

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 183/2018/SIC-I

Shri Vithal Kusta Gaonkar,
H. No. 1463 Santona,
Dabal – Dharbandora
Via Curchorem- Goa
V/s

....Appellant

1) Alpa Dessai, Public Information Officer,
Then Headmistress Government High School-Shigao,
Presently working in GHS Collem Sanguem.

2) D.R.Bhagat, Deputy Director of Education,
First Appellate Authority,
MASSANO De Amorim Building,
Near National Theatre, Panaji.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 27/07/2018

Decided on: 07/09/2018

ORDER

1. The facts in brief leading to present appeal are that the appellant Shri Vithal K Goankar by his application, dated 13/04/2018 filed u/s 6(1) of The Right to Information Act, 2005 sought certain information from the respondent no 1 PIO of the Government High School, Dharbandora, Goa under 3 points as stated therein in the said application.
2. According to the appellant the said application was responded by PIO thereby furnishing the information at point no 1 and 3 and the point no 2 was transferred to the PIO of Deputy Director of Education Panjim in terms of sec 6(3) of RTI Act vide letter dated 17/4/2018 . The copy of the said letter dated 17/4/2018 was also forwarded for intimation to the appellant.
3. According to the appellant information sought under point no 1 (g) and at point No. 2 of his application dated 13/4/2018 was not furnished . As such the first appeal was filed by him before the

Deputy Director of Education being the First appellate authority on 21/5/2018 who is the Respondent no. 2 herein .

4. The Respondent No. 2 vide order dated 18/6/2018 disposed the said first appeal with no directions to PIO on account of non-appearance of appellant .
5. Being aggrieved the action of both the Respondent, the appellant has approached this commission on 27/7/2018 in the present second appeal filed in terms of section 19(3) of RTI Act, 2005 contending that the information at point no. 1 (g) and point No. 2 is still not provided to him and also for invoking penal provision.
6. In pursuant to notice of this commission the appellant was present in person . The present PIO Shri Anand Kudalkar was present alongwith then PIO Shri Alpa Desai .
7. The reply was submitted by then PIO Smt. Alpa Desai on 31/8/2018 in the registry of this office which was inwards by the entry No. 1678 dated 31/8/2018 after the matter was taken up by this commission .
8. Affidavit also filed by the present PIO Shri Anand Kudalkar on 7/9/2018.
9. The copy of the reply filed by then PIO Smt Alpa Desai dated 31/8/2018 and affidavit filed by present PIo Shri Anand Kudalkar on 7/9/2018 were furnished to the appellant on 7/9/2018.
10. Arguments were advanced by both the parties .
11. It is the contention of the appellant that the first appellate authority i.e the Deputy Director of Education, Central Education Zone, Panaji fixed the hearing of first appeal on 14/6/2017 at 3.30 pm vide notice dated 28/5/2018 which was received by him on 19/6/2018. He further contended that he had brought the said fact to the notice of first appellate authority vide his application dated 23/6/2018 and requested suitable date for hearing . It is his

grievance that without giving him chance to represent his case the First appellate authority disposed his first appeal on 18/6/2018 itself. In support of his contention he has relied upon the notice issued to him by the First appellate authority dated 28/5/2018 wherein the date of hearing was fixed on 14/6/2018, his letter dated 23/6/2018, the Xerox copies of the postal acknowledgment cards and order of the FAA on 18/6/2018. It was further contended that the order of First appellate authority is bad in law as the first appellate authority did not give him opportunity of representing his case and did not take a note of his letter dated 23/6/2018. He further submitted that till date no complete information have been provided to him and he sought for a direction to Respondent PIO for providing information at point No. 1 (g) of the application dated 13/4/2018

12. It is the contention of then PIO that whatever information available in the office of Headmistress, Government High School, Shigao , Collem, Dharbandora had been supplied/ provided to the appellant and some of the information could not be provided as it is not traceable in the office and that she made strenuous efforts to trace the said required document in the personal file of Mrs. Namrata Gaonkar and as such it is her contentions that the question of depriving the appellant from not providing information does not arise at all .
13. Vide affidavit dated 7/9/2018 the present PIO Shri Anand Kudalkar have contented that the application of the appellant was inwarded vide inward No. 1 dated 13/4/2018 and then PIO have responded the said application vide their letter No. GHA /SHICLM /DHAR/RTI/2018/12 dated 24/4/2018 through Registered A.D. and the information at point no. 1 "a", "b", "c", "d", "e" and "f" and information at point No. 3 sought by the appellant vide his application dated 13/4/2018 was provided and collected by the appellant and the information at point No. 1 (g) since unavaible in the records in their office could not be furnished .

it was further contended as the all types of leave is being sanctioned by Deputy Director of Education in respect of Headmistress as such the information sought at point No. 2 of Mrs. Namrata Gaonkar was transferred u/s 6(3) of the RTI Act, to the PIO and the Deputy Director , Central Zone, Panajim, Goa vide letter dated 17/4/2018.

14. It was further contended that the information at point no. 1 (g) is not traceable/unavailable in the records of their office.

15. In the nutshell it is the case of both the PIOs that the time table of teaching period with subject of Mrs. Namrata Gokuldas Gaonkar from the period from 1/9/2017 to 14/10/2017 is not available in the records of Public authority.

16. The Delhi High Court in LPA No. 14/2008 Manohar Sing V/s N.T.P.C. has held;

“The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of which reply was sent and hence the directions to furnish the records if the same is not in existence cannot be given.”

17. Yet in another decision Delhi High Court The registrar Supreme Court V/s Comondore Lokesh K. Batra & others has held at par 15;

“As already noticed above, “right to Information” under section 2(j) means only the right to information which is held by any public authority . We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the appellant “.

18. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

"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 ."**

19. It is clear from the ratios laid down by the Hon'ble Apex Court and High Courts that PIO is supposed to furnish the information as available and as it exists in the records of the public authorities and is not suppose to create the information for the purpose of furnishing the same to the information seeker .
20. Since the information at point no. 1 (g) and point No. 2 of Mrs. Namrata Gaonkar as sought by the appellant vide his application dated 13/4/2018 since not available in the records of the public authority concerned herein no any directions could be issued to Respondent PIO for the purpose of furnishing the same .
21. The bonafides have been shown by the then PIO in responding the application of the appellant well within stipulated time of 30 days and providing whatever information available in the records of public authority. The then PIO was diligent in her duty and have acted in conformity with the provisions of RTI Act. Considering the fact and circumstances of the present case I am of the opinion this is not a fit case warranting a levy of penalty on then PIO.

22. In view of above discussion I am of the opinion that the relief sought by the appellant cannot be granted. Hence the appeal stands dismissed

Notify the parties.

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.

Pronounced in the open court.

Sd/-

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