

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner,

Appeal No.350/2019/CIC

Shri Sachin Kalokhe,
Hno.268, Penha de Franca,
Britona, Bardez-Goa.
403101

..... Appellant

V/s

- 1) Civil Registrar cum Sub Registrar,
(HQ), PIO, O/o The State Registrar- cum -
Head of Notary Services,
7th Flr Shramshakti Bhavan,
Patto centre Panaji Goa.
- 2) Shri Raghuvir D. Bagkar,
Hno.896 Bambordem,
Moirá Bardez -Goa.
- 3) State Registrar cum Head of Notary Services,
First Appellate Authority,
The State Registrar cum Head of Notary Services,
7th flr Shramshakti Bhavan,
Patto Centre Panaji-Goa. Respondent

Filed On:16/12/2019

Disposed On:06/02/2020

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 09/09/2019, filed u/s 6(1) of the Right to Information Act 2005 (Act for short) sought from respondent no.1 certified copy of memorandum of understanding dated 04/06/2015 executed before respondent no.2.
- b) On 12/09/2019, the said application was forwarded to respondent no.2 by the respondent no.1. According to appellant such transfer is wrong as the respondent no.2 is private person. According to appellant as the information as sought, was not furnished he filed first appeal to the respondent no.2, being the First Appellate Authority (FAA).

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- c) The FAA joined respondent no.2 as party to first appeal by order, dated 30/10/2019 and disposed the said appeal by holding that appellant is satisfied with information provided. The appellant is aggrieved by said order and has therefore landed before this commission in this second appeal u/s 19(3) of the act.
- d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 24/01/2020 filed her reply to the appeal. It is the contention of PIO herein, inter alia, is that under the Notaries Act and the concerned Rules the respondent authority have only powers to inspect and monitor functioning of the notaries. That the information sought is not held in records and hence was not furnished. It is according to PIO that on 30/10/2019 the respondent no.2 filed copy of register maintained and nos.434 to 436 dated 04/06/2015 and has stated that the respondent no.2 does not maintain the copies of memorandum.
- e) The appellant filed his written submissions. According to him the respondent no.2 is bound to maintain the records i.e. the memorandum of understanding. In support of his claim appellant has relied upon the case of *J. G. Hegde v/s R. D. Shukla* to canvas that the High Court has issued specific directions that notaries to maintain registers and records.

2) FINDINGS:

- a) Perused the records and considered the pleadings and submissions of the parties. By his application dated, 09/09/2019 filed u/s 6(1) of the act, the appellant has sought for the certified copy of the memorandum of understanding dated 04/07/2015 executed between

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Smt Rekha D. Kalokhe and others and registered before the respondent no.2 as a notary.

b)Undisputedly the notary office under the notary act 1952 is not a public authority as defined u/s 2(h) of the Act. However such a notary though a private entity is appointed by the respondent authority for performing certain acts under the Notaries act 1952 and rules framed thereunder. The control over appointment and conduct of the notary lies on the respondent authority. The respondent authority in furtherance of such rights are required to seek filing certain records before it.

c) From the above it is clearly noted that just being a private body does not grant blanket immunity to the notaries from disclosure of information. However such disclosure is restricted to the information, which can be accessed by the respondent public authority under the Notaries Act.

d)Considering the above prerequisites the point which would be required to be dealt with in the present proceedings is :

(i) Whether the respondent authority can access the documents executed before notary under the notaries act 1952.

e) The functions of notary are governed under the notaries rules 1956, the law grants powers to appoint notaries. Under rule (14) the notaries are required to file annual returns in form XIV to the Government. Beside submission of form XIV, the rules does not prescribe any papers to be filed before the respondent Authority. I am not disputing the contention of appellant that there are powers granted for inspection and under rule 11(1) the notaries are required to maintain register in form XV.

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f) Thus considering the provisions of the act, the notary though a private entity is liable to file only form XIV with the respondent authority and to maintain form XV. Nowhere the rules require the notaries to retain or file the copies of documents executed.

g) Section (2)(f) of the act, defines information as under:

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
g).....

(emphasis supplied)

h) In the above circumstances, a copy of memorandum of understanding being not accessible to the respondent authority under the Notaries Act or Rules or any other law it cannot be held as information in terms of section 2(f) of the act. Consequently the respondent authority cannot be directed to provide such non accessible records as information as there is no obligation over notaries to file such copy before the respondent Authority.

i) I have perused the judgment in the case of *J.G Hegde v/s R. D. Shukla* as relied upon by the appellant. The direction as issued by the High Court therein are to carry out inspection to ensure that the notaries maintain the register and records provided in Notaries act 1952 and Notaries rule

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1956. There are no directions to maintain any copies of documents executed or file such copies to the Government. In such situation the said citation cannot be applied to the case in hand.

j) Considering the above position of law and the mandate under the Notaries rules 1956, I find that the copies of memorandum entered into private parties and attested before notary is not dissimiable information under the act. The appeal thus has no merits and the same is disposed with following:

O R D E R

The appeal is dismissed. Order to be communicated to parties.

Proceeding closed.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji -Goa