

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

Appeal No.305/2019/SIC-I

Shri Bhavesh Kalia
R/o B/803, Krishna Vasant Sagar,
Complex, Thakur Village, Kandivati (E),
Mumbai 400101 .

.....Appellant.

V/s.

1. Public Information Officer ,
Joint Director of Accounts,
Directorate of Small Savings & Lotteries,
Serra Building, Altinho Panaji Goa.

2. First Appellate authority,
Director , Directorate of Small Savings & Lotteries,
Serra Building, Altinho Panaji Goa.

3. Summit Online Trade Solutions Pvt.LTD.,
G-1,A wing, Austin Plaza,Altinho,
Panaji-Goa .

.....Respondent

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

Filed on: 15/10/2019
Decided on:22/01/2020

ORDER

1. By this appeal the Appellant assails the order dated 1/8/2019, passed by the Respondent No. 2 first appellate authority of Directorate of Small savings and Lotteries, filed by the Appellant herein thereby dismissing his appeal by upholding the contention raised by the Respondent NO. 1 PIO and by Respondent no. 3 Summit online Trade Solution Pvt. Ltd.
2. The brief facts which arises in the present appeal are that the Appellant Shri Bhavesh Kalia vide his application dated 18/1/2019 with a subject " copy of Information in details of Goa State Lottery tendering from January 2010 till date with all terms and conditions" had sought for certain information on two points namely (a) Name of the company with all related documents,

terms and conditions who is running lottery at present in Goa State and (b) copy of the extension agreements executed between Government of Goa and company/ Market agent who is running the lottery at present in Goa State. The said information was sought from the PIO of the office of Directorate of Small Savings and Lotteries at Altinho, Panajim- Goa in exercise of appellant's right under sub-section (1) of section 6 of Right to Information Act, 2005.

3. It is contention of the appellant that he received a reply from Respondents no. 1 PIO herein on 4/2/2019 in terms of section 7(1) of RTI Act thereby providing him only the name of company and the other information sought by him was denied to him in terms of section 8(1)(d) of RTI Act, 2005.
4. It is the contention of the appellant that he was not satisfied with the reply of respondent NO. 1 PIO and also aggrieved by the conduct of PIO, hence he preferred first appeal on 11/2/2019 before the Respondent No.2 first appellate authority of Directorate of Small savings and Lotteries in terms of section 19(1) of the Right To Information Act, 2005, however the respondent no.2 neither conducted hearing neither disposed his first appeal within stipulated time as such he was constrained to file second appeal before the Information Commission.
5. It is the contention of the appellant that the undersigned commission conducted several hearings however, instead of decided the application on merits, vide order dated 26/6/2019 remanded the matter back to respondent No. 2 with a direction to hear and decide the first appeal filed by the appellant within 30 days in accordance with law .
6. It is the contention of the appellant that in pursuant to direction of this commission Respondent No.2 conducted a personal hearing and the Respondent no. 2 by an order dated 1/8/2019 dismissed his first appeal by upholding the say of PIO.

7. Being aggrieved with the order dated 1/8/2019 passed by First appellate authority and reasoning given by First appellate authority, the Appellant approached this Commission on 11/10/2019 on the grounds raised in a memo of appeal.
8. In this back ground the appellant has approached this commission interms of section 19(3) with a prayer for quashing and setting aside the judgment and decree dated 1/8/2019 passed by the respondent no.2 first appellate authority and for direction to Respondent PIO for furnishing complete information as sought by him in his application dated 18/1/2019, and for invoking penal provisions against respondent no. 1 interms of section 20 of the RTI Act.
9. In pursuant to the notice of this commission, appellant despite of due service of notice, opted to remain absent. Respondent No.1 PIO Shri Rajesh Mahale appeared. Respondent No. 2 Shri Santosh Kundaikar were present . Respondent no. 3 was represented by Shri Yogesh Chawan.
10. Reply filed by Respondent no. 1 and Respondent no.2 on 13/12/2019 respectively and by Respondent No. 3 on 27/12/2019 there by resisting the appeal. The copies of above reply could not be furnish to the appellant on account of his absence.
11. All the three Respondent's submitted to consider their reply as their arguments. Opportunity was granted to the appellant to substantiate his case. However since the appellant opted to remain absent, this commission had no any other option then to decide the matter based on the records available in the file.
12. It is the contention of the appellant as stated in the memo of appeal is that the information sought by him ought to be necessarily in a public domain as the same relates to the government largess and although the agreement is signed with

Respondent No. 3 who is purposely a third party, the information deals with the transaction entered into with the Government. It was further contended that Respondent no.2 ought to have considered that the transaction involving the state where the public exchequer is directly involved cannot be considered as a "Commercial Trade Secret" to be exempted under provision of the said Act.

13. On the other hand respondent no. 1 PIO contended that interest of the State Government was of paramount importance and as there was no larger public interest foreseen in the RTI application, the information sought was not provided as per the provision of RTI Act. It was further contended that lottery activity is very competitive activity run as a commercial trade by engaging a marketing agency by signing a contract wherein a few states like West Bengal, Goa, Maharashtra, Kerala, Punjab and North East States are running the State lotteries by appointing similar marketing Agents in a very compact market and there is stiff competition amongst the states to run the lottery activity and as the lottery market is very restricted market, it was therefore necessary to protect the interest of the State Government as the revenue generated out of the lottery activity is specifically used for social welfare schemes and divulging any information under the agreement and other related documents would have impacted the revenue generation through the sale of the lottery tickets as the same could have been used by the other States/Marketing Agency which would have been detrimental to the interest of Goa State. It was further contended that the respondent no. 2 has also reiterated that the copy of the agreement sought by the appellant falls under section 8(1)(d) of RTI Act and the disclosure of the agreement would harm the competitive position and commercial confidential of the business of the third party. It was further submitted that the appellant has failed to establish the larger public interest involved in seeking copy of agreement .

14. The respondent no. 2 vide his reply contended that he had decided the first appeal in accordance with law with passing a speaking order.
15. The respondent no. 3 vide his reply submitted that Mrs. Sumit Online Trade Solution Pvt. Ltd have been appointed as marketing agent in the year 2010 , through open tender process, by the Government of Goa for marketing of Goa State lottery tickets . The agreement for a period of five years and thereafter, keeping in view the performance of marketing, the terms of agreement was extended further on year-to-year basis. It was further submitted that the information sought by the applicant is also exempted from the disclosure under clause 8(j) of the RTI Act as the information sought by the applicant is personal information of the company and disclosure of the same have no relation to any public activity or interest. It was further contended that the false complaint has started poring after the enter of the West Bengal Market since September 2018. Hence , it is their contention that there is no public interest but business revelry. It was further submitted that all the audits of Goa State lotteries has already been done by CAG, internal auditor of department and other agency of the Government of India and there are no discrepancies in the conduct of Goa State lotteries. It was further submitted that in all states where the lotteries tickets are being sold, there are state authorities to deal with malpractices in lottery operations. It was further submitted that disclosure of commercial and other terms may hamper there business prospects and as such they are objecting to release of the said information.
16. I have scrutinise the records available in the files .
17. The respondent No. 1 and respondent no. 3 have contended that the information sought comes within the purview of section

8(1)(d) and 8(1) (j) of RTI Act which have been upheld by respondent no.2.

18. It would thus been, seen the information sought by the appellant if found justified in public interest , the exemption u/s 8(1)(d) and 8(1)(j) would be lifted .
19. The Hon'ble High Court of Delhi at new Delhi (i) in writ petition (C) No. 677 of 2013 and CM No. 1293 of 2013 Union of India V/s Anita Singh and (ii) in w.P.(C)1243/2011 and CM No. 2618 of 2011 UPSC V/s R.K. Jain has held as under

“whenever the queries applicant wishes to seek information the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest the queries should in the application, (moved u/s 6 of the Act)disclose/plead the special circumstances, so that the PIO concerned can apply his mind to it , and ,in case he decide to issue notice to the concerned third party u/s 11 of the act, the third party able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether or not, the special circumstance exist in a given case.”

20. On the perusal of the application filed by the appellant in terms of section 6(1)of RTI Act dated 18/1/2019 no special circumstances warranting such disclosures were indicated in the said application by the appellant. Such an averment and pleadings were not made by him in the memo of appeal filed before this Commission. So also on perusal of the judgment passed by the first appellate authority one could gather that the appellant had not made any submission to establish the larger public interest involved in soughting the copy of agreement.

21. The appellant also did not remain present before this commission to establish and/or to substantiate that he had sought a said information in a larger public interest. The averments made by the respondents either in the replies given interm of section 7(1) of RTI Act or even in the replies filed before this commission have gone undisputed and unrebutted. No any circumstances have been incorporated by the appellant in seeking the said information. It is also not the case of the appellant that there are some irregularities or illegalities in awarding such tender to respondent no. 3 or there is a loss to public exchequer or terms and conditions of the agreement were not in accordance with law.
22. From the undisputed facts and circumstances narrated and incorporated by respondent No. 1 and 3 which has been upheld by respondent No. 2 First Appellate Authority, it appears that the agreement executed by Respondent no. 3 with the Government of Goa, for sale of Goa State Lotteries, may contain various commercial terms and condition for marketing and as such disclosure of the agreement or any other terms related to marketing stragery etc cannot be done unless the larger public interest warrant the disclosure of such information .
23. In the light of the above discussion, since the appellant failed to plead the circumstances by way of cogent and convincing evidence and having failed to established that it was sought in larger public interest, as such the basic protection afforded by virtue of exemptions enacted under section 8(1)(d) cannot be lifted or disturbed. Hence the relief sought at prayer (a) cannot be granted.
24. No cogent and convincing evidence produced on record by the appellant attributing malafides on the part of the Respondent PIO. On the contrary the records reveals that the application of

the appellant was responded well within stipulated time of 30 days so also the first appellate authority upheld the decision of the respondent. As such the facts of the present case also doesn't warrant the levy of penalty on Respondent PIO. Hence the relief sought at prayer (b) and (c) also cannot be granted.

25. In view of discussion above, I do not find merits in the appeal proceedings and hence liable to be dismissed, which I hereby do.

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