

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Appeal No. 80/SCIC/2014

Advocate Lourdes Coutinho ,

R/o. House No. 728,

Fradilem, Navelim,

Salcete-Goa 403707

.....Appellant

V/s

1. First Appellate Authority (FAA),

Joint secretary (Law)

Legal & Legislative Affairs Department,

Secretariat Porvorim Goa.

2. The Public Information Officer (PIO),

Office of the State Registrar-Cum,

Head of Notary Services, 7th Floor,

Shram Shakti Bhavan, Patto Plaza,

Panaji Goa

..... Respondents

Filed on: 22/07/2014

Decided on: 02/04/2018

ORDER

1. Vide application dated 26/03/2014 the information seeker Advocate Lourdes Coutinho who shall be herein referred to as appellant had sought for information on 14 points from the Public Information Officer (PIO) of Law Department, Porvorim as stated therein the said application. The said application was filed under section 6(1) of the Right to information Act, 2005.

2. The PIO of the law Department (Estt), vide letter dated 28/03/2014 transferred the said application to the PIO of office of the State Registrar cum Head Notary services under

section 6(3) of the RTI 2005, thereby requesting the PIO of Civil Registrar cum sub Registrar (Head Quarters) to furnish information at point No. 1, 5, 6, 7 and 12 directly to the applicant.

3. According to the appellant she received the letter dated 3/04/2014 from Assistant Public Information Officer (APIO) there by calling upon her to do the inspection of the Registers, free of cost on the ground that information sought by the appellant is voluminous in nature. According to the appellant She received one more letter from APIO dated 23/04/2014 seeking time of about 60 days to furnish the information being voluminous.
4. Being aggrieved by such response of Respondent No. 2 PIO, appellant preferred 1st appeal with law Secretary on 5/05/2014 being FAA in terms of section 19(1) of RTI Act.
5. Respondent No. 1 FAA by an judgement dated 17/06/2014 directed the PIO to furnish the information in respect of point No. 1, 5, 6 and 12 to the appellant within 10 days from the date of receipt of order, free of cost.
6. According to the appellant in pursuant to the order of respondent No. 1 FAA she visited the office of PIO on 30/06/2014. However no information came to be furnished to her as such She vide her letter dated 30/06/2014 brought said fact to the notice of PIO.
7. According to the appellant she received a letter dated 3/07/2014 from APIO Smt. Sunanda T. Gawas denying the contents of a letter dated 30/06/2014 and vide said letter it was submitted to appellant that information was handed over

to her on 30/06/2014 and she has also inspected the documents on the said day.

8. According to the appellant she vide letter dated 17/07/2014 informed the PIO that information was not collected since it was incomplete.
9. According to the Appellant as she didnot received information, she was forced to approach this Commission on 17/07/2014by way of second appeal in terms of section 19(3) of the RTI Act 2005 there by seeking directions as against Respondent No. 2 PIO to furnished her information as sought by her vide application dated 26/03/2014 and for invoking penal provisions.
10. Parties were notified. In pursuant to which appellant was present in person. Respondent No. 1 FAA was represented by Advocate Kishore Bhagat. Respondent No. 2 PIO Mrs. Shubha Desai was present.
11. Since the information was not received/collected by the appellant and since it was kept ready by the APIO, the present PIO was directed to furnish the same and to file compliance report. Accordingly compliance report came to be filed by PIO alongwith the covering letter dated 10/10/2016 by which the pointwise information at points No. 1, 5, 6, 7 and 12 were furnished to the appellant.
12. Respondent vide said compliance report also undertook to provide information at point No. 6 for the year 2009 and 2010 within a month.

13. One more compliance report dated 16/11/2016 was filed by the Respondent PIO interalia informing this Commission that vide register AD letter dated 10/11/2016 the appellant was requested to collect information at the earliest.

14. On 4/01/2017 the appellant submitted that the information at point No. 1 and 12 had not been fully furnished. She further submit's that copy of the inward book shows 330 entries of the applications of the candidates however the documents which are furnished to her is 100 in number. She further submitted that the information at point No. 12 is incomplete as according to her she has notices of other candidate who appeared for examination and the said documents are not furnished to her. The appellant was then directed by this commission to produce the documents at Sr. No. 12 which is in her possession which according to her she has obtain through other source.

15. The appellant filed application on 14/02/2017 and submitted that the information at point No. 1 pertaining to the year 2013 have been furnished to her and the information pertaining to the year 2008 to 2012 have not been furnished to her. Accordingly on 20/04/2017 the PIO furnished voluminous copies of the information, free of cost to the appellant. The appellant on verification of the said information submitted that the copies of the notices sent to the candidates for the year 2014 have not been furnished to her. The PIO volunteered to furnish the said information based on available records if the names of the candidates are provided to her by appellant. On subsequent dates of hearing the PIO submitted that she was unable to provide the information as the appellant didnot provide the names of the candidates to whom the notices were issued.

16. On 5th June 2017, the PIO filed the declaration that information pertaining to the year 2009 in respect of application of the Advocate Shilpa Salgaokar due to busy schedule remained to be submitted to the appellant and further categorily stated that whatever information was available in the records of the office have been furnished to the appellant free of cost.

17. The appellant vide application dated 21/03/2017, 21/06/2017 putforth her grievances with regards to information furnished to her and submitted that PIO have furnished to her incomplete information at point no. 1, 6, 7 and 12.

18. An affidavit dated 17/06/2017 came to be filed on 21/6/2017 by PIO Mrs. Shubha S. Desai interalia submitting that she has resumed the post of PIO on 16/07/2014 after the application was filed by the Appellant. She further contended that when the application of the appellant was received in their office, the post of PIO was vacant and as such the APIO Smt. Sunanda Gawas had arranged for supply of information to the appellant, as per order dated 17/06/2014 of the FAA. Vide said affidavit it was further submitted that though appellant appeared before APIO, refused to collect the information. It was further contended that she on taking the charge of PIO, as per the instructions of State Registrar intimated the appellant to visit their office to discuss about the information sought by the appellant. However, appellant refused on the ground that there is no provision for discussion under the RTI Act. It was further contended that during the present appeal proceedings, delivered the annexure I to V as it was arranged by then APIO and the acknowledgment having received the

same have been endorsed on the covering letter by appellant on 10/10/2016. It was further contended that she supplied copies of the notice pertaining to the appellant and also remaining information in respect of point No. 6 pertaining to year 2009 and 2010.

19. Vide affidavit dated 17/06/2017 which was filed on 21/06/2017, PIO have categorily submitted that the information have been supplied to her as per the records available and that there is nothing more found in the records.

20. Written synopsis/submissions were filed by the appellant on 9/01/2018 and on 25/01/2018 contending that incomplete information have been furnished to her.

21. I have scrutinised the records available in the file and also considered submissions of the both the parties.

22. It is case of the PIO that all the documents available in the records have been provided to the appellant. The PIO is required to furnish the information as available and existing on their records. The PIO is not suppose to create the information or collate the information for the purpose of furnishing the same to the information seeker, this observation of mine is based on the ratio laid down by the Apex Court.

a) 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. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, to collect or collate such non available information and then furnish it to an applicant".

b) The Apex court in case of Peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held:-

"under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order".

23. As it is contention of the appellant that incomplete information is furnished to her as such onus is on the appellant to prove the same by way of producing convincing evidence on record. In the present case the appellant was directed to produce the copies of the documents at sr. No. 12 before this Commission which according to her she has obtained through other source. Despite of granting opportunities the appellant didnot produce the same.

24. The Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para "7" has held:-**

"The Commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to uphold the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available."

25. By considering the ratio laid down by High Court in case of Celsa Pinto (Supra). Since appellant failed to produce any evidence despite of directions by this Commission, it is not appropriate to draw any such conclusion that PIO provided incomplete information to the appellant.

26. With regards to other prayers which are in nature of penalty from the provision under section 20 of the RTI Act it could be gathered that the penalties can be imposed only on the PIO. In the present case admittedly there was no any person officiating as PIO for the said public authority. The APIO

Sunanda T. Gawas has promptly responded the application of the appellant on 3/04/2014 thereby calling upon him to inspect the register free of cost being information is voluminous in nature. And also vide letter dated 23/04/2014 had sought for time to furnish the information at point No. 1,5,6,7 and 12 since it was voluminous in nature.

27. It is contention of the respondent PIO that the appellant appeared before APIO and the appellant refused to accept information on the ground that it is incomplete. The Commissions finds some truth in the said statement as the appellant vide letter dated 17/07/2014 have also stated the said fact at para 8, "*on 30/06/2014 the information was not collected since it was incomplete.*" As such I find that there was no denial of information to the appellant by APIO also.

28. Further it can be from the records that the present PIO Shubha S. Desai was not officiating as PIO when application under section 6(1) was filed nor when the order passed by the FAA. Time and again the present PIO have shown her bonafides by furnishing the information and offering the inspection to the appellant.

29. Considering the above circumstance. I am of the opinion the facts of the present case doesnot warrants invoking of penal provisions as against Respondent PIO as the appellant herself have delayed in receiving information when offered by APIO.

30. Appeal disposed accordingly. Proceeding stands closed.

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.

Proceeding stands close.

Sd/-

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

Kk/-