

GOA STATE INFORMATION COMMISSION
 Kamat Tower, Seventh Floor, Patto Panaji-Goa
 CORAM: **Smt. Pratima K. Vernekar, State Information Commissioner.**
Penalty No. 54/2017 In Appeal No. 67/2017

Rudresh S. Naik,
 Radha bldg. 2nd Floor,
 Beneard guedes road,
 Nea Market, Panaji-Goa.

.....Appellant

V/s

The Public Information Officer,
 River Navigation Department,
 Betim Bardez, Goa.

.....Respondent

Decided on: 29/01/2018

ORDER

1. This Commission while disposing above appeal vide order dated 26/10/2017 had directed the PIO to provide the information as sought by the Appellant vide his application dated 6/03/2017 within 20 days from the receipt of the order and if the information not available then to file affidavit. Vide said order the Commission had also directed PIO to showcause as to why penalty as contemplated under section 20(1) and or 20(2) of the RTI Act 2005 should not be imposed on her. Inview of the said order passed by this Commission on 26/10/2017 the present appeal converted into penalty proceedings.
2. In pursuant to the showcause notice dated 21/11/2017, the PIO's Mrs. Sandhya Corde was present who filed affidavit in reply on 16/01/2018 alongwith the enclosures.
3. The copy of the reply could not be furnished to the Appellant on account of his continuous absence.

4. Arguments were advanced by the Respondent PIO.
5. I have considered the submissions of PIO so also have considered the affidavit in reply filed by PIO alongwith the enclosures i.e. file notings at page 1/N, 2/N and 3/N.
6. It is contention of the Respondent PIO that the information sought by the Appellant was pertaining to the Traffic section of the River Navigation department. The said was available with the Sr. Superintendent (Works and Traffic) who was also Assistant Public Officer for Navigation Department as such the said information was called from the Head of Traffic section and Sr. Superintendent (Works and Traffic) replied to her that the information requested by appellant "was not available in the department". It is her contention that based on the information provided to her by APIO who was also heading the said Traffic section, she vide letter dated 7/04/2017 informed the appellant that information sought by him are "not available". It is her further contention that as the PIO she can only provide information if the same is available in the office record. She has also relied upon the reply/note sheet in support of her said contention which is at 2/N to 3/N.
7. On perusal of the said note sheet at 2/N and 3/N, it appears from the said note sheet that Sr. Superintendent (work and traffic) has stated that the information requested under the RTI Act is not available and it is not feasible to maintain considering 24x7/round the clock working of

Flotilla staff which includes Inspectors. It was further stated in the said note sheet that said staff is deputed on the board of ferryboats or for smooth operation of the ferryboats and unlike in other Govt. Staff and hence are protected by Industrial dispute Act. ***It was further stated that for quick and smooth functioning of the traffic section it is effective practice to communicate around 350 flotilla staff by way of electronic media such as telecommunication and mobile handsets.***

It was further submitted that Inspector are engaged in multiple activities/job responsibilities throughout day as per changing situations/scenarios due to which information asked is not available, and also cannot furnished by creating the same.

8. In the nutshell it is case of the respondent PIO that no written orders/duty chart/attendance register is maintained by them and there was practice to communicate around 350 flotilla staff by way of electronic media such as telecommunication and mobile handset.
9. 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”.*

10. The Supreme Court in *State of U.P. V/s Raj Narayan* (1975) 4 Supreme Court Cases 248 observed :-

“ The people of this country have a right to know every public act, everything that s done in a public way, by their public functionaries. They entitled to know the particulars of every public transaction in all its bearings. The Right to know which is derived from the concepts of freedom to speech, though not absolute, is a factor which can, at any rate, have no repercussion on the public security. To cover with a veil of secrecy their common routine, denial is not in the interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of partied and political or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

11. In another land mark case *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".

12. The Hon'ble High Court of Delhi - Writ Petition (c) 3660/12 Union of India V/s Vishwas Bhampurkar has held:-

" The right to information Act is a progressive legislation aid at providing, to the citizens access to the information which before the said Act came into force, could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to contain safeguard and exemption. Therefore while interpreting the provisions of the Act, the court needs to take view which would advance the objective behind enactment of the Act, instead of taking a restrictive and hyper technical approach which would obstruct the flow of information to the citizen".

13. The Hon'ble high Court of Alahabad while deciding the writ number 45252 of 2005, Praveen Varma V/s Hon'ble High Court of jurisdiction reported 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 of as an exception."

14. One could gather from the above judgment that every member of public gets right to know of

the working of the public servant, his honesty, integrity and devotion to duty. Infacts nothing remains personal while as far as discharging of duties as the salary is paid to the public servant from the public exchanger. In the present case it appears that the Sr. Superintendent (works and traffic) has not maintained the records pertaining to the Govt. staff working under him visa vis their place of postings, duties etc.

15. The Hon'ble High Court of Bombay at Goa in Writ Petition 1 of 2009 Kashinath Shetye V/s PIO. The Hon'ble Court has held:-

“ a public servant continuous to be a public servant for all 24 hours therefore, any conduct/misconduct of a public servant even in private, ceases to be private. When, therefore, a member of public demand as an how many leaves were available by the public servant, such information though personal, has to be supplied and there is no question of privacy at all.

It has been further held that “ such supply of information at the most may disclose how sincere or insincere the public servant is in discharge in his duty and the public has to right to know.”

At relevant para (8) it has been also held that section 8(1) (j) states that “information which cannot be denied to parliament or state Legislature shall not be denied to any person.”

16. As such the contention of the public authority that for the quick and smooth

functioning of the traffic cell, the staff was communicated by electronic media is not in accordance with RTI Act and it amounts to obstructing transparency of the affairs of the public authority. There are other Govt. department which are engaged in public utility services such as KTC, PWD, Electricity Department, Police Department wherein more staff are attached to the said department. Those department also have to impart their duties on the fields and exigencies of work also can crop up in said department. The Police Department who are having more than 2000 staff, maintains the station diary, Rosters/duty charts where the details of the employees posted are recorded. As per the office procedure in Government Department every Head of Office/Section has to issue office order to every employee assigning him the place of posting and day to day duties. Movement registers also required to be maintained, in terms of Circular No. 45/1/95-GAD dated 23/10/2001 and circular No. 45/1/95-GAD dated 20/07/2014. Biometrics records are also required to be maintained by public authorities. It is mandatory to maintained such records and the public authority are duty bound to maintained the same in order to bring the transparency in the affairs of the public authority and as such the employees of the River Navigation Department would not and cannot be an exception to the said rule. The conduct and the attitude on the part of the public authority concerned herein appears to be adamant and suspicious visa vis in bringing in transparency of the affairs of the public Authority. Though as contended by PIO that certain arrangements are made for the purpose of effective functioning's

like telecommunication, the records of public authority being amenable to the public should also be in public forms/records.

17. If all public authorities starts following the foot steps of Navigation Department, the very purpose of the act for which it came into existence will be frustrated and will amount to obstructing transparency and accountability in public authorities.
18. Considering the above position and as the PIO is affirmed vide her affidavit dated 16/02/2018 that instruction are not issued in writing to the staff and the practice followed by the traffic section to communicate Flotilla Staff including Inspector on Mobile or verbal instruction, I am unable to pass any further direction to furnish information as it would be redundant now. However, I feel it appropriate to exercise my powers under the Act to issue direction to the authority to maintain the records for public accessibility.
19. In the above given circumstances, following order is passed:-

Order

- a) In exercise of the powers conferred on this Commission interms of subsection (5) of section 25. I hereby direct the public authority concerned namely Department of River and Navigation to maintain the records in physical form till they are converted into soft copies and computerised.

b) Copy of the order may be sent to Chief Secretary and Secretary of River And Navigation Department for the information and for necessary actions.

Proceedings closed. Notify the parties.

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.

Pronounced in the open court.

Sd/-

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

KA/-