

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

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

**Appeal No.95/SIC/2014**

Shri Gajendranath . R. Usgaonkar  
Advocate, Residing at H. No.1350,  
Next to Central Bank of India,  
Opposite Market, Housing Board ,  
Alto Porvorim, Bardez –Goa

..... Appellant

V/s

- 1) The Public Information Officer  
Law Department (Legal Affairs)  
Government of Goa  
Secretariat, Alto Porvorim  
Bardez Goa.
  - 2) The Firs Appellate Authority,  
Joint Secretary (Law),  
Government of Goa  
Secretariat, Alto Porvorim,  
Bardez Goa
- ..... Respondents

Filed on: 01/09/2014

Disposed on: 06/07/2018

**1) FACTS IN BRIEF:**

**a)** The facts in brief as pleaded by the appellant herein are that the appellant herein by his application, dated 20/3/2014, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the PIO, Respondent No.1 herein viz.

*“1. Number of Portuguese laws/enactment still applicable to Goa.*

*2. Number of Portuguese laws/enactment translated in to English by Govt.*

...2/-

*3. Which translation of Portuguese Laws/ enactment is under process of translation and will be made available.”*

**b)** The said application was by respondent no.1, PIO herein on 15/4/2014 interalia stating that no records are available in the respondent department and that said information is available with the respective administrative departments administering said laws under their control. By said reply PIO further directed the appellant to approach administrative departments for seeking such information, if he wish so.

**c)** 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).

**d)** The FAA by order, dated 17/6/2014 dismissed the said appeal.

**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 on 15/3/2016 filed reply to the appeal .FAA also filed the reply to the appeal on 15/3/2016.The appellant filed his written arguments. The respondents have not filed any arguments in writing nor advanced any oral arguments. Adv. K.L. Bhagat submitted that the reply filed by the PIO and FAA be treated as their respective submissions.

...3/-

**g)** In his arguments it is the contention of the appellant that PIO has admitted that legal Affairs Division of law Department is tendering legal advice to the Government on all matters with regards to the laws administered by the Administering Departments According to appellant, it is central agency of the State Government which advice government on all legislations.

It is further submitted by appellant that State Administration runs on mechanism device called "Line Agency" and "Staff Agency", which is military principle use during war and that it is the job of line agency to lay down the policy, rules and regulation and staff agency merely executing bodies implementing these laws/rules etc. In all matters Secretariat is carrying on function of line agency to which we refer as "Department" and all the executing/administering bodies are either called "Directorate" or "Commissioner", who are responsible to execute the law and administer the law. It is always the law that executing authority cannot question the policy makers i.e. line agency and therefore, PIO can emphasis Administering bodies to give information, which is incorrect and absurd. Moreover, the respective Directorate is controlled by Secretariat Department Line agencies and since P.I.O is part of Secretariat Department, it was for Legal Affairs, Law Department to gather information available from all the Secretariat Department and give it to Appellant.

It is further according to appellant that reply given by the PIO and reliance placed upon Government (Allocation) Business Rules 1987, make it ample clear that Legislative Affairs, Law Department is responsible to give information asked by the Appellant and by referring to para (9) of reply of PIO she submits that the PIO has squarely admitted at said para that she is governed by the Rules of Business of Government of Goa, 1987.

According to appellant apart from giving opinion as stated by the PIO, the Law Department, Legal Affairs have many other functions/duties under entry no.21(g) which includes Publication of Acts, Rules, Notification Codification of laws and maintenance of up-to-date laws, rules and notifications.

According to appellant the Judgment in the case of *Central Board Of Secondary Education* passed by Hon'ble Supreme Court as relied upon by the FAA is not applicable to the present case in as much as that Business rule of the Government, itself provides for Publication of Acts, Rules, and Notification, Codification of laws and maintenance of up-to-date laws, rules and notifications. This obligation to maintain of up-to-date laws covers information at point 1 to 3 and PIO cannot escape her obligation to give the information sought u/s 6(1) of the act.

Appellant has further submitted that "Right to Information" is not merely statutory right bestowed by the legislature on the citizen, but it is also

fundamental right i.e. right to know and that the PIO is to maintain up-to-date Law and notification. According to appellant if list of such laws are not maintained then one can directly allege that Legislative Affairs, Law Department is not carrying out its duty as per said business rules.

