

# GOA STATE INFORMATION COMMISSION

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

## Appeal No. 50/2021/SIC

Mr. Melwyn Fernandes,  
H. No. 317/1, Goncoi,  
Aldona, Bardez Goa  
403508.

..... Appellant

v/s

1) The Principal/Public Information Officer (PIO),  
St. Thomas Higher Secondary School,  
Aldona, Bardez - Goa.

2) The Dy. Director of Education,  
First Appellate Authority (FAA),  
North Education Zone,  
Mapusa, Bardez Goa.

..... Respondents

Filed on : 03/03/2021

Decided on : 21/01/2022

### **Relevant dates emerging from appeal:**

|                           |              |
|---------------------------|--------------|
| RTI application filed on  | : 21/10/2020 |
| PIO replied on            | : 21/11/2020 |
| First appeal filed on     | : 30/11/2020 |
| FAA order passed on       | : 06/01/2021 |
| Second appeal received on | : 03/03/2021 |

### **ORDER**

1) The second appeal filed under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the Act) by the appellant Mr. Melwyn Fernandes against Respondent No. 1, Public Information Officer (PIO), Principal, St. Thomas Higher Secondary School, Aldona Goa and Respondent No. 2, First Appellate Authority (FAA), Deputy Director of Education, North Educational Zone, Mapusa Goa came before the Commission on 03/03/2021.

- 2) The brief facts of this appeal, as contended by the appellant are that the appellant vide application dated 21/10/2020 sought under section 6 (1) of the Act, information on three points from the PIO. Feeling aggrieved by the reply dated 21/11/2020 from the PIO, the appellant preferred appeal dated 30/11/2020 before the FAA. The FAA passed the order dated 06/01/2021 directing the PIO to furnish the information within 15 days. Despite these directions, PIO failed to furnish the information. That being the case, the appellant filed second appeal before the Commission with prayers such as complete information and penalty on the PIO.
- 3) The concerned parties were notified. Pursuant to the notice, the appellant appeared in person. The PIO initially appeared in person and later authorised his legal representative to be present on his behalf. Appellant filed submissions dated 12/08/2021, 18/10/2021 and 08/11/2021. PIO filed affidavit cum reply on 12/08/2021, submission on 17/09/2021 and reply dated 15/12/2021. Both parties delivered arguments on 18/10/2021 and presented final arguments on 15/12/2021.
- 4) The information sought by appellant and his contention on each points in brief is as below:
- (i) Minutes of the meetings conducted by the School Managing Committee for the year 2018, 2019 and 2020 as per the scheme of Management. This information is not furnished by the PIO stating the same is not available. Under the Goa School Education Act and Rules, the school is bound to conduct the meetings of the School Managing Committee and maintain the records.

(ii) Minutes of the meeting conducted by the school managing committee to reconstitute the present School Management Committee alongwith the copy of the proposal submitted to the Education Department to note the change in the Committee. This information is not furnished by the PIO stating the same is not available. The appellant is not satisfied with this reply, as any change in the composition of the Managing Committee in terms of Rule 46 2(d) of Goa School Education Rules, 1986 shall be communicated to the Directorate of Education within 7 days. Accordingly the information should be available and is required to be furnished.

(iii) Copy of transfer policy, if any, framed by the Fransalian Education Society and approved by the Directorate of Education in respect of the Principal/Teachers working in the school run by the said society in Goa. This information is not furnished by the PIO stating the said information does not come under the purview of the PIO and hence it is not possible to provide the same. The appellant states that he is not satisfied with the reply. Since the institution is recognised by the Government of Goa and if there is any transfer policy framed by the society, it has to be approved by the Directorate of Education, hence the information is required to be furnished.

5) The PIO in reply denied the contentions of appellant and stated that the information sought under point no. 1 and 2 of the application is not available in his office, for which the complaint has been filed on 19/01/2021 with the Mapusa Police Station. It is

the contention of the PIO that he came to know about the missing of the said information only after receiving the application from the appellant. Also that the PIO issued a letter dated 16/11/2020 to Fr. Diogo Fernandes, erstwhile Principal and PIO, requesting to hand over the said minutes book, however the same is still not handed over to the PIO. Further the PIO stated that as regards the information regarding reconstitution of the Committee, the same does not exist since the committee is not reconstituted and that the PIO cannot create the information which is not existing and the second appeal is misconceived.

- 6) Contesting strongly these statements, the appellant contended that the police complaint was not filed by the PIO after receiving RTI application, nor this matter was brought on record before the FAA during proceeding of first appeal. It was an afterthought on the part of the PIO that, after the directions from the FAA to furnish the information, he created the issue of misplacement of said minutes book and filed police complaint. The PIO in his reply dated 21/11/2020 did not mention about the misplacement of information and he sent another reply dated 20/01/2021, after the FAA order dated 06/01/2021 and after registering a police complaint on 19/01/2021, wherein PIO wrote to appellant that the information is not available and complaint is filed in Mapusa Police Station. By stating this, the appellant claimed in his arguments that the PIO is trying to hide the information to cover up his misdeeds and the police complaint is an eyewash to avoid the disclosure of the information.
- 7) On the other hand, Adv. Dhaval D. Zaveri, while arguing on behalf of the PIO again stated that the information regarding the minutes of the managing Committee is not available. PIO has filed police complaint regarding the misplacement of minutes. The Committee

was not reconstituted, hence there is no such proposal sent to the Education Department, therefore the information pertaining to point No. (ii) is not available. Being aided school, Goa School Education Act and Rules are applicable to the authority, however not in toto since the authority is a minority educational institute. The Transfer Policy which the appellant is seeking is not applicable to the society/authority of the respondent PIO as the appointing and transferring authority is the Provincial Superior, the Rules and Regulations of Fransalian Education Society, Goa are binding on the society. The said information i.e. transfer policy of the Fransalian Education Society is not under the purview of the PIO.

- 8) After careful perusal of the records, submissions of both the sides and arguments of the appellant as well the respondent PIO, it is observed that though the PIO initially replied to the appellant that the information pertaining to point No. 1 and 2 is not available, later during the proceeding before the Commission stated the said information is missing from the office of the PIO and for that he had filed a police complaint. He also produced a copy of the said complaint. The PIO has blamed the former Principal/PIO for missing of the information from the office.
- 9) The documents brought on record and submission indicate that there is a long tussle between the two sides, including High Court Petition. Nevertheless, since Fr. John Robert, Manager has filed complaint in Mapusa Police Station vide letter dated 19/01/2021 regarding the missing of the minutes book of the school Management Committee for the years 2018, 2019 and 2020, the police will have to complete the investigation into this complaint and will have to come to a conclusion regarding the missing minutes book. Until then, the said information will have to be considered as not available, as claimed by the PIO. In this

situation, PIO cannot be directed to furnish information sought by appellant under point no. 1 and 2 of his application.

10) Under point No. 3 of his RTI application, the appellant has sought for the copy of the Transfer Policy, if any, framed by the Fransalian Education Society, and approved by the Directorate of Education in respect of the Principal/Teachers working in the school run by the said society in Goa. The PIO while denying this information has stated that the said Transfer Policy does not come under the purview of the PIO. As the appointing authority is the Provincial Superior, the Rules and Regulations of Fransalian Education Society are applicable to the school and these Rules and policy is decided by the Provincial Superior, and not the PIO.

11) Notwithstanding with this argument, the Commission concludes that the said school is an aided school, receives regular grants in aid from the Government of Goa and therefore comes under the definition of public authority under section 2(h) of the Act. The appointments, promotions and other relevant matters are governed by the Goa School Education Rules, 1986. It is pertinent to note that the selection of Fr. Sahayaraj as the Principal of the school, done by the management was not approved by the Directorate of Education under Rule 78(iii) of the Goa School Education Rules, 1986. This being the case, it is clear that the matters such as appointments and promotions etc. of the said school are decided under the Goa School Education Rules, 1986. More so, the institution is being Public authority, and if the transfer policy exists, it becomes a public document. Hence the information sought by the appellant under point No. 3 is required to be furnished by the PIO.

12) The FAA while disposing the first appeal had directed the PIO to furnish the information on all three points. However it is noted

that the PIO while denying the information made no reference to the misplacement of the information and that a police complaint will be filed. FAA, in the absence of this reference passed an order dated 06/01/2021 directing PIO to furnish the entire information within 15 days. The Manager of the school filed police complaint on behalf of the PIO, regarding missing of minute books, thereafter, on 19/01/2021. Hence the question of furnishing the said information i.e. minute books does not arise, till the investigation reaches the logical end. However the information pertaining to the Transfer Policy has to be in the custody of the PIO and the same not being exempted under section 8 of the Act, the onus to furnish the same to the appellant is on the PIO.

13) In the light of above discussion, the appeal is disposed with the following order:-

- a) The appeal is partly allowed.
- b) The PIO is directed to furnish the information i.e. Transfer Policy sought by the Appellant under point no. 3 of the application dated 21/10/2020, within 15 days from the receipt of the order free of cost.
- c) The right of the appellant to seek the information under point No. 1 and 2 of the application dated 21/10/2020, if available after the police investigation shall remain open.
- d) All other prayers are rejected.

Proceeding stands closed.

Pronounced in the open court.

Notify the parties.

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

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