

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

Appeal No.277/2019/SIC-I

Mr. Marciano Reveredo,
S-B2nd floor, Casa Dos Allados,
Abade Faria Road,
Margao-Goa.

....Appellant

V/s

1. Public Information Officer,
O/o, Directorate of Archives & Archaeology,
Panaji-Goa.

2. First appellate authority,
O/o, Directorate of Archives & Archaeology,
Querem Road, Panaji-Goa.

.....Respondents

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

Filed on: 29/8/2019
Decided on: 30/10/2019

ORDER

1. By this appeal, the appellant assails the order, dated 16/8/2019, passed by the respondent No.2 first appellate authority in first appeal No. 1/1/2018/RTI/1117/DAA, filed by the appellant herein.
2. The facts in brief as put forth by the appellant are as under;
 - (a) The Appellant vide his application dated 29/5/2019 had sought from the Respondent No.1 Public Information Officer (PIO), of the office of Directorate of Archives and Archaeology for the CCTV Footage of 28th and 29th may 2019 of all the cameras in scholar room and public servicing area at the office of Directorate of Archives and Archaeology .
 - (b) The said information was sought by the appellant in exercise of his right u/s 6(1) of RTI Act, 2005.

(c) It is the contention of the appellant that his above application filed in terms of sub section (1) of section (6) was responded by the respondent no 1 PIO on 20/6/2019 wherein it was informed to him that the hard disk which is essential to record footage of CCTV cameras is not working and the process for the upgradation CCTV cameras is in process.

(d) It is the contention of the appellant that he being not satisfied with a said reply , filed 1st Appeal on 18/7/2019 to Respondent no. 2 the Directorate of Archieves and Archeology being first Appellate Authority interms of section 19(1) of Right To Information Act, 2005.

(e) It is the contention of the appellant that the Respondent no.2 First Appellate Authority passed an order dated 16/8/2019 without opportunity/notice to him, by upholding the say of the Public Information Officer (PIO) and hence he being aggrieved by the action of both the Respondents is forced to approach this commission in his 2nd appeal on 29/8/2019 as contemplated u/s 19(3) of Right To Information Act,2005.

3. In this background the appellant has approached this commission with a contention that the information is still not provided and thereby seeking relief of directions to PIO to furnish him the required information at the earliest and for invoking penal provisions against both the Respondents .

4. Notices were issued to both the parties, in pursuant to which Appellant was represented by Advocate J. Gracious. The Respondent No.1 PIO Dr. Vasu Uspalar and Respondent No.2 First Appellate Authority Smt. Blossom Mandeira was present .

5. Reply filed by Respondent NO. 1 and 2 alongwith the enclosures on 15/10/2019 respectively. Copy of the both the replies were furnished to the Advocate for the appellant .
6. Counter Reply also filed by appellant on 23/10/2019, The copies of same were furnished to the respondents
7. It is the contention of the appellant that the said information was sought in a larger public interest as it was found that the money is accepted from the general public on the above mentioned dates. He further submitted that the respondent have placed on records an imprecise report allegedly from a service personnel to Satisfy the refusal of the respondent No. 1 on the non functioning of the hard-Disk in question without any details of the hard-disk alleged to have been tested such as serial number of the hard-disk, its capacity/make etc and the procedure followed for a such testing . It was further submitted that allowing the Respondents ,the right to refuse information coupled with facetiously backed reports goes against the spirit of the Act. It was further submitted that appropriate directions are required to be issued against the Respondent No. 2 first appellate authority for not following procedure established by law and passing the order arbitrarily and also against Respondents for non maintenance of vital information.
8. It is the contention of the Respondent no.1 PIO that CCTV footage asked by the appellant is not available in the office of Respondent No. 1 and the process of the up grading the CCTV Surveillance system is in progress and in support in his above contention he annexed the certified Xerox copies of the CCTV files No. 3/1204/2008-09/HA and No. 1/350/CCTV/2019/DAA notings. It was further submitted that the cameras were not functioning properly even before the application was filed by the appellant under section 6(1) of RTC Act and with that regards M/s Matrix Enterprise, the Agency who installed the cameras were invited for

inspections and a note at page 10/N will reveals the said fact. It was further submitted that a proposal for installation for CCTV has been also moved vide letter dated 5/7/2019 and expenditure sanctioned towards installation of CCTV cameras have been granted and the work order is already given for up-gradation of CCTVs and in support of his above contention he relied upon letter dated 1/8/2019 for proposal of installation of CCTV and the note at 5/N of the Finance (Exp.) Department.

9. The respondent No. 2 also took a similar stand as taken by the PIO and further added that file No. 1/350/CCTV/2019/DAA have been sent to the Government for expenditure sanction.
10. I have considered the submission made on behalf of both the parties and also scrutinized records available in the file
11. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has 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 records 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”.

12. Yet in another decision, the Apex court in case of Peoples Union for Civil Liberties V/s Union of India, AIR Supreme Court 1442 has held

“under the provisions of RTI Act, Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which has passed an order”.

13. Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records**. PIO has clearly stated that the information is not available in their office records. The same stand was also taken by the Respondent PIO in the reply given in terms of section 7(1) of RTI Act. So also before the first appellate authority.

14. The Delhi High Court in L.P.A. No.14/2008, Manohar Singh V/s N.T.P.C. has held;

“The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of which reply was sent and hence the directions to furnish the records if the same is not in existence cannot be given.”

15. By subscribing to the ratios laid down by the Hon'ble Courts, since the information is not in existence/not available in the

records of the office of the Public Authority, the same cannot be ordered to be furnished and hence the reliefs sought at serial No.(a) by the appellant cannot be granted.

16. It is seen that the application of the appellant was responded by the respondent PIO within the stipulated time of 30 days. The respondent No. 2 first appellate authority who is also senior officer of Respondent PIO has also upheld the say of the PIO. The submissions of the respondent PIO are also supported by the documentary evidence. Hence in my opinion the facts of the present case doesn't warrant levy of the penalty or fine on the Respondent PIO.
17. On perusal of the order passed by Respondent No. 2 First Appellate Authority, this commission found that nowhere there is a reference of issuing notices to the appellant. From the order it could be gathered that said order was passed by respondent no.2 only by considering the say of respondent PIO. The contention of the appellant that he was not heard in the first appeal have not been categorily disputed and rebutted by the Respondent No.2 First appellate authority and hence, I find some truth in the contention of the appellant that there is gross violation of principle of natural justice.
18. It needs to mention that in every judicial proceedings, the principle of natural justice demands that both the parties should be heard. Non hearing of the appellant in the first appeal has resulted into mischarge of justice there by depriving the opportunity to the appellant of substantiating his case.
19. Considering the above facts, and records pertaining to first appeal, I find that the Respondent no.2 First Appellate Authority has committed a serious irregularity of not notifying the appellant to substantiate his grievance. Thus, I find that the respondent no. 2 First Appellate Authority, has acted in total casual and mechanical

manner. There is a gross violation of principal of natural justice. Such an conduct on the part of Respondent No. 2 first appellate authority who is Quashi Judicial authority was least expected. Hence the respondent no. 2 First Appellate Authority is here by admonished and he is hereby directed hence forth to follow the principal of natural justice and to dispose the matters in accordance with law after affording opportunities to both the parties.

With the above directions the proceedings stands 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