

GOA STATE INFORMATION COMMISSION

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Appeal No. 57/2020/SIC-I

Mrs. Elsa Fernandes,
Lecturer in Arch. Asst.,
Department of Arch. Asst.,
Government Polytechnic,
Panaji Goa.

.....Appellant

V/S

1. The Public Information Officer,
Government Polytechnic, Panaji,
Altinho, Panaji Goa.

2. The First Appellate Authority,
Government Polytechnic, Panaji,
Altinho, Panaji Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 05/02/2020

Decided on: 19/11/2021

FACTS IN BRIEF

1. The Appellant Mrs. Elsa Fernandes, Lecturer in Architectural Assistantship, Government Polytechnic, Altinho, Panaji Goa, by her application dated 03/10/2019 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information on ten points mentioned in the said application from Public Information Officer (PIO), Government Polytechnic, Panaji Goa.
2. The said application was replied by PIO on 05/11/2019, by which the information at point No. 1,3,4,7 and 10 was furnished to Appellant on payment of Rs. 34/- towards the fees.

However the information in respect of point No. 2,5,6,8 and 9 was not provided for the reason "not available in the office" or for the reason that the said information is available on website.

3. Not satisfied with the reply of the PIO, she preferred first appeal before, Principal, Government Polytechnic, Altinho, Panaji Goa being the First Appellate Authority (FAA).
4. The FAA by order dated 07/01/2020 dismissed the said appeal as the Appellant remained absent for the hearing.
5. Aggrieved with the order of FAA, Appellant preferred the present appeal under sec 19(3) of the Act, before this Commission with the following prayers:-
 - a. Quash and set aside the impugned order dated 07/01/2021 and
 - b. Direct that the information sought under item 2,5,6,8 and 9 to be furnished.
6. Notices was issued to the parties, pursuant to which the present PIO appeared alongwith the then PIO Shri. J. Umesha on 11/03/2020 and sought time to furnish the available information. FAA appeared but chose not to file any reply in the matter.
7. On subsequent date of hearing, the present PIO, Mr. Allwyn Facho appeared and furnished information on point No. 2,5,6 and 9 vide letter No. GPP/PIO/RTI-ACT/01/C&C/2020/8348 dated 09/06/2020.

It is also on record that PIO by letter dated 10/07/2020 supplied additional information at Point No. 8 and 9 which was duly endorsed by the advocate D.J.D. Ticlo who is appearing for Appellant.

As per the direction of this Commission, PIO by letter dated 05/08/2020 furnished clarification in respect of information at Point No. 2 and 5 alongwith enclosures and accordingly matter was fixed for arguments.

8. I have perused the pleadings, scrutinise the records and considered the written and oral arguments of the parties. Learned counsel Adv. A.P. Furtado argued on behalf of Appellant, Mr. Allwyn Facho argued on his behalf and on behalf of the then PIO.
9. After filing supplementary/clarification on behalf of the present PIO there are several submissions and counter submissions by the parties, however in the course of hearing the limited point which arised in this proceeding is whether PIO has furnished the information as sought by the Appellant.
10. It is an admitted fact that, information at point No. 1,3,4,7 and 10 has been furnished to the Appellant, the only dispute remains herein with respect of information at point No. 2,5,6,8 and 9, which is not furnished by PIO and not considered by FAA while deciding the first appeal.
11. According to Adv. A.P. Furtado, the information provided by the PIO is incomplete and evasive. He contended that the Appellant through her RTI application sought the date of meeting conducted by Architectural Assistantship Department, copy of notice of said meetings and minutes of the said meetings. The reply of the PIO is that the information is not available in this office, which is incorrect as Office of Government Polytechnic, Panaji (Public Authority) is under National Board of Accreditation.

Further according to him, Appellant sought the certified copies of all complaints of harassment filed by her till date. However the PIO supplied a copy of the complaint dated 11/10/2013 filed by the Appellant to the Director of Technical Education, through the Head of Department and through the Principal. Earlier on 25/10/2019 it was replied that no complaint from the Appellant is available.

