

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

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

Appeal No.49/SIC/2012

Mr. Nevil B. Furtado,
H.nO.51, Copelwaddo,
Sernabatim, Salcete –Goa. Appellant.
V/s

- 1) The Public Information Officer,
Village Panchayat of Colva,
Colva, Salcete –Goa.
- 2) The First Appellate Authority,
O/o the Block Development Officer-II,
Margao, Salcete –Goa. Respondents.

Filed on :27/02/2012

Disposed on:13/12/2018

1) FACTS:

a) The appellant herein by his application, dated 03/10/2011 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO under several points therein.

b) The said application was replied on 25/10/2011 informing the appellant that some of the available records were kept ready and to inspect the same for providing copies of the same. By subsequent reply the PIO furnished further reply by furnishing copies of information at points 1(d), (e) and in respect of the rest it was informed that the information as not available. However according to appellant the information

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as sought was not furnished and hence the appellant filed first appeal to the respondent No.2.

c) The First Appellate Authority (FAA) by order, dated 04/01/2012, allowed the said appeal and directed PIO to provide the information. In spite of the said order, the PIO failed to furnish the information.

d) The appellant has therefore 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. On 01/03/2018 the appellant filed a memo submitting that at the relevant time one Allauddin Moniar was responsible for furnishing information. Accordingly notice was issued to then PIO Shri Moniar. He filed his reply on 17/04/2018 inter alia submitting that the information sought is not available nor maintained. He has further stated that to verify the availability of records the appellant was called to inspect records and that on 29/10/2011 it was verified by appellant that the same are not available. According to PIO the records are pertaining to the year 1984. The PIO has concluded his reply by contending that under the act only the available information can be furnished.

f) As the information in this case is not furnished due to non availability of the records, the concerned PIO was directed to file affidavit in support of his such contentions under Rule 5 of

The Goa State Information Commission (Appeal Procedure) Rules 2006. Accordingly on 07/08/2018 the said PIO filed affidavit interalia affirming the above facts.

g) The appellant has filed his written submissions on 27/06/2018. As per his said submissions he has verified the records which was furnished to him by PIO and the copies of which are already furnished to him. He has further stated that in the course of said inspection he was informed by PIO that no other documents are available.

2) FINDINGS:

a) Perused the records. It is not in dispute that the information at points 1(d) and (e) is furnished. The other information is not available in the records. This is the consistent stand of the PIO. The Appellant has also confirmed this stand of PIO during his communication. The PIO has filed his affidavit affirming the fact of non availability of information. It is nowhere the case of the appellant that the records at all exist. In these circumstances I have no reasons to discard or disbelieve the contents of the affidavit of the PIO and hold that the records pertaining to information does not exist.

b) It is also to be noted that the information pertains to the years stating from 1979 to 1993, which is sought in 2011 i.e. after a span of about 18 to 32 years and it is quite probable that the records may not be available now.

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c) While considering the scope of information which can be furnished under the act, Hon'ble Supreme Court in the case of *Central Board of Secondary Education V/s Aditya Bandopadhyay* (Civil Appeal No.6454 of 2011) 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 no 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 of assumptions.”*

d) Considering the above facts and the ratio laid down by Apex Court as above, I find that the information being unavailable cannot be furnished. Any order to that effect shall be redundant and unenforceable. In view of the above following:

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ORDER

The appeal is disposed as redundant. However, the rights of appellant to seek the same information at anytime later, if the records are traced, are kept open.

Notify the parties.

Proceedings closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa