant therefore has a submission that in case it is not held in said format then the authority should be directed to maintain the same in said form for being dispensed to appellant. This according to appellant can be done by invoking section 19 of the act. Here again the Hon'ble Supreme court has defined the power that can be exercised by the commission under section 19. In the case of **Central Board of Secondary Education & Vs. Aditya Bandopadhyay & Ors (supra)** apex court at para 36 thereof has observed:

"36. Section 19(8) of RTI Act has entrusted the Central/State Information Commissions, with the power to require any public authority to take any such steps as may be necessary to secure the compliance with the provisions of the Act. Apart from the generality of the said power, clause (a) of section 19(8) refers to six specific powers, to implement the provision of the Act. Sub-clause (i) empowers a Commission to require the public authority to provide access to information if so requested in a particular 'form' (that is either as a document, micro film, compact disc, pen drive, etc.). This is to secure compliance with section 7(9) of the Act. Sub-clause (ii) empowers a Commission to require the public authority to appoint a Central Public Information Officer or State Public Information Officer. This is to secure compliance with section 5 of the Act. Sub-

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*clause (iii) empowers the Commission to require a public authority to publish certain information or categories of information. This is to secure compliance with section 4(1) and (2) of RTI Act. Sub-clause (iv) empowers a Commission to require a public authority to make necessary changes to its practices relating to the maintenance, management and destruction of the records. This is to secure compliance with clause (a) of section 4(1) of the Act. Sub-clause (v) empowers a Commission to require the public authority to increase the training for its officials on the right to information. This is to secure compliance with sections 5, 6 and 7 of the Act. Sub-clause (vi) empowers a Commission to require the public authority to provide annual reports in regard to the compliance with clause (b) of section 4(1). This is to ensure compliance with the provisions of clause (b) of section 4(1) of the Act. **The power under section 19(8) of the Act however does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in***

the form which facilitates the right to information and ensure that the records are computerized, as required under clause (a) of section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of sections 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub- 51 sections (3) and (4) of section 4 of the Act.-----"

(emphasis supplied)

g) Thus by applying the above ratio of judgment and considering the "Information" as defined under the act I hold that as the nature and form in which the information is sought does not form part of the records of the Public authority, it does not constitute information under the act and hence cannot be furnished.

The directions as sought by the appellant u/s 19 of the act would amount to directing creation of fresh records for the purpose of being furnishing to the appellant. Such directions being beyond the scope of the act would be contrary to the ratio as laid down by Supreme Court in the case of Aditya Bandopphay (Supra)

h) In the facts and circumstances of the case I find that as the information sought for by appellant at point (b) of his application is not in existence the same cannot be ordered to be furnished as it does not constitute information u/s 2(f) of

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the act. In the result I proceed to dispose the present appeal with the following:

O R D E R

The appeal is dismissed. The rights of appellant to seeks information as is maintained by the Public Authority, are kept open. Proceedings closed.

Parties be notified.

Pronounced in open hearing.

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