

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 87/2020/SIC-I

Mrs. Larissa Martins e Rodrigues,
H. No. 409, Zorulem,
Tuem, Pernem Goa.

..... Appellant

v/s

1. Public Information Officer cum Probation Officer,
Directorate of Women & Child Development,
Panaji Goa.

2. First Appellate Authority,
Directorate of Women and Child Development,
Panaji-Goa

..... Respondents

Filed on : 20/04/2020

Decided on : 06/09/2021

Relevant dates emerging from appeal:

RTI application filed on	: 06/06/2019
PIO replied on	: 25/06/2019
First appeal filed on	: 01/07/2019
FAA order passed on	: 14/11/2019
Second appeal received on	: 20/04/2020

ORDER

1. The Second Appeal filed under section 19(3) of the Right to Information Act, 2005 (RTI Act) by Larissa Martins e Rodrigues R/o. Zorulem, Tuem, Pernem-Goa against Respondent No. 1 Public Information Officer (PIO), Probation Officer, Directorate of Women and Child Development, Panaji-Goa and Respondent No. 2, First Appellate Authority (FAA), the Director, Directorate of Women and Child Development, Panaji-Goa came before this Commission on 20/04/2020.
2. The brief relevant facts leading to the Second Appeal, as contended by the Appellant are that :-

- a) The Appellant vide application dated 06/06/2019 under section 6(1) sought from the PIO information on 8 points related to convicts having numbers 546/02, 547/02, 548/02 and FIR No. 42/2019 registered in the Pernem Police Station. The Appellant sought the said information within 48 hours perceiving a threat to her life as she is the Sister-in-law of the said convicts.
 - b) The Appellant had sought the said information since the information was required to be given to her legal representative for furtherance of justice. The Appellant received the reply dated 25/06/2019 stating the information cannot be furnished under rule 21 of the Goa Probation of Offenders Rules, 1993 as also under section 8(1) (e) and 8(1)(g) of the RTI Act.
 - c) Being aggrieved with the decision of the PIO, the Appellant filed first Appeal before the FAA on 01/07/2019. The Order of the FAA was received by the Appellant on 16/11/2019 upholding the decision of the PIO. The Appellant filed second Appeal dated 24/04/2020 against the PIO and the FAA.
3. The Second Appeal was admitted after condonation of delay request was granted. The parties were notified and the matter was taken up for hearing on 02/07/2020. The Appellant appeared through her authorised representative and the PIO Shri. Dilip Kudalkar appeared and filed reply alongwith the enclosures. The Appellant filed written arguments dated 13/08/2020. The PIO filed reply dated 11/09/2020 to the written arguments of the Appellant. Further the PIO filed additional reply dated 23/09/2020 and submitted that his reply may be treated as his arguments.
 4. Meanwhile the matter could not be heard for sometime as the then Commissioner reported sick. Later the Commissioner demitted the Office on completion of tenure and the matter could not be heard. The matter was taken up for further hearing upon joining of the new Commissioner. It is seen from the records that the Appellant vide application dated 8/07/2020 had prayed for permission to add the FAA, Director, Directorate of Women and Child Development, Panaji as Respondent No. 2 and the said prayer was pending for decision. Notice was issued to the FAA upon adding her as Respondent No. 2, to appear and file reply.
 5. During the proceeding the Commission had directed the PIO to file an affidavit mentioning which information is not available/does not exist.

Accordingly the PIO filed affidavit dated 30/7/2021. Later the FAA filed reply dated 20/08/2021 through the PIO.

6. The Commission has perused the Appeal memo, reply, additional reply, written arguments, affidavits etc. After careful perusal of all the submissions the Commission would like to record its observations as follows:-

(a) The information sought by the Appellant vide application dated 06/06/2019 can be divided into two parts.

(i) Information sought at point No. 1 that is, report of the Probation Officer for convicts number 546/02, 547/02, 548/02 alongwith all notes and noting sheets that led to the report.

The PIO has denied the information sought above applying rule 21 of the Goa Probation of Offenders Rules, 1993 and also citing section 8(1)(e) and 8(1)(g) of the RTI Act.

(ii) Information sought from point No. 2 to point No. 8 is regarding transport vehicles, log books, records of visits etc.

The PIO has stated in the affidavit dated 30/07/2021 that the information at point No. 2 to point No. 8 does not exist and it is not maintained by his Office.

(b) The FAA, in her order dated 14/11/2019 as well as in the reply dated 20/08/2021 filed before this Commission has upheld the decision of the PIO by stating that the PIO has acted upon as per the rules of Probationers Offenders Act at point No. 1 of the RTI application of the Appellant. The FAA has endorsed in her reply that the RTI Act, 2005 has overriding effect over the rules of Probationer Offenders Act. However, the FAA has also endorsed the PIO's decision classifying the information sought at point No. 1 under section 8(1)(e) and 8(1)(g) of the RTI Act and has upheld PIO's decision to deny the information under the said sections because the Appellant has not elaborated on the larger public interest involved in disclosing the said information. According to the FAA the Appellant has failed to prove the larger public interest involved in disclosing information at point No. 1.

7. The information sought by the Appellant at point No. 1 of her RTI application is third party information. The PIO has acted as per the provisions of section 11 of the RTI Act and sought say from the third parties. The said third parties vide letters dated 14/06/2019 have opposed disclosure of the said information to the Appellant.
8. The information at point No. 1 is denied to the Appellant citing rule 21 of the Goa Probation of Offenders Rules 1993, governed by the Probation Offenders Act, 1958. The said information has also been classified by the PIO under section 8(1)(e) and 8(1)(g) :-

Section 8(1)(e) of the RTI Act reads:-

Exemption from disclosure of information:- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.

(e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

Section 8(1)(g) of the RTI Act reads:-

8. Exemption from disclosure of information:- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.- (g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

As per the above provisions, information under section 8(1)(e) can be disclosed in the case of larger public interest. However, the Appellant in her written arguments and in other submissions has not elaborated about larger public interest. Therefore the Commission is of the opinion that the Appellant has failed to prove larger public interest in disclosing information at point No. 1 in her application dated 06/06/2019.

9. As mentioned in para 6(a)(ii) above, the PIO has stated on affidavit that information at point No. 2 to point No. 8 sought by the Appellant is not available. The Commission finds no ground to discard and/or disbelieve the said affidavit. In the above circumstances, the Commission holds that the said information does not exist and there is no ground to invoke power under section 20 as non furnishing of the information cannot be held as deliberate or malifide. Needless to say that in case at anytime the statement in the said affidavit is found false, the person swearing it would be liable for action for perjury.

10. In the background of the above discussion and as per the documents brought on records, the Commission concludes that the Appeal does not carry merit and thus needs to be disposed accordingly with the following:-

a) The Order of the First Appellate Authority dated 14/11/2019 is upheld.

b) The Appeal is dismissed.

Proceedings stand closed.

Pronounced in the open court.

Notify the parties.

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

Aggrieved party if any, may move against this order by way of a Writ Petition, as no further Appeal is provided against this order under the Right to Information Act, 2005

Sd/-

(Sanjay N. Dhavalikar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa