

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

Appeal 242/2018/SIC-I

Avelino Menino Furtado,
A-204 Allan Villa, Kalina Church Road,
Kalina, Santacruz(E),
Mumbai-400029.

.....Appellant

V/s

1)The Public Information Officer,
Uday Prabhu Dessai,
Dy. Collector and SDO,
Salcete, Maragao, Soughth Goa.

2)First Appellate Authority,
Agnelo A.J.Fernandes,
Additional Collector-I & Appellate authority,
South Goa Margao.

.....Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 08/10/2018
Decided on: 03/01/2019

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Avelino Menino Furtado herein by his application dated 11/06/2018 filed under section 6(1) of Right to Information Act, 2005 sought certain information on 3 points from the Respondent No. 1 Public Information Officer (PIO), office of the Deputy Collector and S.D.O. Salcete, Margao Goa as stated therein in the said application.
2. It is contention of the Appellant that the said application of his was responded by Respondent PIO vide their forwarding letter dated Nil bearing No.SDO/SAL/RTI/2018/9243 interalia informing him that the information sought by him does not come within the definition 2(f) of RTI Act, 2005 and thereby rejected the request of the appellant.
3. It is his further contention that he was not satisfied with the above reply of the PIO as the information as sought by him was not provided to him. As such, he preferred first appeal on 28/7/2018 before the Respondent

No. 2 Additional Collector-I, Salcete, Margao, South Goa interms of section 19(1) of RTI Act, 2005 being the first appellate authority and the Respondent No. 2 first appellate authority by an order dated 28/8/2018 dismissed his first appeal by upholding the say of PIO.

4. It is contention of the appellant that being aggrieved by action of both the Respondents he is forced to approach this commission by way of second appeal.
5. In this back ground the present appeal came to be filed before this commission on 3/10/2018 under section 19(3) of the RTI Act 2005 , there by seeking direction to PIO for furnishing him the said information, for invoking penal provisions and for seeking compensation .
6. Notice were issued to both the parties. In pursuant to which appellant was present in person. Respondent No. 1 PIO was represented by Shri Abhishek Naik On 30/11/2018 who filed/placed on record reply of PIO dated 30/11/2018. Thereafter neither the PIO nor his representative appeared before this commission. Respondent No.2 first appellate authority opted to remain absent.
7. Copy of the reply was furnished to the appellant on 3/1/2019
8. Arguments were advanced by the appellant.
9. It is the contention the appellant and as also stated in the memo of appeal is that the refusal to furnish the information sought for by him is contrary to the provision of RTI Act 2005 and that both the Respondents have failed in discharge of their duties by not complying with the provisions of RTI Act,2005. He further submitted that lots of his valuable time has been lost in pursuing his RTI application besides causing him mental agony . He further submitted that he has to travel down from Mumbai to Goa in pursuing his RTI application and the Respondents are overlooking difficulties faced by him. He further submitted that the information is still not provided and prayed for a direction for furnishing the same.

10. Respondent PIO vide his reply contended that the application of the appellant dated 11/6/2018 was received by their office on 13/6/2018 and on receipt of the same the application was marked to Deputy Collector and SDO –II, Salcete on 22/6/2018 since the matter was pertaining to the court of Deputy Collector and SDO –II , Salcete and in support he relied upon the Xerox copy of extract of Inward Register.
11. It was further contented by Respondent PIO in pursuant to his above request, the information was put up before him by the dealing hand Smt. Arya Velip which is inturn was submitted/send to appellant on 3/8/2018 by Register A.D. and in support of his contention he relied upon his reply , Xerox copy of postal document of having it posted and the letter dated 17/7/2017 addressed to the appellant by Shri Paresh Fal Dessai, Deputy Collector and SDO-II Margao Goa.
12. It was further contended that in respect to point No. 3(ii), the appellant was requested to carry out the inspection of the file and then to seek the required information.
13. It was further contended that information sought 3(iii) since did not come within the preview of section 2(f) of the RTI Act, the same was denied to the appellant.
14. It was further contended that there was no refusal of available information and if appellant still desires to carry out the inspection of the file, the same will be allowed and PIO even volunteered to furnish him the information available with respect of the said file free of cost.
15. I have scrutinized the record available in the file so also considered the submissions made by the parties.
16. The appellant vide his application dated 11/6/2018 at para 3(iii), appellant is seeking the reasons why certain things was done or not done or is required to be done in the sense of justification.
17. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011

Central Board of Secondary Education V/s Aditya Bandhopadhaya
wherein it has been held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act. **The RTI Act provides access to all information that is available and existing.** This is clear from the combined reading of section 3 and the definition of “information “and “right to information “under clause (f) and (j) of section 2 of the Act. **If the 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 .”**

18. Yet in another decision Hon’ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“ The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sense of justification because the citizen makes a requisition about information. Justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information”.

19. The Apex court in case of peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held

“under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order”.

20. Based on the ratio laid down by the above courts, I hold that the Information as sought by appellant at para 3(iii) does not come within the purview of definition of "information" as such the same cannot be ordered to be furnished.
21. Nevertheless since PIO has volunteered to give inspection of the concerned file and further to provide the available information, the appellant if so desires may visit the office of the Respondent PIO within 15 days from the receipt of this order for the purpose of carrying out the inspection of the said concerned file and for obtaining the documents.
22. The prayer which is in the nature of ordering inquiry cannot be granted as the present proceedings are registered as appeal. Inquiry can be conducted u/s 18(2) only in complaint cases.
23. For seeking compensation, the burden lies on the claimant to produce sufficient evidence. In the present proceedings there is no convincing evidence of the detriment or loss suffered by the appellant is produced on record by him as such compensation cannot be ordered.
24. With the above directions the proceedings stands 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