He further contended that the PIO has not given any

information for point No. 6 which was sought but instead he supplied copies of whatever documents that came in to existence between sexual harassment committee and the Appellant after 03/10/2019. The information supplied which came into existence after filing of RTI application was not sought for.

Further it is the contention that, PIO did not supply copies of AICTE Rules and whatsoever supplied is insufficient information and do not add anything to the reply of PIO dated 25/10/2019.

Further according to him, with respect to information at point No. 3, the Appellant is supplied with the copy of the order dated 12/11/2019 and 02/03/2020 both of which are subsequent happening after filing of RTI application and therefore irrelevant and these documents have never been sought by the Appellant.

He further argued that, PIO recommended to refer to AICTE website, however he did not furnish the website address to the Appellant. And that she is entitled for hard copies of the information and non furnishing of the information is deliberate attempt and evading the disclosure of information.

In support of his case Adv. Furtado also relied upon the judgement of Delhi High Court in case of Union of India v/s Vishwas Bhamburkar, and various order of CIC in case of Pawan Pandey v/s PIO, DRM's office, W.C. Railway Information Cell. Mr. Nagendra Pal Singh v/s Department of Training and Technical Education, Delhi. Mr. Ashwani Kumar v/s Mr. Sushil Kumar, PIO and E-I, Municipal Corporation of Delhi and judgement of Kuljit Singh v/s SDM Delhi.

12. According to the present PIO, Mr. Allwyn Facho, the RTI application of the Appellant was dealt with by the former PIO Shri. Umesha J. The first appeal was disposed on 07/01/2020 and

he took the charge as PIO when the matter came up for second appeal on 13/01/2020.

According to him on very first date of hearing, Commission directed him to locate the information as possible and as per the direction of this Commission. He deeply looked onto the matter, verified personally with the subordinate and superior Officer, referred the RTI application to the concerned officers under sec 5(5) of the Act, and the response of the said officer has been conveyed to Appellant through the Commission during the course of hearing on 09/06/2020 thereby furnishing information at point No. 2,5,6 and 9.

Further on hearing dated 23/06/2020 and hearing dated 10/07/2020 she was furnished additional information and clarification on point No. 2. According to PIO, whatever information that is available and exists with public authority has been supplied to the Appellant.

Further according to PIO, Appellant is a senior gazetted staff of Government Polytechnic Panaji and whatever information sought by her are available with her and she filed RTI application with an ulterior motive to harass the superiors.

13. I have perused the RTI application dated 03/10/2019, in which Appellant had sought the "Dates of all Architectural Assistantship Departmental meetings conducted, notices of said meetings and minutes of the said meeting during the year 2019 till date."

In reply and as information on said point, PIO produced on record a letter dated 17/03/2020 received from V.C. Fernandes,

HOD of Arch. Assistantship which reads as under "It is informed that no notices are issued regarding meetings conducted and no minutes of meetings are available. It is further informed that being a small department, all issues are sorted out through discussion with concerned staff as and when required."

Since the Appellant was not satisfied with this reply, the PIO sought further clarification from HOD. The HOD reiterated through PIO by letter dated 27/07/2020 that no written notices are issued regarding the meeting held in Architectural Assistantship Department and no minutes of meeting are recorded, as informed vide letter dated 17/03/2020. Any issues arising in the Department are sorted out by the HOD in consultation with Department faculty and no written records of such consultation are maintained.

Appellant is working in the said department since long time as a senior faculty, if she had attended any departmental meetings she could have mentioned that date or produced on record the notice of departmental meeting to substantiate her claim. She has failed to produce iota of evidence to indicate that such departmental meetings were held in past. On the other hand PIO, has produced on record a letter dated 17/03/2020 which shows that the notice of meeting were not issued and minutes were not recorded.

It is observed that the information as sought was not at all generated at the Respondent authority and the same does not exist, therefore same is not made available to Appellant.

Merely alleging the missing of file of minutes of meeting and expecting PIO to file police complaint is absurd and redundant.

14. As regards to information at point No. 5, Appellant sought certified copies of all complaints of harassment filed by her till date

or through the Principal, Government of Polytechnic, Panaji.

The PIO produced on record the complaint filed by Appellant dated 11/10/2013 to the Director, Directorate of Technical Education, Porvorim.

15. As regards, to information at point No. 6, Appellant sought action taken on any of the complaint of harassment filed by her.

At the first instance, PIO replied that the information is not available in the office as this information is not pertaining to just harassment but a sexual harassment of women and therefore such cases are dealt under " the Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act, 2013 (hereinafter to be referred as 'Act of 2013').

The Appellant was aware of the fact that on her complaint dated 04/11/2019, the Chairperson of Sexual Harassment Committee of Government Polytechnic has initiated the inquiry and Appellant has got every right to get the copy of the information of each and every piece of paper which is relied against her from the Inquiry Committee.

Under sec 16 of the Act of 2013, the documents are considered as 'confidential', however same can be made available to the concern party only after completion of inquiry.

When the application under RTI reached the office of PIO, the inquiry under the Act of 2013 had not reached final conclusion. Section 16 of the Act of 2013 provides bar for dissemination of information to third party. Sec 16 of the said Act of 2013 reads as under:-

"16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the

complaint made under section 9, the identity and address of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of internal committee or Local committee, as the case may be, and the action taken by the employer or the District officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witness."

It also provides for right of complainant to have report under section 13(1) of the said Act of 2013 as under:-

"13.(1) On the completion of any inquiry under this Act, the internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties."

In the present case, the inquiry concluded on 06/03/2020 and the information furnished to the Appellant was on 20/03/2020. Thus considering the above position of law, I find that there is no delay in furnishing the information.

16. As regards to information at point No. 8, the Appellant has

sought the certified copy of AICTE rules from the PIO, in respect of teaching facility to be made available for teaching faculty of public authority.

The PIO replied "please refer AICTE website".

All India Council for Technical Education (AICTE) is the National level statutory body established with the objectives for promotion of quality in technical education and basically for regulation and maintenance of norms and standards in technical education. Government Polytechnic, Panaji Goa is an institution in training, research and development of technical education and giving Diplomas, said institution is coming within the purview of AICTE.

Admittedly, Appellant is a senior faculty in Architectural Assistantship in Government Polytechnic, Panaji for last 23 years and presently pursuing her Masters Program in Environmental Architecture in Dr. Bhanuben Nanavati College of Architecture, Kaveri Nagar, Pune. In my opinion instructing the Appellant to refer to the website of AICTE does not cause any harm to the Appellant, as sec 4(1)(b)(v) of the Act provides that public authorities shall publish the rules, regulations, instructions, manuals and records held by it or under its control. And here in this case AICTE, is the Apex body of technical Education in India and therefore there is no wrong to request the Appellant to refer the website of AICTE. The PIO can facilitate in providing information to the citizen which is available and exists with the public authority. The information which is not held by PIO cannot be provided.

17. The limitations of the seeker in seeking information available on the website vis a vis under the Act is discussed by the Hon'ble Apex court in the case of **Registrar of companies and other v/s Dharmendra Kumar Garg and another**

WR(C)1127/2009. The ratio laid down in said case is contained in paras (34) and (35) as under:-

"34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information", means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfilment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information", is specifically conferred by the RTI act is that information which "is held by or under the control of any public authority".

18. In another Judgement of Hon'ble High Court of Delhi in **Prem Lata CPIO Trade Marks Registry v/s Central Information Commission & Ors. (2015(4) ALL MR (JOURNAL) 15)** has observed:-

"22. The scheme of the [RTI Act](#), in placement of various Sections thereof, clearly is to in the first instance require the public authorities to suo motu make available / accessible to the public as much information (in their possession and control) as possible by placing the same in public domain including on the internet and to thereafter devise a process to enable the public to request for / seek such information from the public authorities which the public authorities have not suo motu made available. This is evident particularly from [Section 4\(2\)](#) supra which requires public authorities to constantly endeavour to provide as much information suo motu to the public through the medium including of internet so that the public have minimum resort to the use of the [RTI Act](#) to obtain information. The unequivocal meaning flowing there from is that resort to the [RTI Act](#) to obtain information i.e. by requiring the public authorities under [Section 5](#) to appoint CPIOs to deal with requests for information to be made under [Section 6](#) is only qua the information which has suo motu not been so made available to the public by the public authority. [Section 6](#) again provides that "a person who desires to obtain any information under this Act..." The same, read with "...so that public have minimum resort to the use of this Act to obtain information" in [Section 4\(2\)](#) can only mean that resort to [Section 6](#) is permissible only for information not made available under [Section 4](#). Unless the Act is so interpreted, the words "so that the public have minimum resort to the use of this Act to obtain information" in [Section 4\(2\)](#) and the words "a person who desires to obtain any information under this Act" in [Section 6](#) would be rendered otiose.

23. It even otherwise belies logic as to why [Sections 5 to 7](#) providing for appointment of CPIOs, making of request for information and providing of information or rejection of request for information should be read as applicable also to the information which has already suo motu been made available by the public authority to the public at large and as to why the CPIOs should be required to, in response to a request under [Section 6](#), again provide information which the public authority has suo motu made available on internet. Any other meaning or interpretation ascribed to the said provisions would render infructuous the obligation discharged by the public authority of suo motu making information available on internet. The Legislature, while enacting [Section 4](#), obliging the public authority to suo motu make all information available, was fully aware of the high cost entailed in so making the information made available. [Section 4\(1\)\(a\)](#), while providing for computerisation by public authorities of all records, makes the same subject to availability of resources. To hold, that notwithstanding the public authority, at a huge expense, having suo motu made information available to the public at large, is also to be burdened with dealing with request for the same information, would amount to a huge waste of resources of the public authorities. Experience of operation of the Act for the last nearly ten years has shown that the officers of the public authorities designated as CPIOs have other duties also and the duty to be discharged by them as CPIO is an additional duty. It cannot also be ignored that dealing with request for information is a time consuming process. If it were to be held that information already made available under [Section 4](#) will have to be again provided under [Sections 6 & 7](#), it will on the

one hand not advance the legislative intent in any way and on the other hand may allow misuse of the provisions of the Act for extraneous reasons and allowing harassment of CPIOs by miscreants.”

19. An information seeker is expected to ask for information as per sec 2(f) of the Act, which requires that the information should be available in any material form.

Hon'ble Supreme Court in **Central Board of Secondary Education & Anrs v/s Aditya Bandopadhyay & Ors (Civil Appeal No. 6454/2011)** has held that:

"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. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide "advice" or "opinion" to an

applicant, nor required to obtain and furnish any "opinion" or "advice" to an applicant. The reference to "opinion" or "advice" in the definition of "information" in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens.

But that is purely voluntary and should not be confused with any obligation under the RTI Act."

Applying the above principal as laid down by Hon'ble Supreme Court and other Courts, I find that the request of the Appellant at said point No. 8 cannot be granted. The record also reveals that information at point No. 9 is duly furnished to the Appellant on 10/07/2020.

20. Adv. A.P. Furtado relied upon the Judgement of Delhi High Court in Union of India v/s Vishwas Bhumburkar, however the facts and circumstances of the said judgement are different. Said judgement is in respect of missing Project Report from Ministry of Tourism which is not the point here in this case. He also relied upon the order of CIC in Pawan Pandey v/s PIO DRM's office, West Central Railway Information Cell, Mr. Nagendra Pal Singh v/s Government of NCT of Delhi and decision in Ashwin Kumar v/s Mr. Sushil Kumar PIO & SE-I Municipal Corporation of Delhi which is also not applicable in the present case as the facts in the said case are not similar to the fact of the case before us.

21. In the backdrop of the discussion above, I find that the information as sought for has been granted to the Appellant free of cost. I find that approach of the PIO is bonafide and genuine. In the circumstances, I dispose off the appeal with 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