

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

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No: 214/2018/SIC-II

Ms. Priyanshu Dwivedi,
F-3,/F4, Techno Cidade Complex,
Chogm Road,
Porvorim Goa

... Appellant

v/s

1. State Public Information Officer,
Section Officer,
Home Department (General),
Secretariat, Porvorim Goa.

2. First Appellate Authority,
Additional Secretary, Home,
Secretariat Porvorim Goa

... Respondents

Relevant emerging dates:

Date of Hearing : 07-01-2019

Date of Decision : 07-01-2019

ORDER

1. Brief facts of the case are that the Appellant vide an RTI application dated 01/03/2018 sought certain information under Section 6(1) of the RTI Act, 2005 from Respondent PIO, Department of Home (General), Secretariat, Porovrim-Goa.
2. The information pertains to 5 points and the appellant is *inter alia* seeking information regarding (1) The details of No. of proposals received by the Home Department for Extension of Arm license to the neighbouring states for last three years details as under:- (a) name of the Applicant. (b) Address. (c) Date of received of proposal (d) Permission granted (e) Time taken for such approval in each case. (f) Document furnished and considered for grant of such extension of license. (2.) No. applications pending for grant of approval for extension of Arm Licenses, FY.2013 to till date. (3) To furnish the records for pending of such proposals in Home Department. (4) To furnish the time frame for disposal of such proposals of extension of Arm license. (5) Copy of the Citizen charter may be furnished pertains to the Home Department.

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3. The PIO as per 7(1) vide Letter No.19/03/2018-HD (G)/855 dated 20/03/2018 informed the Appellant that with respect to information sought at Sr. No.1 & 2 the same amounts to creation of information under Section 2(f) and (j) and para 10 of OM No. 1/4/2009-IR dated 05/10/2009 issued by Government of India, Ministry of Personnel, Public Grievances and Pension. The PIO with respect of point 3 & 5 stated that the information called for is not available in the record. With respect to point No 4 the Appellant was requested to pay an amount of Rs.8/- and obtain the desired information.
4. Not satisfied with the reply of the PIO, the Appellant filed the First Appeal on 10/04/2018 and the First Appellate Authority (FAA) vide his Order dated 22/06/2018, partly allowed the First Appeal and directed the PIO to provide the information under point No.2 to the Appellant within 10 days and ordered that the Department may take steps to prepare the citizens charter which will be made available to the Citizens on Demand.
5. The First Appellate Authority (FAA) in his Order has observed that with respect to point No.1 and 2 the same amounts to creation of information which is not readily available in the Department. As regards to information at point No. 3 and 5, the PIO has replied stating that information is not available in the Department and has requested the RTI applicant to collect the information pertaining to point No.4 after making the payment.
6. Being aggrieved with the Order of First Appellate Authority, the Appellant has challenged the same by way of Second Appeal registered before this Commission on 05/09/2018 *inter alia* on the ground that the information sought is not deliberately given and that the full and correct information is not furnished. The Appellant has prayed that direction be issued to provide information free of cost and for penalty, compensation and other such reliefs.

7. During the hearing the Appellant is represented by Shri Kamla Kant Chaturvedi whose letter of authority is already on record. Shri Kashinath Shetye, is also present to assist the representative of the Appellant. The Respondent PIO, Celina Rodrigues, Section Officer, Dept. of Home (General), Secretariat, Porvorim is present.
8. At the outset the representative for the appellant submits that information at point No. 1 has not been provided and that the same should be provided as it is mandatory for the Government to maintain a Register containing details of all proposals received for extension of Arm licenses to neighbouring states which should include the name of the applicant, Address, Date of Proposal is received, whether permission is granted, etc and which is not done as per the Arms act.
9. It is further submitted that with regard to furnishing information at point No.2, the same is incorrect and incomplete, as the PIO has stated that only application is pending and which information is false as there are several applications pending and that directions be given to the PIO to provide the list of all pending applications including those which are under process. It is finally submitted that besides information at points 1&2, the appellant is not interested in receiving information sought at points No. 3, 4, 5.
10. The PIO, on her part submits that timely information was furnished to the Appellant vide 19/03/2018-HD (G)/855 dated 20/03/2018 clearly stating that the information sought at point No.1 and 2 tantamount to creation of information under section 2 (f) and (j) and para 10 of part 1 of the guidelines circulated vide OM No.1/4/2009-IR dated 05/10/2009 by Government of India, Ministry of Personnel, Public Grievances' and Pension, Department of Personnel and Training. The PIO also submits that in the said letter it was informed that the information at point No. 3, 5 is not available in the Department.

11. The PIO finally submitted that with respect to information at point 4 the Appellant was requested to pay an amount of Rs.4 and that the Appellant has paid the said amount and collected the information and that pursuant to receiving the Order of First Appellate Authority (FAA) further information has been provided. The PIO files a detailed reply dated 12/12/2018 confirming the facts which is taken on record.

12. The Commission has heard the respective parties. The representative for the Appellant has stated that the Appellant is interested in receiving information at point no 1 & 2 and not other information sought at point 3, 4 and 5. It is seen that the PIO has denied information at point no 1 & 2 on the ground that it amounts to creation of information u/s 2(f) and (j) and has also relied on an Office Memorandum no 1/4/2009-IR dated 05/10/2009.

Section 2(f) states ... "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

13. The Commission in this context finds that with regard to point no 1, the PIO can very well furnish information at points 1 a) b) c) and d) pertaining to the names and address of the Applicants, date of the proposal received and if permission is granted as certainly furnishing such information does not amount to creation of information as per section 2(f). However information at point 1 e) is correctly not furnished as such information indeed leads to creation of information as the PIO is not called upon to calculate the time taken to process applications. Also information at point 1(f) need not be furnished as it pertains to Personal information. It is of no concern for the Appellant to know what documents are submitted by other applicants in their individual cases and on what basis the department has considered such document and which will differ on case to case basis. Such information in the considered opinion of the Commission is 'Personal Information' which has no relation to public activity and thus is exempted under section 8(1)(j). ..5

14. The Commission also finds that with respect to information in point no 2 i.e number of applications pending for grant of approval for extension of Arm Licenses, FY.2013 to till date, the PIO was directed by the FAA to provide the same, however the PIO has furnished part information by stating that only one application is pending which is erroneous as it is argued that many applications are under process and thus pending. The PIO is hereby directed to furnish a complete list of pending applications. The order dated 22/06/2018 passed by the First Appellate Authority (FAA) stating that information at point No.1 and 2 amounts to creation of information is hereby quashed.
15. It is the bounden duty of every public authority to maintain all records including a proper register. If such records were maintained, then the PIO could have furnished copies of the register showing the number of applications received bearing the names and address of the applicants as also the date of application and other details. It is therefore imperative for the Department to maintain a register so as to maintain accountability, transparency and openness of government.
16. The PIO is accordingly directed to provide information at point No.1 a) b) c) and d) and also information at point no 2 of the RTI application within 30 days of the receipt of the Order free of cost. The same should be dispatched by Speed Post with AD. A compliance report along with one set of the documents furnished be submitted to the Commission. Consequently the prayer of the appellant for penalty, compensation and other reliefs stand rejected.

With these directions the Appeal case stand disposed.

All proceedings in Appeal case stands closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner