

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website:www.gsic.goa.gov.in

Appeal No.157/2020

Dr. (Ms.) Kalpana V. Kamat,
Caldeira Arcade, 1st Floor,
'B' Block, Bhute Bhat,
Vasco da Gama-Goa.
403802

.....Appellant

V/S

1. The Public Information Officer,
COE Examinations,
Section III, Goa University,
Taleigao-Goa. 403206.

2. The First Appellate Authority,
Goa University,
Taleigao Plateau,
Goa. 403206

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 29/09/2020

Decided on: 14/10/2021

FACTS IN BRIEF

1. The Appellant, Dr. (Ms.) Kalpana V. Kamat, r/o Caldeira Arcade, 1st Floor, 'B', Block, Bhute Bhat, Vasco da Gama, Goa 403802, by her application dated 27/07/2020 filed under sec 6(1) of the Right to Information Act, 2005 (Act for short), sought inspection of documents before seeking the documents from files, from Public Information Officer (PIO), Controller of Examination, Examination Section-III, Goa University, Taleigao, Goa. She sought information on 13 points contained in the said application.
2. The said application was replied on 17/08/2020 by PIO, however according to Appellant, inspection of file was not given to the Appellant and being so, Appellant filed first appeal before the First Appellate Authority (FAA), Goa University at Taleigao Goa.
3. The FAA by its order dated 24/09/2020 upheld the reply of the PIO and dispose the first appeal with more clarification.

The Appellant, being not satisfied with the order of the FAA, landed before this Commission in this second appeal under sec 20 of the Act.

4. Notice was issued to the parties, pursuant to which the PIO appeared and filed his reply on 27/01/2021. FAA duly served, chose not to file any reply in the matter.
5. Perused the records, appeal memo, reply, rejoinder, written submissions and heard oral arguments as well.
6. On perusal of appeal memo, it is noticed that the appeal has been filed under sec 20 of the RTI Act, 2005. Mere reading of sec 20 of the Act, it reveals that sec 20 deals with the penalties, however, Right to Information is a fundamental right and the Act being a beneficial legislation, this Commission considers it as a typographical error and hereinafter treats and deals it as an appeal filed under sec 19(3) of the Act.
7. On considering the contents of pleading from the appeal memo it appears that the Appellant is confused and has brought issues not relevant to the appeal unnecessarily. Nevertheless the Commission has deliberated on the points raised therein in the present order.
8. According to Appellant, she was the student of Law College which is affiliated to Goa University. She answered all semester examinations of law college with hard work however she did not get expected marks from the examination and hence she sought information of all 5 subjects from October 2015 to April 2018 and also sought information of other candidates who passed the examination.

Further according to the Appellant, whatsoever information provided by PIO is misleading, incomplete, false and fabricated with respect to Record retention schedule of Goa University which

is applicable to law colleges of Goa. She is also not satisfied as she was not provided with inspection of concerned subject files.

9. It is the contention of the PIO, through his reply that, the RTI application was replied on 17/08/2020 within stipulated time.

According to PIO, information in respect to Point No. 1, the question paper of all 5 subjects from October 2015 till April 2018 and the same will be made available to the Appellant within 08 days on payment of requisite fee of Rs. 364/- in the office of PIO. The remaining part of the information that is answer keys and answer sheet of each question paper is not available with the office of PIO as per the records retention schedule / guidelines.

Information at Point No. 2 and 3 could not be provided as per the retention guidelines (six months) and this information is not available.

Information at Point No. 6 and 7, it was stated that the information is voluminous and hence the Appellant was called upon to indentify the required information by personally visiting the examination section of PIO.

And information at Point No. 4, 5, 8,9,10,11,12 and 13 is forwarded / referred to colleges, under sec 6(3) for providing the information.

10. It is further contention of PIO that, the University in total conducts 79 examinations and 10,000 students on an average answer the examinations. The University cannot be expected to retain the answer sheets for years to come and therefore the record retention schedule has been formulated and the university is acting accordingly.

Further according to PIO, in terms of record retention schedule of Goa University, the record of answer sheet and answer

keys are not kept beyond the period of six months in terms of their policy decision.

11. After the reply filed by the PIO, there are several submissions and counter submissions filed by the parties, however in the course of hearing, the entire controversy rest on the point of record retention schedule of Goa University.
12. On perusal of copy of record retention schedule produced on record by PIO, it is noticed that the said copy does not contain any date, signature of issuer of documents or any attestation, however we are placing reliance on it since it is incorporated in the affidavit in reply dated 27/01/2021.

In terms of the said record retention schedule, the assessed answer books are required to be maintained for six months after the declaration of result of revaluation. The record retention schedule is in force, and the same is applicable to all centres, sections, departments and all affiliated colleges of Goa University, therefore the PIO, Goa University is bound by the record retention schedule.

13. The Appellant sought information in respect of answer keys and answer sheet of the examination held in October 2015, April 2016, October 2016, April 2017, October 2017 and April 2018.

The request of information seeker about the information of her answer sheet can be and should be provided to her. It is not something which a public authority can keep it under veil of secrecy, even disclosing the marks and the answer sheet to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practise will enables a fair play in this competitive environment where candidate puts her time in preparing for such exams.

However in the instant case in hand the request of the Appellant came after the period specified in the Retention Schedule of Goa University is over and public authority is not obliged to maintain said record as per Statute.

The RTI application being filed on 27/07/2020, that is after the lapse of six months of declaration of revaluation result, the contention of PIO appears true and probable.

14. From the records, it indicates that the information in respect of question papers and copies of declared result was made available to Appellant on 17/08/2020. However, reasons best known to Appellant, she did not collect said information till date by paying the requisite fee.

Apart from that, she was also offered the inspection of files with regards to information at Point No. 6 and 7 since the said information is voluminous. The Appellant could have inspected the file and identified the required documents by personally visiting the examination section of PIO, however instead, she preferred to file the present appeal with the allegation of non-disclosure of information and further prayer of imposing penalty.

15. The present appeal also suffers from serious infirmity of non pleading of proper relief clause and prayers. In short, Appellant asked this Commission to search the prayer clause from the records of appeal memo filed before First Appellate Authority and grant the relief under this second appeal. This is not appropriate.

16. Be that as it may , while dealing with an issue of non-availability of information due to destruction of records, the Hon'ble Supreme Court in the case of **Central Board of Secondary Education and another v/s Aditya Bandopadhay (Civil Appeal No. 6454 of 2011)** at para (29 and 30) thereof has observed:

"29. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer-books for a period of six months. The fact that right to information is available in regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the [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 require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. For example, with reference to answer-books, if an examinee makes an application to CBSE for inspection or grant of certified copies beyond three months (or six months or such other period prescribed for preservation of the records in regard to other examining bodies) from the date of declaration of results, the application could be rejected on the ground that such information is not available. The power of the Information Commission under [section 19\(8\)](#) of the RTI Act to require a public authority to take any such steps as may be necessary to secure compliance with the

provision of the Act, does not include a power to direct the public authority to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority.

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 regard 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 override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority".

17. Applying the above ratio of the case in hand, the PIO has informed that the concerned records are not required to be maintained beyond six months from the date of declaration of revaluation result as per the policy of the Goa University.
18. In the present case, the records in respect of answer keys and corrected answer sheets from October 2015 to April 2018 are not maintained beyond six months. I hold that the information sought cannot be ordered to be furnished as it is not existing, and therefore no intervention of the Commission is required.
19. In the backdrop of above facts, I dispose the appeal with the following:

O R D E R

The appeal is dismissed.

Proceedings closed.

Pronounced in the open court.

Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner