

GOA STATE INFORMATION COMMISSION

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Appeal No.263/2021/SCIC

Shri. Jawaharlal T. Shetye,
H.No. 35/A, Ward No. 11,
Khorlim, Mapusa-Goa 403507.

.....Appellant

V/S

1. The Public Information Officer,
Dy. Superintendent of Police,
Headquarters (North),
Porvorim Goa.

2. The Public Information Officer,
Sub-Divisional Police Officer,
Mapusa-Goa.

3. The First Appellate Authority,
Superintendent of Police (North),
Alto, Porvorim, Bardez -Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 22/10/2021

Decided on: 19/07/2022

FACTS IN BRIEF

1. The Appellant, Shri. Jawaharlal T. Shetye r/o. H.No. 35/A, Ward No. 11, Khorlim, Mapusa- Goa, by his application dated 23/06/2021 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), The Deputy Superintendent of Police, North Goa, Porvorim Goa.
2. Upon receiving the information from the APIO, Police Inspector of Mapusa Police Station, the PIO responded the RTI application on 19/07/2021 and on 13/08/2021 and also furnished the available information, and informing the Appellant that his complaint dated 13/02/2020 is forwarded to Sub-Divisional Police Officer at Mapusa vide Pet No. 132 dated 13/02/2020 for inquiry and report in to the same is awaited.

3. Dissatisfied with the reply of the PIO, the Appellant preferred first appeal under section 19(1) of the Act before the Superintendent of Police, North at Porvorim, Goa being the First Appellate Authority (FAA).
4. The FAA by its order upheld the reply of the PIO and dismissed the first appeal on 21/09/2021.
5. Being aggrieved with the order of the FAA, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.
6. Notice was issued to the parties, pursuant to which the representative of PIO, Shri. Mangesh Mahale appeared and placed on record the reply of the PIO on 02/12/2021. The representative of Respondent No. 2, Shri. Sunil Patil appeared and placed on record the reply of another PIO on 02/12/2021. In spite of valid service of notice, the FAA opted not to appear in the matter.
7. It is the case of the Appellant that on 13/02/2020 he lodged complaint with the (1) Superintendent of Police, Porvorim, Bardez-Goa and (2) The Sub-Divisional Police Officer, Mapusa Police Station at Mapusa Bardez-Goa seeking for registration of First Information Report (FIR) against Mr. Dharmanand R. Moraskar for issuing false and fabricated Medical Certificate of cause of death of the deceased Shri. Vilas Naguesh Mahale r/o. Khorlim, Mapusa, Goa. Upset over no action has been initiated by the Police, he filed the RTI application on 23/06/2021 and sought information with regards to Action taken report on his complaint and inter-alia other information. However, according to him, the PIO has provided incomplete information and the FAA also failed to deal with the matter properly and has mechanically decided the first appeal without examining the issue.

Further according to him, Mr. Dharmanand R. Moraskar is not a practising doctor of any nature, however issued false and fabricated medical certificate of cause of death of deceased Vilas Naguesh Mahale and for his wrong doing the Police ought to have been registered an FIR and to substantiate his case he relied upon the various correspondence and also the circular dated 21/03/2014 issued by Department of Home (General), Secretariat, Govt. of Goa referring the case of **Lalita Kumari v/s State of U.P. and Ors.**

8. Opposing the contention of the Appellant, the Respondent No. 1 the PIO submitted that upon receipt of the RTI application, same was forwarded to APIO/ PSI Reader Branch, North Porvorim and based on the reply furnished by APIO he replied to the RTI application on 19/07/2021 i.e within stipulated time. He further submitted that the original complaint of the Appellant dated 13/02/2020 was forwarded by S.P. North to SDPO Mapusa vide Pet- 132 dated 13/02/2020 for enquiry and report and the same is pending before SDPO Mapusa and this fact has been informed to the Appellant. Further according to him the Inquiry Report is not yet received, as the same is still under inquiry with SDPO Mapusa.
9. According to Respondent No. 2 (the another PIO), the Appellant has been rightly furnished all the information with regards to information at point No. 1, 2, 3 and 4 which was available on the records of Mapusa Police Station vide the letter No. SDPO/MAP/RTI-377/495/2021 dated 13/08/2021.
10. Perused the pleadings, replies, rejoinder, scrutinised the documents on record and considered the arguments.
11. On perusal of appeal memo and on going through the relief clause, it appears that the Appellant is not satisfied with the investigation of the Police as no FIR has been lodged against

Dr. Dharmanand Moraskar as per his complaint. Therefore, his main grievance as prayed in prayer (ii) as under:-

"(ii) Direct both the Respondents to analyse the Complaint dated 13/02/2020 in its true perspective which is under inquiry without any progress where in prima facie cognizable offence has been revealed involving Mr. Dharmanand Moraskar for issuing false and fabricated medical certificate of cause of death of the deceased person Shri. Vilas Naguesh Mahale r/o Khorlim Mapusa-Goa."

Even in the rejoinder dated 24/01/2022 filed by the Appellant he reiterated same stand and prayed that the PIO be directed to furnish correct and complete information after registering the FIR on Dr. Dharmanand Moraskar.

12. The Circular which is relied upon by the Appellant dated 21/03/2014 issued by Department of Home is based on the judgement of Hon'ble Supreme Court in the case of **Lalita Kumari v/s State of U.P.** In the said judgement the court issued certain directions as regards the registration of FIR by a Police Officer in charge of Police Station. In the said judgement it is observed that, if the inquiry disclosed the commission of a cognizable offence, the FIR must be registered and the Police Officer cannot avoid his duty of registering offence.
13. On the background of above, the Appellant requires this Commission to grant relief as prayed which include, inter-alia matter not connected with the provision. In other words the Appellant wants this Commission to direct the public authority to lodge FIR against Dr. Dharmanand Moraskar for his misconduct which is beyond the powers of the Commission.

14. The Commission has to function within the provisions of the Right to Information Act, 2005. This Commission is constituted under the said Act with powers and functions more particularly described under section 18, 19 and 20 of the Act. Such powers consist of providing existing information held in any form and in case of non-compliance of the said mandate without any reasonable cause, then to penalise the PIO. No powers are granted to the Commission to deal with any grievance beyond the said Act, as there is no provision under the Act to redress the grievance.

15. The High Court of Gujarat in case of **State of Gujarat & Anrs v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj.12)** has held that:-

"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information is not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act."

16. In the present case, the PIO has furnished all the available information to the Appellant on 13/08/2021 which is duly endorsed by the Appellant. The PIO can only facilitate in providing information to the Appellant in case the same is available with the public authority. He cannot be held responsible for the reasoning of

the decision taken by the competent authority. Even in the case of **Lalita Kumari v/s State of UP**, which is relied upon by the Appellant, the discretion of the Police has not taken off by the Hon'ble Apex Court. Registering of FIR is a discretionary power granted to investigation authority. If the Appellant feels that any official is not performing his duty in proper manner or doing something that is contrary to law, he can approach the concerned competent authority on the basis of information furnished to him.

The High Court of Patna in the case of **Shekhar Chandra Verma v/s State Information Commissioner (L.P.A. 1270/2009)** has held that:-

"10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the appellant.

*11. The view we have taken above is supported in principle by a recent Patna High Court LPA No.1270 of 2009 dt.09-12-2011 4 decision of the Apex Court in **Central Board of Secondary Education and Another vs Aditya Bandopadhyay and Others [(2011) 8 SCC 497]**, in para 59 whereof it has been laid down that information which is not held by or under the control of any public authority and which cannot be accessed by any public authority under any law for the time being in force does not fall within the scope of the RTI Act. This has further been clarified in para 63 to the effect that the said Act provides access to all information that is available and existing. It has been stated that 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.”

17. Under section 7(1) of the Act, the PIO is required to dispose the request of the seeker within 30 days. Admittedly, the PIO has furnished the reply on 19/07/2021 and 13/08/2021 i.e within stipulated time.
18. In the light of above legal position and considering the fact and circumstances as discussed above, I hold that Commission has no jurisdiction to grant the relief prayed in the proceeding. I find no merit in the appeal and therefore same is disposed off with the following:-

ORDER

- The appeal stand dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner