

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

Second Appeal No. 135/2015/SIC-I

Uday A. Chari Priolkar,
H.No. C-5/55,
Mala, Panaji, Goa.

....Appellant

V/s

- 1) Dy.Registrar (Tech)/PIO.
RCS, Panaji Goa.
- 2) First Appellate Authority,
Director of Animal Husbandry and
Veterinary Services,
Patto, Panaji, Goa.
- 3) The Managing Director,/PIO,
Goa State Coop. Milk Producers Union Ltd.
Curti Ponda Goa.
- 4) First Appellate Authority,
Registrar of Co-operative Societies,
Panaji Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 23/12/2015
Decided on: 09/11/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Shri. Uday. A. Chari vide his application dated 02/06/2015 sought certain information from the respondent no 1 the PIO (technical) of the Office of Registrar of Cooperative Society, Panjim, Goa as stated therein. The said information was sought by the appellant from Respondent No. 1 in exercise of his powers in terms of sub section (1) of section 6 of RTI Act, 2005.
2. The above application was transferred by Respondent No. 1 vide distinct/separate letters dated 10/07/2015 to (i) respondent no 2

the Director of Department of Animal Husbandry and Veterinary services, Panjim Goa, (ii) to respondent no 3 the PIO of Goa state Milk Producers Union Ltd. and (iii) to PIO of Assistance Registrar of Cooperative Societies (election), North Goa district, Panjim, Goa in terms of section 6(3) of the RTI Act, 2005. The copy of those letters was also forwarded to the appellant herein.

3. The Respondent No. 1 vide said letter bearing no 43/2/2005/TS/RCS(part III)/1192 dated 10/07/2015 had requested Respondent No. 2 to furnish the information at point no. 4 of the application filed by the appellant dated 02/06/2015. Vide letter bearing no. 43 /2/2005/TS/RCS(part III)/1193 dated 10/07/2015 the Respondent No. 1 PIO had requested the Respondent No. 3 to furnish the information at point no. 3 and 9 of the application dated 02/06/2015 and vide letter bearing no. 43/2/2005/TS/RCS(part III)/1191 dated 10/07/2015 had requested the PIO of assistance registrar of cooperative societies (election) to furnish the information at point no. 2, 5 and 8 to the appellant under intimation to their office.
4. According to the appellant the Respondent No. 1, 2 and 3 failed to furnish information within stipulated time neither they communicated to him regarding delay of information, as such the appellant being aggrieved by such an action of respondents, preferred 1st appeal before the registrar of Cooperative Societies, Panjim, Goa on 28/07/2015 who is the Respondent No. 4 herein and the Respondent No. 4 was pleased to dismiss his 1st appeal by an order dated 04/11/2015.
5. It is the contention of the appellant that he also preferred 1st appeal on 07/07/2015 before the Respondent No. 2 Director of Department of Animal Husbandry and Veterinary Services, Panjim Goa being First Appellate Authority (FAA), however the Respondent No. 2 failed to pass any order on his 1st appeal even though the matter was fixed for orders on 21/08/2015.

6. In this background the appellant has approached this commission by way of second appeal on 23/12/2015 thereby contending that information at point no. 2, 3, 4, 5, 6 and 9 have not still furnished and has sought for the directions to Respondent No. 3 to furnish him information at point no. 3, 4 and 9, to Respondent No. 1 on point no. 2, 5 and 6 and Respondent No. 2 on point no. 4 free of cost as sought by him vide his letter dated 02/06/2015, also for invoking penal provisions and for declaring Respondent No. 3 as public authority under definition of 2H(i)(ii) of RTI Act, 2005.
7. Notices are issued to the parties, in pursuant to which appellant appeared in person. Respondent no 1 and 4 were represented by Shri G. R Kajori and by Shri. Prasad Volvoikar. Respondent No. 2 Dr. Santosh Dessai was present and Respondent no 3 was represented by P. A. Sawant.
8. Reply filed by Respondent No. 1 on 06/04/2017 alongwith the enclosures, by Respondent No. 2 on 01/03/2017 alongwith enclosures and by Respondent No. 3 on 01/03/2017. Copies of the replies were furnished to the appellant.
9. Written arguments were placed on record by the appellant on 02/06/2017 alongwith with the enclosures, the copy of same was furnished to the respondent herein.
10. The legal officer Shri P. A. Sawant appearing for Respondent No. 3 submitted and also filed application on 14/12/2017 thereby contending that writ petition no 162/2011 is pending for final disposal before the Hon'ble High Court of Bombay at Goa bench **wherein the basic issue whether the Goa State Cooperative Milk Producers Union Ltd. is public authority or not** is yet to be decided and the Hon'ble High Court has directed not to pass any final orders on the application made by the respondent (information seeker) therein. He further submitted the issue involved in writ petition and the present

proceeding are common as such requested to keep the appeal proceeding sine die. As the Hon'ble High court was seized of the matter and as the issue regarding the status of Respondent No. 3 viza viz the RTI Act since having direct nexus over the present proceedings, this commission felt it appropriate to adjourn the matter sine die till the disposal of writ petition no 162/2011. The Respondent No. 3 was directed to intimate the outcome of said writ so that the matter can be taken up once again for hearing.

11. Accordingly the authorized representative of Respondent No. 3 filed an application dated 28/09/2018 with the registry of this Commission thereby intimating this commission that the writ petition filed by Respondent No. 3 was allowed by the Hon'ble High court and Hon'ble high court has decided that the Respondent No. 3 are not "public authority" within the meaning of section 2(h) of the RTI Act. The copy of the order of writ petition was also enclosed to the said application. The said application which was inwards vide no 1889 on 28/09/2018 was placed before me on 05/10/2018.
12. Accordingly on the receipt of the application dated 28/09/2018, fresh notices were issued to the parties, in pursuant to which Appellant, Respondent No. 1 and 2 appeared and Respondent No. 3 opted to remain absent.
13. It is the contention of the appellant as stated in memo of appeal that Respondent No. 3 failed to furnish the information in order to cover up illegalities committed by Respondent No. 3. It is further contended that responded has acted in perverse and illegal manner by failing to furnish him information within stipulate time of 30 days. It was further contended that respondent had ignored the provisions of the act by refusing to grant the requested information to the appellant and thereby violation of right to information act have occurred.

14. Vide written arguments dated 02/06/2017 the appellant have disputed the averments made by respondents in their respective replies and have contended the replies are unacceptable and bad in law. Vide said written arguments has further contended that Respondent No. 3 receives grants from the Government of India and Goa Government has granted them the land on lease. As such it is his contention that the statement of Respondent No. 2 that lease deed is not available is false information given by Respondent No. 2. He further contended that the Respondent No. 2 should have collected the information from the Respondent No. 3 if the information was not available with him. It was further contended that Respondent No. 3 is having 8 lakhs share capital of Respondent No.1 and 4 which has been supplied to Respondent No. 3.
15. In the nutshell it is his contention that respondent no.3 come under the purview of RTI Act as their receiving grants by the Government and hence Respondent No. 3 should directed to furnish the information as declaring them to be public authority.
16. Respondent No.1 vide their reply dated 06/04/2018 have contended they have responded the application of the appellant and vide their letter dated 01/07/2015 they have provided the available information at point no. 1, 6 and point no. 9 (partly) to the appellant and informed appellant that information at point no. 2, 3, 5 and 8 relates to Assistant Registrar of Cooperative Societies (election) and point no. 4 was related to Respondent No.2, he may approach the respective PIO's. It was further contended that on the written request of appellant dated 08/07/2015, the Respondent No.1 further transferred the copy of the application to the concerned public authorities on 10/07/2015 in terms of section 6(3)of RTI Act, 2005.
17. In the nutshell it is the case of Respondent No. 1 that the information available in the office records have been provided to the appellant.

18. The Respondent No.2 vide his reply have disputed the statement of the appellant that he failed to pass any order on the 1st appeal and further contended that the reasoned order was passed by him on 21/08/2015 wherein his appeal was dismissed and the appellant was absent on the said date. It was further contended that department is not in possession of the information asked by him as such the said was further transferred to PIO of Respondent No. 3.
19. The Respondent No. 3 vide their reply dated 01/03/2017 contended that on receipt of the letter bearing no. 43/2/2005/TS/RCS(part III)/1193 dated 10/07/2015 on 21/07/2015 from Respondent No. 1 to provide information to the appellant on point no. 3 and 9, the vide letter bearing no 633 dated 24/07/2015 informed the Respondent No. 1 that the issue of applicability of RTI Act to the Respondent No. 3 is subjudised before the Hon'ble High Court in writ petition no. 162/2011 and as such they are unable to consider the said letter of Respondent No. 1 till the decision of Hon'ble High Court on the said subject matter. It was denied that they failed to furnish the information inorder to cover up the illegalities as alleged by appellant and since the matter was subjudised before the Hon'ble High Court the question of failure to furnish information by Respondent No. 3 under RTI Act to cover up the alleged illegalities as contended by appellant does not arise at all. It was further contended that the First Appellate Authority (FAA) vide order dated 04/11/2015 has rightly dismissed the appeal as the issue of applicability of the RTI Act, 2005 to Respondent No. 3 is pending before the Hon'ble High Court of Bombay of Goa in writ petition no. 162/2011 and wherein the Hon'ble High Court had directed not to pass any final order on the application made by the information seeker therein. It was further contended that the appeal is liable to be dismissed as the appellant has not come out before this commission with true

facts as there is no letter dated 23/02/2015 of the appellant under RTI as contended by him in the present appeal at para no. 1. It was further contended that the appellant has not sought for any prayer to set aside the impugned order passed by the First Appellate Authority (FAA) as such in absence of the challenge of the order the present appeal is liable to be dismissed.

20. I have scrutinized the records available in the file and also considered the submissions of the parties.
21. The appellant has sought for the directions to Respondent No. 3 to furnish the information on point no. 3, 4 and 9 free of cost and to declare the Respondent No. 3 as a public authority under definition of 2H(i)(ii) of RTI Act, 2005.
22. The decisions given and ratios laid down by the various High Court and Apex Court are binding on this Commission. Since the Hon'ble High Court of Bombay at Goa bench in writ petition no. 162/2011 have already dealt and decided the issue and held that "Goa State Cooperative Milk Producer's Union Ltd is not a public authority. Hence the above relief sought by the appellant against Respondent No. 3 herein cannot be granted and becomes redundant.
23. The appellant herein in the present proceedings has sought for relief against Respondent No. 1 for furnishing him information on point no. 2, 5 and 6 and against the Respondent No. 2 for furnishing information on point no. 4 as sought by him vide his application dated 02/06/2015.
24. The Respondent No. 1 vide the reply dated 06/04/2017 have contended that information at point no. 2 and 5 was related to Assistance Registrar of Cooperative Societies (election), the vide letter dated 01/07/2015 informed appellant to approach the concerned offices as per the directions given in office

memorandum dated 12/06/2008 as the information was pertaining to other public authority. It was further contended that the appellant instead of approaching the said office vide letter dated 08/07/15 directed to transfer the copy of his application in terms of section 6(3) of RTI Act to the concerned public authority and accordingly Respondent No. 1 vide letter dated 10/07/2015 transferred the said application to the Office of Assistance Registrar of Cooperative Societies (election) and information at point no. 6 have been provided to the appellant.

25. It is pertaining to note that the PIO of Assistant registrar of cooperative societies (election) has not been arrayed as a party in the present proceedings. The commission is empowered to give directions to the public authority who is in the possession of the said records. Since the PIO of Assistant registrar of cooperative societies (election) is not in party to the present proceedings, as such the commission is not in position to give any directions for the purpose of providing information at point no. 2 and 5.
26. The appellant have made the First Appellate Authority (FAA) as a party to the present proceeding who is the respondent no 2 herein and sought relief of directions to Respondent No. 2 for furnishing him information at point no. 4. Under the RTI Act, directions can be only issued to PIO for furnishing information and not to First Appellate Authority (FAA) as such the relief sought by the appellant cannot be granted. Nevertheless the Respondent No. 2 vide his reply dated 01/03/2017 have categorily stated that their department is not in possession of the information asked by the appellant and as such the same was forwarded to PIO of Goa State Milk Producers Union Ltd.
27. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of “information” and “right to information” under clause (f) and (j) of section 2 of the Act. If the 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 non-available information and then furnish it to an applicant”.

28. Yet in another decision the Delhi High Court The registrar Supreme Court---V/S Comondore Lokesh K. Batra & others January 2016. LPA 24/2015 & CM No.965/2015

Has held at para 15

“As already noticed above, “right to Information” under section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the appellant”.

29. AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma Vs State Information Commissioner Bihar has held

“in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so

far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant.”

30. In view of ratios laid down by above court no direction can be given to collect, collate the information from other public authority for the purpose of furnishing it to the information seeker. Hence the contention of the appellant in his written arguments the Respondent No. 2 should have collected information from Respondent No. 3 if the information was not available with him does not hold good.
31. The appellant vide memo of appeal at relief 2 and 4 has sought for taking disciplinary action and for imposition of penalty against Respondent No. 1 and 3. In this context since the respondent no 3 have been already held by the Hon’ble High Court in writ petition no 162/2011 is not a public authority, no Penal provisions can be invoked against respondent no 3.

From the records it is seen that the application was made on 02/06/2015 by the appellant which was responded on 01/07/2017 thereby providing the available information to the applicant under point no. 1, 6 and point 9 partly and regarding the other points since the said information was not available in their office the appellant was informed to approach the concerned PIO’s. The said reply was given well within 30 days time as stipulated under the RTI Act. Further the bonafides have been also shown by the Respondent No.1 by transferring the said application to the respective PIO’s on the request of the appellant. There was no denial of information on the part of Respondent No. 1.

32. The reply filed by Respondent No. 1 appears to be probable and convincing as the same is supported by the documentary evidence. And hence I am of the opinion that this is not the fit case warranting levy of penalty on respondent no 1.
33. The appellant has also sought relief for compensation in terms of section 19(8)(b) of RTI Act. However as appellant have failed to

produce any convincing documentary evidence on record showing what was the detriment and the loss suffered to him as such said relief cannot be granted.

34. Since the available information have been furnished by Respondent No. 1 vide letter dated 01/07/2015 and subscribing to the ratios laid down by the above courts, I find no intervention is required of this commission for the purpose of furnishing the information.
35. In the above given circumstances and based on the discussion above I find no merits in the appeal and liable to be dismissed which I hereby do.

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