

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 92/2020

Shri. Oswald H. Pinto,
Editor of Debates,
Goa Legislature Secretariat,
Porvorim – Goa

..... Appellant

v/s

1)Ms. Namrata Ulman,
Secretary,
Goa Legislative Assembly,
Secretariat, Porvorim – Goa
First Appellate Authority, under RTI Act, 2005

2)Shri U.D. Bicholkar,
Asst Public Information Officer/
Committee Officer,
Goa Legislature Secretariat,
Porvorim – Goa.

3)Shri Mohan Gaonkar,
PIO/Under Secretary,
Goa Legislature Secretariat,
Porvorim – Goa.

.... Respondents

Filed on : 27/05/2020

Decided on : 26/10/2021

Relevant dates emerging from appeal:

| | |
|---------------------------|--------------|
| RTI application filed on | : 11/03/2020 |
| PIO replied on | : 22/04/2020 |
| First appeal filed on | : 23/04/2020 |
| FAA order passed on | : 22/05/2020 |
| Second appeal received on | : 27/05/2020 |

ORDER

1. The Appellant Shri. Oswald H. Pinto, vide application dated 11/03/2020, filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred to as Act), sought certain information as mentioned in the said application from Respondent

No. 2, Assistant Public Information Officer (APIO) Goa Legislature Secretariat, Porvorim Goa. The information is with respect to his own service matter, such as pay fixation etc.

2. The Appellant received a reply dated 22/04/2020 signed by Shri. U.D. Bicholkar, APIO, stating that the concerned file is forwarded to the Government and as such, the information called upon at para 1 and 2 will be provided once the file is received by the Legislature Secretariat ; and as regards the information at para 3, the concerned file is forwarded to the Personnel Department.
3. Being aggrieved by the response of APIO, the Appellant preferred an appeal dated 23/04/2020 before the Respondent No. 1, First Appellate Authority (FAA), Secretary, Goa Legislative Assembly, Porvorim Goa. The FAA vide order dated 22/05/2020 dismissed the Appeal. The Appellant states that the denial of information is contrary to the provisions of the Act and the conduct of the Respondents is deliberate and with an intention to deprive Appellant the information he sought.
4. It is the contention of the Appellant that he filed second Appeal before this Commission on the above mentioned grounds. The Appellant has prayed for :
 - (a) Directions to Respondents to furnish correct and complete information,
 - (b) Penalty on Respondents and disciplinary action etc.
5. The matter was taken up on board and notice was issued to the concerned parties. Pursuant to the notice, Appellant as well as APIO appeared in person. FAA filed reply dated 29/06/2020. APIO Shri. Bicholkar submitted that the then PIO has retired and the appointment of new PIO is in process. Subsequently the present PIO

Shri. Mohan Gaonkar filed reply dated 10/09/2020 stating he has been appointed as PIO on 28/08/2020. The PIO was admitted as Respondent No. 3 in the cause title of this Appeal. The Appellant filed counter reply on 10/08/2020 and again on 07/10/2020.

6. The present PIO has stated in his reply that the information could not be furnished as the file was not in the Legislature Secretariat at the time of said RTI application. Though the said file was received by the Secretariat on 28/04/2020, information was not furnished as it was a live file pertaining to service matter and disclosure would have compromised decision making process. The PIO has cited some cases wherein it has been held that in cases under investigation, information is not to be disclosed until the investigation is complete and records in any form cannot be disclosed by the concerned authority. The PIO states that the Appellant works in the same Public Authority and the information sought pertains to his own service matter on which decisions are yet to be taken by the appropriate authority. Any divulging of information at this stage will jeopardise the decision making process as the service matter is still not finalised. With this say, the PIO has denied the information to the Appellant claiming exemption under section 8(1)(e) and (h) of the Act.
7. The FAA, vide reply dated 29/06/2021 has justified her order in the first appeal. The FAA has stated that the PIO could not furnish information as the file was not in the Legislature Secretariat at the time of RTI application of the Appellant. Later, the file was received, however information was not disclosed because it would have compromised the decision making process. The FAA also states in her reply that the Appellant has filed writ petition in the Hon'ble High Court of Mumbai at Goa bench for which the FAA has filed a detailed reply and furnished all relevant copies of notings before the Hon'ble High Court.

8. The Appellant has stated in his counter reply that the file was received by the Legislative Secretariat during the proceeding of first appeal, before the appeal was decided by the FAA. Therefore the information could have been furnished, whether the file is live or dead, does not bar under the law from providing information under RTI Act, 2005. The Appellant has also questioned the decision making process which is kept pending for years together.

9. The Respondents have raised some grounds on the entitlement of information by the Appellant and on the other hand the Appellant has expressed certain apprehensions against the Respondents. Considering the gravity, the matter was posted for arguments. Mr. Hercules Noronha, Joint Secretary, Goa Legislature Secretariat argued on behalf of FAA as well as PIO. Mr. Noronha stated that the information is not furnished to the Appellant because the said matter is about pay fixation/increment in salary of the Appellant. The Appellant, in the past has used political influence to get out of way increments and if the information is furnished to him at the time when the decision making process is not complete, the Appellant may again use political favours to settle the matter in his favour.

10. The Appellant argued that he has not approached any political personality and he is seeking this information in order to submit before the Hon'ble High Court in a relevant matter filed by him. That the Appellant is entitled for higher scale as per Government Circular since 2013. However, the decision process has continued for years together which has denied him the higher scale. That the Appellant is seeking his own information and the said information is available in the Legislative Secretariat, which should be provided to him. The Appellant highlighted FAA's order dated 22/05/2020. In the last para of the said order the FAA has stated that the file pertaining to the

information has been received by this Secretariat on 28th April 2020, and the applicant, if he wishes may make a fresh application for the same. The Appellant argued that the FAA should have directed PIO to furnish information instead of asking Appellant to file fresh application.

11. It is seen from the records that the PIO and the FAA, while denying the information to the Appellant has claimed exemption under various sub clauses of section 8(1) of the Act. This claim is relied upon the orders passed by several Information Commissions in support of their contentions that the process of inquiry and decision making also constitute investigation. However, the relevant point here is that the orders of State Information Commissions of other States having jurisdiction concurrent to that of this commission cannot be considered as binding. Moreover, the context of the decision and the matter brought before them are not known.

12. Moreover, the reasons for denial of information by Respondents at various stages are different. Initially it was denied saying the file is not available. Thereafter the FAA, even though had received the file during proceeding of first appeal, upheld the decision of APIO. It is strange that the reasons put up by the FAA, that during the period of 30 days, of RTI application, the information is not held by the PIO. The FAA has erred on this aspect. The order of the FAA is dated 22nd May 2020, much after the receipt of file, that is on 28th April, 2020 and therefore FAA could not have taken this ground.

Furthermore, the stand of the present PIO and FAA, during the proceeding of second appeal has been different. During the first appeal, the FAA while upholding the say of PIO, also initiated appellant to file fresh application whereas the present PIO and FAA took support of section 8(1)(e) and (h) of the Act in denying the information.

13. It is therefore necessary to examine this argument. Various sub clauses of section 8 (1) of the Act does not provide blanket exemption in refusing the information. The onus lies on PIO to show the reason for such exemption. In a similar matter, B.S. Mathur v/s Public Information Officer, Writ Petition (C) 295/ 2011, the Hon' ble Delhi High Court has observed in para 19 which reads :-

"19. The Question that arises for consideration has already been formulated to the court order dated 21st April 2011. Whether the disclosure of the information sought by the petitioner to the extent not supplied to him yet would impede the investigation in favour of section 8 (1) (h) of the RTI Act ? The scheme of the RTI act, its objects and reasons indicate that disclosure of information is the rule and non disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in section 8 of RTI Act".

14. Further, Hon'ble High Court of Punjab and Haryana in Vijay Dheer v/s State Information Commissioner, Punjab and Ors. (LNIND 2013 PNH 2263) has held :

" While examining the scope of an exemption clause under section 8 of the Act, it would be useful to refer to the statement as objects and reasons of the act itself. The objects and reasons of the Act recite that the provisions of the Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further, the Act has been enacted in order to promote transparency and accountability in the working of every public authority".

Considering the ratio laid down by the Hon'ble High Court of Delhi, it is obligatory on the PIO to furnish information unless in some

exceptional cases it is exempted ; and if it is exempted the onus is on PIO to show why the information is exempted under particular sub clause of section 8 (1).

14. The PIO and FAA has sought exemption under section 8 (1)(e). Hon'ble Supreme Court, in civil appeal No. 6454 of 2011 (arising out of SLP (c) No. 7526/2009), C.B.S.E & Anr. v/s. Aditya Bandopadhyay & Ors has stated in para 24:-

"24. – we may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in fiduciary relationship with the examinee, that section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship".

The ratio laid down by the Apex Court is very much applicable here considering the fact that the Appellant has sought his own information. Let us now see the reasons advanced by the PIO and FAA, through the Joint Secretary: - The claim is that the Appellant has used political influence in getting out of way increments and if the information is disclosed, he may bring political influence to settle the matter in his favour. It is shocking that such an argument is put forth by a senior officer. This reflects a lot but we restrain to

comment. This cannot be accepted as a reason for exemption under section 8(1)(e) and (h).

16. It is seen in the records as well during argument that the Appellant and respondents have produced documents/ correspondence related to the service matter and pay fixation, to be more precise. Also both the sides have levelled allegations against each other. However these things do not pertain to the appeal, as redressal of service matters does not come under the jurisdictions of this Commission, therefore, the Commission has not considered these submission. The role of Commission is limited to ensure that a citizen is provided with information that is available in records and sought under the Right to Information Act, 2005.

17. As pointed out by the Appellant, the PIO's office had received the concerned file during the proceeding of first appeal. However the FAA instead of directing PIO to furnish information, asked Appellant to file fresh application. This shows nothing but the arrogance of the FAA and least respect towards the provisions of the Act. The appellant has also questioned decision making process of the authority which seems to be ongoing for a long time. The enquiry or investigation and also any decision making process cannot continue forever, it attains its logical conclusion at a certain point. And on this pretext the information should not be denied. At what stage, the decision making process is pending is also not brought on record by the PIO.

18. Importantly, the Appellant is seeking his own information, which is available in the record of PIO. More importantly, the Appellant has now retired on superannuation and therefore there is no possibility that he can interfere in the decision making process of his pay fixation, if at all the same is still pending.

19. In the light of above discussion and on the basis of records brought before the commission the appeal is disposed with following order :-

- (a) The Appeal is partly allowed.
- (b) The Order of FAA is set aside.
- (c) The PIO is directed to furnish the information sought by the Appellant vide application dated 11/03/2020, within 10 days from the receipt of this order, free of cost.

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