

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

Appeal No. 170/2018/SIC-I

Shri Nitin Y. Patekar,
Oshalbag, Dhargal,
P.O. Colvale, Goa.

....Appellant

V/s

- 1) The Public Information Officer (PIO),
Office of Directorate of Panchayat,
Junta House, Panaji Goa.
- 2) First Appellate Authority (FAA),
Office of Directorate of Panchayat,
Junta House, Panaji Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 13/07/2018

Decided on:10/09/2018

ORDER

1. The fact arising in the present appeal are that the appellant Shri Nitin Y. Patekar, by his application dated 13/4/2018 filed u/s 6(1) of the RTI Act, 2005 sought from the respondent no 1 PIO of the office of Directorate of Panchayat, Panjim Goa, certain information on 3 points as stated therein in the application
2. It is the contention of the appellant that the said application was responded by the Respondent PIO on 4/05/2018 wherein the information at point no 3 was provided to him and information at point no 1 was denied in terms of section 8(1) (j) of the RTI Act 2005 and the information at point no 2 was not furnished to the appellant on the ground that 3rd party Village Panchayat Secretary Shri Dhiraj Govekar had objected for furnishing the same being his personal information.
3. The appellant being aggrieved by such a response filed first appeal before the Directorate of Panchayat at Panjim on 16/05/2018.

4. It is the contention of the appellant that the Respondent no 2 First appellate authority did not dispose or passed any order within time limit on the First appeal filed by him. As such being aggrieved by the action of both the Respondents he is forced to approach this commission.
5. In this background, the present appeal has been preferred on 13/07/2018 in terms of section 19(3) of the RTI Act, 2005 with the contention that information at point no 1 and 2 have not been still provided to him . In the present appeal he has sought for the prayer against both the Respondents for initiating disciplinary actions under the service rules.
6. The matter was listed on the board and for taken for hearing. In pursuant to the notice of this commission appellant opted to remain absent. Respondent No. 1 Shri Pundalik Khorjuekar appeared and filed his say on 5/09/2018. The copy of reply could not be furnished to appellant on account of his absence. Respondent No. 2 the FAA opted to remain absent neither filed any reply. As such I hold that averment made in the memo of appeal by the appellant are not disputed by Respondent No. 2 First appellate authority.
7. the Respondent PIO vide his reply dated 5/9/2018 have submitted that he has taken the charge of Deputy Director of Panchayat (North) on 2/7/2018 and the cause of action aroused during the tenure of then PIO Shri Chandrakant B. Shetkar who had responded on 4/5/2018 and he requested to issue notice to then PIO Shri Chandrakant B. Shetkar as he is more conversant to rebut into the matter .
8. On scrutiny of the application dated 13/4/2018 filed in terms of section 6(1) of RTI Act, it is seen that the appellant at point no 1 has sought for the certified copy of the service book of village Panchayat Secretary Mr. Dhiraj J. Govekar.
9. The important events like confirmation, termination of services, fixation of pay in revised scales, stepping up of pay, memos issued

to the employee, suspension, penalty, etc are reflected in the body of service book.

10. The Hon'ble Apex Court in special leave petitions (civil) 27734 of 2012(arising out of CC 14781/2012)Girish Ramchand Deshpandey v/s central information commission and others it was held that

“The performance of an employee/officer in an organisation is primary the matter between the employee and employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand the disclosure of which would cause unwarranted inversion of privacy of that individual. And if the central public information officer or the state public information officer of the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right”.

11. By subscribing to the ratio as laid down by Apex court in case of Shri. Girish Deshpandey (Supra) and as in the present case the appellant did not make out any case that the disclosure of such information has relationship to public activity or interest nor has succeeded in establishing that the information sought for is for larger public interest. Being so I am not inclined to grant information at point No.1
12. The appellant at point No.2 has sought for copy of the application filed by Dhiraj Govekar for recruitment along with documents filed with the same. The same was denied to the appellant on the ground that the third party Shri Dhiraj Govekar had objected for furnishing the same.
- 13 The Apex Court In Writ Petition No. 5427, V.V. Minerals V/s Director of Zeology at relevant Para 12 has held that

“When the third Respondent as an information officer, ordering notice to the petitioner and taking their objections and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the state and such information is in exclusive custody of the state, the question of seeking any opinion from the third party on such issues may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On other hand, such a disclosure may help any party to act upon those documents and take appropriate steps”.

14. The Apex Court at para 17 has also held ;

“No total immunity can be claimed by any so-called third party. Further, it is not a matter covered by section 8(1)(d) of the Act, the question of any denial by the information officer does not arise’.

15. The Hon’ble High Court of Allahabad vide deciding the writ petition 45252 of 2005 Praveen Varma V/s Hon’ble High Court of Judicature reported the in 2008 (1) RTI 137 has discussed ambit and scope of section 3,4, and 6 and has held that

“The disclosure of information in regards to the functioning of Government must be rules and secrecy must be an exception”.

16. One could gather from above Judgments that Every member of the Public gets right to know of the working of the public servant his honesty, integrity and devotion to duty. In fact nothing remain personal while as far as the discharging of duties as the Salary is paid to the public servant from public exchanger.

17. PIO is a designated person of the Department who is responsible to ensure to the compliance of RTI act and facilitated the information

seeker in obtaining the information and is under obligation to render Assistance to the information seeker. Sum and substance of section 5 of the RTI Act is that every PIO should extend all reasonable assistance in making information available rather than putting in hurdles in different ways.

18. In the present case it is not a case of PIO that the information is not available. It was denied since the third party i.e. the Village Panchayat Secretary Shri Dhiraj Govekar has objected. In the present case information at point No.2 sought pertains to Government servant wherein he had filed application with supporting documents to the Government for securing a Government job. The said documents are on the records of the public authority concerned herein and the said documents are filed in a course of securing the Government job. By disclosure of such information, no privilege or business interests of the Village Panchayat Secretary Shri Dhiraj Govekar are effected and the said information cannot be denied to parliament or State legislature
19. In view of " Section 8(1) (j) of RTI act by subscribing the ratios laid down by the above courts and so also based on the discussion above, I am of the opinion that the appellant is entitled for the information at point No. 2
20. The application was filed on 13/4/2018 and the said was replied on 4/5/2018 within stipulated period of 30 days by which the information at point no 3 was provided to the appellant. I also do not find any irregularity or illegality in the reply dated 4/05/2018 given by the respondent PIO in terms of section 7(1) of the RTI Act, 2005 at point No. 1 for the reasons discussed above as such I am of the opinion that this is not the fit case for warranting levy of the penalty on PIO.
21. However the displeasure is hereby shown on the conduct of the Respondent No. 2 first appellate authority . The records shows that

even though the first appeal was filed before Respondent No. 2, the same was not taken up for hearing . The said act on the part of respondent No.2 first appellate authority is in contravention against the RTI Act. The said act came into existence to provide fast relief and as such time limit is fixed under the said act to dispose the application u/s 6(1) of the RTI Act within 30 days and to dispose the first appeal maximum within 45 days. The Act on the part in Respondent No. 2 First appellate authority is herein condemnable.

In the above given circumstances the following order is passed.

Order

- i. Appeal partly allowed .
- ii. The respondent No.1PIO is hereby directed to furnish information to the appellant as sought by him at point No. 2 vide his application dated 13/4/2018 within 15 days from the date of the receipt of the order .
- iii. Respondent No. 2 First appellate authority is hereby directed to be vigilant henceforth while dealing with the RTI matter and to strictly comply with provisions of section 19(1) of the RTI Act 2005. Any lapses on the part of the First appellate authority in future will be viewed seriously.

The appeal disposed accordingly, 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