

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 55/2017

Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Near Sateri Temple,
Mapusa-Goa

.....Appellant

V/s.

1. The Public Information Officer (PIO),
Hydrographic Surveyor,
Captain of Ports Department, Panaji
 2. The First Appellate Authority (FAA),
Captain James Braganza, Captain of ports Department,
Panaji
- ...Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 3/05/2017

Decided on: 5/02/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Jawaharlal T. Shetye by his application, dated 29/9/2016, filed u/s 6(1) of The Right to Information Act, 2005 sought certain information from the PIO of office of Captain of Ports department, Panaji Goa, under ten points as stated therein in the said application.
2. The said application was responded by Respondent No.1 PIO herein on 20/10/2016 thereby calling upon appellant to make a necessary payment of Rs. 36/- to a information fees. A letter dated 18/10/2016 also enclosed to a said application were each query of the appellant was duly replied.

3. As the information as sought was not as per requirement of the appellant , the appellant filed first appeal on 3/11/2016 before the Captain of Ports who is the respondent No.2 herein, and the respondent No. 2 first appellate authority by an order dated 21/12/2016 disposed the said appeal with the direction to dealing hand to review the matter and furnish required information to the appellant.
4. It is the contention of the appellant that the first appellate authority failed to inform the next date of hearing and also failed to finally dispose first appeal with the mandatory period of 30 days.
5. The appellant being aggrieved by said response of PIO and first appellate authority, has approached this Commission on 2/05/2017 in this second appeal u/s 19(3) of the act with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for other reliefs.
6. In pursuant to notices of this commission Appellant was present in person. Respondent the PIO represented by Advocate Smt. Nilima Narvekar. Respondet No. 2 was represented by Xaverito Fernandes
7. Reply filed by PIO on 3/10/2017 and additional reply on 10/11/2017 alongwith the affidavit of PIO Shri Sagar Chandra Rai.

8. Vide above reply it is contended that from document such as birth certificate, form 8, election voter card, Ration card, Pension pay order of Shri Vilas Mahale it could be gathered that the Swapnil Vilas Shirodkar/mahale was the son of Mrs Vilashini Shirodkar and late Shri Vilas Shirodkar

It was further contended that the question of conducting through inquiry by the Respondent was not required as earlier Departmental inquiry was held and the inquiry report dated 24/8/2017 was submitted to the information commission in the matter pertaining to the second appeal No. 137/2016.

9. It was further contended that department is only having the diversion certificate dated 18/6/2016 of Smt. Vilasini Vilas Shirodkar produced by Shri Swapnil Shirodkar and Department does not have any other document other than Diversion Certificate.
10. It was also contended that Police complaint was made to the Police inspector, Panajim Police Station regarding the misplacement of document vide letter bearing No. 16079 / 2/2559 dated 27/7/2016.
11. It is further contended that they have responded the application of the appellant well within stipulated time and thereby furnishing the information as such the question of imposing of penalty does not arise.
12. The Respondent No. 2 First appellate authority, vide his reply contended that one Shri Swapnil Vilas Shirodkar has submitted his application dated 7/6/2010 which was

inwarded vide serial No. 5975 and the same was process by their office and the department had issued a certificate bearing no A16079/2182 dated 17/6/2010 and the nomination papers of Shri Vilas Mahale declared Shri Swapnil V. Shirodkar as his son. It was also further contended that the Police complaint has been filed with the Panajim Police Station and due department inquiry was conducted of the missing documents pertaining to same subject matter in appeal no 137/2016.

13. It is the contention of the appellant that he had sought the said information in order to approach the competent authority against Shri Swapnil V. Shirodkar. He further contended that the said information was sought by him in larger public interest in order to expose the irregularities done by the officials of the public authority. He further contended that the answer given at point no. 8 & 9 that the record are not available appears to have been given to cover up the misleads of Swapnil Shirodkar.
14. The appellant also filed application on 10/11/2017 thereby praying to call for relevant file to join inspection in order to verify and get satisfied that the relevant documents are have gone missing and not traceable. The said application of the appellant was granted by this Commission and PIO was directed to give the inspection of the relevant document to the appellant .
15. Accordingly the Advocate for the PIO vide application dated 17/1/2018 produce on record the office note dated 15/1/22018 bearing the signature of the appellant of having carried out the inspection of the file No. A-

16079/2 of the personal file of late Shri Vilas Mahale Ex-Sailer from page No. 1/C to 391/C .

16. Hon'ble supreme Court in "***Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)***", while dealing with the extent of information under the Act at para 35 has observed:

"At this juncture, it is necessary to clear some misconception about the RTI Act . The RTI Act provides access to all information that is available and existing . This is clear from the combined reading of section 3 and the definition of "information " and "right to information "under clause (f) and (j) of section 2 of the Act . **If the 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 .**

17. The Respondent PIO right from the inception has informed that information at point NO. 7 & 8 is not available in their office records.
18. PIO is duty bound to furnish the information as available on record of the public authority . PIO is not required to create the information for the purpose of furnishing the same to the information seeker. The said observations of mine are based on the ratio laid down by the Apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya.

19. In the above given circumstances Since the information is not available with the public authority concerned herein, the same cannot be directed to be furnished. with regards to missing of the information pertaining to the said points, the Departmental inquiry have been conducted by the concerned public authority. It has been also contended that the facts of missing documents have been reported to the Police, as such the prayer 2 becomes redundant.
20. I also do not find any cogent and convincing evidence against Respondent PIO for invoking penal provisions and for granting compensation. As such the prayer of penalty sought by the appellant also cannot be granted.

With the above directions, the appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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.

Sd/-

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

Ak/-

