

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

Appeal No. 275/2019/SIC-I

Shri Kenneth Ian Stewart Silveira,
H. No. 99, Deusu, Chicalim,
Mormugao Taluka, Goa .

....Appellant

V/s

1) The Public Information Officer,
Office of the Deputy Collector (LA) & P.I.O.,
Panaji, Goa.

2) First Appellate Authority,
Office of the Additional Collector-I,
Panaji Goa.

.....Respondents

CORAM: Ms. Pratima K. Vernekar, State Information Commissioner.

Filed on: 26/08/2019
Decided on: 28/10/2019

ORDER

1. The brief facts leading to present Appeal as put forth by the appellant Shri Kenneth Ian Stewart Silveira are as under :-
 - a) The Appellant herein by application dated 22/04/2019, filed u/s 6(1) of the RTI Act, 2005 sought from the Public Information Officer, Office of the collector, North –Goa at Panaji certain information under three points as under
 - i) photo copy of the out ward letter bearing No. AC-1/JUD/MISC/2017/255 dated 8/1/18 addressed to the OSD to Hon'ble chief Minister, secretariat, Panaji goa
 - ii) Photo copy of the entire file which contained the above mentioned letter.
 - iii) Inspection of the said file.
 - b) It is the contention of the appellant that the said application was responded by Respondent No. 1 PIO on 06/06/2019 and on 17/6/2019. Vide letter dated 17/06/2019 he was informed that his application are

rejected u/s 8 (1) (h) of RTI Act, 2005 on the ground that "information would impede the process of investigation or apprehension or prosecution of offender as inquiry is in progress and therefore the disclosure of information will be against the public interest at that stage".

- c) It is the contention of the appellant that he being not satisfied with the said response and as the information as sought was not furnished , he filed first appeal on 18/06/19 before the respondent No.2 against the decision of the public information officer interms of section 19(1)of RTI Act 2005.
 - d) It is the contention of the appellant that the Respondent No.2 first appellate authority by an order dated 02/08/2019 dismissed the appeal filed by the Appellant by upholding the say of the Respondent No. 1 PIO.
 - e) It is the contention of the appellant that he being aggrieved by the actions of both the Respondents, has approached this commission on 26/08/2019 in the 2nd appeal filed u/s 19(3) of the act on the ground raised in the memo of appeal and with a contention that information still not provided to him by the Respondent No.1 as was sought by him ,
2. In this back ground the appellant has filed this appeal thereby seeking direction as against PIO for furnishing the information as sought by him, for invoking penal provision and for compensation.
 3. In pursuant to notice of this commission, the Appellant appeared in person. Respondent PIO Mrs. Sandra D'Souza was present Respondent No. 2 first appellate authority was represented by Shri. Ajit Naik.
 4. Reply filed by Respondent No. 1 on 4/10/2019 and affidavit on 16/10/2019.

5. It is the Contention of the Appellant that PIO had initially informed him vide reply dated 6/6/2019 that the file has been traced and that he can inspect the file and pursuant the said letter he had inspected the said file on 18/6/2019, and the said file contained all the documents without such note as sought by him at point No. 1 . It was further submitted that the file containing statement of the witness is not going to impede any investigation process as the file has already given out its final reports. It was further contended that details contains in the said file is not the file under investigation at Collectors office and the PIO have given him bare and lame excuse by misusing the section 8(1) (h) of RTI Act. It was further contended that the information sought by him was the public documents and there is nothing confidential with any of the public documents in question and hence he is entitle for the said information.
6. It is his contention that due to the malafide and false information (rejection) provided by Respondent NO. 1 PIO , he had to suffer a lots and due to non furnishing the information, great prejudice has been caused to him and on that ground he vehemently pressed for invoking penal provision.
7. The Respondent No. 1 PIO on the other hand had submitted that she has been appointed as PIO recently and that she had furnished the correct reply.
8. Vide affidavit, the Respondent PIO submitted that criminal investigation against the appellant is underway in the Crime Branch Ribander on issue concerning monetary compensation against the land acquired for international Air Port at Mopa in Pernem Taluka and in this regards the preliminary inquiry is conducted by the collector, North and the report was submitted to Government who then entrusted the criminal investigation to the Police of the Crime Branch alongwtih the original documents

in the said case and police has registered offence under Crime Number 11/2018. It was further submitted that as per her knowledge the criminal investigation is still underway and at this juncture, any documents concerning the criminal investigation are parted to alleged accused, there is every possibility of impeding the process of investigation and the Respondent No. 2 first appellate authority has rightly withheld the information as it is protected from disclosure u/s 8(1) (h) of RTI Act. It as further submitted that the appellant has not made any grounds on public interest necessitating such disclosures.

9. In a nutshell, it is case of the Respondent PIO is that the matter is under investigation and the grounds raised by the appellant in the present appeal are baseless without any support as well documentary evidence.
10. During the argument the Respondent PIO again submitted that the file pertaining to information sought was forwarded to the Crime Branch for conducting investigation into criminal aspects and presently the file is with the Crime Branch and there is a designated PIO for the said public authority .
11. I have scrutinised the records available in the files and also considered the submissions of both the parties .
12. The exemption under section 8(1)(h) is for limited period and once process of investigation is completed, the disclosure of information no longer causes impediment to the prosecution. The records pertaining to information sought are presently in the possession with the Crime Branch for conducting inquiry and investigation and since presently no documents in originals are available with the respondent No. 1 PIO, no directions can be issued to Respondent PIO for providing the said documents. There are no records available in the file showing the status of said inquiry and investigation by the crime branch of Goa Police. PIO

of Crime Branch is not a party to the present proceedings. I am of the considered opinion that opportunity has to be granted to the PIO of the crime branch to appropriately deal with the application.

13. With regards to other relief sought by appellant which are in penal nature, The Hon'ble High Court of Bombay at Goa in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:

"The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

14. On perusal of the records it is seen that the application was filed on 22/4/2019 by the appellant. Interm of section 7(1) the same ought to have been replied by 23/5/2019. The said was responded on 6/6/2019. Even though there is marginal delay in responding the application of the appellant the same cannot be held to be intentionally and deliberate. It appears from the contents of the said letter that the inspection was offered the movement the file was traced. The appellant has also admitted of having carried the inspection in pursuant to the said letter of PIO. There is no convincing and cogent evidence on records attributing malafides on the part of PIO. By subscribing to the ratio laid down by the Hon'ble High Court in case of A. A. Parulekar (Supra), I am of the opinion the facts of the present case doesn't warrant levy of penalty on the PIO and as such the relief sought by the appellant in penal in nature cannot be granted.
15. In the above given circumstances, I find the ends of justice will meet with following directions .

Order

The Respondent No. 1 PIO, of the office of Deputy Collector (LA) is hereby directed to transfer the original application dated 22/4/2019 filed by the appellant to the PIO of crime branch of Goa Police within three days from the receipt of the order and the PIO of Crime Branch is hereby directed to deal with the same in accordance with law.

With this directions appeal 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