

GOA STATE INFORMATION COMMISSION

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

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

Appeal No.102/SCIC/2016

Manjita R. Porob,
 Swami Krupa, Bungalow,
 C-31, G, Sapana Harmony,
 Gogol, Margao-Goa.

-----Appellant

V/s

1) The Public Information Officer,
 Parvatibai Chowgule College,
 P. O. Fatorda, Gogal Margao-Goa.

2) The First Appellate Authority,
 Parvatibai Chowgule College,
 P. O. Fatorda,
 Gogal Margao-Goa.

-----Respondents

Filed on : 24/5/2016

Disposed on: 31/1/2017

O R D E R

1) FACTS:

a) The appellant herein by her application, dated 1/2/2016, filed u/s 6(1) of The Right to Information Act 2005, (RTI Act for short), sought certain information from the Respondent No.1, PIO under several points therein with reference to the report of the committee constituted for specific purpose as mentioned therein.

b) The said application was replied on 1/3/2016 informing the appellant that the said application was forwarded to the

chairman of the said committee but being on leave the same shall be provided after she resumes.

However according to appellant the information as sought was not furnished within time and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA). According to the appellant as the FAA refused to entertain the appeal through its inward section the memo of appeal was sent by registered by post.

c) Though the said appeal was received by FAA, the respondent no.2 herein on 11/3/2016, the same was not dealt with by the FAA till the date of filing of this appeal before this commission. According to the appellant the respondent no.2 requested for some grace period to be given for reply and she waited for further period of more than 40 days beyond 30 days, in spite of which no order is passed.

d) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the RTI act on 24/5/2016.

e) Notices were issued to the parties, pursuant to which PIO, Shri Harish Nadkarni appeared in person and the FAA was represented by Adv. V. Colaso. Appellant was represented by Adv. Ms. Harsha Naik. The PIO on 27/9/2016 filed his say to the appeal. The respondent no.2, FAA has also filed his say on appeal memo on 10/8/2016.

f) In the meantime vide his memo, dated 17/8/2016 FAA submitted that the information, as was sought, has been furnished to the appellant on 13/7/2016 by registered post and calling upon the appellant to pay the cost of the information. The FAA also filed on record the copies of the information as was sent by post as above. The appellant vide her application, dated 16/11/2016 has relied upon the said reply, dated 13/07/2016, so furnishing the information by PIO as her additional documents.

g) As the respondent had raised several grounds on the maintainability of the appeal as also the entitlement of the appellant for information, matter was posted for arguments. The appellant filed her written arguments. The FAA also filed the written arguments through Adv. Colaso. The PIO did not file any arguments.

2) Findings

a) In the written arguments filed by the appellant it is admitted by her that information sought by her at points (3) to (6) of her application, dated 01/02/2016 filed under section 6 (1) of the Act, are furnished and that the information at points (1) and (2(i)) are not furnished or is false. . Hence I hold that the said information at (3) to (6) is received and no intervention of the Commission is required.

b) Regarding, information at point (1) of the appellant's application, dated 01/02/2016, it is the contention of appellant that the minutes of meeting dated 07/09/2015 and 12/10/2015 which she had sought, are not provided even though the appellant has made a mention of the same in the reply dated 13th July, 2016.

In view of this submission, I have perused the appellants application, dated 01/02/2016. In her said application appellant had sought the "minutes of the meeting conducted by the said committee on 07/09/2015 and 12/10/2015 as referred in the report, dated 25/11/2015."

In reply and as information to said point, vide reply dated 13/07/2016, it is stated by PIO in respect of point (1), that "the minutes of the meetings held on 07/09/2015 and 12/10/2015 are attached to reply". The contention of appellant is that such minutes are not attached though it is so mentioned.

On further perusal of the copy of the said information furnished to appellant a copy of which is filed here, it is seen that the minuits which are attached are of meeting, dated 29/09/2015. Another copy of minuits is of meeting, dated 03/10/2015. No copies of minuits of any other date are found. Hence, I find force in the arguments of the appellant that information at point (1) is not furnished.

c) It is also the submission of appellant, in respect of point (2(i) of the application, that though the PIO has stated that the college has sent a registered A/D Letter to complainant no such registered letter was issued and that such a statement is false. Thus the dispute herein is whether registered A/D letter, was actually sent and that it was unclaimed by the appellant. This can be verified by producing the copy of such letter alongwith the copy of the unclaimed envelope containing the remarks of the postal authority.

d) The grievance of the appellant herein regarding the process of obtaining information is that the PIO did not respond to her request within time as contemplated under the Act. On perusal of the records it is found that the application for information under section 6(1) was filed on 1/02/2016. The same was replied on 01/03/2016 that the information could not be given as related person is on leave. Even after filing of the first appeal the information is not furnished. Thus on the face of it there appears to be a delay in furnishing the information.

Even otherwise the information as was sought was pertaining to the report submitted by the committee to the college. It is not the case of PIO that no such report was submitted. The source of information was thus a document in the custody of the public authority under control of the PIO. Such a lapse on the part of PIO calls for a penalty as provided under section 20(1) and 20(2)

of the Act. However, an opportunity is required to be offered to the PIO to explain cause for delay.

It is also the contention of PIO that the appeal is filed beyond the time limit. This plea is neither substantiated by the PIO nor I find any force in it on the face of records. The first appeal was filed within the time of thirty days from the date of deemed refusal and this second appeal is also filed within the time prescribed for second appeal.

d) I have perused the reply filed by the First Appellate Authority (FAA) as also the written arguments. In the reply, dated 17/10/2016, the FAA has tried to explain as to why the dispensation of information was delayed.

Under the powers conferred under section 19(1) of the RTI Act, as an appellate authority FAA was required to deal with the grievance of the seeker by deciding the appeal within the statutory period of maximum 45 days. The FAA, in the reply, does not even whisper as to why the disposal of appeal was delayed beyond the said period. In fact the FAA is expected to be an independent Authority for redressal of grievance of seekers, when the PIO fails to comply with the mandate of section 7 of the Act. Justification if any on role and conduct of PIO in deposing application under section 6(1) should be contained in the orders of the FAA. Having failed to deal with the first appeal within time, the reply, as filed by FAA has no sanctity and does not inspire confidence. In other words, for the purpose of considering the version of FAA by this commission, the same should have been borne out of the findings in the order as was required to be passed under section 19(1) of the RTI Act by the respondent no.2 as First Appellate Authority under the RTI act.

Be that as it may, the reason for delay in furnishing

information are within the personal knowledge of the PIO and it he who was required to put forth such reasons before the commission.

f) In his written arguments, the FAA, by narrating the provisions of the sexual Harassment of women at work place (prevention, Prohibition & redressal) Act 2013, hereinafter referred to as **2013 Act** for short, raised two grounds for denying information being :

- (i) Appellant's right to information under the Act is flowing from complaint made by her to the Committee constituted under 2013 Act and
- ii) The information involved is beyond the scope of RTI Act.?

g) In support of his arguments the advocate for FAA has cited the provisions of the 2013 act including the origin and objectives of the said act. According to the FAA the information as sought is exempted under section 8 and 9 of the RTI Act.

By further referring the section 16 of the 2013 Act, it is the contention of the FAA that notwithstanding the provisions of the Act, the information pertaining to the conciliation, inquiry proceedings, recommendations of internal committee or the local committee shall not be published or communicated. Hence according to FAA the information is exempted u/s 8 and 9 of The RTI Act and hence cannot be furnished.

h) Section (16) of the 2013 Act exempts the dissemination of the information arising out of complaint made under section 9 of 2013 Act in the following words:

"16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint

made under section 9, the identity and address of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of internal committee or Local committee, as the case may be, and the action taken by the employer or the District officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witness.”

i) There is no dispute that the information, as sought by appellant, is pertaining to the complaint filed by the appellant herself regarding allegations of sexual harassment. The information as sought therefore undoubtedly flows from and pertains to such complaint by appellant.

j) The FAA claims immunity from disclosure of the information being exempted under section 16 (supra). On a careful perusal of the provisions of this 2013 Act reveals that it also provides for right of the complainant to have report under section 13(1) of said 2013 Act as under:

“13.(1) On the completion of an inquiry under this Act, the internal Committee or the Local Committee, as the case may be, shall provide a

report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2)-----“

A joint reading of section (16) and section (13)(1) of the 2013 Act reveals that a right is conferred on the complainant to have the report of the committee. Report would also include the records pertaining to the bases on which the findings in the report is arrived at. The bar for disclosure as contained under section 16 of the 2013 Act is for dissemination of information to third parties by way of publication, or communication to public, media or press. It does not put any embargo against the complainant herself from seeking information. Thus considering the above position of law, I find that the information is not exempted from being furnished under section 16 of the 2013 Act or under section 8 and /or 9 of the RTI Act.

k) The FAA in his arguments has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Girish Ramchandra Deshpande V/S (Special Information Commission and others (Special Leave Petition (Civil) No.27734 of 2012)***. I have perused the said judgment. By said judgment Hon'ble Apex Court while dealing with the issue of disclosure of income tax returns, has held that as no public interest is involved in the personal tax returns the same cannot be furnished.

I find the ratio in said judgment distinguishable. The case in hand pertains to the information sought by the

complainant pertaining to her personal complaint and not of third party. But in the case before Apex court the information was sought by a third party and which the Hon'ble court had held, as without involving public interest.

l) In view of the above discussions, I find no force in the submissions of the FAA that the information as was sought is exempted from disclosure. Moreover as observed above such finding ought to have been in judgment if at all passed in first appeal and not in this second appeal by FAA, thus to my mind appears to be after thought.

m) In the backdrop of the above facts and the law on the issue, I find that the appeal has to be partly allowed and directions are issued to the PIO to furnish the unfurnished information. I also find it necessary that PIO should be given an opportunity before imposing any penalty under section 20(1) and /or 20(2) of the RTI Act to justify his lapse.

n) Before I part with the appeal, I express my displeasure over the casual approach of the PIO and of the First Appellate Authority, of an Educational Authority, more particularly in the background of the fact that the information as was sought was pertaining to harassment of women at workplace. The RTI Act is promulgated in order to promote transparency and accountability in the working of every public authority. The 2013 Act, aims at protection of women from harassment at workplace and redressal of complaints of sexual harassment. In addressing such issues the timely intervention of authorities and dissemination of information, sought by the complainants, to which she is entitled to, has to be attended to with a priority. In the present case such

an approach is found missing. I expect that henceforth the authorities under the act viz. PIO and the FAA shall be diligent in dealing with such issues

0) Considering the above facts and in the light of the above discussion I proceed to dispose the appeal with the following:

O R D E R

The appeal is partly allowed. PIO is directed to furnish to the appellant, free of cost, within ten days from the date of receipt of this order, the copies of:

i) Minutes of the meetings held on 07/09/2015 and 12/10/2015,

ii) Copy of the letter, as referred to in reply to point 2(i) in reply at ref no.F.34/468,dated 13th July 2016, of alongwith the copy of unclaimed envelop returned by post containing postal remarks thereon.

PIO is further directed to show cause as to why action as contemplated under section 20(1) and/or 20(2) of the Right to Information Act 2005, should not be initiated against him for delaying the information. The PIO to file the reply in person on 28/02/2017 at 03.30 pm.

Copy of this order to be dispatched to parties free of cost.

Appeal disposed off accordingly

Pronounced in open proceeding.

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

