

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

Appeal No. 279/2018/SIC-I

Tulshidas L. Shirodkar,
 Shree Kamakshi Niwas,
 H. No. 760/50, V. P. Socorro,
 Chogam Road, Near Copperleaf Restaurant,
 Alto-Porvorim, Goa 403521.

.....Appellant

V/s

1. Public Information Officer,
 Dy. Superintendent/ACB,
 Directorate of Vigilance, Serra Bldg.,
 Altinho, Panaji-Goa.
2. First Appellate Authority,
 Superintendent of Police (ACB),
 Directorate of Vigilance, Serra Bldg.,
 Altinho, Panaji-Goa

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 19/11/2018

Decided on: 24/1/2019

ORDER

1. By this Appeal the appellant assails the Order dated 13/11/2018 passed by the Respondent No. 2, Superintendent of Police (ACB) and First Appellate Authority (FAA), in 1st appeal No. SP (ACB)/RTI-09/Appeal/2018/228 filed by the appellant herein.
2. The brief facts which arises in the present appeal are that the appellant Shri Tulshidas Shirodkar by an application dated 24/08/2018 filed u/s 6(1) of the Right To Information Act, 2005 sought certain information as listed at Sr. No. 1 to 4 therein pertaining to the Complaint lodged by him vide his letter dated 18/11/2016 against Shri Ulhas Bhaje, Chlorine Operator, S.D.II, W.D.III, P.W.D. Tonca, Panaji-Goa. The said information was sought from Respondent No. 1 PIO of the office of Superintendent of Police, Anti Corruption branch ,Panjim-Goa.

3. It is contention of the appellant that he received reply from Respondent No. 1 PIO herein on 20/09/2018 interms of section 7(1) of RTI Act, 2005 thereby informing him that the matter is under inquiry and exempted u/s 8(1)(h) of RTI Act, 2005.
4. It is contention of the appellant that he being not satisfied by the said response, he then approached the FAA on 25/10/2018 by way of 1st appeal under section 19(1) of the RTI Act, 2005 and the Respondent No. 2 FAA by judgment dated 13/11/2018 dismissed the said appeal by upholding the say of the Respondent No. 1 PIO.
5. It is contention of the appellant that he being aggrieved by the action of both the respondents and not satisfied with the order dated 13/11/2018 passed by the Respondent No. 2 First appellate authority and the reasoning given by the Respondent No. 2, he had to approach this Commission by way of second appeal on 19/11/2018 with the prayer for seeking directions for furnishing him the information as sought by him, for invoking penal provision as against PIO and also seeking compensation.
6. In pursuant to the notice of this Commission, the appellant appeared in person. Respondent No. 1 PIO Smt. Suchitra Desai was present on behalf of Respondent No.2 Shri Anand Kolambikar appeared. Reply filed by both the Respondents on 21/12/2018 and affidavit was also filed by PIO on 9/1/2019 affirming that inquiry is in progress and the same is not closed. She also placed on record the letter of investigating officer Shri Sunil Falkar dated 14/1/2019 wherein it was submitted the matter is presently under inquiry. Copies of above documents alongwith the enclosures were furnished to the appellant.
7. Arguments were advanced by both the parties. The appellant also filed his written submission on 9/1/2019.
8. According to the appellant he had filed complaint on 18/11/2016 before the Superintendent of Police/ACB/Director of Vigilance,

Altinho, Panjim against Ulhas Bhaje and his Son Sairaj Bhaje and then Superintendent of Police Shri Gupta initiated Legal proceedings against those persons and his statement was recorded by the Police but no further inquiry was conducted against them. He further contended that officials of ACB are hand in glove with said Ulhas Bhaje and his son to protect them for their illegal activities and hence they are not conducting any inquiry against them and simply rejecting his request under section 8(1)(h) of RTI Act, 2005. He further contended that two years have lapsed from the date of filing his Complaint. However, there is no progress in the inquiry. He further contended that refusing to grant the requested information to him constitute violation of his right under RTI Act. He further contended that the Public Authority concerned herein is deliberately delaying the investigation and inquiry in his Complaint in order to protect Shri Ulhas Bhaje and his son.

9. It is the contention of the appellant that as per the Judgment of Hon'ble Supreme court of India incase of Lalita Kumari V/s State of U.P. , it s mandatory to registered FIR in a cognisable offences and that the preliminary inquiry has to be conducted within 7 days from the date of the complaint. He further contended that investigation agencies has taken more than 2 years on his complaint dated 18/11/2016 for completing the inquiry and investigation. He further stated that he had sought the said information in a larger public interest and that he had filed the said complaint against those persons in order to curtail the corruption.
10. The PIO in her reply have raised the exemption for_furnishing the information on the ground that the same is exempted from the disclosure under section 8(1)(h) of RTI Act. She further contended that she acted bonafidly while taking the decision to reject the application dated 24/08/2018 submitted by the appellant and while processing the application of the appellant the relevant file was called for by her from H.C. Sunil Falkar and on going through it was found and noticed that the inquiry pertaining to complaint of

sensitive nature bearing the allegation of possession of disproportionate was still in progress. She further submitted that since the inquiry was under way, the disclosure of the information would have impeded the process of investigation. It was further contended by the PIO that there was no delay or no malafide and deliberate intention in rejecting the request and that she has provided correct reply within prescribed period to the appellant. She further denied the allegation made by the appellant at para (3) of the memo of the Appeal as baseless.

11. I have scrutinise records available records in the files also considered the submissions made by both the parties.
12. On verification of the application dated 24/8/2018 filed interms of section 6 vis-a-vis the reply of Respondent No.1 PIO dated 20/9/2018, it is seen that the PIO had provide pointwise information well within stipulated time of 30 days. At point no. 1 & 2 of his application the appellant has sought for the present status of his complaint wherein the PIO has informed him that the mater is under inquiry. The respondent PIO during the present proceedings also submitted that again she verified from investigation officer whether the inquiry in the complaint have been concluded and to which the investigation officer reported her the same is in progress. Vide her application dated 15/1/2019 she placed on record the letter dated 14/1/2019 of Shri Sunil S. Falkar substantiating her contention that the matter is still under inquiry. The First appellate authority order reveals at para (6) that he has gone through the inquiry files for which the information was sought and it was revealed that the inquiry into the above complaint is still underway. As such I did not find any error or illegality in the reply of PIO given interms of section 7(1) at point no. 1 and 2.
13. It is seen that appellant at point no. 3 and 4 of his application has sought for action taken report and copy of the letter made to a required officer for taking action on his complaint. The Respondent PIO during arguments submitted that question of taking action will

arise only after concluding the inquiry and since inquiry into the complaint is in progress and since not closed the action taken report and the letter as sought by the appellant at point No. 3 and 4 is presently not in existence, in their official records.

14. The PIO is suppose to furnish information as exist and as available in the official records . such observation of mine are based on the ratios laid down by the Apex Court in(i) Civil appeal No. 6454 of 2011 Central Board of Secondary Education v/s Aditya Bandhopadhyya &(ii) in case of peoples Union for civil liberties v/s Union of India reported in AIR Supreme Court 1442.
15. In view of the clarification given by the PIO during arguments pertaining to point no. 3 & 4 and by subscribing to the above ratios laid down by the Hon'ble Apex Court, no any directions can be issued to the Respondents for furnishing the non existing information.
16. The appellant have relied upon certain order passed by the central information commissioner. However those are not binding on this commission being a parallel jurisdiction. The appellant has also relied upon certain order of this commission however the facts and circumstances of those cases are different. One of the case.i.e in Appeal No. 62/2008 the information was sought pertaining to the details of citizens who applied for endorsement on their passport and the reply furnished by the immigration Department, Police Station diary , embarkation cards etc. and in other appeal Number 80/2007-08 the information pertaining to promotion and DPC and ACR was sought from the PIO of Police Department. In the present case the inquiry is in progress of cognizable offence wherein it was not so in the above cases. In my considered opinion, the decision relied by the appellant does not apply to the facts of the present case .
17. Hence in my opinion decision of First appellate authority and reply of PIO does not call for any inferences.

18. The facts and the circumstances of the present case also does not warrants levy of penalty on the PIO as records shows the same was responded well within stipulated time of 30 days and apparently no error or illegality is found in the reply of PIO given in terms of section 7(1) of RTI Act.
19. The grievance of the appellant that two years have lapsed from the date of filing of his compliant and there is no progress in inquiry and that the public authority concerned herein is deliberately delaying the investigation and inquiry in his complaint in order to protect those persons cannot be considered and looked into by this commission as this commission has no jurisdiction and not empowered to consider such grievances of the appellant under the RTI Act. The appellant if he so desires, may redresses his grievances before appropriate/competent authority for expediting the inquiry.
20. In the above given circumstances I finds no merits in appeal and hence the relief sought by the appellant cannot be granted.

Appeal disposed accordingly. 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