

GOA STATE INFORMATION COMMISSION

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Appeal No. 115/2022/SCIC

Somnath K. Maitri,
Flat No. T-5, Vinayak Apts.,
Near Jamia Masjid, Upper Bazar,
Ponda-Goa.

.....Appellant

V/S

1. The Public Information Officer,
Cancona Police Station,
Cancona-Goa.

2. The Superintendent of Police (South),
First Appellate Authority,
Margao-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 19/04/2022

Decided on: 20/10/2022

FACTS IN BRIEF

1. The Appellant, Somnath K. Maitri r/o. Flat No. T-5, Vinayak Apartments, Near Jamia Masjid, Upper Bazar, Ponda-Goa by his application dated 22/02/2022 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Cancona Police Station, Cancona-Goa:-

"Kindly furnish to me the following information under the RTI Act 2005.

*A certified copy of the Vakalatanama of the advocate who represented the opponents as mentioned by you in your reply dated 26/11/2021 (Copy attached). The said reply was made available to me by the Superintendent of Police on **February 21, 2022**, almost two months later, and hence the delay in filing this application.*

I shall bear all the expenses required to obtain the above documents."

2. The said application was responded by the PIO on 08/03/2022 in the following manner:-

"Refer your application dated 22/02/2022 under the Right to Information Act, 2005 addressed to PIO/SDPO Cancona. The information furnished by Shri. Pravin P. Gawas, APIO/PI Cancona PS is as under:

<i>01</i>	<i>Certified copy of the Vakalatanama of the advocate who represented the opponents as mentioned by you in your reply dated 26/11/2021</i>	<i>Certified copy of Vakalatanama is not available on records.</i>
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3. Not satisfied with the reply of the PIO, the Appellant preferred first appeal on 21/03/2022 under Section 19(1) of the Act before the Superintendent of Police, being the First Appellate Authority (FAA).
4. The FAA by its order upheld the reply of the PIO and disposed the first appeal on 11/04/2022.
5. Being aggrieved and dissatisfied with the order of the FAA, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the complete information free of cost.
6. Notices were issued to the parties, pursuant to which, APIO, Shri. Deepak Pednekar, Police Inspector attached to Cancona Police Station appeared on 13/05/2022 and filed his reply in the matter. The FAA duly served opted not to remain present for the hearing.
7. It is the case of the Appellant that, he lodged complaint before the Police Inspector of Cancona Police Station on 12/05/2020 for illegal transfer of the house by opponents bearing No. 449 situated at

Tolpona, Cancona Goa. During the inquiry both the parties were requested to remain present at the Cancona Police Station alongwith the advocates. According to the Appellant in order to know the details about the advocate who represented the Opponents during the inquiry before the PIO, he submitted RTI application on 22/02/2022. Appellant further contended that, the PIO deliberately withheld the information and refused to provide the same and the investigation is not as per the Police manual or not done as per the standard investigation procedure. He also alleged that the PIO has acted casually and carelessly by not investigating the matter properly and seriously.

8. On the other side, the APIO through his reply dated 13/05/2022 contended that, since the vakalatanama was not available with Cancona Police Station, the PIO informed the Appellant on 08/03/2022 that copy of the vakalatanama is not available on records.

Further according to the APIO, the Sub-Divisional Police Officer, Quepem has conducted the inquiry on the complaint of the Appellant dated 12/05/2020 and concluded that the matter is of Civil in nature and informed the Appellant to approach before the competent authority with his grievance.

APIO also contended that RTI application of the Appellant has been responded by the PIO within stipulated time and to substantiate his case he produced on record the copy of the inquiry report dated 26/11/2021 drawn by Kiraj J. Poduval, SDPO, Quepem-Goa.

9. Considering the contention of the rival parties, it may be relevant to go through Section 2(f) and 2(j) of the Act, which reads as under:-

"2. Definitions. – *In this Act, unless the context otherwise requires, --*

(f) *"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data **material held** in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

(j) *"right to information" means the right to information accessible under this Act which is **held by or under the control of any public authority"***

On reading of the above provisions reveals that a seeker can exercise his right in the form and manner as specified under Section 2(f) and 2(j) of the Act. The Act confer on all citizens a right to access information that is held by or under the control of any public authority.

10. The main grievance of the Appellant that, the opponents were represented by an advocate before the Police authority during the inquiry, however, the PIO deliberately withheld the information as the process of investigation was not carried out as per the law.
11. It is a matter of fact that Vakalatanama is a written document that is given by a client to an advocate to appear and plead before any court of law. There is no mention of any particular definition of Vakalatanama in the Civil Procedure Code 1908 as well as Power of attorney Act 1882. However, no vakalatanama is needed for performing legal work like giving opinion, sending notice, drafting petition etc. Appellant in the

instant case failed to establish that, Police Authority is empowered to secure vakalatanama from the Advocate while appearing before any Inquiry proceeding.

12. While considering the scope of information which can be furnished under the Act, the Hon'ble Supreme Court in the case **Central Board of Secondary Education v/s Aditya Bandopadhyay (Civil Appeal No. 6454/2011)** has observed :-

*"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."*

13. The RTI Act provides access to all information that is available and existing, but where the information is not the part of record of a public authority and where such information is not required to be maintained under any law or the rules of the public authority. The Act does not cast an obligation upon the PIO, if the

document is not available on the record. The only information that can be disclosed is that no such information is available.

14. In the instant case, application under Section 6(1) of the Act was filed on 22/02/2022, same was replied on 08/03/2022 i.e within stipulated period, considering the above, I find no malafide on the part of the PIO while dealing the RTI application. The appeal is devoid of any merit and hence I dispose the present appeal with following:-

ORDER

- The appeal stands dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner