

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

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**Appeal No.117/2021/SCIC**

Hondu Vithal Gaonkar,  
H.No. 1463, Santona,  
Dabal Sanvordem via,  
Curchorem-Goa. 403706.

.....Appellant

V/S

1. Seema Malkarnekar,  
The Dy. Secretary/PIO,  
Goa Public Service Commission,  
EDC House, Block No. 'C-1',  
1<sup>st</sup> Floor, Dada Vaidhya Road,  
Panaji-Goa.

2. Paula Rodrigues,  
The Under Secretary/PIO,  
Goa Public Service Commission,  
EDC House, Block No. 'C-1',  
1<sup>st</sup> Floor, Dada Vaidhya Road,  
Panaji-Goa.

3. Y.M. Maralkar,  
The Secretary/FAA,  
Goa Public Service Commission,  
EDC House, Block No. 'C-1',  
1<sup>st</sup> Floor, Dada Vaidhya Road,  
Panaji-Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 01/06/2021**

**Decided on: 06/12/2021**

**FACTS IN BRIEF**

1. The Appellant, Shri. Hondu Vithal Gaonkar, H.No. 1463, Santona, Dabal Sanvordem via, Curchorem-Goa by his application dated 27/01/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Deputy

Secretary, Goa Public Service Commission (GPSC), EDC House, 1<sup>st</sup> Floor, Dada Vaidhya Road, Panaji Goa.

2. The said application was replied on 19/02/2021 requesting the Appellant to collect the information on point No. 1 and 3 by paying requisite fee. The information at point No. 2 and 7 was denied being exempted and the applicant was informed that the rest of the information was not available since the documents are weeded out as per the policy guidelines of the GPSC.
3. According to Appellant, the information as sought was not furnished therefore he filed first appeal before the Secretary, Goa Public Service Commission at Panaji being the First Appellate Authority (FAA).
4. The FAA by its order dated 23/04/2021 partly allowed the first appeal and directed the PIO to give inspection of available file to the Appellant and furnish the information as desired by him.
5. Being aggrieved by the order of FAA, Appellant preferred this second appeal under sec 19(3) of the Act before the Commission with the prayers that:-
  - a) PIO/ Dy. Secretary be directed to furnish the relevant and accurate information in respect of point No. 1(a), 2, 3(a) of application dated 27/01/2021.
  - b) PIO be specifically be directed to furnish the required information in the prescribed format as per the request made in the application dated 27/01/2021 and
  - c) PIO/Dy. Secretary, Seema Malakanekar be punished by imposing fine as per provision of RTI Act, 2005.
6. Notice was issued to the parties, pursuant to which Adv. Jay Mathew appeared on behalf of PIO and filed affidavit in reply on

behalf of PIO, FAA duly served opted not to appear and file his reply in the matter. The Appellant appeared alongwith his representative Shri. Vaman Vaidhya.

7. Perused the pleadings, affidavit in reply, written arguments, scrutinised the documents on record, considered the arguments of the parties and judgement relied upon by the rival parties.
8. Even though the Appellant sought information on seven points in his application, the controversy is only with respect to information on point No. 1(a), 2 and 3(a) as per the prayer clause of this appeal.
9. The representative of the Appellant, Shri. Vaman Vaidhya submitted that by his RTI application he sought the copy of the chart of weightage of all the candidates who applied for the post of Principal, upon which the public authority (GPSC) came to a conclusion that there was no eligible candidate available for the post of Principal in Goa College of Art.

Further according to Appellant, he received two different answers replied by two PIO's. Mrs. Paula Rodrigues, PIO by her reply dated 19/02/2021, replied that no chart of weightage available in the records however by second reply given by another PIO, Smt. Seema Malkarnekar dated 25/02/2021, she furnished the details of candidates for the post of Principal at Goa College of Art, and this according to him is contradictory.

Further according to him, he sought the names of Scrutiny Committee Members, however PIO in order to suppress the fact informed the Appellant that there was no Scrutiny Committee. According to him eligibility of the candidates is determined only after scrutinization of application. Without the scrutinization how the GPSC come to the conclusion that there was no eligible

candidate for the post of Principal. He also alleged that he was not furnished the information in prescribed format.

10. On the other hand, learned counsel Adv. Jay Mathew, appearing on behalf of PIO submitted that, Smt. Seema Malkarnekar is the designated PIO of the public authority (GPSC), however on 19/02/2021, the Under Secretary, Mrs. Paula Rodrigues was given the charge of PIO as the designated PIO was on sick leave. According to him by the first reply dated 19/02/2021, the then PIO replied that no chart of weightage is available in records, however Appellant requested to deposit requisite amount and obtain the available information regarding details of candidates applied for the post of Principal at Goa College of Art, and what Appellant claims to be is not a second reply but it is reference to the earlier reply issued to the Appellant while furnishing the relevant documents on 25/02/2021 and there is no contradiction in both the replies.

Further according to him, no chart of weightage was available since it was not generated by the public authority as no interview was conducted.

11. It is the consistent stand of the PIO and the then PIO that no chart of weightage is available in records so as to enable the PIO to furnish.

The Appellant has raised this grievance before the FAA that chart of weightage was not furnished to him. Hence to resolve the issue the FAA directed the PIO to give inspection of the requisite file and also directed the PIO to furnish the information as desired by the Appellant immediately. Records shows that vide letter dated 03/05/2021, the PIO called upon the Appellant to visit the office of public authority on 07/05/2021 at 11:00 am and inspect the

relevant file. However the Appellant did not inspect the file, stating that he did not ask for inspection of any file and referring to past experiences he alleged that dealing of PIO is not trust worthy, eventually he rejected the offer of inspection of file.

12. As regards to information at point No. 3(a) of the application, the same is replied by PIO by letter dated 19/02/2021. Further by a letter dated 25/02/2021, PIO clarified that the instructions to the candidate for filing up of online forms are available on website of public authority **gpsc.goa.gov.in**. This information was also provided through certified copy to the Appellant on 25/02/2021. I find no contradiction of whatsoever nature as alleged by Appellant.

13. The Advocate for PIO relied upon the judgement of Hon'ble Supreme Court in the **Civil Appeal No. 6454 of 2011, Central Board of Secondary Education & another V/s Aditya Bandopadhyay** with specific reference to para No. 35 in support of his contention. Said para No. 35 reads as under:

*"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of section 2 of the Act. If a 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 record 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.*

Taking into account the above ratio laid down by the court, it is clear that, under the Act, a public authority is required to provide only that information which is available in its records. It cannot be compelled to provide information which is neither present nor generated by public authority in its records, in exercise of its public function.

14. In respect of prayer of the Appellant that direction be issued to the PIO to furnish the information in a prescribed format. While deciding this issue it is relevant to deal with sec 7(9) of the Act, which reads as under:-

*" 7. Disposal of request----*

*(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resource of the public authority or would be detrimental to the safety or preservation of the record in question."*

No doubt in ordinary course, section 7(9) of the Act requires the information to be furnished in the form in which it is asked. In the present case the PIO has offered the same in the available form and I find that there is no denial of information. If the information asked for is not available in the form it is requested for, it cannot be supplied to the requester.

In view of the above, I find that there is no denial of information by the PIO, and I do not find any ground to impose penalty under sec 20 of the Act. In the above circumstances, I find

no merit in the appeal and same is liable to be dismissed. I therefore dispose the present appeal with the following:-

## **ORDER**

- The appeal is dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**  
State Chief Information Commissioner