

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

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

Appeal No.03/2017/SCIC

Shri Joao C. Pereira,
H. No. 40,
Acsona, Utorda,
Majorda, Salcete-Goa. Appellant

V/s

- 1) The Public Information Officer,
Registrar of District & Sessions Court,
South Goa, Margao.
- 2) The First appellate Authority,
District Judge –I,
South Goa,
Margao. Respondents

Filed on :10/1/2017

Disposed on:13/02/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 6/7/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO of The District & Sessions Court SouthGoa, Margao, hereinafter referred to as THE RESPONDENT AUTHORITY, under three points 4(a),(b) and (c) therein.

b) The said application was responded on 13/7/2016 offering to furnish the information at point 4(b) on payment of fees. Regarding information at

...2/-

point 4(a) PIO sought clarification from appellant and regarding point 4(c), a copy of the letter addressed to High Court was enclosed to the response.

c) Appellant by his clarification dated 25/7/2016 informed the PIO that he requires all the information coming under the purview of section 4 of the act pertaining to all the courts functioning at South Goa under the supervision of Principal District & Sessions Judge.

d) In response to the said clarification, the PIO by reply, dated 1st August 2016 informed the appellant that the information sought at point 4(a) was available on the Website and if hard copies are required the appellant should pay fees of Rs.118/-, which according to appellant was paid and the information was furnished. The appellant has filed on record the copy of the said information.

e) According to appellant the information at point 4(a) as was furnished to him was incomplete and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

f) The FAA by order, dated 7/11/2016 dismissed the said appeal.

g) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.

h) Notices were issued to the parties, pursuant to which they appeared. The PIO on 9/10/2017 filed a reply to the appeal. Arguments were heard.

...3/-

i) By the present appeal, the appellant has prayed for an order directing the PIO to furnish the complete information sought by his application dated 06/07/2016 with regard to section (4) as also for initiating disciplinary proceedings u/s 20 of the act.

In his arguments the appellant submitted that he has received information at point 4(b) and (c) and that the information at point (a) is not furnished fully. The appellant has also raised objection to certain procedures adopted by the respondent authority under the act. In this context the contention of appellant was:

i) That the information is uploaded only on 30/06/2016, when it was required to be done within 120 days.

ii) That the rules were framed only in 2009 when the act was enacted in 2005.

iii) That the application for information is required to be filed in a prescribed format when the act does not require any such format.

iv) That the PIOs were appointed only on 30/11/2009, when they were required to be appointed within 100 days.

j) Adv. K. L. Bhagat appearing for the PIO submitted that as the information sought was already on the website the same need not be dispensed in same need not be dispensed in hard form. According to him the appointment of PIO, framing of rules and uploading of information was delayed due to lack of resources and

...4/-

administrative reasons. On behalf of PIO he submitted that the application for information was not clear as to the specific information sought nor the documents were identified. By relying on the rules framed he submitted that the information relating to judicial functions cannot be furnished. He further submitted that the PIO has furnished the entire information and that appellant has not shown as to which information is withheld. In his arguments he also relied on judgments of Punjab & Haryana High Court and that of High Court of Patna, which I find are not relevant for the present appeal considering the issue involved.

2) FINDINGS

a) I have perused the records and considered the submissions of the parties. According to appellant the information at points 4(b) and 4(c) are furnished. Thus the short point to be decided herein is whether the appellant has been furnished with the information at point 4(a) and whether there was any malafide denial of information by PIO.

b) In response to point No.4(a) of the appellant's application u/s 6(1) of the act, the PIO in her reply dated 01/08/2016 has informed the appellant that the information sought is available on the website.

By said letter the PIO has also volunteered to furnish the same information in hard copy form on payment of fees. According to appellant he received the hard copies of said information, which he has relied herein.

c) The Hon'ble Supreme Court, in respect of the cases where the information is available on the website in **W.P.(c) 11271/200g Registrar of companies and others V/s Dharmendra Kumar Garg & another at paras (34 & 35)**

“34. From the above, it appears that the expression “held by” or “under the control of any public authority”, in relation to “information”, means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already “let go”, i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority “holds” or “controls” the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression “right to information”, as the information in relation to which the “right to information” is specifically conferred by the RTI Act is that information which “is held by or under the control of any public authority”.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies Act is governed by the Companies

(Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC - one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.”

d) Considering the above ratio laid down by the Apex Court and the nature of information sought, I find that the gesture of PIO in offering the information with cost was not called for. As the information was already in public domain the same was accessible to the appellant free of cost. Considering the above position providing of the hard copies can at the most be held as out of “*gratis*’ and not as a mandate under the act.

e) Be that as it may, the fact that the appellant has the access to the information through the website is not in dispute. Said uploading of the information is in compliance of section 4 of the act. It is the contention of appellant that the information as furnished is incomplete. However the appellant has not specified as to which information is actually held by the authority in spite of which not furnished. In these circumstances it would be premature to decide as to which information is withheld.

...7/-

f) The PIO also has raised the objection that though the act was enacted in 2005, the uploading of the information, framing of the rules and appointment of PIOs were not in conformity with period prescribed under the act. I am in agreement with the appellant on these contentions. However, though late as the task is already completed I find no grounds to consider these objections now.

g) It is the contention of the appellant that the respondent Authority has prescribed a standard format for filing application u/s 6(1) of the Act. I have perused the said format. Proviso to section 6(1) reads:

“6. Request for obtaining information.__(1) *A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to__*

(a) -----

(b) -----

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making-----“

From the above provision the intent of legislation is clear that the request for information can also be oral

and the PIO shall assist the seeker to reduce the same in writing. Thus even an informal request can be considered as an application u//s 6(1) of the act. Hence I find some force in the submissions of appellant that the format of application as is prescribed by the respondent authority cannot be insisted upon.

h) The appellant has also prayed for invocation of section 20(1) and (2) for punishing the PIO. In the present case the application of appellant was for certified copies of records showing implementation of section (4),4(1)(a),4(1)(b) consisting of 17 points 4(2), 4(3) and 4(4) of the act. At the cost of repetition it is seen that the information is already on the website the same could have been obtained by the seeker through the website. Hence it cannot be held that information is withheld. The Hon'ble Supreme Court in the said case of **Registrar of companies (supra)** on the point of penalties in such case at para (61)(has observed.

“61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist

...9/-

cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show- cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed.

Considering the case in hand the information is already on the website in implementation of section 4 of the Act.

i) In the background of the facts and my findings above, I hold that the information as sought by appellant is furnished or is made available to him by PIO. There is no clear evidence to hold that the information furnished is incomplete. Moreover the appellant can seek further specific information from the PIO, which according to him is withheld. Though I hold that no fixed format of application can be insisted upon, in the present appeal such a question does not arise.

In the above circumstances I dispose the above appeal with following:

...10/-

O R D E R

The prayer of the appellant to direct the PIO to furnish the information is rejected. However the appellant shall be at liberty to seek further specific information which according to him is not furnished to him and not available on the website.

The respondent Authority to comply with the requirements of section 4 of the Act with its true intent and spirit. Rest of the prayers rejected.
Parties be notified. Proceedings closed.
Pronounced in the open proceedings.

Sd/-

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