

GOA STATE INFORMATION COMMISSION

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Appeal No. 196/2020

Shri. Savio Guha,
C-2-5, Prabhu Estate,
Shetyewaddo, Peddem,
Mapusa-Goa.

.....Appellant

V/S

Shri. Dattaram Saedessai,
The Public Information Officer/Director (Admn),
Goa Medical College & Hospital,
Government of Goa,
Bambolim- Goa.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 18/11/2020

Decided on: 11/05/2022

FACTS IN BRIEF

1. The Appellant, Shri. Savio Guha, r/o. C-2-5, Prabhu Estate, Shetyewaddo, Peddem, Mapusa-Goa by his application dated 29/11/2019 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO) of Public Health Department, Secretariat, Porvorim,Goa.
2. The said application was transferred under section 6(3) of the Act to another PIO, The Director (Admn), Goa Medical College at Bambolim, Goa on 04/12/2019.
3. The PIO on receiving the information from Establishment section of GMC, responded to the Appellant informing the Appellant to collect the information by paying requisite fee of Rs. 14/-.
4. Dissatisfied with the reply of PIO, the Appellant filed first appeal before the Dean, Goa Medical College, Bambolim, Goa being the First Appellate Authority (FAA).
5. The FAA by its order dated 05/11/2020 allowed the first appeal and directed the PIO to furnish the information within 15 days from the receipt of the order.

6. According to the Appellant, since the PIO failed and neglected to comply the order of FAA, the Appellant preferred this second appeal before the Commission under section 19(3) of the Act.
7. Notice was issued to the parties, pursuant to which the representative of PIO, Ms. Milita Lopes appeared and placed on record the written submissions of the PIO on 17/12/2021.
8. I have perused the pleadings, reply, rejoinder and considered the written and oral arguments of the rival parties.
9. It is admitted fact that, partial information has been collected by the Appellant by paying the requisite fee. The Appellant is satisfied with the information furnished to him as regards to information on point No. 1. The controversy therefore is only with respect to part information at point No. 2 of the application i.e Action taken report and whether inquiry is still open or close.
10. Ms. Shreya Arur, learned advocate appearing for the Appellant contended that, instead of complying the order of FAA, the PIO deliberately furnished only a single page letter dated 20/11/2020 which is misleading and incomplete information.

She further argued that consequent to the findings of the Inquiry Report of the Committee, no Action taken report has been made available by the PIO. This implies that the core information remains unanswered and further argued that the Appellant did not provide the information on whether inquiry is closed or not, and stressed upon to issue direction to the PIO to furnish the said information.

11. On the other hand, the representative of PIO submitted that vide letter No. GMC/Est-2/RTI/2019/7556 dated 28/01/2020 all the available information has been provided to the Appellant.

She further pointed out that, with the compliance of the order of FAA dated 05/10/2020, the PIO immediately furnished the letter received from the Public Health Department dated 21/11/2016 to the Appellant.

12. On perusal of records it reveals that, Directorate of Health Service, received one complaint from Shri. Suraj Behere, Kedriya Manavdhikar, Goa Vibhag on 14/03/2016, alleging that Dr. Sunanda Amonkar, Medical Superintendent, Goa Medical College had issued prohibitory order on 20/01/2015 to HOD and ward sister directing to comply with the ban on "**Believers**" visiting indoor patients at Goa Medical College, Bambolim (GMC).

Upon the receipt of the complaint, the Under Secretary (Health), Public Health Department, Porvorim Goa directed the Dean, GMC to conduct the inquiry in to the matter.

The Dean, GMC Bambolim vide Order No. 1/29/2016-C/GMC/102 dated 14/07/2016 constituted three member Inquiry Committee, consisting of Dr. H.C. Goel, Prof. and HOD of ENT (Chairman), Dr. Wiseman Pinto, Prof. and HOD of Pathology (Member) and Smt. Triveni Velip, the Deputy Director (Admn) of GMC (Member Secretary).

The Inquiry Committee conducted the inquiry against the said complaint and submitted the Inquiry Report on 02/08/2016 to the Dean, GMC on same day.

In turn, the Dean of GMC, forwarded the said Inquiry Report to the parent Department, i.e Public Health Department (PHD), Secretariat, Porvorim Goa for further order.

13. It is not disputed that, the Appellant received the copy of Inquiry Report dated 02/08/2016. The Appellant also admitted that he received the letter dated 21/11/2016 issued by Under Secretary

(Health), Public Health Department, Porvorim, Goa. However the main grievance of the Appellant is inaction of the PIO in furnishing the information with regards to the Action taken Report.

14. The operative part of Inquiry Committee Report dated 02/08/2016 reads as under:-

"Upon perusal of the complaint and statement of Dr. Sunanda Amonkar, Medical Superintendent, GMC the Committee concludes that there was no malafide intention of Dr. Sunanda Amonkar, Medical Superintendent in issuing the note dated 2/7/2015 as the same was issued as a precautionary measures to maintain peace and discipline in the Hospital. The reply to the letters/instructions has not been communicated to Medical Superintendent. In such circumstances Government may kindly examine the issue and decide whether such an activity is to be permitted or not and the instructions in this regard may be conveyed to the Institution for further action."

From the above, it is clear that the inquiry in to the complaint is over and completed and matter is referred to the Government for further decision.

15. Further on perusal of the letter dated 21/11/2016 addressed to Dean, GMC by Smt. Smita S. Hede, Under Secretary (Health), Public Health Department Porvorim, Goa, it is categorically mentioned that:-

"I am directed to refer to your letter No. 1/29-C/GMC/2016/133 dated 4/8/2016 on above noted subject and to state the report submitted by the Inquiry Committee was submitted to the Government for orders. The Government have no objection if one of the

prayer is done by the priest and the departing soul, but if it is addressed to the congregation of the patients which tantamount to allurements the same may not be allowed in GMC."

16. In the present case, the public authority after receiving the Inquiry Report, forwarded the report to parent department i.e. Public Health Department. The Public Health Department in turn forwarded the said report to competent authority to take appropriate decision and communicated back to the public authority by letter dated 21/11/2016. Admittedly the Inquiry Report dated 02/08/2016 and response received from PHD dated 21/11/2016 is furnished to the Appellant.

Since the action is not taken by the public authority no Action Taken Report is available in the records of public authority. Therefore the Commission is of the view that available information has been furnished to the Appellant.

17. Under the Act, the PIO is not expected to respond the queries made in different form, he can only facilitate in providing information which is available with his records in material form. He cannot be held responsible for the merit or accuracy of the information provided to information seeker or to furnish the reasoning of the decision taken by the competent authority.

The High Court of Andhra Pradesh in the case of **Divakar S. Natarajan v/s State Information Commissioner (W.P. No. 20182/2008)** has held that:-

"16. Before undertaking further discussion as to the legality or otherwise of the order passed by the respondents, the distinction between 'information' on the one hand and the 'reason' for existence or

non-existence of a particular state of affairs on the other hand, needs to be noticed. The Act has comprehensively defined the word 'information'. It takes in it's fold large variety of source of information, including documents, emails, opinions, press release, models and data materials etc. The common feature of various categories mentioned in the definition is that they exist in one form or the other and the PIO has only to furnish the same, by way of copy or description. In contrast the reasons or basis as to why a particular state of affairs exists or does not exist cannot be treated as a source or item of information."

18. While considering the scope of information that could be dispensed under the Act, the Hon'ble Supreme Court in the case of **Central Board of Secondary Education & another v/s Aditya Bandopadhyia (Civil Appeal no. 6456 of 2011)** at para 35 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.”

19. In the light of above legal position and considering the facts and circumstances as discussed above, I find no merit in appeal and consequently the present appeal is disposed with the following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner