

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

Appeal No. 230/2018/SIC-I

Shri Nitin Y. Patekar,
Oshalbag, Dhargal,
P.O. Colvale, Goa.

....Appellant

V/s

1) The Public Information Officer,
Office of Directorate of Panchayat,
Junta House, Panaji Goa.

2) First Appellate Authority,
Office of Directorate of Panchayat,
Junta House, Panaji Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 26/09/2018

Decided on:26/11/2018

ORDER

1. The second appeal came to be filed by the appellant Shri Nitin Patekar on 26/9/2018 against the Respondent no. 1 Public Information Officer of Directorate of Panchayat and against Respondent No. 2 first appellate authority under sub section (3) of section 19 of RTI Act 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 22/6/2018 had sought for certain information on 5 points pertaining to reference No.15/6/DP/EST/VPS /08/6238 dated 29/12/2008 including inspection of the file. The appellant has sought information the said information was sought in exercise of his right u/s 6(1) of RTI Act, 2005. The appellant had also enclosed the advertisement published in the Navhind Times dated 31/12/2008 inviting the application for filing up vacant post of Village Panchayat Secretaries.

3. The said application was responded by Respondent No. 1 PIO on 10/7/2018 thereby requesting the appellant to visit their office (Establishment section) on any working days to inspect the concerned file/documents and then to obtain the documents on payment of necessary fees.
4. Being not satisfied with said response of respondent no. 1 PIO, the appellant approached the Respondent No.2 first appellate authority on 18/7/2018 by way of first appeal u/s 19(1) of RTI Act, 2005.
5. It is the contention of the appellant the first appellate authority failed to hear and dispose the first appeal within stipulated time as contemplated under the RTI Act.
6. Being aggrieved by the action of both the respondents and as the appellant did not receive any information, he approached this commission by way of second appeal as contemplated u/s 19(3) of RTI Act, 2005 with the prayer for direction for furnishing him the information as sought by him and for invoking penal provisions .
7. Matter was listed on board and was taken up for hearing. In pursuant to the notices of this commission appellant appeared in person respondent No. 1 Shri Pundalik Khorjuenkar appeared and Respondent no. 2 first appellate authority opted to remain absent .
8. Reply filed by Respondent No. 1 PIO on 15/11/2018 alongwith enclosures. As Respondent No. 2 first appellate authority failed to appear and file any reply, I presume and hold that the averments made in the memo of appeal are not disputed by Respondent No.2 first appellate authority herein. The copy of the reply of PIO alongwith enclosures were furnished to the appellant .
9. Arguments were advanced by both the parties.
10. It is the case of the appellant that he is satisfied with the information furnished to him at point No. 1 and 3 and his

grievance is in respect to point no. 2, 4 and 5. It is his case that he had sought the said information with the larger public interest as he wants to challenge the appointment of some of the selected candidates in the writ petition before the Hon'ble High Court as according to him some of the selected the candidates, have filed their application for the post of panchayat Secretary without fulfilling criteria and qualification. He further submitted that the said advertise was for filling up of temporary post of Village Panchayat Secretary, however they have been appointed on a regular post and on permanent post He further submitted that there is an illegality and irregularity committed by the appointing authority in filing up said posts and hence he intend to challenge their appointment in view of larger public interest.

11. The respondent PIO vide reply and during verbal arguments submitted that the appellant was requested to visit the office and to inspect the file and to obtain required documents and also instructed head clerk of Establishment section of their office to make records available for inspection to the applicant. It was further contended that since no pointwise information was received from head clerk despite of direction by him, and as such memorandum bearing No.26/87/DP/RIA/2018/4534 dated 26/7/2018 was issued to the said Head clerk with a direction to furnish the information to him within 24 hours in order to unable to provide the information to the appellant. In support of his above contention he has relied upon his reply dated 10/7/2018 given in terms of section 7 so also memorandum issued to the Headclerk and LDC of their establishment section .
12. It was further contended that in pursuant to the said memorandum, the head clerk of establishment section vide letter bearing No. 9/4/DP/EST/RTI/2018/4579 dated 27/7/2018 provided him information at point no. 2 to 5 and in support of his contention he relied upon the letter dated 27/7/2018 addressed to PIO by the Headclerk Smt. Nutan Sankordekar of Establishment section.

