

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

Appeal No.281/2018/SIC-I

Shri Hemant S. Sawant,
UG-2, Shelom Residency,
Yeshwantnagar, Ponda Goa. Appellant
V/s

1. The Public Information Officer,
Dy. Registrar of Co-operative Societies (Admn),
Panaji- Goa.

2. First Appellate Authority,
Registrar of Co-operative Societies,
Panajim- Goa. Respondents

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

Filed on: 21/11/2018
Decided on: 21/1/2019

ORDER

1. The brief facts of the case are that the appellant Shri Hemant Sawant through his application dated 11/07/2018 had sought for the copy of complaint of Ramchandra Shirodkar addressed to the Chief Minister of Goa for Co-option of Gaunekar Gawade on the board of thrift Co-operative Association Ltd, Ponda, Goa. The said information was sought from the Respondent no.1 PIO, of the office of Registrar of Cooperative Societies, Panjim-Goa in exercise of appellant right under sub-section 1 of section 6 of Right to information Act, 2005.
2. It is the contention of the appellant that he received a reply from Respondent no. 1 PIO to the said application on 24/7/2018 denying the said information on the ground that it was exempted u/s 8(1) (j) of the RTI Act, 2005.
3. It is the contention of the appellant that he being aggrieved by such a reply of Respondent PIO, he preferred the first appeal on

4/9/2018 before the registrar of Co-operative societies, Panajim-Goa, being First Appellate Authority (FAA), who is the Respondent No. 2 herein.

4. It is the contention of the appellant that since Respondent no. 2 First appellate authority failed to dispose first appeal within specified time as contemplated under the said Act, he is forced to approached this commission on 21/11/2018 by way of second appeal as contemplated u/s 19(3) of RTI Act, .
5. In this background the appellant has approached this commission thereby seeking several relief viz-a-viz direction for furnishing information as sought by him, for invoking penal provisions and compensation of Rupees 1 lakh in terms of section 19(8) and 19(b)of RTI Act 2005.
6. After notifying the parties the matter was listed on board and was taken up for hearing. Appellant was present. Respondent PIO Smt. Dipti Kankonkar appeared alongwith Shilpa Shenvi, Respondent no. 2 First appellate authority failed to remain present before this commission.
7. Reply filed by respondent no. 1 PIO on 14/1/2019. Copy of the reply filed by respondent no. 1 PIO was collected by Appellant on 15/1/2019 and the matter was then fixed for argument.
8. As no reply was filed by Respondent no. 2 first appellate authority and as he failed to appear before this commission, no clarification could be obtained from the Respondent no. 2 first appellate authority as to why he failed to dispose the first appeal within stipulated time or what was the reason for with holding the same.
9. Written arguments were filed by the appellant on 21/1/2019. Copy of the same was furnished to the Respondent PIO. Arguments of the appellant as well as Respondent PIO were heard.

10. By relying on the Judgment passed by various Hon'ble High Courts , the appellant submitted that the information as sought by him cannot be personal as the same is filed during public activity . According to him the information to which Parliament has an access, the same can be furnished. He further submitted that note sheets and the note of the Hon'ble Chief Minister pertaining to same subject matter has been furnished in him by the PIO of the same Department in response to his earlier RTI application. It is the contention of the appellant that complaint made by Shri Ramchandra Shirodkar is a bogus complaint and he suspect the signature on the said complaint to be forged by Shri Pandurang Kuttiker and by Dr. Datta Hari Bhat in order to bring no confidence motion against him as the Chairmen of TCA . It is his further case that he had sought the certified copy of the said complaint in order to file Police complaint and to bring out the truth and great prejudice will be caused to be him if the same is denied to him.
11. The Respondent PIO vide her reply and during argument submitted that that the complaint was made by one Rajendra Shirodkar to the Hon'ble Chief Minister of Goa and the said was forwarded by the Hon'ble Chief minister through their Department with the remark to the RCS. She further submitted that those remarks of the Hon'ble chief Minister cannot be accessible under RTI Act, 2005 as the same is exempted from disclosure. She further submitted that the information can be provided to the appellant interms of section 10 (1)(2)(a) of the provision of RTI Act
12. I have scrutinized the record available in the file also considered the submissions
13. In a landmark case, Reserve Bank of India and others V/s Jayantilal N. Mistry and others, (Civil) Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of the transfer petition(Civil) No. 707 of 2012). At relevant Para 75, Apex Court has Held;

“The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy”.

14. The Hon’ble High Court of Delhi - Writ Petition (c) 3660/12 Union of India V/s Vishwas Bhamburkar has held:-

“ The right to information Act is a progressive legislation aimed at providing, to the citizens access to the information which before the said Act came into force, could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to contain safeguard and exemption. Therefore while interpreting the provisions of the Act, the court needs to take view which would advance the objective behind enactment of the Act, instead of taking a restrictive and hyper technical approach which would obstruct the flow of information to the citizen”.

- 15.** The Hon’ble High Court of Delhi - in the case of Bhagat Singh V/s Chief Information Commissioner on 3 December, 2007 Equivalent citations: 146 (2008) DLT 385 at par 13 as held;

“Access to information, under [Section 3](#) of the Act, is the rule and exemptions under [Section 8](#), the exception. [Section 8](#) being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself.”

16. By subscribing to the ratios laid down by the above courts and also keeping in view the objective that act seeks to achieve, this commission does not have hesitation in holding that the spirit of the Act enjoins disclosures of information as a general rule and an exemption there from as an exception.

17. According to the PIO the said information is available in their office records and there is no denial on her side to furnish the same but only her concern is that the said complaint bears the endorsement of Hon'ble Chief Minister .
18. By considering the intends of the RTI Act and the reason and purpose for which the appellant desires to have such information, in my opinion, by applying the doctrine of severability as contemplated under section 10 of RTI Act, the requirements of disclosure of information can be met by adequately taking care that the endorsement of Chief Minister is not disclosed.
19. From the records it is seen that the application of the appellant was responded well within stipulated time of 30 days. There is no cogent and sufficient evidence produced by the appellant that the said was denied to him deliberately with malafide intention. The appellant has also failed to produce on record the documents showing what was the detriment or loss suffered by him as such I am declined to grant the reliefs which are in nature of penalty and compensation sought by the appellant.
20. In the above given circumstances, I find that ends of justice will meet with following order.

Order

1. Appeal partly allowed.
2. Respondent PIO is hereby directed to apply doctrine of severability as contemplated u/s 10 of RTI Act and then to provide the information as sought by the appellant by his application dated 11/7/2018 by taking adequate care that the endorsement/ remark of the Hon'ble Chief Minister to the RCS is not disclosed.
3. Rests prayers are disallowed.

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