

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

Appeal No. 46/2019/SIC-I

Shri Sarvesh R. Khandolkar
R/o. H.No. 151, Carmi Bhat,
Merces, Tiswadi-Goa

.....Appellant

V/S

1. Public Information Officer, (PIO),
Office Superintendent,
Administrative Branch,
DGP's Office, PHQ, Panaji- Goa.
2. First Appellate Authority (FAA),
The Superintendent of Police (HQ),
Police Head Quarters,
Panaji-Goa

.....Respondents

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

Filed on: 21/02/2019
Decided on:20/3/2019

ORDER

1. By this appeal the Appellant assails the order dated 21/12/2018 passed by the Respondent No. 2 Superintendent of Police, Goa and 1st Appellant Authority (FAA), in the 1st Appeal No. 16/2018, filed by the Appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Shri Sarvesh Khadolkar vide his application dated 02/11/2018 had sought information as listed at serial No.C- (i) to (iv) therein. The said information was sought from the Respondent No. 1 PIO of the office of Superintendent, PHQ, Panaji-Goa in exercise of appellants right under sub-section (1) of section 6 of Right To Information Act, 2005.
3. It is the contention of the appellant that his above application was transferred by the Respondent No. 1 PIO to other PIOs of Goa Police Department and also to Joint Director of Accounts, vide letter dated 05/11/2018 interms of section 6(3) of RTI Act.

4. It is the contention of the Appellant that the other concerned PIOs along with the Respondent No. 1 furnished him point wise information as was sought by him vide application dated 2/11/2018, however it is his grievance that the information at point No.C- (iv) i.e. specific amount spend till date, on defence counsel/advocates appointed on behalf of Office of Superintendent, Administrative Branch/or any other PIO/ Respondents of Goa, Police Departments, in matter of 2nd Appeal under RTI Act was denied to him by the Respondent No. 1 PIO on the ground that the same is not available on the records of the office. As such he being aggrieved by such a response of Respondent No. 1, filed first appeal on 05/12/2018 before the Superintendent of Police, (HQ), Panaji-Goa being first appellate authority who is the Respondent No. 2 herein interms of section 19(1) of the Right to Information Act, 2005.
5. It is the contention of the appellant that Respondent No. 2 First Appellate Authority by order dated 21/12/2018 dismissed the appeal filled by him by upholding the say of Respondent No. 1 PIO.
6. It is his further contention that he submitted Revisional Appeal on 31/12/2018 before the Respondent, however, the Respondent No. 2 First appellate Authority did not hold any hearing so also did not bother to communicate with the Appellant with regard to the Revisional Appeal filled by him.
7. It is contention of the appellant that he being aggrieved by the action of both the Respondents, and being not satisfied with order dated 21/12/2018 passed by the First Appellate Authority and the reasoning given by the Respondent No. 2 First Appellate Authority, is forced to approach this Commission by way of Second Appeal interms of section 19(3) of the RTI Act.
8. In this background the appellant has approached this Commission with a prayer for direction to Respondent No. 1 PIO for furnishing

him information at point No.C-(iv) and for invoking penal provisions as against both the Respondents.

9. In pursuant to notice the Commission, the Appellant appeared Respondent No. 1 Shri John Nazareth was present who filled his reply on 20/3/2019. The copy of the same was furnished to the appellant.
10. It is the contention of the appellant that the information furnished at point No. 1 clearly marks that there are appointments of advocates in respective matters and those orders also have the references of bill filled. It was further contended that the information vide no.C-(iv) of application, wherein the amount paid to those advocates have remained unanswered. Vide memo of appeal it was contended that payments over the services rendered by the appointment advocates have been borned through public exchequer and hence he entitled for information as sought by him at point No.C- (iv).
11. It is further submitted that, RTI Act, 2005 was introduced with the sole objective of empowering people, curtailing corruption, and bringing transparency and accountability in the working of the Government, however the working of Goa Police Department is seen to be adverse and against the motto of transparency & accountability.
12. It was further contended that both the Respondent were aware of the fact that the said information is held by their office and if not then they should have transfer the same to the concerned office which both the Respondents failed to do so.
13. Respondent PIO contented that he has taken the charge of PIO recently and earlier when the application was filed Shri B.T. Korgaonkar was officiating as PIO. He further submitted that he verified the records and the said information is not found in their records. He further contended that the appointment of the legal

counsel to represent the Police Department in 2nd Appeal under the RTI Act is done by the Department of Law and Judiciary so also the payment of fees of the Defence Counsel/ Advocates appointed on behalf of the Goa Police are paid by the Department of Law and Judiciary and as such information pertaining to the fees paid to the lawyers will be available with the Department of law and Judiciary.

14. I have scrutinised the records available in the file so also considered the submissions of both the parties.
15. The PIO is supposed to furnish the information as available and as it exist on the records of the public authority and he is not suppose to collect or to collate the information from the other public authority. This observation of mine is based on the ratio laid down by the (a) Apex Court in a Civil Appeal no. 6454 of 2011, Central Board of Secondary Education V/S Aditya Bandhopadhaya; (b) By Delhi High Court in LPA No. 24/2015 & CM No. 965/2015: The registrar Supreme Court V/S Commandore Lokesh Batra and others and (c) The Hon'ble High Court of Patna in letters appeal no 1270 of 2009 in civil writ jurisdiction case no. 11913/2009;Shekarchandra Verma v/s State Information Commissioner Bihar. Since the Respondent No. 1 PIO the have category submitted that information not available in the records of their office, and are in possession of Law Department, Government of Goa, Secretariat, no any directions to furnished the information at point no. C- (iv) as sought by the Appellant vide his application dated 02/11/2018 can be issued to Respondent No. 1.
16. The appellant herein has sought for invoking penal provisions against Respondent no. 1 alleging that PIO knowingly furnished him incorrect and misleading information as such the onus was on the appellant to prove the same.

17. The Hon'ble High Court of Bombay at Goa in the case of Dr. Celsa pinto V/s The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para "7" has held:-

"The Commission has with reference to question No. 1 held that the petitioner has provided incomplete answers misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been as valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to upload the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available."

18. The Appellant has miserably failed to produce any cogent and convincing evidence on record substantiating his contention PIO knowing furnished him incorrect and misleading information. On the contrary records shows that the available information at point No. C (i) to (iii) were furnished by the PIO on 28/11/2018 within stipulated period of 30 days so also the application was also transferred to other public authorities in terms of section 6(3) of RTI Act within 2 days. The respondent PIO was diligent in his duties under the RTI Act as such I do not find any reason for invoking my powers under section 20 of RTI Act.

19. The appellant has also sought for levy of penalty to Respondent No. 2 First Appellant Authority for securing undue protection to

Respondent No. 1 in their misdeeds. The same also does not warrant in the facts and circumstances of the present case as the records shows the appropriate order was passed by respondent No. 2. Be that as it may, as per the provision RTI Act, the PIO can be penalised under section 20 and not the First Appellant Authority. Hence I am declined to grant the relief sought by the appellant in the nature of penal provisions.

20. In view of above discussion, I find the ends of justice will meet with following directions

Order

Respondent No. 1 PIO of the office of Superintendent, Administrative branch, DGP office, PHQ Panaji is hereby directed to transfer the point No.C- (iv) of the original application dated 02/11/2018 filled by the appellant to the PIO of the Department of Law and Judiciary, Government of Goa, Secretariat, Porvorim-Goa within 3 days from the receipt of this order. And the PIO of the Department of Law and Judiciary is hereby directed to deal with 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,