

GOA STATE INFORMATION COMMISSION

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

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Appeal No. 32/2021/SIC

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 30/09/2020, filed under sec 6(1) of Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO) of Directorate of Information & Publicity, Udyog Bahavn, Panaji-Goa.
2. The said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant filed first appeal before the Director, Department of Information & Publicity, Panaji-Goa being the First Appellate Authority (FAA).
3. The FAA by its order dated 30/11/2020, allowed the said first appeal and directed the PIO to furnish the relevant information free of cost to the Appellant within 15 days from the date of order.
4. Since the PIO failed and neglected to comply the order of the FAA, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act.

5. Notices were issued to the parties, pursuant to which the PIO, Shri. Prakash Naik appeared and filed his reply dated 02/07/2021 on 05/07/2021.
6. Through his reply, the PIO contended that, the post of Commissioner in Goa State Information Commission is a tenure post and therefore the benefits of the General Provident Fund (Central services) Rules, 1960 are not applicable as the salaries allowances and terms and conditions of service of State Information Commissioner were fixed as per the order of Directorate of Information and Publicity.
7. The PIO also 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 the PIO 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 was also directed to identify the documents so as to take out the copies and matter was 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 copies 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 has raised the queries by filing the application that the documents furnished are only photocopies and not certified by PIO as required by law and she also claim 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 inwards 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 that the 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 exists 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 the public authority.

14. The whole purpose of this Act is to disseminate the available information rather than to withhold the information by 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 Appellant has carried out the inspection of file and obtained the available information.

In view of above, the matter is disposed off.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner