

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No.117/SCIC/2017

Shri. Sudesh P. Tivrekar
H.No.198, Ward No.18
Near Govekar Bakery
Khorlim, Mapusa Goa

.....**Appellant**

V/s

1. Public Information Officer,
Goa Human Rights Commission,
Old Education Department Building,
1st Floor, 18th June Road,
Panaji Goa.
2. First Appellate Authority,
Goa Human Rights Commission,
1st Floor Old Education Dept. Building,
18th June Road, Panaji Goa. **Respondents**

Filed on: 4/8/2017

Disposed on:1/8/2018

1) FACTS IN BRIEF :

a) The appellant herein by his application, dated 15/3/2017 filed u/s 6(1) of The Right to Information Act 2005 (hereinafter referred to as Act for short), sought certain information from the Respondent No.1 herein, being the PIO, under twenty points therein. The said information was pertaining to one Shri J. A. Keny, (hereinafter referred to as the Subject officer for short), member of the Goa Human

Rights Commission, which is the respondent authority herein.

b) The said application was replied by PIO on 4/4/2017 furnishing the information within the stipulated time. However according to appellant he was not satisfied with the information furnished to points nos.(6),(8) to (12),14 and (16) to 20 and hence he filed the first appeal to the respondent no.2 being the First Appellate Authority (FAA

c) The FAA by order, dated 5/6/2017 partly allowed the said appeal. Vide said order the ground for rejection of the information at said point nos.6, 8 to 12 and 14 to 20 were upheld by the FAA but directed the PIO to implement provisions of section 4(1) (a) and 4(1) (b) of the act.

d) The appellant being aggrieved by the said order 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 12/10/2017 filed reply to the appeal. FAA also filed reply to the appeal on 12/10/2017 as also additional reply on 16/10/2017. Parties filed their written arguments.

2. FINDINGS:

a) Perused the records and considered the pleadings of the parties. Also considered the Submissions of the parties. According to the appellant, per his appeal memo, he is not furnished with the information to

points 6, 8 to 12, 14 and 16 to 20. Appellant has no grievance against the information's furnished to him on the remaining points. In these circumstances suffice to consider whether the refusal of information on points (6),(8) to(12),(14) and (16) to(20) by the PIO was bonafide.

b) Before proceeding further it would be necessary to consider the scope and extent of information, which a seeker is entitled to under the act. Act defines information u/s 2(f) as under:

“2. Definitions.___ In this Act, unless the context otherwise requires,___

(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

c) It would be also necessary to consider the exemptions from disclosure under section 8(1)(i) of the act which reads:

“8.Exemption from disclosure of information. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

d) From the reading of section 2(f) of the act the extent of information which can be disseminated under the act is the existing material in some tangible form like records, documents, memo, mails, opinions advises etc, held by the authority.

In other words the PIO of a Public authority is the custodian of the Information held by such authority to dispense the same as it exist. He /she is not the creator of information and hence not answerable or to justify the existence or non existence of information. PIO is also not an advisor to the authority or to any third parties in respect of acts and events occurring with the authority. The role of PIO vis a vis the act is to disseminate the information as and how the same is held or existing with the authority. Considering this status of PIO

under then act he/she is not liable to give any opinion whether certain acts can be performed by any officer or not, being beyond the dispensable information under the act.

e) In the present case, at points **6, 8 to 12, 14, 16 and 19** the appellant has sought the opinion of PIO, whether certain acts can be performed by subject officer. The same being beyond the scope of this act is rightly responded by the PIO as beyond the act.

f) At point **(18)** of his application, the appellant has sought for the gross salary with deductions of the said officer. Salaries of statutory authorities are contained in the statutes itself which constitutes the authority. In the present case the protection of Human Rights Act 1993 constitutes The Goa Human Rights Commission i.e. the respondent authority. Said act also provides for remuneration payable to its members. Thus the information being already in the form of law need not be furnished.

Regarding the deduction from the salary as is sought by the appellant, the same has no relation with the public activity of the officer nor it has any relation with public funds. Such deduction also does not involve any public interest. Deductions from salaries which may also contain deductions for personal reasons like loans, insurances etc. being private in nature cannot be disclosed under the act.

g) At point **(20)** of the application, the appellant has sought for the list of assets and liabilities as furnished by the officer to the Government as per the service rules governing the concerned officer. The appellant has also sought the opinion of PIO whether said assets are disproportionate.

The PIO in his reply has informed the appellant that under Service laws there is no requirement to file such list of assets or liabilities as sought. In other words the PIO has refused the information as it does not exist with the authority being not required to be filed. As observed above the PIO is liable to dispense information which is in existence with the authority and not the one which does not.

h) 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 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."

i) Considering the ratio as laid down above by the Apex court, this commission finds that the information as sought by the appellant at points **6, 8 to 12, 14, 16 and 19** is in the nature of opinion or advise. The information at point **(18)** is personal in nature and hence exempted under section 8(1)(j) and the information at point **(20)** refers to a non existing information. The PIO has dealt with the said requirements of the appellant appropriately. This commission therefore find no malafide in the

approach of PIO while dealing with the said application dated 15/3/2017 filed u/s 6(1) of the act by the appellant.

j) Commission has also perused the order, dated 5/6/2017 passed by the FAA. In the background of the discussions above, this commission finds no illegality or error requiring interference of this commission.

h. In the back ground of the above commission finds no merits in the appeal and hence same is disposed with the following:

O R D E R

The appeal is dismissed. Proceedings closed. Order be Communicated to parties.

Sd/-

(P. S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji –Goa