

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

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Appeal No. 274/2019/SIC-I

Mr. Antonio Jose Viegas,  
H.No. 184/2, Patnimorod,  
P.O. Chinchinim, Salcete-Goa.

....Appellant

V/s

1) The Public Information Officer,  
Shri Serafin Dias,  
Office of the Sub-Divisional Police Office,  
1<sup>st</sup> floor, Margao Town Police Station,  
Margao Goa.

2) First Appellate Authority,  
Office of the Superintendent of Police,  
1<sup>st</sup> floor, Margao Town Police Station,  
Margao Goa.

.....Respondents

**CORAM: Ms. Pratima K. Vernekar**, State Information Commissioner

Filed on: 21/08/2019  
Decided on: 28/10/2019

**ORDER**

1. The second appeal came to be filed by the appellant Shri Antonio Jose Viegas on 21/8/2019 against the Respondent No.1 Public Information Officer, of the office of the Sub-Division Police officer Margao-Goa and against Respondent no.2 first appellate authority under sub section (3) of section 19 of RTI Act, 2005.
2. The brief facts leading to the second appeal as put forth by the appellant are as under
  - (a) The appellant vide his application dated 3/4/2019 had sought for the information from Respondent no. 1 PIO on three points as listed therein pertaining to his complaint dated 21/1/2019 filed before the PIO of Cuncolim Police Station .
  - (b) The said information was sought by the appellant in exercise of his right u/s 6(1) of RTI Act, 2005.

- (c) It is the contention of the appellant that his above application filed in terms of sub section (1) of section (6) was responded by the respondent no 1 PIO on 3/5/2019 wherein information at point no. 1 was provided to him and at point no. 3 he was requested to take the inspection. At point No. 2, the appellant has sought for the certified copy of undertaking/declaration given in writing to the Cuncolim Police Station by the accused person Shri Joe Frank Laitao and other ,which was replied "*as not available*", by Respondent No. 1 PIO.
- (d) It is the contention of the appellant that he being not satisfied with the replied given to him at point no. 2 & 3 by Respondent PIO, filed 1<sup>st</sup> appeal on 16/5/2019 before the Respondent no. 2 Superintendent of Police, Margao-Goa being first appellate authority interms of section 19(1)of RTI Act,2005.
- (e) It is the contention of the appellant that the respondent no.2 first appellate authority vide order dated 1/7/2019 disposed his appeal by upholding the say of Respondent no. 1 PIO .
- (f) It is the contention of the appellant that he being aggrieved by the action of both the Respondent, had to approach this commission in his 2<sup>nd</sup> appeal as contemplated u/s 19(3) of RTI Act thereby seeking relief of directions to PIO to furnish the information and for invoking penal provisions against both the Respondents.
3. In this back ground, the appellant have come before this commission with the grounds raised in the memo of appeal.
4. The matter was listed on board and was taken up for hearing. In pursuant to notice of this Commission, the Appellant appeared in

person along with Shri Santan Afanso. The Respondent No.1 PIO Shri Serafin Dias was present. Respondent No.2 first appellate authority was represented by Shri Theron D'Costa, PI of Cuncolim Police Station. .

5. Reply alongwith the affidavit and enclosures was filed by Respondent no.1 PIO on 21/10/2019. Copies of the same was furnished to the appellant .
6. Application was also filed by the appellant on 21/10/2019 intimating his commission that sou moto inspection was carried out by him on 19/10/2019 and the undertaking given by the accused as sought by him at point no.2 is not available in the case paper conducted by the IO Shri Bharat Karat PSI of Cuncolim Police Station .
7. Arguments were canvassed by both the parties.
8. It is the contention of the appellant that incorrect and incomplete information was furnished to him. It was contended that Respondent PIO totally failed in providing the information sought at point No. 2 and that Respondent no. 2 FAA malafidely passed the judgment by an order dated 1/7/2019 as "the same is not maintained". It was further contended that both the Respondents have acted in an illegal manner thereby refusing to provide the information sought by him for the reasons best known to them and the refusal of the respondents not to entertain the request for information sought by him, has greatly prejudice his right provided under the RTI Act 2005. It was further submitted that direction are required to be given to the PI and IO of Cuncolim Police Station to register the FIR in a Police diary as per the police act and thereafter conduct the preliminary inquiry as per law and also direction to first appellate authority to initiate legal action against the IO Bhart Kharat as well as PI of Cuncolim Polcie Station who was incharge at the time as per the section 23 and 44 of the Police Act 1861

9. On the other hand Respondent PIO vide his reply and affidavit dated 21/10/2019 contended that he has furnished information to the appellant which was existing and was on the record of the office as on the date of reply to the RTI application of the appellant. It was further contended that, during the inquiry the appellant has given the handwritten letter addressed to the Police Inspection Cuncolim police station requesting him to withdraw the complaint as the accused person Joa Frank Leitio and others had visited his house and apologized and PIO relied upon said letter of withdrawal of the complainant and submitted that letter speaks for it selves. It was further contended that the Respondent No.2 first appellant authority has thoroughly dealt with all the aforesaid issues by giving personal hearing to both the parties and after having considering all the aspects, the respondent No.2 First appellate authority have correctly dismissed /disposed the first appeal.
10. I have scrutinized the record available in the file so also considered the submissions made by the both the parties.
11. Since the information at point no. 1 and 3 have been provided to the appellant as per his requirement, I find no further intervention of this commission is required for the purpose of furnishing the same.
12. In the contest of the nature of information that can be sought from PIO, the Hon'ble Supreme Court, in civil Appeal No. 6454 of 2011, Central Board of Secondary Education V/s Aditya Bandhopadhaya it has 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. But where the information sought is not a part of the records 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 non-available information and then furnish it to an applicant”.**

13. Yet in another decision , 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 ,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”.**

14. In letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma vs State Information Commissioner Bihar reported in AIR 2012 Pat 60 has held;

“In our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant.”

15. Thus from the ratio laid down by the Hon'ble Apex court, only the existing and available information in the form of data/records, the applicant can have accessed to such information.
16. The Delhi High Court in LPA No. 14/2008 Manohar Sing V/s N.T.P.C. has held;

"The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of which reply was sent and hence the directions to furnish the records if the same is not in existence cannot be given."
17. Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records**. PIO has clearly stated that whatever information was available and existing with the Public Authority have been furnished to the appellant. The same stand with respect to information at point No.2 was also taken by the PIO right from the inception and his reply u/s 7(1) of RTI Act clearly mentions that information at point No. 2 is not available.
18. By subscribing to the ratios laid down by the Hon'ble Apex Courts (a) in case of Aditya Bandhopadhay (supra) (b) People Union for Civil Liberties V/s Union of India(supra)and(c) Shekarchandra Verma vs State Information Commissioner Bihar(Supra),the information at point nO. 2, since is not in existence/not available in the records of the office of the public authority concerned herein, the same cannot be ordered to be furnished .
19. The facts of the present case does not warrant levy of penalty on the Respondents as it is seen that the application of the

appellant was responded well within stipulated time wherein the available information at point No. 1 and 3 was offered. There is no cogent and convincing evidence on records attributing malafides on the part of the Respondents. Hence in my considered opinion facts of the present case does not warrant levy on PIO

20. The relief sought at point (f) and (g) by the appellant cannot be considered as this Commission has no jurisdiction to entertain such grievances. The appellant if he so desire may approach the competent forum with his above grievances .
21. In view of the above discussion , I do not find merits in the appeal proceedings, hence the same is liable to be dismissed, which I hereby do.

Appeal disposed accordingly. 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