

# GOA STATE INFORMATION COMMISSION

‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

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

**Appeal No.142/SCIC/2016**

Shri Joao C. Pereira,  
H. No.40, Acsona, Utorda, Majorda,  
Salcette Goa.  
Pin 403713.

..... Appellant

**V/s**

1) The Public Information Officer,  
Chief Administrative Officer,  
District & Session Court,  
South Goa,  
Margao-403601.

2) The First Appellate Authority,  
District Judge-I,  
District & Session Court,  
South Goa,  
Margao-403601.

..... Respondents.

**Filed on: 02/08/2016**

**Decided on:28/08/2017**

## **1) FACTS:**

a) The appellant by his application, dated 04/03/2016, sought from the Court of Additional District Judge-I Margao Goa, certified copy of his application dated 29/02/2016 filed in case No.SCORS/10/2012. As the office of the Ad. District Judge had some objection on the said application, same was placed before the Additional District Judge for appropriate orders, who by order dated 04/03/2016, directed the appellant to comply with the objection within 7 days there from.

...2/-

The appellant on 05/03/2016 by his writing on the said application interalia submitted that the said application was filed under the Right to Information Act 2005. (**Act** for Short)

Based on the said writing the Additional Judge dismissed the said application by granting liberty to appellant to apply for the said information to the concerned authority under the act.

b) According to the appellant thereafter by his application dated 10/03/2016, purportedly filed u/s 6(1) of the Act, applied for certified copies of the said applications from the Public Information Officer (PIO) of the District Court.

c) The said application was not responded by PIO within the time fixed u/s 7 (1) of the act and hence deeming the same as rejected appellant filed first appeal to the First Appellate Authority (FAA).

d) The FAA after considering the submissions of the parties, by order dated 23/06/2016, dismissed the said appeal.

c) Being aggrieved by lack of response from PIO and the order of the FAA, the appellant has landed before this Commission by this second appeal u/s 19(3) of the Act.

f) Notices were issued to parties pursuant to which they appeared. FAA filed the reply as also the written submissions. The PIO adopted the reply and the written submissions filed on behalf of FAA.

Oral arguments of the appellant were heard. The PIO and the FAA filed their submissions in writing.

g) According to appellant, in the proceedings, from which he has sought the certified copies, he had filed intervening applications, which were rejected. He sought certified copy of the same, which according to him should have been furnished under the act but was rejected by Additional District Judge by granting liberty to file application under the act to the competent Authority.

Appellant further submitted that when the application, dated 10/03/2016 was filed under the act the information was not granted. According to him when the Judge had passed order to file application under the act , there was no scope for PIO or FAA to reject the request.

With reference to the contention of the FAA that the procedure for furnishing copies under the Act is governed by the rules framed by said Public Authority, the appellant submitted that the said rules, as are framed, are beyond section 28 of the Act. He submitted that said rules calls for providing prepaid envelop by seeker for furnishing information, which is beyond the act and hence cannot take cognizance of the same.

With these submissions the appellant prayed that his appeal be allowed and PIO be directed to furnish the information.

h) In the common written arguments of the PIO and FAA, it is submitted by them that the information sought by the appellant are in respect of pending proceedings and that the disclosure of such records is exempted under rule 13(f) read with rule 10(3) of the Goa, Daman & Diu and Dadra and Nagar Haveli, District Court Right to Information Rules 2009 (Rules for short).

Further according to respondents, the appellant was required to follow the procedure laid down in criminal manual to obtain certified copies, which requires an affidavit supporting the application, stating the purpose for which the copies are sought.

According to respondents the criminal Manual 1980 came in force in state of Goa on 1<sup>st</sup> April 1980 and that said rules are also applied to the District courts and subordinate Courts, vide notification dated 20/01/1992. It is further submitted by them that under Rule 20 of said rules, securing information is governed by the criminal manual.

PIO and FAA is support of their contentions have relied upon several judgments of the Central Information Commission. However I am not inclined to accept the same as a legal precedence for this commission, this being a forum with concurrent jurisdiction.

## **2. FINDINGS:**

a) I have considered the pleadings as also the rival contention of the parties. I have perused the records. The short point that arises herein is whether the appellant can obtain the information pertaining to the judicial proceedings, under the Act.

b) As per the preamble of the Act, the act is promulgated to grant right to the citizens to secure access to Information under control of Public Authorities to promote transparency and accountability in working.

The act also aims at harmonizing the conflict of interest involved in disclosing the information vis a vis limited fiscal resources and preservation of confidentiality of sensitive information.

It is with these aims and objectives that, though in general rights are granted to citizen to seek information, the public Authorities are conferred powers to reject the requests in certain cases as enumerated in section 8 and (9) of the act.

Similarly under section (28) of the Act rights are conferred on the Public Authorities to frame its own rules to carry out the provisions of the Act.

c) The Authority involved in the present case is the District Court. As pointed out by the PIO, said authority by invoking section (28) of the Act has framed its own rules for dissemination of information. Such rules viz. **Goa, Daman & Diu and Dadra and Nagar Haveli District courts, Right to Information Rules 2009**, are published in the Gazette, Government of Goa, dated 21/05/1992, which is relied upon by the PIO.

d) A perusal of the said rules which are framed by the High Court of Judicature at Bombay, in exercise of Powers conferred u/s 28 of the act, a procedure is prescribed for dispensation of information. As per rules (1) sub rule (ii) of the said rules, the said rules apply to Industrial and Labour Courts, Administrative Tribunals and all the Court subordinate to and under Superintendence and control of High Court of Judicature at Bombay, except Tribunals established by Central Government under the act of Parliament. It is not in dispute that the Public Authority herein being the District & Session Court, is subordinate to the High Court of Bombay. Consequently while considering the request for information the PIO is governed by the said rules.

e) Rule (13) (f) of Goa, Daman & Diu and Dadra and Nagar Haveli District courts, Right to Information Rules 2009 reads:

**"13. Exemption from disclosure of information----**  
*--The information specified under section 8 of the Act shall not be disclosed and made available, and in particular the following information shall not be disclosed ---*

a)-----

b)-----

c)-----

d)-----

e)-----

*f) Information/copy/ies inspection with respect to cases pending in court, which shall be obtained from the court, as per rules and orders in force for time being;*

f) The procedure prescribed for obtaining certified copies of cases pending in the court is contained at rule 21 thereof which reads:

*"21. The information/copy/ies/inspection with respect to cases pending in court shall be obtained from the court, as per orders in force for the time being as applicable to the District Courts or as provided for in the civil or criminal Manuals, as the case may be."*

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g) The FAA in the order which is under challenge herein has referred to the provisions contained in the Criminal Manual for the purpose of furnishing certified copies of documents. I have perused the provisions contained under chapter XXI of the said Manual. Clause (2) of chapter XXI of The Criminal Manual prescribed by the High Court of Bombay reads:

*"2. Applications for certified copies by parties other than parties to the proceedings shall be supported by an affidavit stating the purpose for which copies are sought."*

h) Coming to the case in hand. It is not in dispute that the information which is sought pertains to judicial proceedings no. SCORS/10/2012. According to the appellant in the said proceedings he had filed application to intervene but the same was rejected. Hence the appellant as on the date of the application filed u/s 6(1) of the Act is not a party to the said case. He has sought for certified copies of some documents from said proceedings.

i) Initially the appellant by his application dated 04/03/2016, sought the certified copies from said proceedings. On the office objection, appellant has clarified that he is entitled to seek information under the act, he was granted liberty to file appropriate application under the act to the competent authority. The appellant in his arguments wants me to hold that as the District Judge has directed him to file application under the act and appellant having filed the same accordingly, now the same cannot be rejected. I am unable to hold these submissions as the correct interpretation. The District Judge by said order has firstly

dismissed the application as was filed. The said dismissal was due to the fact that neither the said application was filed as per the procedure prescribed under the manual nor it was addressed to the concerned officer i.e. PIO under the act. Based on the contention of appellant, that he is entitled for information under the act, he was granted liberty to file appropriate application under the act to the authority competent under the act to deal with such application. Said order does not contain any directions to furnish the information.

j) It is also the contention of appellant that though the act grants powers to Public Authority to frame its own rules for the purpose of carrying out the provisions of the Act, in this case the rules as framed by public authority herein are not in consonance with and beyond the act and hence cannot be implemented.

Presuming for a while the above submissions as true, it is beyond the competence of this commission to hold so till the said rules are set aside by competent forum. Till such time the effect of the said rules cannot be ignored. I am fortified in such a finding based on the principals laid down by the Hon'ble Supreme Court in the case of ***Gorakhnath Dube V/S Hari Narayan Singh & others AIR 1973 S.C.2451*** where it was so observed in the following words

*"-----The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction; by the necessary implication of their statutory powers to adjudicate upon such*



*rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.”.*

The above ratio is also followed by the Apex Court in the subsequent case of ***Smt. Bismillah V/S Janeshwar Prasad & others (AIR 1990 S.C.540)*** . Hence considering the said principle, I find that the procedure for obtaining information being prescribed under the said rules the appellant was required to follow the procedure there under.

k) In the above set of facts and circumstances I find that as the respondent Public Authority viz. District and sessions Court having been governed by Goa, Daman & Diu and Dadra and Nagar Haveli District courts, Right to Information Rules 2009, the information can be obtained by the seeker under said rules. In the instant case as the appellant's application being not in consonance with the said rules, I find no irregularity or illegality in the impugned order, dated 23/6/2016 passed by the FAA. I therefore find no merits in the appeal and consequently I dispose the same with the following:

### **ORDER**

The appeal is dismissed. However the rights of the appellant to seek the required information from the District and sessions

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Court, South Goa Margao as per the provisions of "Goa, Daman & Diu and Dadra and Nagar Haveli District courts, Right to Information Rules 2009" are kept open. Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

Sd/-

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