

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

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

Appeal No.139/2018/CIC

Shri K. Kubeshwaran,
Flat No. A/F-2, Neelgagan Apartment,
Arlem-Raia, Salcete-Goa.
403720

... Appellant

V/s

1) The Public Information Officer,
Assistant Registrar-Exam (PG)/PO,
Goa University, Taleigao Plateau,
Goa. 403206

2) The First Appellate Authority,
Prof. S. Krishna, Department of Botany,
Goa University, Taleigao Plateau,
Goa. 403206

... Respondents

Filed On: 07/06/2018

Disposed:30/01/2019

O R D E R

1) The appellant herein by his application u/s 6(1) of The Right to Information Act 2005 (Act) sought from the respondent PIO certain information to points/para 6(a) to 6(g) of his application, dated 16/02/2018. Said application was replied on 15/03/2018 by the PIO.

2) Being aggrieved by response of PIO, the appellant filed first appeal to the First Appellate Authority, who disposed the same by order, dated 2nd April 2018.

The Appellant being aggrieved by the said order of First Appellate Authority has landed before this Commission with this second appeal u/s 19(3) of the Act.

Sd/-

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3) In the course of submissions of the parties before this Commission, the appellant submitted that he is satisfied with the reply in respect of points, 6(b) 6(c), 6(e) and 6(f) and that he is insisting for information only to points/para 6(a), 6(d) and 6(g) of his said application dated 16/02/2018 u/s 6(1). In these circumstances my findings in this appeal are restricted and to consider only said requirement of appellant at points 6(a), 6(d) and 6(g).

4) On perusal of records it is seen that the information at points 6(a) and 6(d) is not furnished on the ground that such notings/circulars, guidelines are not issued by Goa University.

On further perusal of the reply of PIO dated 15/03/2018, it is seen that the information at point/para 6(g) is not furnished with a plea that it is "not available". No further clarification is offered. The non availability of the file may be due to misplacement/loss of the records etc after information/records are generated or due to non generation of the records at all. The PIO though had stated in said reply that it is 'not available' it was not clarified whether such notings /guidelines/circulars at all existed at any time or not, as was the reply of PIO to points 6(a) and 6(d).

5) Considering the vagueness of reply to point 6(g) and to seek oral evidence on the fact of non issuance of circulars/guidelines etc, in respect of points 6(a) and 6(d), in exercise of the powers under Rule 5(i) of the Goa State Information Commission (Appeal Procedure) Rules 2006, the PIO was directed to substantiate the fact of non issuance of circular etc. as also the circumstances and grounds under which the information at point 6(g) was 'not available'.

Sd/-

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6) Accordingly, the PIO filed the affidavit on 10/01/2019. Vide her said affidavit it is affirmed by PIO that notings/circulars/guidelines with reference to the concerned subject as sought under point 6(a) and 6(d) are not issued by university and hence cannot be furnished.

Regarding point 6(g) of the appellant's application, the PIO in her said affidavit for the first time has stated that such notings/circulars guidelines were never issued.

7) Apparently by referring to the direction of this Commission for filing affidavit, the PIO have avered in the affidavit that the question of mentioning reason for unavailability does not arise and that the non issuance of circulars at point 6(g) was clear in the reply filed before this Commission as also in the initial reply, dated 15/03/2018.

8) It is observed that PIO is required to know that whenever any request is rejected the same should substantiate the grounds with specific reason. Rejection on the ground of a vague reason like "Not Available" would defeat the very intent of the act and on such a spacious plea the seeker would be deprived of his right. PIO is required to keep in mind that in case the request is required to be rejected under a plea of non availability of the records, the reasons for such non availability should be clarified as was done by PIO with respect to points 6(a) and 6(d).

However on considering the affidavit, filed by PIO as directed, I find no grounds to discard or disbelieve the same and hence the information at points 6(a), 6(d) and 6(g) cannot be ordered to be furnished being non existent.

9) Perused the order of the FAA. It appears that the FAA has misconstrued the scope of section 19(2) of the act by just endorsing the response of PIO. In the appeal it was required

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from the FAA to independently consider the propriety of the response of PIO in the background of the facts before it. In the present order the FAA has mechanically endorsed the reply of PIO u/s 7(1). It is also to be noted that nowhere in his reply to first appeal, it was the case of PIO that the information was available on the website or that appellant should refer the website. It is only in the order of FAA that the appellant was advised to refer to website by FAA. The FAA has also blindly accepted the version of the PIO regarding the non availability of records without coming to any specific finding. The order of FAA thus appears to be sketchy, perverse and without application of mind. The same therefore cannot survive and is required to be quashed and set aside, which is done accordingly.

- 10) In the backdrop of the above facts and circumstances, and based on the affidavit of PIO, I find that the information at points 6(a), 6(d) and 6(g), is not held by the respondent public authority. No orders therefore can be passed as prayed at para (1) directing furnishing of such non existing information. Consequently no relief in terms of prayer (ii) and (iii) can be granted.

Appeal disposed accordingly.

Notify parties.

Proceeding closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji -Goa