

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

Appeal No.54/2019/SIC-I

Mrs. Cleto Fernandes,
H.No.370/1, Virlossa, Penha de France,
Bardez Goa.

...Appellant

V/s

1) The Public Information Officer,
Civil Registrar-Cum-Sub Registrar (HQ).
of the State Registrar Cum
Head of Notary Services Panaji,
Panaji Goa.

.....Respondents

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

Filed on: 05/03/2019
Decided on: 04/06/2019

ORDER

1. By this appeal the Appellant assails the order dated 18/12/2018, passed by the State registrar-cum Head of Notary Services and First Appellate Authority (FAA), in first appeal No.16/2018, filed by the Appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Mrs. Cleto Fernandes vide her application dated 31/7/2018 had sought for information as listed at serial No. 1 to 3 therein from the Respondent PIO of the office of Civil Cum Sub- Registrar, Panaji-Goa in exercise of appellant's right under sub-section (1) of section 6 of Right To Information Act, 2005. Appellant intended to know the period for which Shri R. V. Bodke and Shri K.K. had been appointed as the Sub-Registrar of Bardez at Mapusa in the year 1969 and the names of the Sub-Registrar of Bardez at Mapusa as on 7/11/1969.

3. It is the contention of the appellant that she received a reply from Respondents PIO herein on 13/08/2018 interms of section 7(1) of RTI Act, there by informing her that their office is unable to provide the information since despite of thorough search of the record of the office, the information desired by the appellant herein is not available and held in their office records.
4. It is the contention of the appellant that she was not satisfied with the reply of PIO, hence she preferred first appeal on 10/9/2018 before the State registrar-cum Head of Notary Services being the first appellate authority interms of section 19(1) of the Right To Information Act, 2005.
5. It is the contention of the appellant that the First appellate authority by an order dated 18/12/2018 disposed her first appeal by upholding the say of PIO . No any further relief was granted to the appellant by the First appellate authority.
6. Being aggrieved by the order dated 18/12/2018 passed by First appellate authority and reasoning given by First appellate authority, the Appellant approached this Commission on 4/3/2019 on the ground that information still not provided by the Respondent PIO.
7. In this back ground the appellant has approached this commission with a prayer for directions to Respondent PIO for furnishing correct and complete information as sought by her vide her application dated 1/7/2018 and for invoking penal provisions .
8. The matter was taken upon board and listed for hearing. In pursuant of notice of this commission, appellant was represented by Advocate N. Purkhe and by Advocate S. Adelkar. Respondent PIO Mrs. Shubha Dessai was present.
9. Reply filed by PIO on 12/4/2019 and also Affidavit cum Reply on 6/5/2019. The copies of both the above replies were furnished to the Advocate for the appellant .

10. Arguments were advanced by both the parties.
11. Advocate for the appellant submitted that the findings of the first appellate authority that the intention of the PIO cannot be doubted as the PIO has offered the appellant to inspect the records personally to verify the availability of the records, is fallacious findings and contrary to the ambit and scope of Right to information Act . It was further submitted that the conduct of the respondent PIO and the first appellate authority clearly demonstrate that there is absolutely no application of mind and orders passed by both the authorities are against the preambles of the RTI Act, 2005. It was further submitted that if the information sought is not exempted under section 8(1)(e) of the act the party would be entitled for the information. It was further contended that it is inconceivable that the public office such as Civil registrar cum Sub- registrar would not have the records of the name and the period of different sub- registrars officiating at the relevant time, as contained in the application.
12. It is the contention of the Respondent PIO that she had made bonafide and sincere efforts to search and supply the said information sought by the appellant. However the said information was not found available in the records of the said public authority and also not held in their records and therefore she was unable to supply desire information to the appellant. She further contended that she doesn't have any personal grudge or malafide against the appellant so as to suppress the same information from the appellant. She further contended that she had given offer to the appellant of inspection but she did not avail the same. She further contended that similar application seeking same information as sought by the appellant herein was also made by the one Mrs. Priscilla Fernandes, Britona, Bardez-Goa to the Civil Registrar Cum-Sub Registrar of Bardez and the said application

was transferred to the PIO of head quarters by them u/s 6(3) of RTI Act since the same information not available with the office of Civil Registrar Cum-Sub Registrar of Bardez as such she did not transferred the present application of the appellant to the PIO of Civil Registrar Cum-Sub Registrar of Bardez. She further contended that the PIO is bound to supply the information to the appellant which are available with the PIO and not otherwise.

13. I have scrutinized the record available in the file so also considered the submissions made by the both the parties.
14. 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 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. A public authority is also not required to furnish information which required drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice to an applicant. "

15. 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 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".

16. 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**. In the present case the appellant vide her application dated 31/7/2018 has sought for the information pertaining to year 1969. In other words the information sought was of 49 years old. PIO has clearly stated and affirmed that the information is not available in their office records. The same stand was also taken by the Respondent PIO in the reply given interms of section 7(1)of RTI Act. So also before the first appellate authority.

17. The Delhi High Court in L.P.A. No.14/2008, Manohar Singh 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."

18. Hence by subscribing to the ratios laid down by Hon'ble Apex court, and various High Courts, as the documents/information sought since are not available and not existing in the records of the public authority, no any directions can be issued for furnishing non existing information.
19. The Hon'ble Gujarat High Court, in case of ***Pankesh Manubhai Patel V/S Chief Information Commissioner and others in Special Civil Application no.16480 of 2014***, based on the judgment of the Apex Court, while upholding the order of the Chief Information Commission, has observed :

"5.The commission has recorded reasons in para-4, which reads as under.

"4. We agree with the respondents that collecting this information would disproportionately divert their resources from the day to day work. The appellant has not established any larger public interest, which would warrant a directive to respondents to collect information, sought by him, even at the cost of diverting their resources from their day to day work. In the above context, we also note the following observations of the Supreme Court in central Board of Secondary Education and anr. Vs Aditya Bandopadhyay and ors."

"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities

and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties."

Having considered the relationship between the petitioner and the respondent authorities and the information asked for by the petitioner, this court finds that, the view taken by the commission in the facts of this case does not call for any interference. Further the commission has noted the observations of the Hon'ble Supreme Court of India, which would apply with full force in the facts of this case. This court does not see any infirmity in the impugned decision of the commission. This petition therefore needs to be dismissed."

20. In the present case the information sought is 49 years old. Appellant has not made out any case involving public interest in seeking information which would warrant a direction to the respondent authority to search the information sought at the cost of the day to day work of the authority.
21. The application of the appellant was responded well within stipulated time as contemplated u/s 7 of RTI Act, 2005. The first appellate authority who is the Head of the Department has also held the information is not available in their office records . As such I do not find any illegality or irregularity in the reply given in the terms of section 7(1) of RTI Act. Hence the facts of the present case doesn't warrant levy of penalty on respondent.
22. In the above given circumstances and as discussed above the reliefs sought by the appellant for direction to Respondent PIO for providing him information sought by him vide his application dated 31/7/2018 cannot be granted .
23. This commission sought clarification pertaining to the appointing and controlling authority of Civil Registrar Cum-Sub Registrar for the State of Goa to which the respondent PIO replied that the Department of Law is appointing authority, who does the appointment of Civil Registrar Cum-Sub Registrars for the State of Goa. Hence in my opinion ends of justice will meet with following directions.

Order

The respondent PIO is hereby directed to transfer the RTI application dated 31/7/2018 filed by the appellant to the PIO of the Department of Law in terms of section 6(3) of RTI Act, 2005 within 5 days from the date of the receipt of the order and the PIO of the Law department is hereby directed to deal the same in accordance with law.

With above directions Appeal 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