13. It was further contended that on receipt of the information from the Headclerk on 27/7/2018, he vide letter bearing No. 26/87/DP/RIA/2018/4582 dated 27/7/2018 again requested the appellant to inspect the said file and to collect the information on payment of prescribed fees which are available in their office records . In support of his said contention relied upon letter dated 27/7/2018 issued by him to the appellant .
14. It was further contended that from 27/7/2018 till 2/11/2018 the appellant did not visit their office to inspect the file to collect the information but he opted to approach this commission by way of present appeal .
15. It is his further contention that subsequently on 2/11/2018 some of the affected secretaries vide their letter requested PIO not to furnish their personal information and accordingly vide letter bearing No. 26/87/DP/RIA/2018/7229 dated 7/11/2018, the appellant was informed about the same. In support of his above contention he relied upon letter dated 2/11/2018 addressed to Respondent No. 1 by Shri Manoj Mashelkar, Village Secretary deployed at DOPs office, letter dated 2/11/2018 addressed to Respondent PIO by Shri Joslyn Esteves, Village of Secretary deployed at DOP office and letter dated 7/11/2018 addressed to the appellant by PIO.
16. The PIO during the present proceedings submitted he has no grievance in furnishing information at point No. 2 and 5 . He also further submitted initially he had no grievance in furnishing the information at point no. 4 but in view of the objection raised by 2 candidates the same information could not be furnished to appellant and accordingly the applicant was informed vide letter dated 7/11/2018.
17. It was further contended that there was no malafide intention to delay or not to provide the information to the appellant and has acted in full spirit to provide the required information to the appellant and the delay if any was on account of appellant himself.

18. I have perused the records in the file so also considered the submission made on behalf of both the parties .
19. On scrutiny of the application dated 22/6/2018 filed interms of section 6(1) of RTI Act, it is seen that following information was sought pertaining to reference No. 15/6//DP/EST/BPS/08/6238 dated 29/12/2008.
 - a) Inspection of file.
 - b) Names and designation of Selection committee.
 - c) Copies of written test papers of selected candidates .
 - d) Copy of the Application forms filed by the selected candidates for post of Village Panchayat Secretaries.
 - e) Copies of order of appointment issued to selected candidates .
20. On perusal of the reply/letters of Respondent no.1 dated 10/7/2018 and 27/7/2018 addressed to the appellant herein the PIO has answered all the queries of the appellant within stipulated period of 30 days by which the respondent no.1 had offered to give inspection and also offered to provide the information on payment of Rs. 110/- with the account section of their office on any working days.
21. During the present proceedings, the respondent PIO volunteered to furnish him the information at point No. 1,2,3 and 5 and the information sought at point no. 4 i.e the copy of the application forms filed by the selected candidates for recruitment for the post of Village Panchayat Secretaries was denied to the appellant on the ground that third party namely Manoj Mashelkar and Joslyn Esteve had objected for furnishing the same .
22. In the contest of third party information, The Apex Court In Writ Petition No. 5427, V.V. Minerals V/s Director of Zeology at relevant Para 12 has held that

“When the third Respondent as an information officer, ordering notice to the petitioner and taking their objections and refusing to furnish the documents sought

for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the state and such information is in exclusive custody of the state, the question of seeking any opinion from the third party on such issues may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner (information seeker) are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps”.

The Apex Court at para 17 has also held ;

“No total immunity can be claimed by any so-called third party. Further, it is not a matter covered by section 8(1)(d) of the Act, the question of any denial by the information officer does not arise”.

23. The Hon’ble High Court of Allahabad while deciding the writ petition 45252 of 2005 Praveen Varma V/s Hon’ble High Court of Judicature reported the in 2008 (1) RTI 137 has discussed ambit and scope of section 3,4, and 6 and has held that

“The disclosure of information in regards to the functioning of Government must be rules and secrecy must be an exception”.

24. One could gather from above Judgments that Every member of the Public gets right to know of the working of the public servant his honesty, integrity and devotion to duty. In fact nothing remain personal while as far as the discharging of duties as the Salary is paid to the public servant from public exchanger.
25. PIO is a designated person of the Department who is responsible to ensure to the compliance of RTI act and facilitated the information seeker in obtaining the information and is under obligation to render Assistance to the information seeker. Sum and substance of section

5 of the RTI Act is that every PIO should extend all reasonable assistance in making information available rather than putting in hurdles in different ways.

26. In the present case it is not a case of PIO that the information at point No. 4 is not available. It was denied since the third party i.e. the Village Panchayat Secretary Manoj mashelkar and Joslyne Esteve has objected. In the present case information at point No.4 sought pertains to Government servant wherein he had filed application with supporting documents to the Government for securing a Government job. The said documents are on the records of the public authority concerned herein and the said documents are filed in a course of securing the Government job. By disclosure of such information, no privilege or business interests of the Village Panchayat Secretaries are effected and the said information cannot be denied to parliament or State legislature . It is also stand of the appellant herein that he had sought for the said information in larger public interest.
27. The apex court in S.P. Gupta V/S Union of India, AIR 1982 SC 149 has observed:-

*"No democratic Government can Survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government, that an open Society is the new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of the open Government is the direct emanation from the right to know which seems to be implicit in the right of freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regards to the **functioning of the Government must be the rule, and secrecy an exception**, justified only where the strictest requirement of public interest so demands".*

28. In another land mark judgment, *Reserve Bank of India and others V/s Jayantilal N. Mistry and others; (Civil) Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of transfer petition (Civil) No. 707 of 2012)* , As held at para 75 by Apex Court that:-

"The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy".

29. By subscribing the ratios laid down by the above courts and so also based on the discussion above, I am of the opinion that the disclosure of such information would not cause unwarranted invasion of privacy of the individual who are Government servant and has relation to public activity or interest. The parliament and or State legislature is also entitled to receive such information. As such I am of the opinion that the appellant is entitled to get the information in the larger public interest as sought by him vide his application dated 22/6/2018 including information at point No. 4 .

30. Based on the records available in the file, I am of the opinion that the PIO was diligent in his duties under the RTI Act and there was no his denial from his side to furnish the information as such I am of the opinion that is not a fit case for warranting levy of penalty on PIO hence, I am declined to grant relief sought at No. 2 by the appellant in the memo of appeal for recommending disciplinary action under service rule .

31. Before parting, the displeasure is hereby expressed by this commission on the conduct and the attitude of the Respondent No.2

First Appellate Authority (FAA). The Records shows that even though the First appeal was filed by appellant the same was not disposed by the FAA within a period of 45 days. The respondent No. 2 First appellate authority despite of due service of notice did not bother to appear before this commission neither any reply was filed by him. It is seen from the past records that the Respondent no. 2 first appellate authority have acted in similar manner and fashion showing scant respect to the provisions of the RTI Act and also to the commission. Unfortunately there are no any penal provisions against the first appellate authority under the RTI Act for non compliance of the provisions. However such repeated attitude on the part of the first appellate authority cannot be taken lightly and has to be brought to the notice of his superiors

In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following :

ORDER

- i. Appeal partly allowed .
- ii. The respondent NO. 2 PIO is hereby directed to furnish the information as sought by the appellant vide his application dated 22/6/2018 within 15 days after the requisite fees are deposited by the appellant herein.
- iii. Respondent No. 2 First appellate authority is hereby directed to be vigilant henceforth while dealing with the RTI matter and to strictly comply with provisions of section 19(1) of the RTI Act 2005. Any lapses on the part of the First appellate authority in future will be viewed seriously.

With the above direction appeal stands disposed, proceedings stands closed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa