GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No. 41/2012

Carmina Dias Mondoly,
Cavelossim, Salcete-Goa. ….. Appellant

V/s

1) The Public Information Officer,
Goa University,
Panaji –Goa.
2) The First Appellate Authority,
Goa University,
Panaji –Goa. ….. Respondents.

Filed on:21/02/2012
Decided on:04/02/2019

O R D E R

1) Facts

a) The appellant herein has filed the above appeal on 21/02/2012, being aggrieved by non compliance of the order dated 13/01/2011 passed by the First Appellate Authority (FAA).

b) The facts as pleaded by the appellant are that she filed an application dated 27/10/2011 to the PIO of the respondent authority i.e. Goa University, u/s 6(1) of The Right to Information 2005 (Act). Vide her said application she sought information on 6 points therein viz.

i) Action taken report on her complaint dated 27/11/2008 and 19/02/2009 u/s 4(1) (b) of the act.

ii) Certified copy of first and second LLB examination conducted in 1992 -1994,

iii) Certified copies of revaluation result with regards to Mohammedan law and Indian Succession Act for the

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year April 1996 along with the inspection of the corrected/revaluated answer books and results.

iv) *Officer responsible for declaring results/revaluation results.*

v) *The officer responsible for not declaring results/revaluation results.*

vi) *The reason for not declaring her results/revaluation results.*

c) Appellant has also sought inspection of all concern subject files/diary and registers. According to the appellant she was not satisfied with the reply of the PIO dated 25/11/2011 as according to her it is vague inclusive and evasive. It is further according to appellant that it was obligatory on the part of respondent authority to maintain all the records u/s 4 of the act. It is also the contention of appellant that the PIO failed to give inspection of the records.

d) Being aggrieved by the reply of PIO, appellant filed first appeal to the FAA who by order, dated 13/01/2012 directed the PIO to file affidavit within 21 days, with regard to declaration of results and non availability of answer books.

e) According to the appellant the respondent no 1, i.e. PIO failed to comply with the order of the FAA to provide information. It is also the contention of the appellant that being a public authority it is obligatory on his part to call for the information from subordinates or superiors and to furnish the same to the appellant . According to the appellant she is not furnished with the information sought and hence it is a deemed refusal under the act.

f) The appellant by this appeal has prayed for direction to the respondent to furnish the requested information vide her

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application dated 27/10/2011, as also for a direction to comply sections 4(1) (a) and (b) of the RTI act, as also action against the PIO for not providing information and penalty and disciplinary proceedings. The appellant has also prayed for compensation and cost of the appeal.

g) On notifying the respondent, Advocate for PIO filed the reply on 04/07/2012. It is the contention therein that the appeal is frivolous and that the application dated 27/10/2011 was replied by the PIO on 25/11/2011 wherein the available information in the form of annexures was furnished.

It is further contention of the advocate for PIO that the information sought pertain to the records of the year 1996, prior to the act coming to force and therefore the obligation to maintain records would not have strict application to the present case as some of the documents, which are almost 10 years older than the act are destroyed as a matter of policy vide circular no G.U./Exam/2005/250, dated 02/05/2005 which provides the retention period of answer sheets as 5 years. The advocate for PIO has further denied that the information of the records was not given.

It is also further contention of the advocate for PIO that by reply dated 25/11/2011 complete available information along with certified copies of first and second year examination result conducted in the year 1992-94 have been provided. The PIO has further stated that the FAA by his order dated 13/01/2012 held at the PIO has not willfully suppressed or denied the information. However as the matter pertain to the year 1996, FAA directed the respondent PIO to file an affidavit with regards to the declaration of results and non availability of answer books within 21 days from the date

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of receipt of the order. According to PIO the said order was served on PIO on 02/02/2012 and the affidavit was sworn and posted on 23/02/2012, within 21 days as per the orders of FAA.

PIO further contended that the appellant have not challenged the finding of FAA and that what is the grievances of the appellant herein is non compliance of the order which is prior to the extent of filing affidavit within 21 days and that the appellant has not challenged the findings of FAA.

g) After the reply field by the PIO there are several replies and counter replies filed by the parties as also several applications arising out of such filings. However I am not inclined to consider any such replies or counter relies as it appears that they are only in the form of allegations and counter allegations, extraneous to the subject matter of this appeal.

h) It was found in the course of hearing that the entire controversy rest on the point whether the records are available or not being old and not required to be maintained beyond of period 5 years in view of the circular dated 02/05/2005. In exercise of my powers under rule 5(1) of the GSIC Appeal Procedure rules 2006, by order, dated 08/07/2016, the PIO was directed to file affidavit to prove non availability of records, which was filed accordingly 29/08/2016.

i) Subsequently in the course of arguments, considering the requirements of appellant and as a gesture for arriving at an amicable solution, this commission suggested for conducting inspection. Accordingly the advocate for the PIO and the

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appellant were called upon to fix a mutually convenient date and have the inspection of concerned records. On 20/03/2017 the parties made a submission before this Commission that the inspection was conducted. Appellant admitted that her answer books were not found in the records in the course of said inspection. However the grievances of the appellant was that she was not given any reply to her revaluation request for which she has paid the fees on 05/09/1996. Considering these circumstances and for bringing on record the details of events, this commission again directed the PIO to file on record an affidavit showing the sequence of events which took place after the receipt of the appellant's application for revaluation, i.e. whether any communication was exchanged between the appellant and university. Accordingly on 05/06/2017 an affidavit was filed by the PIO as also a further affidavit on 14/12/2018.

j) Oral and written submission were also advanced by the parties.

2) FINDINGS:

a) Not withstanding several replies and counter replies and various submission and allegations of the parties, the short point, as is raised by appellant in her appeal memo, for my consideration is whether the PIO has complied with the direction of the FAA as per order, dated 13/01/2012.

Regarding the relief sought by the appellant in her appeal, it is the contention of PIO that as directed by the Order of FAA, the required affidavit was posted on 23/02/2012. Such a copy is relied upon by the appellant alongwith the covering

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letter. However said copy does not contain any attestation and hence cannot be accepted to have the sanctity of an affidavit. I do not find any copy of such affidavit filed by PIO in this proceedings. Thus issue regarding the non availability of the records therefore is not finally decided and hence is required to be decided in this appeal.

b) Perused the reply of the PIO, dated 25/11/2011, to the appellant's application u/s 6(1) of the Act, dated 27/10/2011. At point 1(a) the appellant wanted the action taken on her complaint u/s 4(1)(d) dated 27/11/2008 and 19/02/2009. In this respect it is replied by the PIO that the reply in this regard was sent on 21/08/2008. Regarding the complaint addressed to governor dated 27/11/2008 and 19/02/2009 it is informed that the reply was sent to the appellant on 22/08/2011. Copies of both these replies are annexed to the said reply of PIO dated 25/11/2011.

In respect of information at point (2) the copies of the 1st yr and 2nd yr LLB examination results are annexed to the reply. In the said annexure the name of the appellant herein is also found listed. The said results pertain to the year April and November 1992, April and November 1993, April and October 1994 and the 2nd year results of April 1994.

In respect of information at point (3) it is the reply of PIO that the retention schedule as per the circular dated 02/05/2005 shows that the answer papers are to be retained for a period of 6 months after declaration of revaluation results.

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In respect of information at points (4) & (5) the designation of the officer responsible for declaring revaluation of results is already provided.

In respect of information at point (6), it is seen that what is sought is the reason for certain default i.e. for not declaring the results. The reason or justification for any Commission or omission of Public Authority does not constitute information under the act. The said point was thus appropriately replied by the PIO.

c) On further scrutiny of reply of the PIO vis-a vis the application u/s 6(1) of the appellant, it is found that the information at points (4), (5) & (6) has been appropriately furnished/answered. The First Appellate Authority while considering the first appeal has observed that the appellant has specifically referred to her request at point (3) of her application which are the copies of the revaluation results with regard to Mohammedan law and Indian Succession Act. Before the FAA it was the stand of the PIO that the answer books of all previous year were destroyed. To prove this destruction it was stressed by the appellant before FAA that the PIO should be directed to file an affidavit affirming the facts of destruction of the records as per said circular dated 02/05/2005.

Thus it was at the request of the appellant herself that proof of destruction of the records was sought on an affidavit. Even otherwise the FAA was justified in directing the PIO to prove the fact of non availability due to destruction by an affidavit. Hence I find no infirmity or impropriety in the said order of FAA, dated 13/01/2011.

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d) As observed above, attempts were made in the presence of both the parties to inspect the concerned record if available. It is on record that a joint inspection was held by the parties and the appellant has also confirmed before this commission that the said record were not found.

e) Further to get non availability of records an affidavit was sought by this commission from the PIO in excise of its right under rule 5(1) of Goa State Information Commission (Appeal procedure) Rules 2006 in support of the fact of non availability due to non retention as per the circular. The PIO filed the affidavit which is also accompanied by copy of the said circular dated 02/05/2005. As per the said circular the answer books are required to be retained for a period of 6 months after the declaration of revaluation of results.

Undisputedly the results pertain to the year 1996 and the copied therefore are sought by the appellant in 2011. In these circumstances the contention of PIO appears probable. As also pointed out by the PIO, the act came in force in October 2005 and the said circular was issued prior to the act. In these circumstances I do not find that the contentions of the PIO as unsatisfactory. If the information does not exist any order to its disclosure would be redundant.

f) While dealing with an issue of non availability of information due to destruction of records, the Hon'ble Supreme Court in the case of ***Central Board of Secondary Education and another V/s Aditya Bandopadhay (Civil Appeal*** **No.6454 of 2011)** at para (30) thereof has observed.

> *"30. On behalf of the respondent examinees, it was contended that having regard to sub-section (3)of Section 8 of the RTI Act, there is an implied*

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duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of Section 8(3). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular record or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records. Section 8(3) provides that information relating to any occurrence, event or matter which has taken place and occurred or happened twenty years before the date on which any request is made under Section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of Section 8(1) of the RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of Section 8(1). <u>In other words, Section 8(3) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of Section 8(1) will cease to be available after twenty years in regard to records which are required to be preserved for more than twenty years. Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, Section 8(3) will not prevent destruction in accordance with the rules. Section 8(3) of the RTI Act is not therefore a provision requiring all "information" to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority."</u>
(emphasis supplied)

g) Applying the above ratio to the case in hand, the PIO has informed that the concerned records are not required to be

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maintained beyond 6 months from the date of declaration of revaluation results or 5 years in respect of mark list as the case may be. Such circular forms part of the records of this appeal. The said records sought pertained to year 1996. The circular relating to destruction has come in force prior to the Act came in force. The destruction and non availability of records is affirmed by PIO on oath. Thus the version of the PIO that the concerned records are not available, apparently due to its destruction pursuant to said circular, appears to be probable.

h) Regarding the non availability of records and its consequences in dissemination of information under the Act is also clarified by the Apex Court in the said Judgment of *Aditya Bandopadhyay (Supra) at para* (35) thereof as under:

> *"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. <u>The RTI Act provides access to all information that is available and existing.</u> This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a 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. <u>But where the information sought is not a part of the record 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 nonavailable information and then furnish it to an applicant.</u> A public*

authority is also not required to furnish information which require 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. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act". (Emphasis supplied)

i) Thus considering the ratio as laid down by the Hon'ble Supreme Court, in the present case, as the records pertaining to information sought are not maintained, as not required to be maintained beyond 6 months/five years, considering the affidavitary evidence and the concerned circular dated 02/05/2005, I hold that the information sought cannot be ordered to be furnished as it is not existing.

The appellant has a grievance herein that inspite of receipt of revaluation fees on 05/09/1996. She was not given any reply by respondent authority. However this commission cannot deal with this grievance being beyond the competence of the commission under the Act. The appellant has other forum available under the law governing the procedure of revaluation. Thus nothing further remains to be dealt with by this Commission.

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j) Before parting with the matter, I find it worthwhile to highlight the anxiety and concern as expressed by the Hon'ble Apex Court in the case of *Aditya Bandopadhyay (Supra)* at para (36) thereof, which reads:

> *"36. Section 19(8) of RTI Act has entrusted the Central/State Information Commissions, with the power to require any public authority to take any such steps as may be necessary to secure the compliance with the provisions of the Act. Apart from the generality of the said power, clause (a) of section 19(8) refers to six specific powers, to implement the provision of the Act. Sub-clause (i) empowers a Commission to require the public authority to provide access to information if so requested in a particular 'form' (that is either as a document, micro film, compact disc, pendrive, etc.). This is to secure compliance with section 7(9) of the Act. Sub-clause (ii) empowers a Commission to require the public authority to appoint a Central Public Information Officer or State Public Information Officer. This is to secure compliance with section 5 of the Act. Sub-clause (iii) empowers the Commission to require a public authority to publish certain information or categories of information. This is to secure compliance with section 4(1) and (2) of RTI Act. Sub-clause (iv) empowers a Commission to require a public authority to make necessary changes to its practices relating to the maintenance, management and destruction of the records. This is to secure compliance with clause (a) of section 4(1) of the Act. Sub-clause (v) empowers a Commission to require the public authority to increase the training for its officials on the right to information. This is to secure compliance with sections 5, 6*

and 7 of the Act. Sub-clause (vi) empowers a Commission to require the public authority to provide annual reports in regard to the compliance with clause (b) of section 4(1). This is to ensure compliance with the provisions of clause (b) of section 4(1) of the Act. <u>The power under section 19(8) of the Act however does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under clause (a) of section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of sections 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub-sections (3) and (4) of section 4 of the Act. If the 'information' enumerated in clause (b) of section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act."</u> (Emphasis supplied)

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(k) Applying the above requirements to the case in hand, had the respondent Authority i.e. Goa University, strictly complied with the requirements of section (4) of the act and kept the information relating to the policies adopted for maintenance and destruction of records in the public domain, lot of time of the appellant as also of the respondent could have been saved. Even after a span of over 6 years after the act came in force i.e. till 2011, the respondent Authority has not uploaded its such relevant circulars on its website. The respondent Authority deals with the education system of the State involving thousands of students in various fields. For want of updated information in public domain, lot of stress is generated in the student as the services of the respondent Authority directly relates to their academic life and carrier. In case urgent and proper steps are taken to make the policies, procedures orders, directions etc of the University available in public domain, lot of anxiety and stress of the students could be avoided. I therefore find it expedient that an urgent steps are taken to computerize the records and connected through networks all over the country so that access to such records is facilitated. Such a gesture on the part of respondent Authority would not only provide transparency, but also save time of citizens, more particularly the student community in seeking information and also avoid unnecessary applications under the Act.

In the background of above facts and in the light of the observations above, I dispose the appeal with the following:

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<u>O R D E R</u>

The appeal is dismissed. The respondent Authority i.e. Goa University is hereby directed to comply strictly with the requirements of section 4 of The Right to Information Act 2005 within four months from today and report the compliance to this Commission.

Order be communicated to parties. Copies of this order be also sent to the Vice Chancellor and Registrar Goa University for necessary action at their end.

Proceeding closed.

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