

GOA STATE INFORMATION COMMISSION

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

Appeal No. 134/2016

Uday A. Chari Priolkar,
H.No. C-5/55,
Mala Panaji Goa.

.....Appellant

V/s.

1. The Public Information Officer
The Executive Engineer,
Div. III(PHE),
Santa Inez, Panaji Goa.

2. First Appellate Authority,
Superintendent of Surveyors,
P.W.D.
Altinho, Panaji Goa.

.....Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 14/07/2016

Decided on: 26/04/2017

ORDER

1. The Appellant , Shri Uday A, Chari Priolkar submitted an application on 15/1/2016 under RTI Act 2005 seeking certain information at queries from no.1 to 5 from the PIO, Executive Engineer Div, III, PWD(PHE), St. inez Panaji, Goa .
2. The said application was responded by PIO on 12/02/2016 thereby furnishing the information at point No. 1 to 4 of his application. The information at point No. 5 was denied to him on the ground that the said document was internal register and not a public document and as such it was not issued to him being exempted u/s 8(1)(j) of RTI Act.

3. The appellant being aggrieved by the said reply of the Respondent PIO filed a First appeal before the FAA, Superintendent of Surveyor, PWD, Altinho, Panaji Goa on 16/03/2016 and the Respondent No. 2 First Appellate Authority (FAA) vide order dated 15/4/16 directed the PIO to issue remaining information at point No. 5 free of cost.
4. After the order of First appellate authority, vide letter dated 5/05/2016 the Respondent PIO had audacity to inform to Respondent No.2 First appellate authority that the Assistant engineers have independent offices as such the said information is not available in the office of PIO. It was further contended that the copy of the order of the FAA was forwarded to the concerned Assistant Engineers who have orally objected to give the respective information on the ground that the movement Register of the Assistant Engineer is the matter concerned between them and their office and as such it is a personal information. It was also submitted that no larger interest was established by the applicant. The copy of the said letter was forwarded to the appellant for information.
5. The appellant on receipt of the copy of said letter dated 5/5/16 wrote a letter on 10/05/2016 to Respondent No. 2 First appellate authority thereby requesting him once again for direction for compliance of his order.
6. Since no information came to be furnished to him the appellant approached this commission by way of this present appeal on 14/7/16 with a prayer to furnish him the information at point no. 5 of his application dated 15/1/2016 and for invoking penal provision as contemplated u/s 20(1) and 20(2) of RTI Act .
7. In pursuant to the notice the appellant appeared in person The Respondent No. 1 PIO was represented by Shri Chandrakant Parab who filed reply on behalf of PIO on 17/2/17 .

8. I have perused the records and also considered the replies and arguments
9. It is the contention of the appellant that respondent vide their reply dated 12/2/16 have submitted that the information at point no. 5 was exempted in view of section 8(1) (j) of the RTI Act 2005 and have did not specify that the same information is not available with them. It is the further case of the appellant that information at point no.5 has been destroyed by Respondent, PIO Superintendent Of Surveyors, PWD in order to protect the Assistant Engineers who are working under the DIV. III and that the Respondent no. 1 is intentionally suppressing the information in order to protect the Asst. engineer of Div II and others who attend the LLB classes in V.M. Salgaonkar College Miramar during the office hours.

The appellant further contended that Respondent 1 PIO has disobeyed the order passed by the Respondent No.2 on 15/4/2016 and as showed disregards towards the First appellate authority which is his superior officer in rank and such attract disciplinary action. The appellant relied upon various citation of central information commission in support of his arguments.

10. Respondent No. 1 PIO contended vide their reply that the movement register of Asst. Engineer is not a public document and not a mandatory as per the service rule of the employees. It was further contended that the all the Asst. Engineers were provided with government mobile phones and their numbers made available to the public. In brief it is their contention that information sought at point No. 5 is not in existence and as such cannot be provided . The PIO have relied upon judgment of Supreme court of India in case No. 27734 of 2012 in support in their contention.

11. It is seen from the records that , PIO vide his reply dated 12/2/16 given u/s 7(1) of RTI Act reveals that the information at point no. 5 was rejected u/s 8(1)(j) by quoting the decision of the Hon'ble Supreme court incase No. 27734 of 2012 .

After the order of the First Appellate Authority the Respondent PIO submitted that the information was sought from the Asst. Engineers who are having independent offices and who objected for providing the same being personal in nature.

Vide reply before this commission it was contended that the movement register of the Asst. Engineer is not a public documents and not maintained for every cases and not mandatory for service rule of the employees . It was further contended that all the Asst. Engineer have been supplied with Mobile phone in order to contact them at any point of time as such the relevance of the moment register for such officials does not exist at all nor available.

The stand taken by the PIO at above three different stages is not confirmative with each other. From the initial reply dated 12/2/2016 and the letter of Respondent 1 PIO dated 5/5/2016 addressed to Respondent No. 2 First appellate authority it could be gathered that information at point no. 5 i.e. movement register was available in the respective offices and now before this commission that said documents is not maintained by Department which is contrary to the stand taken earlier.

12. The order of the First appellate authority reveals that the matter was decided by hearing of both the parties. There is nothing on record to show that Respondent No. 1 PIO had placed before First appellate authority the fact of Assistant Engineer objecting for provided the same and that said movement Register is not maintained by them. In fact, even the appellate authority

proceeded on the assuming & presuming that such a document is available.

13. The stand taken by Respondent PIO regarding the Asst. engineer orally objecting to give the said information to the appellant is without any supporting documents. Assuming for a while that they have objected, the Respondent No. 1 PIO being a superior officer could have resorted to a CCs Conduct rule and could have sought the said information from them .

So also the contention of the Respondent PIO that information at point No. 5 is not in existence and not maintained by their Department, is also not supported by any documents nor the same is substantiated on oath by way of Affidavit .

15. The citation relied by the Respondent PIO does not apply to the facts of the present case . In the said case what was sought was income tax returns ,copies of memos , showcause notices and censor awarded to the employees from the employer which was qualified to be a personal information .

16. In the present case to my mind the information at point no. 5 would not have been qualified to be personal information as the same is required to be maintained by the head of Department/Offices and that they were duty bound to ensure punctuality in attendance, office discipline and discharge of prompt and efficient services to the general public. **The Government of Goa has issued circular No. 45/1/95-GAD dated 23/10/2001 and circular No. 45/1/95-GAD dated 24/07/2014 to that effect. In the said circular there were directions to maintain movement register so as to curb the practice of leaving of offices during office hours by employees.** The Performa of movement register for Government servant was also enclosed. I am surprised as the PIO being a superior office of the Department is unaware of

such an circular. In view of such an circular, the stand of PIO that such movement register is not required to be maintained cannot sustain.

17. The Hon'ble High Court of Bombay at Goa in Writ Petition 1 of 2009, Kashinath Shetye V/s PIO. The Hon'ble Court has held

"a public servant continuous to be a public servant for all 24 hours therefore, any conduct/misconduct of a public servant even in private, ceases to be private. Therefore, a member of public demand as an how many leaves were available by the public servant, such information though personal, has to be supplied and there is no question of privacy at all".

It has been further held that "such supply of information at the most may disclose how sincere or insincere the public servant is in discharge in his duty and the public has to right to know".

At relevant para 8 It has been also held that Section 8(1) (j) the information which cannot be denied to parliament or state Legislature shall not be denied to any person.

18. The Hon'ble high Court of Alahabad while deciding the writ number 45252 of 2005, Praveen Varma V/s Hon'ble High Court of juridicator reported in 2008 (1) RTI 137 has discussed ambit and scope of section 3,4,and 6 and has held that

"the disclosure of information in regards to the functioning of Government must be the rules and secrecy must be an exception."

19. One could gather from above Judgments that Every member of the Public gets right to know of the working of the public servant his honesty, integrity and devotion to duty. In fact nothing remain personal while as far as the discharging of duties as the Salary is paid to the public servant from public exchanger. It is general

scenario is Government officer that general public has to visit the Government office on number of times and for one reason or other most of the time it is experience of public that particular Officer is not found in the office as such he has to leave the office without his work being done. The movement register is maintained, is to check on such officials who are unauthorizely moving out of the office as such I am of the opinion that providing mobile phones will not serve such purpose.

20. PIO is a designated person of the Department who is responsible to ensure to the compliance of RTI act and felicitated the information seeker in obtaining the information and is under obligation to render Assistance to the information seeker. Sum and substance of section 5 of the RTI Act is that every PIO should extend all reasonable assistance in making information available rather than putting in hurdles in different ways. It is also responsibility of PIO to appear before the Commission and to substantiate his case. In the present case, the Respondent Deelip M. Dhawalikar has not bothered to appear before this Commission so also after filing reply by his representative non appeared to substantiate their case. The Act on the part of PIO herein is condemnable.

21. Indeed if the Appellant had been told or informed right in beginning that the documents are not maintained by them the appellant would not have been compelled to approach the First appellate authority then the commission to seek the information which does not exists. If the Respondent No. 1 PIO given the correct information in time the unnecessary harassment caused to the Respondent in running from pillar to post could have been avoided.

In the above given circumstance I pass the following order;

ORDER

1. The public authority is directed to abide and adhere to instructions given in the circular dated 24/7/2014 issued by

Government of Goa and to maintain Movement Register hence forth.

2. The PIO is hereby also instructed to give proper and correct replies at the inception itself so that unnecessary harassment to common person can be avoided and the valuable time of information seeker could be saved.

Appeal stands disposed accordingly.

Notify the parties.

Authenticated copies of the Order should 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.

Pronounced in the open court.

Sd/-

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

Copy to- The Chief Secretary, Secretariat Porvorim Goa for information & for necessary action.