

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

**Appeal No.79/2019/SIC-I**

Ms.Nisha Pandey,  
F-3/F-4, Techno Cidade Complex,  
Chogam Road, Porvorim, Goa.  
V/s

....Appellant

1) State Public Information Officer,  
Section Officer,  
Home department(General),  
Secretariat Porvorim- Goa.

2) First Appellate Authority,  
Additional Secretary Home,  
Secretariat Porvorim-Goa.

.....Respondents

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

Filed on: 27/03/2019  
Decided on: 10/05/2019

**ORDER**

1. By this appeal the Appellant assails the order dated 14/1/2019, passed by the Respondent No. 2 First Appellate Authority (FAA), in first appeal No.27/2018, filed by the Appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Ms. Nisha Pandey vide her application dated 16/10/2018 had sought for information on two points viz-viz (i) attested copy of the reply dated 4/8/2017 addressed to Smt. Neetal Amonkar, Under Secretary , Home by James T. Edatt, proprietor of James Security Services given to the letter bearing No. 5/24/2017-HD(G) PSA/complaints /2067 dated 20/7/2017 and (ii) attested copy of rejection order of PSARA license to James Security services. The said information was sought from the Respondent No. 1 PIO of Department of Home, Porvorim- Goa, in exercise of

appellant's right under sub-section (1) of section 6 of Right To Information Act, 2005.

3. It is the contention of the appellant that he received a reply from Respondents PIO herein on 2/11/2018 interms of section 7(1) of RTI Act there by intimating her to collect the copies of documents after effecting payment of Rs. 12/-. It is her further contention that vide said letter it was informed to collect the copies of information at point no.(i) and whereas at point No.(ii) it was informed that "the decision is awaited".
4. It is the contention of the appellant that she was not satisfied with the reply of PIO, and since no complete information was furnished to her, hence she preferred first appeal on 6/12/2018 before the Respondent No. 2 Additional Secretary (Home), Secretariat, Porvorim-Goa 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 respondent No. 2 First appellate authority by an order dated 14/1/2019 dismissed 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 14/1/2019 passed by Respondent No. 2 First appellate authority and reasoning given by First appellate authority, the Appellant approached this Commission on 27/3/2019 in this second appeal as contemplated u/s 19(3) of RTI Act on the grounds raised in the memo of appeal and with the contention that complete 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 16/10/2018 and for invoking penal provisions including compensation.

8. The matter was taken upon board and listed for hearing. In pursuant of notice of this commission, appellant was represented by Shri Kamlakant Chaturvedi. Respondent PIO Shri Umesh Desai was Present. Respondent No.2 First appellate authority opted to remain absent neither filed any say to the proceedings.
9. Reply/written statement filed by respondent PIO on 16/4/2019 so also placed on record his affidavit on 10/5/2019.
10. Arguments were advanced by representative of appellant and APIO Smt. Sabina Monteiro submitted to consider reply and affidavit of PIO as their argument.
11. During the proceedings the representative of the appellant submitted that he is satisfied with the information furnished to him at point No. 1 and his grievance is only in respect to point No. 2. The representative of the appellant contended that no complete information was provided neither inspection of required and connected files were given to the appellant by Respondents. It was further submitted that the respondent No. 1 Public Information officer has failed to appreciate relevant provisions of law and has such flouted the RTI Act in letter and spirit and tactfully has not provide the information with the intention to hoodwink the appellant. It was further submitted that 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.

12. It is the contention of the Respondent PIO that vide letter dated 2/11/2018 he had informed the appellant to collect the available information after making the payments and the available information at point No. (i) was furnished to the appellant through her representative Shri Manjit Singh on 21/12/2018 after producing the receipt on 21/12/2018. It was further submitted that the letter dated 6/8/2017 received from the proprietor of James security services was placed before controlling authority for decision and since no decision was taken in the matter it was replied as "decision awaited ". It was further submitted that the question of providing information at point No.2 did not arise since the licence issued by the authority vide letter dated 23/6/2016 is already in force. Vide affidavit, the PIO affirmed that licence issued to James Security is still in force and no order of rejection/cancellation of the cancellation of licence as sought by the appellant at point (b) has been passed by competent authority. It was further submitted that respondent No. 2 first appellate authority has also held the information at point No. (ii) since not available same cannot be granted. It was further submitted that he being PIO cannot create the information and therefore the information is not available, the same has to be informed to the information seeker which he has intimated to the appellant vide reply interms of section 7of RTI Act also in the reply dated 11/1/2019 filed before Respondent No. 2 first appellate authority .
13. In the nutshell it is the case of respondent PIO that the information/documents sought by the appellant at point no. 1 have been provided and the information at point no. 2 since not available on the record of public authority the same could not be furnished to the appellant. The same fact has been also affirmed by the Respondent PIO by way of affidavit

14. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .

15. 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 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.** 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. ”

16. 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”.

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.**
18. From the order of first appellate authority it reveals that the Respondent PIO before the first appellate authority had submitted that the information sought i.e copy of rejection of order of PSARA license to James Security services is not available in their office records. Before this commission also the respondent PIO contended that the license issued by authority vide letter dated 23//6/2016 is already in force and till date competent authority has not taken any decision in respect of complaint and no order of rejection/cancellation of said licence as sought by the appellant at point (b) has been passed by competent authority .
19. The Hon’ble 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. **“If there is no documents available, there is no question of supplying/furnishing such document to the appellant. The learned Single Judge has appreciated the said fact and held that when no document is available, there is no question of supplying such document. There could be**

**no direction for furnishing of any such information.”**

20. Hence by subscribing to the ratios laid down by Hon'ble Apex court, and various High Courts, as the documents sought at point No. 2, 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.
21. The records show that the RTI application of the appellant dated 16/10/2018 was replied on 2/11/2018 well within stipulated time of 30 days. The PIO has shown bonafides in providing information at point no. 1 at initial stage itself. There is no cogent and convincing evidence on records showing that the said documents at point No. 2 is available and despite of same, PIO failed to furnish the documents. As such in my opinion, the facts of the present case doesn't warrant levy of penalty on the PIO.
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 her vide his application dated 16/10/2018 and penalty cannot be granted.

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