

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

Appeal No. 301/2018/SIC-I

Mr. Joao C. Pereira,
H.No. 40 Ascona,
Utorda Majorda,
Salcete- Goa.

....Appellant

V/s

1. The Public Information Officer,
Office of Food and Drugs Administration ,
Opp. The Shrine of Holy Cross.
Bambolim Goa.
2. The Public Information Officer,
Office of Public Health Department,
Government of Goa,
Secretariat Porvorim-Goa.
3. First Appellate Authority,
Additional Secretary Health,
Secretariat Porvorim-Goa.

.....Respondents

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

Filed on: 17/12/2018
Decided on: 07/02/2019

ORDER

1. By this appeal the appellant assails the order 7/12/2018, passed by Respondent no. 3 the additional Secretary (Health) and first appellate authority (FAA) in Appeal No. 1 of 2018 filed by the appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Mr. Joao C. Pereira vide his application dated 29/8/2018 had sought for certain information as listed at point no.1 to 8 therein. The said information was sought from the Respondent No. 1 PIO, of the office of Food and Drugs Department, Bambolim-Goa in exercise of appellant right under sub-section (1) of section 6 of Right To Information Act, 2005.

3. It is contention of the appellant that the Respondent No. 1 PIO of office of Food and Drugs Administration vide her letter dated 19/9/2018 transferred his application to the Respondent no. 2, the PIO of the office of Public Health Department, Porvorim,Goa, interms of section 6(3) of Right To Information Act, 2005 with a request to provide the information pertaining to point No. 4 directly to the appellant.
4. It is the contention of the appellant that his above application was not responded by Respondents no.2 PIO neither furnished him the information pertaining to point no.4 within stipulated period of time interms of section 7(1)of RTI Act as such deeming the same as rejection, the appellant filed first appeal before Respondent No. 3 Additional Secretary Health, on 29/10/2018 being first appellate authority in terms of section 19(1) of the RTI Act, 2005 and the respondent no.3 first appellate authority by an judgment dated 7/12/2018 disposed his said appeal by upholding the say of Respondent no. 2.
5. It is the contention of the appellant that he being aggrieved by the action of respondent No. 2 and Respondent No. 3 and not satisfied with the above order dated 7/12/2018, passed by respondent no. 3 and reasoning given by the Respondent no. 3, he is forced to approach this commission on 17/12/2018 by way of second appeal as contemplated u/s 19(3) of the Right To Information Act, 2005.
6. In this background the second appeal came to be filed by the appellant on 17/12/2018 with a prayer for quashing aside by order dated 7/12/2018 passed by the respondent no. 3 in appeal No. 1 of 2018, seeking direction to respondent no. 2 for furnishing him the informtion as sought by him at point no. 4,and for invoking penal provisions.
7. In pursuant to the notice of this commission, appellant appeared in person. Respondent No. 1 PIO Mrs. Medha Desai and Respondent

No. 2 Meena Naik appeared. Respondent No. 3 first appellate authority opted to remain absent.

8. Reply filed by respondent No. 1 and respondent no. 2 on 29/1/2019 respectively alongwith enclosures. Respondent No. 3 did not filed any say to the grounds raised in the appeal by the appellant. The copy of the replies of the Respondents were furnished to the appellant
9. Arguments were advanced by both the parties.
10. It is the contention of the appellant that the application was transferred by the Respondent No. 1 to respondent no. 2 on 19/9/2018 and the same was not responded by Respondent No. 2 neither furnished him any information with regards to point no. 4 as such he was forced to prefer first appeal on 29/10/2018 before the respondent No. 3 . It is further contention of the appellant that respondent No.2 deliberately delayed in making letter to Respondent no. 1 with ulterior motive and the same was made only on 16/11/2018 that too after two hearings have taken place before first appellate authority and then filed reply before the First appellate authority on 23/11/2018 thereby submitting that Respondent No. 1 had informed Respondent No. 2 vide letter dated 23/11/2018 that no such report was submitted to Chief Minister office by the Directorate of Food and Drugs Administration. It is the grievance of the appellant that no copy of the letter dated 16/11/2018 made by Respondent No. 2 to Respondent no. 1 nor the reply dated 23/11/2018 given by the Respondent No.1 to Respondent No.2 with reference to the said letter was not furnished to him despite of his request. However he fairly admitted of having furnished the same to him now vide reply of both the respondents on 29/1/2019. It is his contention that the same was not provided to him deliberately during the first hearing before the first appellate authority. It is his further contention that Respondent No. 3 first appellate authority was harsh and arrogant and he hurriedly

disposed his first appeal and did not given him proper hearing . He further submitted that the system in the public authority has to be corrected and the RTI Act should be implement in true spirit.

11. It is the contention of the Respondent No. 1 PIO that she had transferred the application of the appellant in terms of section 6(3) of RTI Act to Respondent no.2 with a request to provide the information pertaining to point no.4 of his application dated 19/9/2018 and with regards to rest of the information she vide her letter dated 19/9/2018 informed appellant to pay the cost of information and accordingly the same was released to the appellant on 25/9/2018 after the required fees was deposited by the appellant. She further contended that in pursuant to the order of first appellate authority she provided him the completer information 1,2,3, 7and 8 free of cost to appellant vide her letter dated 29/10/2018. She further contended that she received the letter from Respondent no. 2 on 16/11/2018 requesting to furnish the documents at point no. 4 and in pursuant to said letter she made through search of the office records and it was found that no such documents i.e the departmental reports and papers had been submitted to the Chief Ministers office by their directorate. She further submitted that the available information have been provided to the appellant and information at point no. 4 since not available in the office records has been informed to Respondent no. 2 .
12. It is the contention of the Respondent No. 2 that on receipt of the application dated 29/8/2018 which was forwarded to them by respondent no. 1 vide transfer letter dated 19/9/2018 requesting them to provide the information at point no. 4 she took assistance of deemed PIO and made all efforts to locate the said information as sought by the appellant . She further submitted that despite of through search the same were not available in their office records. It is her further contention that since the basic issue of formalin was pertaining to Food and Drugs Administration as such the

reports would be generated by the said Directorate and hence she vide her letter dated 16/11/2018 again requested respondent no.1 to furnish the documents as referred at the point No. 4 of the RTI application made by the appellant and in pursuant to said letter the Respondent no. 1 vide her letter dated 23/11/2018 informed her that no such document had been submitted to the Chief Minister office by the Directorate of Food and Drugs Administration. It is her further contention that she accordingly informed the appellant vide her letter dated 23/11/2018 and in support of a said contention she relied upon the relevant documents.

13. In the nutshell it is the case of Respondent No. 1 and 2 that the information pertaining to point no. 4 is not available and does not exist in the records of their office hence the same cannot be provided.
14. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
15. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been 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. A public authority is also not required to furnish information which required drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice to an applicant. "

16. 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 an passed an order".

17. 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. The respondent no. 1 in her letter dated 23/11/2018 addressed to Respondent no. 2 has clearly stated that no such documents have been submitted Chief Minister's office by their Department. The same stand was taken throughout by respondent no. 1 and respondent No. 2.

18. The Delhi High Court in LPA No. 14/2008 Manohar Sing 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.**"

19. Yet in another decision reported in AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma vs State Information Commissioner Bihar has held;

"in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant."

20. By subscribing to the ratios laid down by Hon'ble Apex court and by various Hon'ble High court's, the information which is not available/does not exist in the office records cannot be ordered to be furnished.
21. The RTI Act came to existence to provide fast relief and as such time limit is fixed under the said act to dispose application u/s 6(1) within 30 days and to dispose first appeal maximum within 45 days and to transfer application within 5 days in terms of section 6(3) of RTI Act. It is hereby observed and seen from the records that the respondent No. 1 failed to transfer the application to Respondent no. 2 within 5 days as contemplated under sub section (3) of section 6. The Respondent No. 2 admitted of having received the application of the appellant on 19/9/2018 which was forwarded by Respondent no. 1 in terms of section 6(3) of RTI ACT. There is a delay in responding the same. The Respondent No. 2 have also fairly admitted that the said was responded only on 23/11/2018 during the pendency of first appeal. The Respondent no. 2 has sought

leniency on the ground that it was not deliberate and intentional. It is her contention that she was trying to trace the records in their office and since the same was not available, she called for the information from the office of ADC of Directorate of Food and Drugs Administration and as such she could not respond and provide information at point no. 4 until and unless the specific reply was received from ADC of Food and drugs Administration. Considering this as a first lapse on the part of the Respondents, a lenient view is taken in the present proceedings and hereby directed to be vigilant henceforth while dealing with the RTI matters and to comply the provisions of RTI Act in true spirit .Any lapses if found in futures shall be viewed seriously.

Appeal disposed accordingly. 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