

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

Appeal No.16/2020/SIC-I

Subhashchandrashekhar S. Desai
R/o H.No. 521, Dongorim,
Navelim, Margao,
Salcete-Goa.

....Appellant

V/s

1. The Public Information Officer,
Section Officer (Home)/PIO,
Government of Goa,
Secretariat –Porvorim.

2. The First Appellate Authority,
Addl. Secretary (Home), Secretariat,
Porvorim-Goa.

3. The Secretary/Department of Sainik Welfare ,
Collectorate Building,
Panaji-Goa.

.....Respondents

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

Filed on: 10/01/2020
Decided on:20/02/2020

ORDER

1. The brief facts leading to the second appeal as putforth by the Appellant Shri Subhashchandrashekhar S. Desai are that in exercise of his right u/s 6(1), he vide his Application dated 13/08/2019 had sought for the following information:-

a) The copy of writ petition No. 344/2000 filed by his father, Late Shri Shrikant M. Desai, Ex-employee of Rajya Sainik Welfare Panaji V/s State of Goa through Chief Secretary in the High Court of Judicature at Bombay Goa Bench.

b) Copy of the Misc. Civil application No. 379 of 2001 in writ petition No. 344/2000, the parties being same as at in para 1 above

2. It is contention of the appellant that he received reply to his above application from the Respondent no.1 PIO of the Department of Home (General) on 20/9/2019 interalia informing him that the information sought by him is not available in the office records and hence the information cannot be provided .
3. It is the contention of the appellant that he being aggrieved by such an response of Respondent no. 1 PIO and deeming the same as rejection, he filed first appeal on 16/10/2019 to Respondent no. 2 Additional Secretary(Home department) being first appellate authority (FAA)as contemplated u/s 19(1) of Right to Information Act
4. It is the contention of the appellant that the Respondent no. 2 first appellate authority after hearing both the parties, vide order dated 5/12/2019 held that no direction can be issued to PIO to furnish the information which is not available in the records of Department.
5. It is the contention of the appellant that he being aggrieved by the said action of both the Respondents' and as no information furnished to him, he has been forced to approached this commission in his second appeal.
6. In this background the present appeal came to be filed by the appellant on 8/1/2020 against the Respondents on the grounds raised in the memo of appeal with a contention that the information still not furnished and thereby seeking relief of direction to respondent PIO to furnish information as sought by him free of cost

7. In pursuant to notice of this commission, Appellant was represented by Advocate K. B. Surjuse. Respondent No. 1 PIO Shri Umesh Desai was present. Respondent No. 2 FAA opted to remain absent . Respondent No. 3 was represented by Shri Raja Kirloskar
8. Affidavit was filed by Respondent No. 1 PIO Shri Umesh Desai and by Respondent no. 3 on 10/2/2020 respectively alongwith enclosures. The copies of the affidavit filed by Respondents No. 1 and No. 3 were furnished to the Advocate for appellant.
9. Arguments were canvassed by both the parties .
10. It is the contention of the Advocate for appellant that the secretary of the Department of Sainik Welfare, Panaji vide their letter No. DSW/ 8088/03-04dated 10/2/2004 had forwarded the concerned documents to the office of Respondent NO.1 PIO for further necessary action as such it is his contention that the said information ought to have been furnished by Respondent no. 1 PIO to the appellant . It was further contended that the Respondent no. 1 PIO and Respondent no. 2 FAA taking the shelter of plea that at the relevant time no handing over/taking over office records was done does not hold good. He further submitted that the information sought by the appellant is only based on the records which Respondent ought to have maintained. He further submitted that the respondent could have trace the diary or inward /outward register or file register in their office which contains the entries of the correspondence received from the Secretary of sainik welfare Department matter in the year 2004. It was further submitted that the respondent No. 1 could have also contacted the incharge officials who works in the Department of Sainik welfare

and could have obtained clue in detecting of such files papers etc. It was further submitted that PIO could have checked the pay bill register or attendance register of the Home Department staff to find out who was the team of the officials in the year 2004 whom this works were assigned and also could have contacted Under Secretary or then section officer posted in the year 2004 in the Home Department to find out the name of official dealing with the work of Sainik welfare department to know about the requisite information so as to locate the file. He further submitted that the PIO could have checked with Sainik welfare office at Panajim to find out file Number of the Home Department through which the correspondence on this subject was exchanged. It was further submitted that no such steps were taken by the PIO. It was further submitted that reply filed by PIO did not show what was the efforts which they have actually made to trace out the information. It was further submitted that as per the provision of section 8(3) of the RTI Act, cast an obligation on the part of PIO to maintain the records minimum for 20 years so also section 4(1)(a) requires every public authority to maintain all records duly catalogued and index in manner and the form which facilitates the right to information under the said Act. It was further submitted that probably the PIO did not want to part with the documents because the Home Department being the administrative Department of Sainik welfare office is a party to writ petition in question. Therefore, taking shelter of the plea that handed over and taking over is not done is absolute outrageous. It was further submitted that the file consisting of the records sought by the appellant can be available in the record room of the secretariat. However no attempts appears to be have been made by the respondent to find out the records. The Advocate for appellant also relied upon citation reported in AIR 2013

Bombay 62 in the matter of Kausa Education & Charitable trust V/s Maharashtra Information Commission and placed on record Xerox copies of extract of chapter 09 of swamis manual

11. On the other hand the respondent no.1 PIO submitted that on receipt of the application by him, it was marked to senior Assistant/APIO of Home department, Secretariat who was dealing with the said matter of Sainik Welfare and the custodian of the files to furnish the available maintained records to him and the dealing hand informed him that the said information is not available on office records . It was further submitted that inquiries were also made with then dealing hand /entry/dispatch clerks about the disposal of the said Dak /files however the said documents /files pertaining to year 2004 were not traceable in the Department due to long spent of time. It was further submitted that during this period almost four dealing hand were changed who were dealing with the said matter pertaining to Department of Sainik Welfare and moreover at the relevant time there was no proper handling over and taking over the records by the concerned dealing hand . It was further submitted that upon inquiries with incharge of record room he learned that the record room does not have entry of the old records disposed by the Home Department. It was further submitted that the information sought by the appellant could not be provided to the appellant as no records pertaining to the information sought was available in office records despite of possible efforts made by him to trace out the above correspondence with the Department and in support of his case he relied upon letter dated 5/11/2019 addressed to the Secretary of Sainik Welfare by him the reply of Secretary of Department of Sainik Welfare dated 12/11/2019 , letter dated 10/2/2004 addressed to the Under Secretary (Home)by

Secretary of Department of Sainik Welfare, reply of Respondent PIO dated 20/9/2019 addressed to the appellant herein and the letter dated 15/11/2019 addressed to the entry clerk of Home Department and the endorsement made on the said reply by the Jr. Assistant on 18/11/2019 informing PIO that entry book of month of January and February 2004 is not available.

12. Respondent no. 3 vide his affidavit submitted that Shri Srikant M. Desai was working in the Department of Sainik Welfare and retired on supernumeration on 31/1/2002 and had filed writ petition no. 344 of 2000 at Bombay High Court at Goa regarding pay fixation which was forwarded to Government of India, Ministry of Personnel, New Delhi by High Court of Bombay at Goa for examination and the same was returned back by government of India, Ministry of Personnel, New Delhi to their Department vide their letter NO. J/WP-344-00/3966/2003 dated 29/9/2003 and which was in turn forwarded to Under Secretary, (Home), Home department, Secretariat Goa in original being the administrative Department for their necessary action vide their Department letter No. DSW/8088/03-04 dated 10/2/2004. It was further submitted that there are no documents pertaining to writ petition No. 344 of 2000 are held with or available in their Department.
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 , 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 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. Yet in another decision reported in AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009; Shekarchandra Verma vs State Information Commissioner Bihar 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.”

17. Hence according to above judgment of the Apex court, and other Hon'ble High Courts the PIO is duty bound to furnish the information **as available and as exist in the office records.**

18. In the nutshell it is the case of respondent No. 1 PIO and that of Respondent No. 3 that the information/documents sought by the appellant, 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 No. 1 PIO and respondent NO. 3 by way of Affidavit .

19. Be that as it may be, the Hon'ble Gujrat High Court *in Special Civil Application no.16480 of 2014*, in matter of *Pankesh Manubhai Patel V/S Chief Information Commissioner and others*, 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 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. Considering the above ratios laid down in matter of Pankesh Patel(Supra) by Hon'ble High Court of Gujarat such an excise of conducting search of the old records cannot be ordered.

21. 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."

22. In the present case the Respondent No.1 PIO and Respondent No. 3 has clearly stated and submitted that information sought by the appellant is not available in the records of their office. Hence by subscribing to the ratios laid down by above courts ,

no any direction can be issued to Respondent PIO to provide the information which is not available and existing in a records of a public authority.

23. In the present case it appears that the public authority concerned herein was not serious enough in properly maintaining and preserving the records. The failure on the part of the public authority concerned herein i.e Department of Home in not properly maintaining and preserving the records has resulted into non availability of the information. Hence the public authorities concerned herein are hereby directed hence forth to maintain and preserve the records as per the prevailing laws and procedures applicable to them.
24. With the above directions the appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa