

GOA STATE INFORMATION COMMISSION

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Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 23/2020/SIC-II

Shri Hipolito D'Costa,
H. No. 486, Devote,
Loutulim – Salcete Goa.

..... Appellant

v/s

The Public Information Officer,
Directorate of Panchayats,
3rd floor, Junta House,
Panaji – Goa.

..... Respondent

Filed on : 17/01/2020

Decided on : 04/10/2021

Relevant dates emerging from appeal:

RTI application filed on	: 21/10/2019
PIO replied on	: 20/11/2019
First appeal filed on	: 22/11/2019
First Appellate Authority Order passed on	: 18/12/2019
Second appeal received on	: 17/01/2020

ORDER

1. The brief facts of this case as contended by the Appellant Shri. Hipolito D'Costa, are that the Appellant vide application dated 21/10/2019 had sought information under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as, Act) from the Respondent, Public Information Officer (PIO), Directorate of Panchayats, Panaji Goa. The PIO denied the information under section 8(1)(h) of the Act, vide letter dated 20/11/2019. The Appellant filed first appeal before the First Appellate Authority and the FAA, vide Order dated 18/12/2019 directed PIO to provide information within 15 days.

2. It is the contention of the Appellant that the PIO did not furnish information inspite of the order passed by the First Appellate Authority and therefore the Appellant is compelled to file this second appeal against the PIO, under section 19(3) of the Act. The Appellant has filed second appeal with prayers such as (a)The PIO be directed to provide complete information, (b) Compensation under section 19(8) (vi)(b) of the Act, (c) Penalty be imposed on PIO.
3. The second appeal was registered in the Commission on 17/01/2020, notice was sent to the concerned parties and the matter was taken up for hearing. Smt. Neha Bandekar, present PIO, Office Superintendent, Directorate of Panchayats, appeared and filed detail reply dated 19/03/2021. However Appellant has remained absent throughout the proceeding.
4. The Appellant has stated in the appeal memo that the information sought by him ought to have been provided by the PIO, and the act of refusal to provide the information inspite of order passed by the FAA, is in violation of provisions of the Act. The Appellant has claimed that the denial of information has caused torture and harassment to him.
5. The PIO has filed detail reply alongwith enclosures with a copy to the Appellant. It is seen from enclosures that Smt. Fiona Audrey Cardozo, the then PIO had conveyed to Appellant vide letter dated 20/11/2019 that information cannot be furnished under section 8(1)(h) of the Act, as informed by the Head Clerk, Vigilance Section of PIOs Office. The present PIO, Smt. Neha Bandekar has stated in her reply dated 19/03/2021 that the concerned file was under submission to the Office of Chief Secretary for necessary action under the Lokayukta Act. Now, the said file is received by Vigilance section of her department. However, it is observed that

proceedings of Goa Lokayukta in respect of which information is sought is challenged before the High Court of Bombay at Goa in Writ Petition 16/2020. Also that the Appellant is not party to the said proceeding before Lokayukta and the FAA was not aware of the said fact during the process of the first appeal, since the relevant file was not in the Directorate of Panchayats.

By stating this, the PIO has submitted that the matter regarding execution of order dated 18/12/2019 of the FAA may be decided by the Commission.

6. Section 8(1)(h) reads :-

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

(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

In the said matter though the PIO has claimed exemption under section 8(1)(h), the PIO has not made any attempts to bring it to the notice of Commission, how the release of information would impede the process of investigation or apprehension or prosecution. Rather, it is observed that the Lokayukta has already passed the order and the said order is challenged in the High Court. It is observed that pursuant to the order passed by FAA, the PIO vide letter dated 15/01/2020, has furnished part information pertaining to point no. 6 to 8. However the information pertaining to 1 to 5 and 9, 10 is responded by saying file under submission to Chief Secretary, and the required information as sought will be furnished on receipt of the file. It is also mentioned in the reply that the file is submitted to is after the order of FAA. This implies that the information/file was available with the PIO, during the course of first appeal. It can be also inferred that the PIO has not brought to the notice of the FAA, the stand taken 'herein' that the appellant is not part of the

proceeding before Lokayukta. To say that FAA was not aware of this during the process of first appeal is not appropriate.

7. In a similar matter of **B.S. Mathur v/s. Public Information Officer of Delhi High Court (W.P.(c)295/2011)**, Hon'ble Delhi High Court has observed –

"The mere pendency of an investigation or enquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure or the information sought would 'impede' or even on of lessor threshold 'hamper' on 'interfere with' the investigation. This burden the Respondent has failed to discharge'.

In the present matter, the investigation is completed, Lokayukta has passed the order. Hence the question of hampering or impeding or interfering with the investigation does not arise.

8. Section 19(5) of the Act reads as under :-

19. Appeal – (5) in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer of State Public Information Officer, as the case may be, who denied the request.

9. The above mentioned provision has been reiterated by the Hon'ble High Court of Delhi in the case of **State Bank of India v/s Mohd. Shahjahan (W.P. No. 9810/2009) in Para 22:-**

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden therefore is entirely

on the Public Authority to show why the information sought from it should not be disclosed”.

Considering the ratio laid down in the above order of Hon'ble Delhi High Court and as per the provision of the Act, it is necessary for the PIO to show satisfactory reasons for withholding the information from the seeker. Furthermore, the PIO committed to the appellant to furnish information as per the order of FAA, vide letter dated 15/01/2020.

10. In view of above discussion, it is considerate opinion of this Commission that the information sought by the Appellant has to be furnished. Initially entire information was denied by the then PIO. However, the present PIO furnished part information from point no. 6 to 8 vide letter dated 15/01/2020. This does not indicate any malafide to be attributed to the decision of PIO, as the decision was an error in interpretation of section 8(1)(h) of the Act. Therefore the Commission passes the following order :-

- a) The appeal is partly allowed.
- b) The PIO is directed to furnish information from Point No. 1 to 5 and point no. 9 to 10, sought by the Appellant vide application dated 21/10/2019, within 15 days from the receipt of this order, free of cost.
- c) All other prayers are rejected.

11. Hence the appeal is disposed accordingly and proceedings stands 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