

GOA STATE INFORMATION COMMISSION
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Appeal No.303/2019/SIC-II

Lindo Furtado,
R/o. H. No. 51,
Copelwaddo, Sernabatim,
Salcete-Goa

.....Appellant

V/S

1.Public Information Officer,
O/o SDO Margao Police,
Margao Goa. 403 601.

2.First Appellate Authority,
O/o Supt. of Police,
South Goa, Margao,
Salcete-Goa. 403 601

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 10/10/2019

Decided on: 12/04/2021

FACTS IN BRIEF

- a) The Appellant herein has filed the above appeal on 10/10/2019 being aggrieved by the order of Shr. A.K. Gawas, IPS, First Appellate Authority (FAA) dated 20/09/2019 in Appeal No. 28/2019.
- b) The facts as pleaded by the Appellant are that he filed an application dated 03/06/2019 to PIO of the Respondent authority i.e. Superintendent of Police, South Goa District, under Sec 6(1) of the RTI Act and sought information on 10 points.
- c) Appellant has also sought inspection of files and certified copies of the documents, copy of the statement obtained during

interrogation, copy of forensic science laboratory reports / handwriting expert report, opinion of Director of Prosecution etc. According to the Appellant he was not satisfied with reply of PIO, dated 02/07/2019 which stated that "As regards to **Point no. 1 to 9** the said case papers have been weeded off from 2004 to 2007 vide SP/S-Goa/Rader/9026/2018 dated 21/09/2018 and with reference to **Point No. 10** it was stated by the Respondent that 'A' Summary granted by JMFC Court Margao on 18/12/2000.

- d) Being aggrieved by refusal to allow the inspection and certified copies of documents as requested, the Appellant approached First Appellate Authority i.e. Respondent No. 2 i.e. the Superintendent of Police, Margao, Goa.
- e) The Superintendent of Police, Shri. A.K. Gawas, IPS, the First Appellate Authority, passed the order on 20/09/2019, by upholding the order of PIO, Margao and accordingly disposed the First Appeal stating that the information sought by the Appellant has been weeded out in accordance with the departmental rules.
- f) The Appellant herein by this appeal has prayed for directions to the Respondent No. 1 to allow inspection / information / certified copies as requested in the application dated 03/06/2019 and also prayed that both the Respondents may be penalised for deliberately denying the information.
- g) On notifying the Respondents, the PIO, Shri. Serafin Dias, SDPO, Margao, filed his reply on 04/03/2020 stating that the information sought for by the Appellant has been weeded out in accordance with the departmental rules vide Order No. SP/S-Goa/reader/9026/2018 dated 21/09/2018.

Respondent also submitted in Para No. 6 of the reply that "due to typographical error the information provided to the applicant in respect of Point No. 10 **"A" Summary granted by JMFC Court Margao on 18/12/2000 may please be read as 28/08/2007"**.

h) I have heard the oral arguments of authorised representative of Appellant, Shri. Nevil Furtado along with the additional submission filed by Appellant and perused the reply of the Respondent and scrutinised the documents available on records.

i) Now the entire controversy rest on the Point

"Whether Respondent failed to maintain and preserve the records for 20 years and that Respondents weeded off the records illegally?"

j) It is the contention of the Appellant, that on the basis of his complaint dated 20/07/1999 the Block Development Officer, Salcete taluka lodged FIR which came to be mentioned No. 57/99 under Sec 468 of the IPC in the Colva Police station and he needs to know whether charge sheet has been filed on the basis of the said FIR or action taken report if any, from the Colva Police in respect of the said FIR.

k) It is also the case of Appellant that in the course of investigation, Inward and Outward register of Colva Panchayat office were called by Colva Police, and he sought the information whether same has been furnished by village Panchayat Colva to Police Inspector, Colva. He also sought the present status of FIR 57/99 registered by Colva Police.

It is also the contention of the Appellant that, as per sec 8(3) of the RTI Act every Public authority is required to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. In this

case Respondent failed to maintain and preserve information thus violating the provision of RTI Act.

- l) Appellant is not satisfied with the reply of PIO and also with the Order passed by the First Appellate Authority and contented that the Public authority i.e. Respondent No. 1 cannot weed off the records belonging to the Panchayat.

He also contended that alleged 'A' Summary report granted by JMFC has not produced in the present appeal and that the Respondents acted irresponsibly as they have failed to preserve, maintain the said records in duly catalogued and indexed manner as required under Sec 4(a) of the Right to Information Act.

- m) The Order bearing No. SP/S-Goa/Reader/9026/2018 dated 21/09/2011 issued by Shri. A.K. Gawas, Superintendent of South Goa for weeding of old records is produced by the PIO. In the said order it is mentioned that:-

"Sanction is hereby accorded for destruction of old records of Colva Police Station as per the list enclosed. It should be ensured that the records that are to be destroyed are not required in the any court matter or any official purpose by the Department / RTI".

- n) It is therefore apparent that if any Court matter or any RTI matter is pending for disposal before the issue of sanction for weeding the records would be required to be maintained. The appellant failed to produce any documents on record to show that RTI application or any Court matter was pending prior to the date of weeding off records on 21/09/2018. As per the reply of PIO, "A" Summary granted by JMFC Court, Margao on 28/08/2007. In this circumstances the contention of PIO Respondent appears probable.
- o) Undisputably once 'A' summary was granted by JMFC Court Margao of any criminal offence, matter and investigation are presumed to

be closed there, unless appeal is preferred against said 'A' summary proceeding. Neither Appellant has pleaded nor the Respondent has submitted that an appeal proceeding is pending in respect of 'A' summary granted by JMFC, Margao dated 28/08/2007. It is therefore presumed that matter has been closed on 28/08/2007.

The RTI 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, when it does not exist.

p) While dealing with an issue of non availability of information due to weeding off / destruction of records, the **Hon'ble Supreme Court in the case of Central Board of Secondary Education and another v/s Aditya Bandopadhyaya Civil Appeal No. 6454 of 2011** at para 30 thereof has observed:-

*"30. On behalf of the respondents / examinees, it was contended that having regard to sub-section (3) of section 8 of RTI Act, there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of section 8(3). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular records or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records. Section 8(3) provides that information relating to any occurrence, event or matters which has taken place and occurred or happened **twenty years before the date** on which any request is made under section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years*

under the rules of the public authority, is exempted from disclosure under any of the provisions of section 8(1) of RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of section 8(1). In other words, section 8(3) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of section 8(1) will cease to be available after twenty years in regards to records which are required to be preserved for more than twenty years. Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, section 8(3) will not prevent destruction in accordance with the Rules. Section 8(3) of RTI Act is not therefore a provision requiring all 'information' to be preserved and maintained for twenty years or more, nor does it overdrive any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority."

- q) Applying the above ratio it is clear that, the obligation under RTI Act is to make available or give access to existing information or information which is expected to be preserved or maintained. If the rules and regulations governing the functioning of the respective Public Authority requires preservation of information only for a limited period then the Appellant will be entitled to such information only if he seeks the information when it is available with the PIO.
- r) When records are weeded out in terms of the relevant rules/orders, the question of committing any offence to destruction of information does not arise. Considering that the record had been weeded out on 21/09/2018 even prior to the date of application of

Appellant dated 03/06/2019 under 6(1) of RTI the information sought cannot be ordered to be furnished as it is not existing.

In the background of above fact and circumstances, I find that the appeal is devoid of merit. The same is therefore disposed with following order:-

O R D E R

Appeal is dismissed

Proceeding stands closed.

Pronounced in the open court.

Notify the parties.

Authenticated copies of the Order should be furnish to the parties free of cost.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner