

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

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

Appeal No. 31/SCIC/2016

Smt. Antonia Michelle Abel,
Flat A-3, Bella Vista Apartments,
O' Coqueiro Circle,
Alto Porvorim –Goa

Appellant.

V/s

- 1) The Public Information Officer,
Office of the Hon'ble Chief Minister,
Government of Goa,
Secretariat Complex,
Porvorim-Goa.
- 2) First Appellate Authority,
Office of the Hon'ble Chief Minister,
Government of Goa,
Secretariat Complex,
Porvorim –Goa. 403521.

Respondents

Filed on: 23/02/2016

Disposed on: 09/11/2017

1)FACTS:

a) The appellant by her application dated 17th August 2015 filed u/s 6(1) of the Right to information Act 2005(Act for short) addressed to the respondent No.1 herein i.e. PIO, office of Chief Minister, Government of Goa, sought information on six points therein. At point No.7 the appellant sought inspection of files. According to appellant, as per her statement in memo of appeal, that as per directions of the office of Hon'ble Chief Minister, the same was entered in the office of General Administration Department (GAD).

b) According to appellant she was intimated by PIO,GAD vide letter, dated 2/9/2015 that she has called the information as

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requested from the office of PIO, office of Chief Minister, Goa, which has in turn informed PIO,GAD that the information as sought is not available and hence cannot be furnished. PIO GAD offered the copy of the said note from the office of Chief Minister. Said PIO also informed the appellant that her application in original was transferred to Home Department and copy to Directorate of Archives and Archeology.

c) The appellant, apparently aggrieved by the said response of PIO preferred first appeal to first appellate Authority but according to appellant till date no order is passed by it.

d) The appellant has therefore approached this Commission in second appeal u/s 19(3) of the act.

e) Notices were issued to parties, pursuant to which PIO filed his reply on 11/10/2017. The matter was thereafter posted for arguments.

f) It is the submission of appellant that the information sought by her vide application , dated 17/08/2015 be furnished to him. According to appellant as per the statement of Hon'ble Chief Minister made in the assembly, she has sought the information and which is refused.

g) In reply to the submissions of appellant it is the submission of PIO, office of chief Minister, that the appeal is bared by limitation and hence could not be entertained on merits it is submitted that the information is not available in the office of Chief Minister and hence cannot be furnished which was accordingly informed to appellant. He further submitted that the

information submitted to legislative assembly is different from what is requested by appellant under the act. The PIO has also raised objection for condoning the purported delay in filing this second appeal.

2.FINDINGS:

a) I have perused the records. I have also considered the pleadings and submissions of the parties. By her application filed u/s 6(1) of the act, the appellant has sought information at points (1) to (7).

b) At point (1) the appellant requires the certified copy of written reply submitted by the Hon'ble Chief Minister of Goa (C.M.) to State Legislative Assembly that Government has spent certain amount for exposition of relics and related services. For the purpose of clarity appellant has attached a copy of the press news. A perusal thereof reveals that the said press news refers to certain statement made by C.M. in the state Legislative Assembly. The appellant wants to have the copy of the report so placed in assembly.

Without dwelling on the issue of privileges of matters in assembly, it is to be noted that the statements made in assembly by elected representative can be based on some information supplied by related authority. The information may be in any mode as is found expedient for the purpose of assembly. As rightly pointed out by PIO, office of the Chief minister, the statement or submissions of elected representative in legislative assembly and the information sought are different. Thus the request of appellant cannot be dealt with by the respondent No.1 herein, as the same is based on the data furnished by other department/s.

However as the said press report is not disputed I find it appropriate that the information if any can be availed from the authority holding the information. This can be done by transferring the request to the concerned Authority.

c) Coming to the request at point (2) and (3) of the application I find that the request is vague. The word "**any**" in point (2) would require the PIO to undertake the scrutiny of the records. Similarly, at point (3) the appellant has asked for certified copy of the application and registration details of the catholic church of Goa. This information is general in nature and does not pertain to any specific body or organization. Here also I find that PIO will require investigations of records.

d) While considering the extent and scope of information that could be dispensed under the act, the Hon'ble Supreme court in the case of: **Central Board of Secondary Education & another V/s Aditya Bandopadhyay** (Civil Appeal no.6454 of 2011) at para 35 has observed :

"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 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 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."

In view of the above, the request of appellant at said points Nos. 2 and 3 cannot be granted.

d) On perusal of the nature of information at points (4) to (6) it is seen that at said points the appellant has expressed certain concern on the approach/conduct of other entity. The said points also puts forth the view and opinion of the appellant on certain issues. Nothing is clear as to what information is required by the appellant.

Section 2(f) of the act defines information in following words:

“2. Definitions.__ *In this Act, unless the context otherwise requires,___*

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

(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;”*

Again as held by the Hon’ble Supreme Court in the case of ***Central Board of Secondary Education & (supra)*** information cannot be sought in the form of opinion.

In the background of above discussions the information at points (4) to (6) cannot be ordered to be furnished being beyond the purview of “information” as defined u/s 2(f) and hence cannot be ordered under the act.

e) At point No.7 the appellant has sought for inspection of files. As discussed above due to lack of clarity in the information sought and authority holding it, such an order would be redundant. Even the information at point (1) being held by other authority such an order for inspection would be premature. However, on identification and location of information same could be availed.

f) Considering the above facts and the findings, I dispose the above appeal with the following:

O R D E R

a) The Respondent No.1, PIO, office of chief Minister, shall transfer part of the application of the appellant dated 17th August 2015 to the PIO of the concerned Authority holding information at point (1), within FIVE DAYS from the date of receipt of this order by him.

In case the respondent No.1 transfers the part of the application at point (1) as ordered at (a) above, the transferee PIO shall deal with such request in accordance with The Right to Information Act 2005, without insisting on the limitation prescribed under proviso to section 6(3) (i) and (ii) of the Right to Information Act 2005.

b) The request of the appellant for information at points (2) (3) and (7) being vague cannot be granted. However liberty is granted to appellant to seek information thereon from the concerned public Authority with clarity.

c) The request of the appellant at points (4) to (6), being in the form of opinion of appellant, is rejected.

Notify the parties.

Proceedings closed.

Pronounced in open proceedings.

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