

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.278/2018/SCIC

Shri Uday A. C. Priolkar,
R/o H. No.C5/55,
Mala, Panaji –Goa.

....Appellant

V/s

1) The Public Information Officer,
The Executive Engineer,
Div III, PWD,
St. Inez, Panaji –Goa.

2) The Public Information Officer/Director (ADM),
PWD, Altinho, Panaji –Goa.

3) The First Appellate Authority/
Superintendent of Surveys, PWD,
Altinho, Panaji –Goa.

....Respondents.

Filed on :16/11/2018

Disposed on: 02/04/2019

1) FACTS IN BRIEF:

- a)** The appellant herein by his application, dated 19/06/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act for short)sought information from the PIO, office of Superintendent Engineer Monitoring and Evaluation unit, PWD Altinho Panaji under three points therein.
- b)** The said application was transferred to respondent no.1, who replied on 25/07/2018. By said reply the information at point (1) was not furnished being not specific and also stating that no RTI applications were submitted by Assistant Engineer-II of said division Prior to December 2011. The information at point (2) was partly furnished by rejecting the list of moveable & immovable on the ground of exemption u/s 8(1)(J) of the act. The information of point 3 was also partly furnished.

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According to appellant the information as sought at point (2) was not exempted under the act inspite of which it was not furnished and hence the appellant filed first appeal to the respondent No.3, being the First Appellate Authority (FAA).

- c) The FAA by order, dated 20/09/2018, allowed the said appeal and directed PIO to furnish the information in respect of part of point 2 i.e. NOC to purchase and to allow inspection to appellant and to take copies in respect of file at point 3.
- d) Being aggrieved by order of FAA the appellant has landed before this commission in this second appeal u/s 19(3) of the act, on the ground that the information as furnished to him is incomplete and misleading.
- e) Notices were issued to the parties, pursuant to which they appeared. The respondent No.2 on 8/01/2019 filed reply to the appeal. Respondent no.1 filed his reply on 18/01/2019. Appellant filed his written arguments. Oral arguments of the parties were also heard.

2) FINDINGS:

- a) Perused the records and considered the arguments of the parties. By his application, dated 19/06/2018, filed under section 6(1) of the act the appellant has sought information on 3 points viz:

(i) Copies of RTI applications submitted before the various divisions of PWD, Deputy Collector, S.D.O. Panaji, Collector of North Goa and copies of the replies of PIO.

(ii) Copies of moveable and immovable assets statement submitted by Executive Engineers and Asst. Engineers (AE) and copies of NOC of purchase moveable and immovable properties from January 2000 to date.

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(iii) Copies of payments made to contractors for construction of new Sewage Treatment Plant at patto as also date of commencement and completion of work and measurement book and copies of payment done from 2015 to 2018 to the contractor.

- b)** In respect of information on **point (1)**, after its transfer u/s 6(3) of the act the PIO, viz E.E. III, WD III, the respondent No.1 herein by his reply, dated 25/07/2018 stated that the information at point (1) is not specific and clarified that no applications under RTI were submitted by Asst. Engineer –II of said division prior to December 2011.

In the course of submissions in this appeal, the PIO clarified that under the act information can be sought by reference to individual person and not by designated post and hence there were no applications filed with the designations of Asst. Engineer. It might have been filed in their individual names. It is thus according to him there were no applications of Engineer by designation.

- c)** The act confers powers only to citizen to seek information. “Citizen” as defined under the Citizenship Act is an individual person and not a designated post. Thus I find force in the submissions of the PIO that no applications could be filed for information by designated post and hence no such applications seeking information exist. Thus point (1) was appropriately answered by PIO. The appellant has also not raised any grievance pertaining to point (1) in his first appeal.
- d)** In the course of oral submissions it was the contention of appellant that the addressee PIO i.e. PIO, office of Supt.

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Engineer, Monitoring & Evaluation Unit, by exercising his rights under section 6(3) of the act ought to have transferred his application to other authorities which are mentioned in his application under section 6(1).

I am unable to concede to these arguments. On reading of the act more particularly section 2(h) read with section (5), it is clear that each authority/body or institution constitutes an independent public Authority and each such authority is required to appoint an independent PIO.

Section 6(3) requires the transfer of applications when conditions at clause (i) and (ii) of said section occurs. Whether such conditions exist or not is to be decided by the PIO of the Public Authority to whom application is made. Under section 6(3)(i) and (ii), the duty is cast on the addressee PIO that incase due to movement of files/administrative reason the information is held by other authority application are required to be transferred u/s 6(3).

If one had to accept the contention of the appellant that invariably all the applications are required to be transferred by addressee PIO, then a situation would exist where the seeker would seek information of all public Authorities through one Authority by expecting transfer of request to all the authorities on scrutiny of application. Such a situation would not involve appointment of independent PIO to all authorities. The act does not envisage such a procedure. The requirement under section 6(3) is only to facilitate the seeker from running to different authorities in case the files/records are moved from one office to another due to administrative or procedural reasons.

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- e) At **point (2)** the appellant has sought two fold information. Firstly the appellant seeks the **copies of statement of moveable and immovable assets** and secondly the **copies of NOC issued to purchase immovable and immovable properties.**

According to appellant the PIO has furnished incomplete and misleading information on said point (2). The appellant has not clarified as to how the same is misleading. However the contention that it is incomplete is apparently on account that only the second part i.e. NOC for acquiring properties is furnished and the statement of moveable and immovable properties is refused. Hence the dispensability of the statements of moveable and immovable under the act is required to be dealt with.

- f) While denying the copies of statement of moveable and immovable assets, PIO has taken shelter of section 8(1)(j) of the act by holding that it is a personal information. To substantiate the said refusal the respondent No.2, to whom the application was transferred has relied on the judgment of the Apex Court in **Special Leave Petition No.27734 of 2012 Girish Ramchandra Deshpande V/s Central Information Commission and others.**

On going through the application filed by appellant u/s 6(1), it is seen that what is sought is the statement of moveable and immovable assets filed A.Es and E.Es to Government. Undisputedly the statement is the one filed to the Government as is mandatory for the Government employees as per the conditions of service. In the case of *Girish Deshpande (Supra)* as relied upon by the PIO, Apex Court after considering the restrictions of disclosing such information under the act, at **Para (14)** has held :

“14. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and 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.”

As observed above, in the case of *Girish Deshpande (Supra)* the information was sought out of the personal income tax return filed to the concerned authority. Filing of income tax returns is personal responsibility and has no connection with public activity unless specified. On the other hand the statement of moveable and immovable assets as are sought herein is the ones which were filed as required by the Government under the service rules.

- g)** The extent of privacy u/s 8(1)(j) available to a public servant is held by The Hon’ble High Court of Bombay, Goa Bench at Panaji in the case of *Kashinath J. Shetye V/S Public Information Officer, The Superintendent Engineer-II(N), Electricity Department, Panaji, Goa and others Writ petition no.1 of 2009* wherein the scope and extent of involvement of privacy is held in the following words:

“7. The first thing that needs to be taken into consideration is that the petitioner is a public servant. When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while

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as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/misconduct of a public servant even in private, ceases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know.

8. The next question is whether the applicant should be supplied the copies of the application at all. It was contended that the copies of the application should not be supplied for, they may contain the nature of the ailment and the applicant has no right to know about the ailment of the petitioner or his family. To my mind, what cannot be supplied is a medical record maintained by the family physician or a private hospital. To that extent, it is his right of privacy, it certainly, cannot be invaded. The application for leave is not a medical record at all. It, at the most, may contain ground on which leave was sought. It was contended that under Section 8(1)(j), the information cannot be supplied. In this regard, it would be necessary to read proviso to that section. If the proviso is read, it is obvious that every citizen is entitled to have that information which the Parliament can have. It is not shown to me as to why the information as is sought, cannot be supplied to the Parliament. In fact, the Parliament has a right to know the ground for which a public servant has

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taken leave since his salary is paid from the public exchequer. In the circumstances, I do not find that the Information Commission committed any error in directing such information to be supplied. There is no substance in the writ petition. It is dismissed.”

h) Thus considering the fact that the statement of moveable and immovable assets sought by appellant is sine qua non for holding public post. Thus it has a direct relation to the public activity of the concerned A.Es and E.Es. The same is therefore dispensable under the act and cannot have immunity from disclosure u/s 8(1)(j) of the act. The ratio as laid down by the Hon'ble Apex Court in the case of *Girish Deshpande (supra)* being in the context of filing of personal income tax returns unrelated to any public activity is thus distinguishable and not applicable in the present case.

g) Coming to **point (3)** of the appellant's application u/ 6(1), which information is related to work of construction of New Sewage Treatment plant, information required were date of Commencement and completion of work, measurement books pertaining to pipeline and payment done from 2015 to 2018.

In the course of arguments it is the contention of PIO that as on the date of application only part work i.e. up to dismantling of the old plant was undertaken and work of new construction or laying of pipeline or completion was not undertaken. According to him thus whatever information as was available then has been furnished.

The above being the position, I hold that the information as was available in respect of point 3, is furnished. However

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this finding shall not limit the rights of appellant to seek further information as per the progress and/on completion of the said work.

- h)** In the above circumstances, I hold that the information at point (1) has not been furnished being not in existence with reference to the designations. The appellant is entitled to have the part information at point (2) viz. the statement of moveable and immovable assets. The information at point (3) is furnished as was existing till the date of application.

Though the appellant has prayed for imposition of penalty, no grounds are made out by him. Moreover the PIO has given his decision on request within time as is mandatory under section 7(1) of the act.

In the background of the above facts and considering the position of law I dispose the appeal with following:

O R D E R

Appeal is partly allowed. The PIO, PWD(ADM) the respondent no.2 herein is here by directed to furnish to the appellant the statement of moveable and immoveble of assets as filed by the Assistant Engineers and Executive Engineers from January 2000 till 19/06/2018, as per the procedure laid down under The Right to Information Act 2005.

Rest of the prayers are rejected.

Notify parties.

Proceedings closed.

Pronounced in open hearing.

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

