

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

Complaint No: 30/2019/SIC-I

Shri Sarvesh Raghu Kandolkar,
H.No. 151, Carmi Bhat,
Merces, Tiswadi Goa.
Pin Code;403005.

....Complainant

V/s

1) The Deputy Superintendent of Police,
Head Quarters, North,
Porvorim, Bardez-Goa.
(Public Information Officer),

2. The Superintendent of Police,
North Goa District,
Porvorim, Bardez-Goa.
(First Appellate Authority),

..... Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 28/3/2019

Decided on:13/05/2019

ORDER

1. This Order disposes the present complaint filed u/s 18(1) RTI Act, 2005 by the complainant herein. The brief facts leading to present complaint are as under:

(a) The complainant Shri Sarvesh R. Kandolkar by application dated 15/11/2018 filed under sub section (1) of section 6 of the RTI Act, 2005 sought certain information pertaining to PSIs of Goa Police Department with effect from 1987 to 2006. The said information was sought from the PIO of office of Superintendent, Administrative branch, PHQ, Panaji-Goa.

(b) It is the contention of the complainant that the PIO of office of Superintendent, Administrative branch, PHQ, Panajim-Goa transferred his above application vide letter dated

16/11/2018 to the Respondent No. 1 PIO of the office of Deputy Superintendent of Police (HQ/N) in terms of section 6(3) of RTI Act , 2005.

(c) It is the contention of the complainant that the said application was responded by Respondent No. 1 PIO on 17/12/2018 thereby informing him that the information sought by him is ready and to collect the same after paying Rupees 106/-

(d) It is contention of the complainant that on 11/1/2019 he received and acknowledge the information which was submitted to him by Respondent no. 1 PIO vide his covering letter dated 17/12/2018. However according to him the respondent PIO only provided him information at point No. 1 i.e. attestation form of 14 PSIs and the remaining part was rejected u/s 8(1)(j) of RTI Act, 2005 being third party information.

(e) It is contention of the complainant that he being aggrieved by the refusal of the information, preferred first appeal on 14/1/2019 before the Respondent No. 2 superintendent of Police, North-Goa being first appellate authority and the Respondent No. 2 dismissed his first appeal vide order dated 30/1/2019 by upholding the say of PIO and coming to the conclusion that the information sought was a personal information of the third party.

2. It is contention of the complainant being aggrieved by the actions of both the Respondents, he had to approach this commission by way of the present complaint on 28/3/2019.

3. In the present complaint, complainant has sought for direction as against respondent PIO for furnishing him the requested information as sought by him, vide application dated 15/11/2018, free of cost, and for invoking penal provision as against both the Respondents.

4. The matter was taken up on board and listed for hearing after intimation to both the parties. In pursuant to the notice of this commission, Complainant was present in person. Respondent present PIO Shri Edwin M.S. Colaco appeared and filed his say on 15/4/2019.
- 5 . Since it was submitted that when the application was filed Shri Serafin Dias was officiating as PIO and during the proceedings before the first appellate authority Shri Kiran Poduval was officiating as PIO, a fresh notices were issued to them pursuant to which Shri Kiran Poduval appeared and filed his say on 30/4/2019. The say also came to be filed on 13/5/2019 by Shri Serafin Dias. The Respondent No. first appellate authority was represented by Shri Manguesh Mahale who placed on record reply of respondent no. 2 first appellate authority. The copies of above replies were furnished to the complainant
6. Arguments were advanced by both the parties.
7. It is the contention of the Complainant that documents sought by him are held by the public authority and as such accessible under RTI Act, 2005. It was further contended that the Respondent no. 1 PIO has casually opined that the information sought pertains to third party but failed to follow the procedure as laid down u/s 11 of RTI, 2005. It was further submitted that the office superintendent of Administrative branch, PHQ-Panajim and the PIO of Deputy Superintendent of Police, Head Quarters(South) Margao Goa has also furnished him information as per the same application dated 15/11/2018 and in support of his contention he relied upon annexure VII and VIII. It was further contented that the every citizen is entitled to know about the appointment, working, honesty, integrity and the devotion to the duty of a public servant and nothing remains personal.

8. The above named three PIOs vide their respective replies contended that information at point No. 1 was provided and information sought by the complainant at point 2,3 and 4 being third party information and not being sought in public interest was denied to the complainant interms of section 8(1)(j) of RTI Act, 2005 . The then PIO Shri Serafin Dias also relied upon order of Hon'ble Supreme Court of India in special leave petition (civil) No. 27734 of 12 in case of Girish Deshpande V/s Central Information Commissioner and also the orders passed by this Commission in Appeal No.86/SCIC/2017 and Appeal No. 84/SCIC/2017 both dated 17/10/2018.
- 13 I have perused the records available in the file so also considered the submission made on behalf of both the parties.
14. The complainant has sought for the directions to the PIO for furnishing him correct and complete information as sought by him vide his application dated 15/11/2018, free of cost. However in view of the ratio laid down by the Hon'ble Apex Court in the case of (i) ***Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** and (ii) Hon'ble High Court of Karnataka At Bangalore in writ Petition No.19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012(GM-RES), Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission, *this Commission has no powers under section 18 of RTI Act to provide access to information which have been requested for or which have been denied to any information seeker and the remedy would be to file appeal as provided under section 19(3) of the RTI Act. Hence the relief sought by the complainant at prayer-(i) cannot be granted in a complaint proceedings.*

15. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI Act. However before such order is passed the commission must be satisfied that the intention of the Respondent PIO was not bonafides.
16. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of RTI Act, 2005 The Hon'ble High Court of Bombay, Goa Bench at Panajim in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:
- "11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."*
17. In the background of above ratio laid down by the Hon'ble High Court, the point arises from my determination is
- a) Whether the delay and the rejection of the information at point no. 2,3, and 4 was deliberate and intentionally.
18. The Hon'ble High Court of Bombay at Goa in writ petition No. 797 of 2018; Mr. Deepak Pandharinath Vaingankar, V/s Mr. Suryakant Babu Naik and others set aside the order dated 5/7/2018 in appeal No. 37/2018/CIC passed by the State information Commission, at Panajim and has held that;
- "information such as date of appointment , working hours, Educational Qualification, details of Higher Education's are qualified to be personal information".
19. The high Court of Delhi at New Delhi in writ petition (C) 5057 of 2015 ; Satpal V/s Central Information Commissioner has held at para 6

“It is apparent from the above that personal information or details submitted by an employee to an employer for the purpose of his employment are expected to be kept confidential. Plainly, the same cannot be available to all and sundry. However, if the competent authority is satisfied that a larger public interest warrants the disclosure of such information, the same can be disclosed, notwithstanding, that the same was available with the person in a fiduciary capacity”.

20. Yet in another decision the Delhi High Court at New Delhi in LPA 253/2012 ; Shri Harish Kumar V/s Provost Marshal-Cum Appellate authority has held at para 10 and 11

“Our constitutions aim is for a casteless society and it can safely be assumed that the disclosure made by a person or his or her cast is intended by such person to be kept confidential and when any person information has sought has no nexus with public authority or interest, the same is not to be provided”.

21. On perusing of the application dated 15/11/2018 filed by the complainant, it is seen that the complainant has sought for birth certification, Education qualification and cast certificate of PSIs of Goa Police Department. It is also seen from the note of the said application that the complainant also intends to get certificate /information pertaining to retired /deceased PSIs also .

22. By subscribing to the ratios laid down by the Hon'ble High court in (i) Deepak Pandharinath Vaingankar (supra),(ii) Shri Satpal V/s Central Information Commissioner and (iii) Shri Harish Kumar V/s Provost Marshal-Cum Appellate authority(Supra), I hold that information sought by the complainant is qualified to be exempted u/s 8(1)(j) of Act as such I do not find any

irregularity or illegality or perversity in the reply given in terms of section 7(1) of RTI Act by PIO nor in the order passed by the Respondent No. 2 first appellate authority .

23. The Hon'ble Delhi High Court in writ petition (C)11271/09; Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

"The legislature has cautiously provided that **only in cases of malafides or unreasonable conduct**, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

24. Yet in another decision in Delhi High Court in writ petition No. (C) 5469/2008 Col. Rajendra Singh V/s Central information commissioner and another's has held ;

"Section 20 no doubt empowers the CIC to take penal action and direct payment of such compensation or

penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or that there the refusal to receive application or the **request was denied malafidely**".

25. The records shows that the application of the complainant was promptly responded wherein information at point No. 1 is provided. The other information sought vis-à-vis education qualification, cast certificate etc. of the third party is held to be personal information by the Hon'ble High court of Goa in writ petition No. 797 of 2018, by Delhi High Court in writ petition (C) 5057 of 2015 and Delhi High Court at New Delhi in LPA 253/2012 as such the complainant could not have claimed it at a matter of right . The complainant has not been able to demonstrate by way of any cogent and convincing evidence that the information sought by him was in larger public interest and that both the respondents malafidely denied the said information to him.
26. The appellant has also sought for disciplinary action as against Respondent No. 2 first appellate authority .The same does not warrant in the facts and circumstances of the present case as the records produced by the complainant itself shows that the appropriate order was passed by the Respondent no. 2 first appellate authority on 30/1/2019. Be that as it may, as per the provisions of the RTI Act, only the PIO can be penalized u/s 20 and not the First Appellate authority. Hence the relief as sought by the appellant in the present complaint proceedings against Respondent No. 2 first appellate authority also cannot be granted .
27. In view of the ratios laid down by the various High courts and in view of the above discussion I am of the opinion that this is not

the fit case warranting levy of penalty on PIO as well as first appellate authority. Hence the complaint is liable to be dismissed which I here by do .

Proceedings 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