Appellant has further submitted that Respondent No.1/PIO has plainly stated in her para 2 of her reply that she has informed that “ No records are available in the department as regards to information sought” and this implies that Legal Affairs, Law Department is not maintaining up-to-date law enforced in territory of Goa and thereby violates the mandate of business rule quoted above and that PIO also stated in para (9) sub para (3) that Law Department is not originating department as per allocation of Rules of Business, but duty is casted under the business rules to maintain all laws upto date by the Legislative affairs, Law Department (I), which duty has not been carried out by them.

By referring to section (4) of the act appellant submits that PIO was duty bound to maintain up-to-date laws enforced in state of Goa duly catalogued and indexed in a manner and the form which facilitate right to information under the Act, even the said Act need to be computerized and maintained, within 100 days from enactment of the Act 2005 and it is pity that PIO has failed to carry out its obligation even after 10 years.

According to appellant PIO must be well aware that ignorance of law is not excuse and that the PIO has displayed ignorance that she is not aware about the various Portuguese laws in force in Goa and hence prevailing Portuguese legislations are not been considered at the time of giving advice to the Government and thereby anomalous situation arises in legal field. According to appellant, if the Legal Affairs Department is not aware of such Portuguese legislation enforce, than such advice is not Advice at all. Appellant as Advocate, while practicing in Hon'ble High Court faces extreme problem and difficulties in absence of Portuguese laws in force in Goa as Judges coming from Bombay ask for translation and it is not possible to give translation as it is very expensive affair to translate entire law and many erroneous judgments are passed by the High Court concerning rights of the Citizens.

While concluding his arguments the appellant submitted that Respondent No. 1 is bound to give information as sought by the Appellant because under the business rules PIO is bound to maintain up-to-date law, Rules and notification from time to time. In fact such information ought to have been available on the Law department Web site.

**h)** In her reply filed in this appeal, which are the substantive arguments of PIO, it is her contention that it is admitted that the Law Department Legal Affairs by virtue of the Rules of Business of the Government of Goa is required to give opinion to all

the Administrative Departments of Government of Goa, however the answer given to the question raised by the MLA becomes the record of the Legislature and it is for the Applicant to obtain the said records from the Legislature Department if he wants the said information.

According to PIO it is the case of the Appellant in the First Appeal that he was aware about the Starred Question No.568 of Mr. Manohar Parrikar (then Opposition Leader) and the reply given by then Law Minister, Mr. Domnic Fernandes in which detail list of Portuguese legislation as well as Portuguese legislations translated by the Government was available. Thus according to her, inspite of having knowledge of the said source of information, it is the contention of the Appellant that instead of Resp. No.1 asking him to approach the respective Administrative Departments, as to which are the laws those are in force and administered by the Administrative Departments, the Respondent No.1 should carry out the exercise by herself to collect and supply the Appellant information or intimate all the concerned departments of this State Government to give the information to the Appellant as sought by him.

According to PIO the Law Department, Legal Affairs, is not the originating department, as per the Allocation of the Rules of Business of the Government of Goa, 1987, and only two Acts are administered by this Department (i.e. M. L.As. Act and the Speaker's

Act). It is the Law Department (Establishment Section) which administers the Portuguese Laws in respect of succession, marriage, wills where special Notaries are appointed, happens to be the State registrar. There are certain Portuguese laws which are still force in this territory and most of the names of these acts will be known to the person who is conversant to the enactments relating to that subject matter except a few of which are often used viz. code of Comunidades, the Devasthan Regulations, which are administered by the Revenue Department, the Portuguese Water Supply Bye-laws as regulated by Portaria No.6802 dated 22/10/1957 and Portaria No.7041,dated 10/10/1957, administered by the PWD.

It is further according to her the present case also does not fall within the ambit of transfer u/s 6(3) of the RTI Act as the Appellant cannot make an application to the PIO of one department and request him to furnish the information pertaining to information or documents of other Govt. Departments. According to PIO Appellant was aware about the administrative departments from where the Appellant could obtain the information and hence could have submitted his applications to the concerned administrative departments to obtain the said information. PIO has further repeated that the appellant having the knowledge of the department having the information ought to have sought the same from the concerned department.



PIO has further submitted that the role of Law Department (Legal Affairs) is to give legal opinion to all the Government Departments and that this department is not suppose to give any legal opinion to any private parties. As far as the information under the Right to Information Act is concerned, the same is governed by the provisions of the Act, 2005 and as per the said provisions, no advice or interpretation in any form can be given to any person under the said Act and Only the records which are available in this Department can be furnished to the parties and further the stand taken by the Appellant, that the advice given by the respondent can be implemented themselves calling all the concerned administrative departments to give information, cannot be adhered to as the Appellant is free to seek the information from the concerned P.I. Os. In her reply PIO has placed reliance on judgment of this commission in the case of **Sushma Karapurkar** wherein according to her the role of the Law Department has been clearly spelt out and also in the case of **Dr. Celsa Pinto**. According to PIO in the said cases it is held that the Appellant can make an application to every department and obtain the specific information. It is not proper to file application to the PIO of one Department making request therein to him to obtain information from all other Govt. departments and/or to transfer it to all other Govt. Departments, and that there are guidelines in this regard issued by the Information Dept. bearing No.DI/Inf/RTI/Disclosure/20yrs/08/7152,dated 15/07/2008, which are to be adhered

to by all the Departments. According to PIO in pursuance to the guidelines given in the said Circular, when the information sought is scattered with more than one or other public Authorities, the PIO of the Public Authority who has received the application should advise the Applicant to make separate applications to the concerned Public Authorities to obtain information from them. According to PIO the Act requires the supply of such information only which already exists and is held by the Public Authority or held under the control of the Public Authority. It is beyond the scope of the Act for a Public Authority to create information. According to PIO Collection of information, parts of which are available with different Public Authorities, would amount to creation of information which a Public Authority under the Act is not required to do. It is also according to her that since the information is not related to any one particular Public Authority, it is not a case where application should be transferred under sub-section (3) of Section 6 of the Act. According to PIO sub-section (3) refers to "ANOTHER PUBLIC AUTHORITY" and not "OTHER PUBLIC AUTHORITIES" and therefore the contention of the Appellant that the Respondent No.1 should carry out the exercise to collect the information from the various administrative departments or intimate all the concerned departments of this State Government directing them to give the information as sought by the Appellant is not correct.

Further according to PIO maintaining a list of Portuguese Legislations/Enactments still applicable/ or in force does not fall under the duties assigned to her Department. The contention of the Appellant that the Respondent is dealing with various Legislations/Bills piloted by the Government and therefore what was prior legislations or repealed legislations etc. this department is bound to maintain is not correct, as the concerned Administrative Departments are the originating Departments for carrying out any amendments to the existing law under their control and hence the records are maintained by them and not by this Department. The PIO has once again repeated that the information pertaining to a stated question the same becomes the records of said department.

While concluding her contentions the PIO has submitted that the Appellant is not entitled to seek the said information from the Respondent No.1 and should approach the respective Administrative departments for seeking the information sought by him as the said information is not available in this Department and more particularly from legislature department.

**i)** By referring to the sequence of disposal of the first appeal it is the contention of FAA that this Respondent is a quasi judicial public authority under the provisions of the RTI Act, 2005 the FAA cannot be called upon to explain how he arrived at those decisions hence he is not required to be a party. It is

further submitted that the FAA is not covered by the Penal Provision under RTI Act and that there is no provision in the RTI Act under which the FAA is bound to supply information to the Appellant. By referring to the judgment passed by the Hon'ble Supreme Court in the case of *Central Board of Secondary education V/S Aditya Bandopadhaya*, the FAA submits that PIO cannot be called upon to collect or collate information. FAA thus justifies the denial of information by the PIO.

## **2. FINDINGS**

**a)** Perused the records including the application filed by appellant u/s 6(1) of the act, the response of PIO u/s 7(1) and the order passed by the FAA. Also considered the submissions of the parties. Considering the rival contentions of the parties, the point which arises for the determination of this Commission is:

*Whether the PIO was justified in directing the appellant to approach Administrative departments for seeking the information?*

**b)** The appellant vide his application u/s 6(1) of the Act has sought to have the information pertaining to (i) the number of Portuguese laws/enactments still applicable to Goa (ii) Number of such laws translated into English and (iii) which of them are under process of translation.

The said request is refused by the PIO on the ground that no records are available in said department. In the same reply appellant is informed by the PIO that said information is available with respective Administrative Departments administrating the said laws under their control. The appellant is further advised by PIO to approach the Administrative Departments for seeking information regards the law administered by such departments.

**c)** The PIO in her reply, dated 15/03/2016 filed before this commission has relied upon and filed on record copy of the official Gazette, dated 13<sup>th</sup> August 1987 (Series I No.20), in support of her contention that the respondent Authority is originating department as per allocation of the rules of business of Govt. of Goa. According to her only two acts are administered by said Department ie. MLA's Act and Speaker's Act and that it is the establishment section which administers certain Portuguese laws whereas other Portuguese laws are administered by several other departments as stated by her in her reply.

**d)** On careful consideration of the said gazette, it is seen that at sr. no.21(I), among other subjects ,the legal affairs division of the Department of law and Judiciary are also allotted: *Publication of Acts, Rules, Notification, Codification of laws and maintenance of up to date laws, rules and notifications, law Library and Personal Laws and other Laws of general nature.* At 21(II) the Establishment Division is allotted other subjects apparently pertaining to the officials/

authorities under the said subjects which are allotted to the legal affairs Division.

In these circumstances the Commission is unable to accept the contention of the PIO that the subject matter of information sought was not pertaining to legal affairs section and that it pertained to establishment section.

**e)** The information sought was regarding to the existing Portuguese laws applicable to Goa, its translations. As found above as, the information's sought was pertaining to laws, which may be either personal or general in nature, required to be maintained by the legal affairs division, which is the respondent Authority herein and was dispensable under the act. This Commission therefore find no force in the submissions of the PIO that the said application of appellant required collection of information .

**f)** The PIO in support of her contentions has relied upon the judgments passed by this Commission in the case of *Smt. Sushma Karapurkar (Appeal no. 259/2008 and Appeal no.272/2008)* as also passed by Central Information Commission in the case of *Shri Vibhar Dileep Barla*. In this context it is required to be clarified that neither the orders of this Commission nor that of Central Information Commission can be held as precedents. The cases before these authorities may have distinct facts and cannot be applied as law for subsequent cases. The central information

commission is not an appellate authority for the State Commission. However as the PIO has relied upon the same it is necessary that the distinguishing factors are pointed out.

**g)** In the case of *Smt. Sushma Karapurkar (Supra)* the information sought therein was in the form of further details in respect of a legal opinion submitted by Law department. Being in the nature of an opinion for checking the veracity of records the same was rightly rejected by the Commission as no opinion can be sought from PIO in respect of any records held by public Authority.

In the case of *Shri Vibhor Dileep Barla (supra)* also the Central Information Commission had held that what was sought by seeker was the opinion and that opinions does not constitute dispensable information under the act.

**h)** The PIO has also relied upon the Judgment of the Hon'ble High Court of Bombay in the case of *Dr. Celsa Pinto v/s Goa Information Commission . W.P. 419/2007*. Commission fails to understand as to how the ratio therein is applicable to this case in hand. In the said case of *Dr. Celsa Pinto v/s Goa Information Commission*, at points (2) and (3) of the seeker's application u/s 6(1) what was sought is "Why the post of curator was not filled" and "Why the librarian from Goa Engineering College was not considered for the post....."

In other words the information Sought therein was in the form of “reasons” for happening or non happening of certain facts. Being in the form of seeking justification, the Hon’ble High Court, by considering the scope of information 2(f) of the act has held that the furnishing of Justification is beyond the scope of functions of PIO.

Thus the facts in the case of *Dr. Celsa Pinto (Supra)* and the case in hand are totally distinguishable. In the present case the appellant has not sought any Justifications or reasons but has sought the information which according to him should exist with the respondent Authority. The PIO thus, for refusing the information, has totally misinterpreted ratio laid in the case of *Dr. Celsa Pinto* and that *Smt. Sushma Karapurkar* and of *Shri Vibhor Dileep Barla (Supra)*.

**i)** It is contended by the PIO that respondent department is liable to give advise to government departments only and not to private parties. Without disputing the above proposition, under notification inofficial Gazette, dated 13<sup>th</sup> August 1987 (Series I No.20) as relied upon by the PIO, the respondent authority is also required to maintain the up to date Laws, Law Library as also to deal with personal law and other laws of general nature. Thus a wide jurisdiction is granted to the respondent department. No opinion can be issued by department even to Government unless the there is proper maintenance of



the library. Any opinion can be only with reference to the laws. The PIO has thus totally misinterpreted the extent of its responsibility. What is sought by the appellant under his application is thus required to be maintained for the purpose of reference of the respondent authority to give opinion.

**j)** It is also the contention of the PIO that as the information was held by other authority, the PIO is not liable to collect the same for the seeker. In this context the PIO has relied upon purported guidelines issued by Information Department dt.15/07/2008. Commission does not find any such guidelines filed by PIO on record. However even if such guidelines are issued, Same cannot curtail the scope of the Act, which is a Central Legislation. Any such guidelines or circulars of departments if allowed to prevail, would make the act itself meaningless. It appears that the PIO wants to suggest that the operation of a Central law i.e. The RTI Act herein is regulated by a department of state Government under some guidelines or circulars. Such a proposition appears ridiculous as also not in consonance with the act. The PIO appears to have lost the site of the overriding effect of the act as contained in section 22 thereof. If such an argument is accepted it would nullify the aims and objectives of section 6(3) of the act and the intentions contained therein to facilitate the seeker to have the information from the public authorities. Said provision nowhere casts an obligation on PIO to

collect information from the transferee and provide to seeker. If information is held by another authority, on transfer of the request u/s 6(3) the transferee PIO is required to furnish the information to the seeker directly and not through the transferor PIO.

**k)** In a further attempt to wriggle out of the liability to furnish the information, the PIO has interpreted the scope of transfer u/s 6(3) to a single another authority and not to multiple authorities. Commission is unable to accept the said restrictions. Section (13(2) of The General clauses Act 1897, clearly defines a singular entity to include more than one and vice versa. Though section 6 (3) of the act refers to 'Authority' it includes more than one authorities also.

Thus Considering the nature of request and grounds under which the information is refused, I find that the PIO has failed to perform her obligation under the act by not providing the information and/or by transferring the request to other authority.

**l)** On a careful Scrutiny of the Judgment, dated 17/06/2014 passed by the FAA, it appears that it is an attempt to cover up the lapses on the part of PIO. A plain reading of the said judgment also reveals that the same is based on a convenient misinterpretation of the act. The said judgment is based on a totally misinterpretation of the judgment of the Apex Court in the case of *Central Board of Secondary Education u/s Aditya Bandopadhyay [2011 (8) S.C.C.497]*. In the said

case there was no issue pertaining to the interpretation of section 6(3) before the Apex Court. The issue therein was pertaining to the records which were required to be maintained by concerned authority but were not actually maintained. Said judgment nowhere restricts the use of section 6(3) to access the information. Apparently while upholding the justification of PIO for not furnishing information, the FAA has misinterpreted the scope and extent of information to be furnished by PIO and the liability of the PIO to transfer request u/s 6(3) of the act. The judgment of the FAA thus exhibits a mere ignorance of the provision of the act which the commission is unable to concur with. The order of the FAA thus cannot sustain and is required to be set aside.

**m)** In the back drop of the above, the denial of request of the appellant by PIO does not appear to be bonafide. The entire approach of the PIO and the FAA while dealing with the request of the appellant is against the true intent of the Act. Being a department concerned with the law and legal affairs, a high sense of responsibility was expected while dealing with the cases under the act. The entire approach of the said two authorities i.e. PIO and FAA in relation to the exercise and functions under the act appears to be not in conformity with the provisions and spirit of the act.

**n)** In the circumstances this commission finds that the PIO is liable to furnish to the appellant the

information held by it. In respect of the information which is held by other authorities, the request of appellant is required to be transferred to such authorities as contemplated u/s 6(3) of the act. Considering the pleadings of the parties this Commission also finds that the respondent Public Authority has not complied with the requirements of section 4(1) of the Act. The appeal is therefore bound to succeed and the same is therefore disposed with the following:

**O R D E R**

Appeal is allowed. PIO is hereby directed to furnish to the appellant free of cost, the information as sought by him by his application, dated 20/3/2014. In case the said information or any part thereof is not held by it then the PIO shall transfer such request to the authority holding it within 5 days from the date of receipt of this order by PIO.

The respondent Authority viz Law Department is hereby directed to comply with the requirements of section 4(1) of The Right to Information Act 2005 at the earliest.

Issue notice to Ms. Pooja Phadte, the then PIO to show cause as to why penalty as contemplated under section 20(1) and/or 20(2) of The Right to Information Act 2005 should not be levied against her.

...21/-

Reply to notice to be filed by the then PIO on 1<sup>st</sup> August 2018 at 10.30 a.m., alongwith the documents in support, if any.

Notify the parties.

Pronounced in the open proceedings.

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