GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.304/2018/CIC

Shri Janardhan Poi Angle,
BGS/6/CD Patanga Building,
Aquem Alto Margao. ..... Appellant

V/s

Shri Sanjay Ghate,
Public Information Officer,
Kadamba Transport Corp. Ltd.,
Pariaso De Goa Building,
Alto, Porvorim –Goa. ..... Respondent

Filed on:21/12/2018

Decided on :12/04/2019.

1) FACTS:

a) The appellant herein by his application, dated 02/08/2018 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent PIO under Points 1 to 12 as contained therein, pertaining to the suspension and proceedings against one Shri Mahesh Kamat.

b) The said application was replied on 07/08/2018. Vide said reply the PIO informed appellant that the information sought relates to third party. PIO had further requested appellant to visit the office of PIO on 20/08/2018 at 15.30 hrs for clarification of certain points.

The appeal memo is silent as to whether the appellant visited the office of PIO as was called. However, according to appellant the PIO refused to the information on the ground that it relates to third party and that it cannot be furnished without personal visit of appellant.

c) The appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA) but the same is not decided. According to appellant FAA has recused from deciding appeal.

d) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act on the grounds that PIO was obliged to furnish the information as he held it and to comply with the requirements of section (11) of the act and that he wrongly insisted on the personal visit of appellant as precondition.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 23/01/2019, filed reply to the appeal. Parties were directed to file written submissions.

f) In his written submission the PIO has submitted that the information was not provided to appellant as it was pertaining to third party, viz Shri Mahesh Kamat. He has further submitted that in the recent hearing before SIC-I, it was informed to said Shri Mahesh Kamat that all his information will be uploaded on the website and accordingly the same is uploaded on webside of KTCL viz. www.ktclgoa.com on 15/03/2019. In view of uploading of the information the PIO has prayed for disposal of the appeal with an order to appellant to refer the said website for information.

g) The appellant has also filed his written submissions on 02/04/2019. It is his contention therein that he has visited the office of PIO for clarification but the PIO was not available and that he has intimated to PIO that personal visits should not be imposed. However I find no such facts in the appeal memo.

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It is further the submission of appellant that he has learnt through his representative that the information is uploaded on website but on verification it is found that it is not uploaded.

By referring to a similar complaint the appellant has submitted that in complaint No.28/2018/SIC/II, the PIO has attached list of physical forms from accounts, Personal and legal department of the respondent Authority which can be copies in e form and according to him no records other than e form exist.

The appellant has also relied upon an affidavit in appeal No. 169/2018/SIC-I wherein the PIO has affirmed the status of the information/records. Thus the appellant has concluded that the information which is now disclosed on e form on website is outside the scope of application dated 02/08/2018.

The Appellant at paras (11) to (14) of this written submission has also challenged the procedure adopted by PIO while dealing with the application. The appellant has now prayed for a direction to PIO to reject the request information sought on the ground that the information sought is not the information record of respondent authority which can be claimed as a matter of right under the act as also for penalty and warning.

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 point 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 Janardhan Poi Angle has applied for several Information. The appellant has sought the information pertaining to one Shri Mahesh P. Kamat regarding his suspension compulsory retirement, disciplinary proceedings and related acts. 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 ***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."

13).....

14) In our considered opinion, the aforementioned principle of law applies to the facts of this case on 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 the information sought by the appellant, being personal in nature and not involving any public interest or activity is beyond dissemination to appellant under the act.

e) In the written submissions filed before this Commission in this appeal, the PIO has submitted that all the information pertaining to Shri Mahesh Kamat is uploaded on the website i.e. www.ktclgoa.com on 15/03/2019.

The appellant in his written arguments has not disputed the said fact. The only contention which is raised is that the information so uploaded does not contain the documents as sought under application dated 02/08/2018. Notwithstanding the fact that as held above, that the appellant cannot have the access to information being personal, the appellant has not specified as to which of the information /documents are not available on the website.

f) On behalf of the appellant it is further contended that certains documents are held by the respondent Authority in physical form. He has produced the records of complaint No.28/18-SIC-II to substantiated such claim. On perusal of said records it is seen that the representative of the appellant herein, Shri Mahesh P. Kamat was the seeker therein. Dissemination of said documents to said Shri Mahesh Kamat did not involve any impurity like

personal information as is involved and herein and hence was furnished to him being personal to him. In other words the information is already held by the representative of the appellant.

g) Be that as it may, as stated by the PIO, the information being on the website, no intervention of this Commission is required. In this context it would be appropriate to consider the ratio laid down by Hon'ble Superme Court in the case of ***Registrar of companies other V/s Dharmendra Kumar Garg and another WP(C) 1127/2009.*** In the said case the Hon'ble Apex court, while considering the scope of sections 2(j) and (3) of the act have held:

> *"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 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.

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h) Thus in addition to the exemption from disclosure under clause (j) of section 8(1), the information being also available on the website, hence being not under the control of the respondent Authority cannot be ordered to be furnished. The appeal thus also has become infructuous is disposed with following:

O R D E R

The Appeal stands dismissed. Order to be communicated.

Proceeding closed.

Sd/-
(Shri. P. S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa