

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 31/2021/SCIC

Ms. Pratima Kiran Vernekar,
Succorro Gardens, Nerin Bldg,
Flat No. 203, 2nd Floor, Near Datta Mandir,
Ambirne, Sucorro, Bardez-Goa.

.....Appellant

V/S

The Public Information Officer,
Directorate of Information & Publicity,
Government of Goa,
Udyog Bhavan, 3rd Floor,
Panaji-Goa.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 12/02/2021

Decided on: 16/09/2022

FACTS IN BRIEF

1. The Appellant, Ms. Pratima Kiran Vernekar, r/o. Succorro Gardens, Nerin Bldg, Flat No. 203, 2nd Floor, Near Datta Mandir, Ambirne, Sucorro, Bardez-Goa, by her application dated 28/09/2020, filed under sec 6(1) of Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) of Directorate of Information & Publicity, Udyog Bahavn, Panaji-Goa:-

"Kindly furnish me the certified copies of the documents of all the files maintained by the Directorate of Information & Publicity, Government of Goa at Panaji pertaining to undersigned State Information Commissioner, Ms. Pratima Kiran Vernekar.

In case if the concerned files are held by another public authority you are required to transfer this application to such authority holding the same within 5 days from date of receipt of this application as required under section 6(3) of RTI Act 2005 under intimation to the applicant."

2. The said application was responded by the PIO on 13/10/2020 in the following manner:-

"With reference to your application dated 28/09/2020 on the above referred subject, it is informed that the requisite information sought by you under RTI Act, 2005 except information related to G.P.F. Contribution is ready. The said information will be provided once the relevant file is traced.

You are therefore kindly requested to collect the information by paying an amount of Rs. 308/- (Rupees Three Hundred and Eight only) towards photo copies charges from this office during working hours."

3. Upon receipt of intimation, the Appellant collected the information from the office of public authority on 30/10/2020 by effecting the requisite payment of Rs. 308/-.
4. Being aggrieved and dissatisfied with the information furnished, the Appellant preferred a first appeal before the Director, Department of Information & Publicity, Panaji-Goa being the First Appellate Authority (FAA).
5. The FAA by its order dated 30/11/2020, partially allowed the first appeal and directed the PIO to furnish the remaining information free of cost to the Appellant within 15 days from the date of order.
6. Being aggrieved by non-adherence of the order of the FAA and non-compliance of the provision of the Act, thereby non furnishing correct and complete information, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act.
7. Notices were issued to the parties, pursuant to which the PIO, Shri. Prakash Naik appeared and filed his reply on 05/07/2021 and

submitted that for want of relevant file available in the office of public authority he could not furnish the information. However, Department has recently received the file from the Home Department and now he is ready and willing to furnish the information. The Commission suggested for joint inspection of the file to explore possibility to locate the purported information and accordingly joint inspection of the file was fixed on 19/07/2021 between 10.30am to 11.30 am in the office of the PIO, at Panaji-Goa. Adv. M. Korgaonkar appearing on behalf of Appellant also directed to identify the documents so as to take out the copies and matter fixed for compliance on 03/08/2021.

8. During the course of hearing on 03/08/2021, Adv. M. Korgaonkar appeared and furnished the details of the information/files identified during inspection of records on 19/07/2021. The PIO undertook to produce the certified copy of the said documents on next date of hearing and matter was posted for compliance/clarification on 25/08/2021 at 3:00 pm.
9. Accordingly on 25/08/2021, the PIO appeared and submitted that he has furnished the following information as identified by the Adv. M. Korgaonkar:-

"a. Files pertaining to pension and Gratuity with respect to M/s. Pratima Kiran Vernekar bearing File No. DIP/GSIC/PER/F.2/2016

b. File No. GSIC/Per/F.2/2016 regarding contribution of GPF.

c. Files pertaining to leave encashment No. DI/INF/GSIC/SIC-leave-encashment/2021.

d. File No. DI/INF/GSIC/PER/F-2/2018-2019.

e. File No. DIP/GSIC/PER/F-2/2016 files pertaining to contribution towards GPF dated 18/01/2021 alongwith notings."

10. Adv. M. Korgaonkar appearing for the Appellant and raised the queries by filing the application that the documents furnished are only photocopies and not certified by the PIO as required by law and she also claimed that she did not receive the information with regards to the decision taken on Confidential Note. On next date of hearing, the PIO furnished certified copy of all documents identified by Adv. M. Korgaonkar and submitted that inspite of the constant efforts he could not trace the copy of Confidential Note.

He further submitted that, he checked the inward register maintained by the public authority and it was found that the so-called Confidential Note was not inwarded in the inward register and to substantiate his claim he also produced on record the copy of Inward/Outward Register of the public authority of the relevant time.

11. At the time of argument, Adv. M. Korgaonkar stressed upon the Confidential Note dated 26/03/2018 which was claimed to be submitted by the Secretary of Goa State Information Commission, Panaji to the Director of Information & Publicity, Panaji Goa. She further contended that it is mandatory on the part of each public authority to maintain and preserve all its records and since this information was less than five years old and demanded for action against the officer who is responsible for the loss of records and she placed reliance on judgement of High Court of Delhi in the case **Union of India v/s Vishwas Bhamburkar (W.P.(c) 3660/2012)** and judgement of High Court of Bombay in the case **Vivek V. Kulkarni v/s The State of Maharashtra & Ors (W.P. No. 6961/2012)** to support her case.

12. The PIO, Shri. Prakash Naik submitted that alleged Confidential Note was not inwarded in the office of public authority and therefore the said information is not at all generated,

moreover the Appellant could not produce the copy of the said Confidential Note to substantiate her claim and claim of the Appellant is based on assumption and presumption and not tenable in the eyes of law.

13. I have perused the judgement of High Court of Delhi in the case of Union of India v/s Vishwas Bhamburkar (Supra), in the said judgement, the Court prima facie was satisfied that the information was infact available with the public authority, the concerned PIO also admitted that the photocopy of the report was available and signed by the concerned Joint Secretary and Director at the relevant time, however, same was missing from the records of public authority. However, in the present case, the Appellant failed to establish that Confidential Note was actually sent by the Secretary of Goa State Information Commission, Panaji to the office of Director, Department of Information & Publicity. No iota of evidence is produced on record by the Appellant to hold that information is generated by public authority or at all exist and available with the public authority and due to the lapse and failure of the public authority said file is missing from the records of public authority.

14. The whole purpose of this Act is to disseminate the available information rather than to withhold the information from the public authority. The RTI Act provides access to all information that is available and existing but where the information is not part of the records of the public authority, the Act does not cast an obligation upon the PIO to furnish the information. Since the information sought is not available with the public authority, it cannot be furnished.

15. In the present case, the PIO disposed the request of the applicant within stipulated time. The Appellant also carried out the

inspection of file and obtained the available information, remaining information cannot be ordered to be furnished as the same is not available.

In view of available information having been provided to the Appellant, I find no ground to impose penalty against the PIO as prayed by the Appellant, accordingly the matter is disposed off.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner