

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

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

Appeal No.53/SIC/2014

Shri Jawaharlal T. Shetye,
Secretary Mapusa Jana Jagruti Samiti,
H. No.35, Ward No. 11, Khorlim,
Mapusa-Goa. Appellant

V/s

- 1) The Public Information Officer
(Mahesh Gaonkar)
Sub-Divisional Police Office,
Mapusa Police Station,
Mapusa-Goa.
- 2) The First Appellate Authority
(Priyanka Kashayap IPS)
Superintendent of Police (North)
North District Head Quarters,
Porvorim –Goa. Respondents

Filed on :15/5/2014

Disposed on:23/1/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 11/3/2014 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 several points therein.

b) The said application was replied on 28/3/2014. However according to appellant he has no grievance in

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respect of the replies to points 8 and 9 of the application but he has a grievance in respect of the other points viz.1 to 7 and 10 to 15 and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

c) The FAA by order, dated 28/4/2014 dismissed the said appeal and held that the information due has been furnished.

d) Being aggrieved by the said order of the FAA, the appellant has landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 2/2/2016 filed his reply to the appeal. The parties filed their written arguments.

f) It is the contention of the appellant vide his arguments inter alia is that the PIO has contended that appellant has sought information on 15 different points pertaining to FIR No.92 of 2014 but that the information sought was pertaining to the incident of slab collapse on 28/7/2014. At para 5 of his arguments the appellant has contended that certain police personnel and other officers had participated in the incident. According to him it was mandatory on the PI to register FIR on behalf of the state. By attaching copy of the news report of another incidence of collapse of Ruby residency the appellant has submitted that the Police have failed to register FIR and that as per FIR lodged certain persons are not impleaded in the same as was done in the case of Ruby Residency. According

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to him the PIO was a mute spectator and shielding police officials. It is for these grounds that the appellant submits that as such the PIO has furnished false and misleading information.

The appellant has thereafter referred to the act and more particularly section 4 thereof and has finally submitted that the PIO should be penalized .

f) In his arguments filed on behalf of PIO, it is contended by Adv. K.L. Bhagat that the information at points 1,2 3,5,6 & 9 of the appellant's application was furnished initially and the information at points 4,7,8,10,11, 12,14 and 15 was not furnished as the investigation was pending. However according to PIO the said information i.e. at points 4, 7, 8, 10,11,12,14 and 15 was furnished to the appellant in the course of this proceedings after the investigation was over.

It is further contended by PIO that the contentions of the appellant regarding the alleged non performance of the duties by PIO does not fall under the act and that the commission cannot supervise the investigation. According to him the information which could impede the investigation could not be given and hence the same was not given initially. PIO admitted that the FIR number was not mentioned but submitted that the incident pertaining to building collapse, which is the subject of the application is under FIR No.92/2014.

The PIO has further met the submissions of the appellant and has submitted that the information as

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was due is furnished and that there is no malafide denial of information and hence the appeal be dismissed.

2) FINDINGS:

a) I have perused the application filed by the appellant. Before I go to the information sought, I find it necessary to consider whether the information as sought for constitute “Information” under the Act. At **points 3, 5, 6, 13 and 14**, the appellant has sought to know “whether certain events had occurred. Such requirement are in the form of queries and answers in the form of inferences. Pertaining to said points, the PIO has furnished certain replies but it may be out of gratis and voluntary. Such queries are in fact not required under the act. I am fortified in this view on the bases of the ratio laid down by the Hon’ble **apex court in the case of *Central Board of Secondary Education & another V/s Aditya Bandopadhyay*** (Civil Appeal no.6454 of 2011) at para 35 , which reads as under:

“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 form 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

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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 require drawing of inferences and/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."

In the light of the above, the points referred above namely No.3, 5, 6, 13 and 14 being not information the same cannot be ordered to be furnished.

b) I have perused the information sought at **points 1,2 and 9.** pertaining to the said points the PIO has furnished the information in the reply dated 28/03/214. The appellant has no where contended that the said information is wrong. Only thing according to the appellant at para (6) of his appeal memo is that he is not satisfied with the order passed by the First Appellate Authority (FAA).

c) With reference to the rest of the points the PIO has informed the appellant that the investigation of the case is going on and hence the information cannot be disclosed. This is denied by taking shelter under section u/sec 8(1)(h) of the act. The fact that the

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investigation was in progress is evident from the fact that after the completion of the investigation the PIO has filed on record the information. The appellant in his arguments does not dispute the PIO's contention that in the course of proceedings the information has been furnished. I therefore find no fault on the part of the PIO in withholding the information pending investigation in view of the immunity under section 8(1)(h) of the act.

d) Coming to the order of the FAA find that in the course of the First appeal the matter was under investigation of Mapusa P.S. in Cr. NO.92/2014 under section 347, 338 r/w 34 IPC. Being so the said order of the FAA appears reasoned in view of the protection granted u/s 8(1) (h) of the Act. I find no grounds to interfere with the said order.

e) Be that as it may as of date the PIO has furnished the information sought in view of the conclusion of investigation. I find that the present appeal vis a vis the relief for seeking information has become redundant.

f) I have considered the application filed by the appellant u/s 6(1) of the RTI Act and the argument submitted by the applicant in the present appeal. For the purpose of substantiating these case the appellant has annexed copies of paper cutting regarding some incident at Canacona pertaining to collapse of a building. By referring to the said reports the appellant, in his arguments submit that the officers of the police station has not registered any FIR or that

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not implicated the name of officials of Mapusa Municipal Council as was done in the case of incident of Canacona of Ruby Residency. It is also the contention of the appellant that the sub-Divisional officer is shielding the alleged corrupt police officers and is furnishing false and misleading information. Thus summing up the arguments of the appellant it is his contention that the concern Police officials have allegedly committed breach of their duties.

g) Such submission and relief are beyond the scope and object of the Act. A mechanism of redressal for dereliction of duties is provided in the other acts like The code of criminal procedure and/or the Service rules governing the employees. Hence the appellant has wrongly chosen this forum for redressal of such grievances.

h) I have considered the argument on the behalf of the PIO. As submitted therein I concur that in case there is delay in registration of FIR or non inclusion of the culprits in the offence such remedy could be avail by the court and not from the Commission.

i) It appears from the entire tone of the appeal that the appellant wants this commission to penalize the PIO for not adhering to the service rules or the requirement under the criminal procedure, by sadly mistaking that such relief are beyond the scope of the act.

j) In the fact and circumstances of the present case and considering the fact that the information has been furnished after completion of investigation. I find no

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merits in the appeal and the same is disposed with the following:

ORDER

Appeal stands disposed.

Notify the parties.

Proceeding closed.

Pronounced in the open proceedings.

Sd/-

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