

GOA STATE INFORMATION COMMISSION

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

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

Appeal No.96/SCIC/2017

Kunda Kerkar,
Goa Legislative Assembly,
Porvorim-Goa. Appellant

V/s

- 1) The Public Information Officer,
Smt. Ligia Godinho,
Under Secretary,
Goa Legislative Assembly,
Porvorim –Goa.
- 2) The First Appellate Authority,
N. B. Subhedar,
Secretary Legislature,
Porvorim –Goa. Respondents

Filed on : 30/6/2017
Disposed on: 19/4/2018

1) FACTS IN BRIEF:

a) The appellant herein by her application, dated 16/12/2016 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought information from the Respondent No.1, PIO under twenty four points therein.

b) The said application was replied on 16/1/2017 furnishing part information and denying the some under section 8(1)j of the act. However according to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

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c) The FAA by order, dated 3/4/2017 partly allowed the said appeal and directed PIO to transfer points (6) and (13) u/s 6(3) to the PIO of Social Welfare Department. In respect of some points the response of the PIO was upheld and regarding rest information was ordered to be furnished.

d) The appellant being aggrieved by the said order of FAA 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 6/10/2017 filed reply to the appeal .

f) The appellant filed her written arguments. The PIO during her presence on 28/02/2018 submitted that the reply filed by her to the appeal be treated as her substantive argument.

g) The contention of the appellant as per her arguments in brief is that the response to her application by the PIO was time bared besides being vague, in complete, unsatisfactory, inconclusive and evasive information. It is the contention of the appellant that both the respondents have not applied their minds and it was for the PIO to call the information from the subordinate and thereafter furnish to the appellant. It is also the contention of the appellant that the PIO has failed to provide inspections.

By relying on various citation and by reproducing the order passed by the High Court in Writ Petition No.379/12 appellant submitted that the information sought herein is required to be produced before the High court in the contempt petition.

h) It is the contention of the PIO that the information sought at points (1),(2),(10) and (12) were not furnished as the said information was personal in nature and thus exempted under section 8(1) (j) of the act. With reference to information at point (5) and (17) it is contended by PIO that the application was unclear and not specific. With reference to information at (6) and (13) it is contended that the same was transferred under section 6(3) after the order of the First Appellate Authority (FAA). The PIO contends that at point (9) the appellant is trying to dig information by seeking reason. With reference to point (14),(16),(18),(19) and(20) it is the contention of PIO that the same is furnished to the appellant either initially or after the first appeal and with reference to point(21) it is the contention of PIO that the CR upto the year 2012 are provided. In respect of point (22) PIO has informed that the account section does not keep the records as the pay slips are distributed alongwith the staff on the salary day. With reference to point (23) and (24) the PIO has offered the inspection.

2) FINDINGS:

a) Considering the rival contention of the parties and the fact that the information was sought being bulky in nature covering 24 points, I find it appropriate to segregate the points involving common reason for refusal and to consider whether the PIO is liable to furnish the same under the act in this respect.

With reference to points(1),(2),(10)and(12) the information is refused by PIO on the ground of confidentiality as exempted under section 8(1) (j).If one consider the nature of information sought, the

same pertains to employment of the staff with the Government. The information sought pertains to approval of the Government orders issued, Seniority list minutes, recommendation etc. pertaining to the Government staff. Thus the information sought at point (1),(2),(10) and (12) pertains to the public functionaries, in respect of the records created while discharging the public duties. Being so obviously a larger public interest is involved. For the purpose of promoting transparency, disclosure of information is justified as the same is closely connected with the functioning of the public authority. The appellant has not sought any private information, otherwise then what is required to be maintained in the course of service with public authority. Thus I find that the information at point (1),(2)(10) and (12) is required to be furnished and cannot be withheld.

I have perused point (5) of the application filed by the appellant under section 6(1). At said point she has sought for certified copies of circulars, notifications, memorandums etc. regarding points (1) to (4). If one goes through the requirement at point(4) the appellant has narrated certain reply dated 09/02/2016 however, at point (5) she has not clarified as to what precisely she wants. Even otherwise the appellant was not furnished information at point (1) and (2) and hence the information at point (5) which includes and refers to the points 1 to 4 was not clear to the PIO and same required clarity in respect of what information is sought. However once the information at point (1) and (2) is furnished the appellant shall be entitled to seek the further information with clarity.

b) With reference to para (6) and (13) no finding is required in view of the fact that the information is held by another authority and the request on these points is already transferred to the concerned department.

c) Coming to the information at point (9) and(15) the appellant, by referring to certain RTI response, has sought the reason for not implementing the post base roster. Such a reason being beyond the purview of the PIO the same cannot be furnished and the PIO was the justified in answering the same.

d) Coming to point (17) of the application the appellant has sought the certified copies of “17 manual” as per section 4(1) (a) and (b) of the act. If one peruses the said provisions there is no reference of term as “17 manual” in the act and hence the same appears to be vague and not clear. However it appears that what the appellant wanted are the record which are required to be maintained under section 4(a) and 4(b)(i) to (xvii) of the act. Even otherwise maintaining such record under section 4(a) and 4(b) of the act are mandatory for all the public authorities including the respondent authority herein. In the circumstances I feel it appropriate that the same is required to be maintained by the respondent authority and if the appellant requires, the same can be referred thereafter.

g) Coming to point (21) of the application, it is the contention of the PIO under section 7(1) that the said confidential report being private in nature cannot be furnished under section 8(1)(j) . In the reply filed in the appeal the PIO has contended that the information at point (21) is furnished up to the year 2012.

Confidential report (CR) by name and nature requires confidentiality and are required to be confidential. This confidentiality should be retained all throughout to avoid any misunderstanding or ill feeling between the author of such report and the subject pertaining to whom the same is prepared. However such reports can be furnished only to the person for whom it is prepared. While furnishing such copies to such information seeker, the confidentiality can be maintained without disclosing the name, designation and identifiable details of the officer who has prepared it. By this application the appellant wanted the CRs up to the date of application which according to appellant has been furnished till 2012. In the same breath further CRs are also required to be furnished only to the appellant herself by taking precaution to hide the identity of the author who has prepared the report.

h) In respect of point (22) it is the contention of the PIO in the reply that the office does not keep duplicate copies of the salary slips and the original are submitted to the staff. Thus the said point is appropriately answered.

i) With reference to point (23), the PIO in her reply has clarified that the register cannot be copied as the same is bigger in size. This is the practical difficulty in offering the copies. However the PIO has offered the inspection of the same and the appellant can have the same and take copies, if otherwise possible. Similar is the case of point (24).

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j) It is the contention of PIO vide reply filed herein and as per the response under section 7(1) that the information at said other points is already furnished. Though the appellant in the appeal memo and in the arguments referred the same information as vague, incomplete, unsatisfactory, inconclusive etc. the appellant has not offered any clarification thereon as to why she contends the same so. In the circumstances I am unable to hold that the information which is furnished is at all vague, incomplete, unsatisfactory, inconclusive etc.

k) The appellant in his appeal has sought for an action for not providing the information in time. If one considers the application u/s 6(1) which is dated 16/12/2016 and by leaving the date of application, the said response being on the 30th day cannot be said to be bared. Even otherwise considering the volume of information, even if there is a marginal delay it cannot be held as deliberate or intentional.

l) Coming to the prayer for disciplinary action and compensation I find that as held above the PIO in her prudence and apparently to safe guard has furnished part information and with held the other with a reason. The PIO in her logic and reasoning has refused part information. Just non furnishing of the explanation of reason to the satisfaction of appellant would not ipso facto mean that PIO withheld the information with a motive. Being so such an action cannot be held to be malafide.

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m) The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (***Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others***) has observed:

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

n) In the back drop of the above facts and my findings above I find the appeal is to be allowed partly. However I find no grounds sufficient to invoke my rights u/s20(1) an/or 20(2) of the act. consequently the same is disposed with the following:

ORDER

Appeal is partly allowed. The PIO is hereby directed to furnish to the appellant, free of cost the information as sought by her at points **(1),(2),(10),(12) and(21)** of her application dated 16/12/2016 within three weeks from the date of receipt of this order.

With a view to maintain confidentiality, the confidential reports as sought at point (21) be furnished by taking precautions not to disclose the name, designation and identifiable details of the officer who has prepared and signed the same.

The PIO is also directed to furnish free of cost the inspection of the pay bill register since 1999 till date and also the dairy registers, files documents etc.

as sought by appellant at points **(23)** and **(24)** of the appellant's application dated 16/12/2016.

Liberty is granted to the appellant to seek further information, if any, after getting the information as ordered herein.

Rest of the prayers in the appeal are rejected.

Notify the parties.

Proceedings closed.

Pronounce in the open Proceedings.

Sd/-

(Mr. Prashant S. P. Tendolkar)

State Chief Information commissioner

Goa State Information Commission

Panaji-Goa