

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

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

Appeal No.110/SCIC/2017

Mr. Narayan Anand Kharade,
104/A, Valley View, Plot B-1,
Sector -12, Kharghar,
Navi Mumbai 410210.

-----Appellant

V/s

- 1) Public Information Officer,
Department of Art and Culture,
Patto, Panaji Goa.
- 2) First Appellate Authority,
Department of Art and Culture,
Patto, Panaji Goa.

-----Respondents

Filed on : 20/07/2017
Disposed on :04/04/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 30/3/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under four points therein.

b) The said application was replied on 17/4/2017 purportedly enclosing the information sought as was available with the department. As per the enclosure the information at point 1 was enclosed and the information at other points was replied that “the department does not keep the records of this type of personal information”.

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c) According to appellant the information, as furnished to him, was incomplete and unsatisfactory and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

d) The FAA by order, dated 19th June 2017, dismissed the said appeal as withdrawn by the appellant in order to prefer appeal before the commission. According to the presiding officer of the FAA the information was pertaining to him and hence did not find it appropriate to entertain the appeal against himself.

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

f) Notices were issued to the parties, pursuant to which they appeared. The PIO and the FAA on 10/10/2017 filed reply to the appeal. The PIO also filed additional reply on 28/12/17.

g) The parties filed their written arguments. In his arguments the contention of the appellant is that as per his requirements he has sought the information ***whether the Director and the Dy. Director are or have been members of any registered organization and if yes the further documents were sought.*** According to the appellant the said information was refused as personal information. The appellant has further argued that under rule 13 of All India service (Conduct) Rules 1968 it is mandatory for the employees to furnish the information, as sought by him, to the department. Hence

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according to him there is a presumption that the public authority has failed to maintain the information as is required to be maintained under the service rules.

By referring to the definition of information under the act he submitted that the information as sought by him is deemed available under the act. He has further emphasized that the information is required in the interest of the general public. By relying on the judgment passed by the High Court of Delhi in the case of *Vishwas Bhamburkar(W.P.(C)3660/2012 & CM 7664/2012(stay)*, he submitted that the information is bound to be furnished and that the authority is making mockery of the act. The appellant has also referred to a phone call by PIO to him regarding his application and wants this commission to take cognizance thereof However the same being personal and not borne out of records, I am unable to take cognizance of the same.

The appellant has further contended that the considering the said judgment of the High Court of Delhi, this commission can direct an inquiry into the matter when the PIO has stated that the information is not available.

h) The PIO in his submissions has contended that the appellant has sought the information with an oblique motive and only to harass the officers. According to him the information as was available was furnished and the balance information was not available with the authority. PIO has denied the allegations of the appellant and has submitted that

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the same are malafide. The PIO has filed the copy of the application u/s 6(1) filed by the appellant and the response u/s 7(1) of the act and submitted that the information is not sought in public interest. He has further contended that the information being personal cannot be disclosed.

2) FINDINGS:

a) I have perused the records, more particularly the application filed by appellant u/s 6(1) of the act. I have also considered the reply filed by the PIO as also the submission of the parties.

b) I have perused the reply of the PIO, dated 17/04/2017. By said reply, with reference to point (1) it is informed that the information pertaining to Minister for Art & Culture is not available and that of the Director and Dy. Director is furnished. It is the contention of appellant that the said information is partly furnished. According to him the names of institutions and year of passing was not furnished. If one peruses of appellant's requirement at point (1), it is seen that the appellant has sought only academic records. Said request neither was for certified copies of said records or the details of institutions., year of passing etc. In the absence of a specific request, information as furnished cannot be held as incomplete. In the circumstances I hold that the information on point (1) pertaining to academic records of Director, deputy Director has been furnished. In respect of the non availability of the records pertaining to Minister, I shall deal with the same later, herein.

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C) Coming to points (2) and (3) of the application, it is seen firstly that the said requirements of appellant are in the form of opinion of PIO *whether* Director and Dy. Director were active in field of Art and Culture etc. Such opinion is not an information which can be dispensed under the act. However if any records are maintained by the authority they may be accessed as information. The said points (2) and (3) were replied that department does not keep records of such type of information and hence the same is not available.

d) Regarding point (4) of the appellant's application, he wanted to know whether said officer have been members of any organization. Here also only if the records are kept with the authority the same are to be furnished, otherwise it become an opinion of the PIO which is beyond the purview of act. In this case the said information is not made available to the appellant on the ground that same is not maintained by the authority.

e) when the appeal came for hearing before me, I required that the fact of non availability of records should be substantiated on an affidavit and hence PIO was directed to file such affidavit. Vide his affidavit dated 5th February 2018, it is stated by PIO that by said reply dated 17/04/2018 the appellant was informed that the department does not keep any records of said type of personal information and hence said information is not available.

Thus from the above the PIO has affirmed that the information as sought at points (2) to(4) is not available as same is not maintained by the authority.

f) While considering the extent and scope of information that could be dispensed under the act, the Hon'ble Supreme court in the case of: ***Central Board of Secondary Education & another V/s Aditya Bandopadhyay*** (Civil Appeal no.6454 of 2011) at para 35 has observed :

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a 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, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which requires drawing of inferences And/

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or making assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act." (emphasis supplied)

g) considering the above ratio of the Hon'ble apex Court and the case in hand, as the information sought being not available with the authority for whatever reason cannot be furnished or ordered to be furnished. Thus the information pertaining not only to Director and Dy. Director but also of Minister being not held by said office cannot be accessed.

h) As against said ratio of Hon'ble Supreme Court the appellant has a submission that Rule 13 of All India Services (Conduct) Rules 1968 binds the employees to obtain previous sanction from government. Further according to his submissions that PIO claiming that the department does not keep records gives presumption that authority has failed to maintain the information which is required to be maintained under said 1968 Rules.

The appellant by emphasizing the definition of information under the act has highlighted that the information, which can be accessed by public authority under 1968 Rules could be deemed as available and hence dispensable.

i) For the purpose of considering the said arguments of appellant firstly there is nothing found on record showing whether the Director or Dy. Director are in fact governed by the All India Service (Conduct) Rules 1968. However assuming for a while and as contended by appellant, it would be necessary to consider the said provisions of 1968 Rules. Rule 13 reads:

“13. Private trade or employment.—13(1) Subject to the provisions of sub-rule (2), no member of the Service shall except, with the previous sanction of the Government,—

(a) engage directly or indirectly in any trade or business, or

(b) negotiated for or undertake, any other employment, or

(c) hold an elective office, or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not, or

(d) canvass in support of any business of insurance agency, commission agency etc. owned or managed by any member of his family, or

(e) take part, except in the discharge of his official duties, in the registration, promotion or management of any bank or other company registered or required to be registered under

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the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, or of any co-operative society for commercial purposes.

(f) Participate in, or associate himself in any manner, in the making of:—

(i) a sponsored media (including radio, television programme, or

(ii) a media programme commissioned by Government media, but produced by an outside agency, or

(iii) a privately produced radio or television or other media programme including a video magazine.

Provided that no previous permission shall be necessary in the case a member of the service participates in a programme produced by the Doordarshan on a subject dealt with by him in his official capacity.

(g) Involve or engage himself in the registration, promotion, management of other kinds of activities of any non-Governmental organization if the same is aided by the Central Government, State Government or an international organization or agency;

13 (2). A member of the Service may, without the previous sanction of the Government,—

(a) undertake honorary work of a social or charitable nature, or

(b) undertake occasional work of a literary, artistic or scientific character, or

- (c) *participate in sports activities as an amateur, or*
- (d) *take part in the registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society, or of a club, or similar organisation, the aims or objectives of which relate to promotion of sports, cultural, or recreation activities, registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force; or*
- (e) *take part in the registration, promotion or management (not involving the holding of an elective office) of a co-operative society substantially for the benefit of the members of the Service or government servants registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State :*

Provided that,—

- (i) *he shall discontinue taking part in such activities if so directed by the Government; and*
- (ii) *in a case falling under clause (d), or clause (e) of this sub-rule, his official duties shall not suffer thereby and he shall, within a period of one month of his taking part in such activity, report to the Government giving details of the nature of his participation.*

13(3): *Every member of the Service shall, if any member of his family is engaged in a trade or business, or owns or manages an insurance agency or commission agency, report that fact to the Government.*

13(4) No member of the Service **shall** accept any fee for any work done for any public body or for any private person **without the sanction** of the Government.

Explanation:—Fee means a recurring or non-recurring payment made, whether directly or indirectly to a member of the Service from a source other than the Consolidated Fund of India or the Consolidated Fund of a State, but does not include :—

(a) unearned income such as income from property, dividends and interest on securities; and

(b) Income from literary, cultural, artistic, scientific, or technological efforts and income from participation in sports activities as an amateur.

13(5) Contesting election to sports bodies etc.: - Subject to the provisions of sub-rule (2) of rule 13, **no** member of the service **shall, except with the previous sanction** of the Central Government:-

(i) hold an elective office in any sports association/ federation/ body, by whatever name known at State/ National level for a term of more than 4 years or for one term, whichever is less: provided that this restriction will not apply to functionaries like the District Magistrate, Superintendent of Police etc. when they hold posts in ex-officio capacity at Divisional/ District/ Sub-divisional/ Taluk levels;

(ii) *Canvass either for his own candidature or for any other person for holding elective office in such sports bodies is mentioned in clause (i) above.*

(iii) *While canvassing for contesting elections either on his own behalf or any other person, indulge in conduct and becoming a member of the service.*

(iv) *Shall proceed on travel abroad in connection with the work or other activities of any sports bodies described in clause (i) above without prior cadre clearance from the Central Government”*

j) Thus as no permission is required from Government for joining organizations constituted under the 1860 Act, the averments of the PIO that the office does not keep this type of information and hence not available are not found to be baseless.

k) The appellant in support of his contentions has relied upon the judgment of Delhi High Court in the case of Union of India V/s *Vishwas Bhamburkar*, wherein it is held :

*“Ordinarily, the information **which at some point of time or the other was available** in the records of the Government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available.-----”*(emphasis supplied)

l) Thus for applicability of the said ratio the information sought firstly should be available at some point of time or the other should continue to be available. Thus it refers to the records which were existing at some time. The said ratio is distinguishable from the case in hand as in this case the information was not at all generated and hence not available at any point of time. It is nowhere seen that the information was at all existing at some time or required to exist. The said judgment is thus not applicable in present case. As the information was not part of the records herein, the same cannot be created for being furnished, which is the ratio laid down by the apex Court in the case of *Aditya Bandopadhyaya* (Supra).

m) In the above circumstances I do not find any malafide on the part of PIO in non furnishing the information. Consequently I find no merits in the appeal and hence I dispose the same with following:

O R D E R

The appeal is dismissed. Notify the parties. Proceedings closed. The file of First appeal and called by this commission and appended to the file of this appeal, be returned to FAA under acknowledgment.

Pronounced in open hearing.

Sd/-

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