

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.236/2018/CIC

Shri Gautam Bene,
H. No.361, Madevmoddi,
Tilamol, Madevmoddi,
Tilamol, Quepem Goa,

..... Appellant.

V/s

The Public Information Officer,
Shri Sanjay L. Ghate,
Kadamba Transport Corporation Ltd.,
'Pariaso De Goa Building',
Porvorim -Goa.

..... Respondent.

Filed on : 03/10/2018

Disposed on: 12/04/2019

1) FACTS:

a) The appellant herein by his application, dated 07/07/2018 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent PIO under several points contained therein.

b) The said application was replied on 19/07/2018. Vide said reply the PIO informed appellant that the information sought relates to third party. PIO further requested appellant to visit his office on 31/07/2018 at 11.30 hrs for clarification. The appeal memo is silent as to whether the appellant visited the office of PIO as was called.

According to appellant the reply dated 19/07/2018 is not the a compliance to the application under RTI and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA). The FAA by order, dated 11/09/2018, dismissed the said appeal.

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c) The appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act on the grounds that the PIO failed to furnish information or reject it with reason. That PIO failed to comply with the requirements of section (11) of the act and that he insisted on the personal visit of appellant as precondition and that PIO failed to communicate point for clarification and seek explanation.

d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 13/11/2018, filed reply to the appeal. Appellant filed written arguments.

e) In his reply it is the contention of PIO that the appellant was called for inspection as the information was a third party information. According to PIO the information sought through appellant is of one Mr. Mahesh Kamat and that the appellant failed to appear before FAA. According to PIO the request of appellant for a direction to PIO not to insist on personal attendance to his office proves that appellant is not interested in information but is interested only to harass PIO in connivance with Mr. Kamat, who according to PIO should be blacklisted.

PIO has also referred to three different appeals by three different appellants viz the appellant herein, one Mr. Anuj Kamat and Mr. Sushant Bhandare as proxy of Shri Mahesh Kamat and also for illegal alteration in appeal memo by Shri Kamat amounting to forgery.

f) In the written arguments filed by appellant, it is his contention that the insistence of presence of appellant in the office of PIO is illegal and unjustified. It is only in the arguments that appellant has stated that he has remained

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present before PIO and that PIO was not available at said time. Appellant has highlighted the procedure provided u/s (11) of the act in case of third party information. According to appellant he is an independent identity and has nothing to do in respect of information obtained by other. Appellant has also alleged collusion between PIO and FAA.

It is further according to appellant that the information sought is a matter of public interest administrative decisions of Public authority. According to him the matter of compulsory retirement of Mr. Mahesh Kamat is in public domain and hence it cannot be classified as third party information. The appellant has also submitted regarding the compulsory retirement and FR 56(j). However the same is not material for the present proceedings. As the issue of compulsory retirement of any employee is beyond the jurisdiction of this commission. The representative of appellant has also relied upon the judgment of the Hon'ble Supreme Court reported in AIR 1992 SC 1020 on the point of procedure to be adopted before compulsory retirement and scope on rule 56(j) of the fundamental ruled. The said citation is also not applicable herein for the same reason.

The appellant has further averred that PIO has already filed affidavit before this commission in appeal no. 169/2018/SIC-I that such information is not available since it is not in existence on records. In view of said affidavit appellant wants this Commission to hold that PIO has erred in not invoking rule (11) of act.

The appellant has further submitted that he is interested in the records as are held, accessed and controlled and circulated by public Authority and in case it

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is not so then he shall accept the communication of PIO. With the above submissions appellant wants this Commission to call for an affidavit as to whether information sought is on record of authority or not.

g) The PIO also filed his written arguments. According to him the information asked of the person and person representing the appellant is one and the same. This type of deception by the appellant before the Hon'ble forum misusing the devine law made for the Citizen of India. The application, appeal before First Appellate Authority and before Hon'ble forum made in connivance with Mr. Mahesh Kamat are filed with malicious intention.

According to PIO, he came to know about connivance of Mr. Mahesh Kamat when the first application was made by appellant to office of PIO, hence appellant was called to his office to discuss about and make him understand about the voluminous information. and to understand the public interest in the application of an episode which happened 9 year ago in KTCL and that too when the representative's appeal before FAA was dismissed with directives to PIO not to give any information to Mr. Mahesh Kamat in future. PIO has annexed a copy of said order.

It is further according to PIO all information was furnished to Mr. Mahesh Kamat and that by representating the appellant, Mr. Mahesh Kamat has misued RTI Act 2005 and submitted as many as 19 applications within period of 30 days. All the information are hovering over the same subjects that is the CRS of Shri Mahesh Kamat and from that day Mahesh Kamat, the representative Shri Mahesh Kamat is using RTI Act with malicious intention by filling

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numerous applications, appeal I & II etc in name of third parties. Further according to PIO, appellant's representative Shri Mahesh Kamat has information which is provided by PIO and can very well share the information to appellant rather than wasting time of Public Authority including this forum. But on the contrary the said representative, who is the object of the information is representing and arguing in front of Hon'ble forum to provide information to appellant and pressing for penalty, which is misuse of RTI. According to PIO, Shri Mahesh Kamat is behind this appeal. The PIO has narrated several instances at points (1) to (6) of connivance of Shri Mahesh Kamat and appellant that the subject application of appellant was filed personally by Mr. Mahesh Kamat in absence of appellant, in the office of PIO, that first appeal is signed by Mr. Mahesh Kamat whose information is asked by appellant. That said Representative has enclosed the reply filed by respondent in Appeal No.169/2018/SIC-I dt. 22/11/2018 Mr. Mahesh Kamat whose information is asked is representing appellant in this and several appeals before the office of CIC-Goa. The PIO has also alleged forgery by the said representative in the records of this appeal. Thus according to PIO instead of seeking information through this long route, the appellant can very well seek information from his said representative i.e. Mahesh Kamat, as all information is available with him. Thus according to PIO the appellant is just illusion and main information seeker is Mr. Mahesh Kamat, who has been holding the information. The PIO has also prayed for dismissal of all the appeal in respect of information asked by other appellants of Mr. Mahesh Kamat, and pending before this forum and other SIC office.

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h) The appellant has filed arguments in counter. On perusal of the same it is seen that the same are only personal allegations against the PIO in an undignified language. I therefore refrain from considering the same for this appeal as not worth. Needless to say that the appellant, as a prudent person, ought to have made the submissions in respect of the facts of the case and not on the person involved.

2) FINDINGS

a) Perused the records and considered the submissions and pleadings of the parties. In view of the rival contention of the parties the points which arise for the determination of this Commission is whether the refusal of information to the appellant by the PIO was malafied.

b) In the present case appellant viz Shri Gautam Bene has sought the information pertaining to suspension compulsory retirement & disciplinary proceedings and related acts of Shri Mahesh Kamat. Such records may contain some allegations, imputations, stigmas etc against the concerned employee. In ordinary course the nature of allegations and imputations are to be made known to the concerned employee for effectively defending his/her case. However such imputations or stigmas are personal in nature vis a vis the concerned person. Besides the above position I find no public interest involved in seeking such information any decision of the public authority based on the proceedings of suspension, compulsory retirement, disciplinary proceedings would effect the concerned person and not public.

c) I am also fortified in my above view on the bases of the ratio laid down by the Hon'ble Supreme Court in the case of

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Girish Ramchandra Deshpande V/s Central Information Commission & other (Special Leave Petition(Civil) No.27734 of 2012, where in by concurring with the findings of the Public Information Officer the Apex Court has observed.

“12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.”

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14) *In our considered opinion, the aforementioned principle of law applies to the facts of this case on*

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all force. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.

15) It is for these reasons, we are of the considered view that the application made by respondent No.1 under Section 6 of the Act was wholly misconceived and was, therefore, rightly rejected by the Public Information Officer and Chief Public Information Officer whereas wrongly allowed by the Central Information Commission and the High Court.”

d) Thus notwithstanding the plea of PIO that the appellant herein is a proxy of Shri Mahesh Kamat, the information at said points Nos. (1) to (4), (8) to (16), being personal in nature and not involving any public interest or activity is beyond dissemination to appellant under the act, even if the appellant is held as a third party.

e) It is also the contention on behalf of appellant that incase the information was pertaining to third party, the PIO ought to have issued notice to the concerned party as required u/s (11) of the act. In this context it is to be

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observed that section (11) and section 8(1)(j) are interrelated. Section 8(1) (j) grants right to the PIO to decide whether the disclosure of information held by it has any public interest or relationship or involves public interest. It is only after being satisfied regarding involvement of public interest or relationship then the procedure u/s (11) of the act is required to be followed. In other words in case PIO comes to a finding that no public relation/interest involved, then there lies no question of invoking section (11) of the act.

f) It is the submission of PIO that the appellant is a proxie of Shri Mahesh Kamat, who had filed several applications seeking similar information and after having received the same is filing several applications through proxies.

It is noted from the records that initially the appellant Gautam Bene has stayed away from the proceedings even before the FAA. It is before this Commission that the appellant is being represented by Shri Mahesh Kamat, pertaining to whom the information is sought. In such circumstances the interest of the appellant as a seeker and that of Shri Mahesh Kamat as representative of seeker is common. Thus I find some force in the contention of PIO that appellant is a proxie of Shri Kamat.

g) According to the appellant's said representative, Shri Mahesh Kamat, in his arguments at para (14) it is his case that PIO has already filed an affidavit before this Commission in appeal No.169/2018/SIC-I in respect of the similar information sought under the act. According to him by said affidavit the PIO has stated that the said information

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is not in existence on record of KTCL. On behalf of appellant it is contended that due to such situation PIO has erred in not invoking section (11) of the act.

h) As held above the information at said points (1) to (4), (8) to (16) does not involve public interest or relation, was rejected by PIO. Though the information at other points is a dissimilable information under the act, the same is stated to be not existing with the authority. This statement is made by PIO on oath in Appeal No.169/2018/SIC-I, filed by said Shri Mahesh Kamat, representative of appellant herein. As the representative of the appellant, was aware of the status of information, the appellant could have obtained said information from said representative Thus the gesture of appellant in seeking information from PIO instead of having it from his representative smacks of malafides.

Considering the above position I find force in the submissions of the PIO that the information sought of the person and the person seeking information is the result of subverted process of law in regard to CRS of Shri Mahesh Kamat.

i) A note of the fact is required to be taken that another two second appeals are heard by this commission being second appeal no.303/2018/CIC and No. 304/2018/CIC, wherein the information pertaining to same subject matter is involved. In the said two appeals though the appellants are different they are represented by common representative i.e. said Shri Mahesh Kamat, who is also the representative of the appellant herein.

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j) In the said two appeals nos.303/2018/CIC and 304/2018/CIC, the same PIO has submitted that the information pertaining to the same subject matter is uploaded on the website of respondent authority i.e www.ktclgoa.com. The representative of appellants has admitted the said fact. This appeal is also hence required to be considered in the light of the said facts.

k) The limitations of the seeker in seeking information available on the website vis a vis under the act is discussed by the Hon'ble Apex court in the case of **Registrar of companies and other v/s Dharmendra Kumar Garg and another (WR(C)1127/2009**. The ratio laid down in said case is contained in paras (34) and (35) as under.

“34. From the above, it appears that the expression “held by” or “under the control of any public authority”, in relation to “information”, means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already “let go”, i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority “holds” or “controls” the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information

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who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression “right to information”, as the information in relation to which the “right to information”, is specifically conferred by the RTI act is that information which “is held by or under the control of any public authority”.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.” (emphasis supplied)

i) Applying the above ratio to the case in hand, even if the information as is sought by appellant herein is shared

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publicly independent of the act, and also being already held by the representative of appellant, the application u/s 6(1) herein or in any other similar cases would be superfluous and would act as hindrance in smooth functioning of public Authorities instead of discharging regular duties.

j) In the above circumstances in addition to exemption under rule (j) of section 8(1), the appeal is also rendered infructuous. Consequently the same is disposed with the following:

ORDER

Appeal is dismissed. Order be communicated.

Proceeding closed.

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(P. S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji - Goa