

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 123/2022/SCIC

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

.....Appellant

V/S

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

2. The First Appellate Authority,
Superintendent of Police (North),
North District, Headquarters,
Alto, Porvorim-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 28/04/2022

Decided on: 13/02/2023

FACTS IN BRIEF

1. The Appellant, Shri. Jawaharlal T. Shetye r/o. H.No. 35/A, Ward no. 11, Khorlim, Mapusa-Goa vide application dated 17/01/2022 filed under the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of Sub-Divisional Police Officer at Mapusa-Goa.
2. The said application was responded by the PIO on 10/02/2022 in the following manner:-

Sr.No.	Questions	Reply
I	Enclosed herewith photocopy of the representation / complaint dated 29/01/2021 made to your office for your ready perusal which is self explanatory and marked as Annexure "A". With reference to the Annexure "A" kindly furnish to me the following information as under:-	
1	Furnish the daily / monthly progress report with regards to the above referred Annexure "A" from your	Copy of Enquiry Report into the complaint dtd.

	end i.e after inwarding Annexure "A" in your office on 29/01/2021 to whom it was marked for processing in a time bound manner under the service delivery Act implemented by the Government and applicable to your office.	29/01/2021 is enclosed.
2	Furnish the certified copy of the action taken report from your end in respect of Annexure "A" after processing the same in a time bound manner.	As per the reply five at Point No. 1 above.
3	Furnish certified copies of all notings and the certified copies of all the correspondence letters generated from your concerned officials in processing the above referred Annexure "A" in a time bound manner.	Copy of complaint dtd 29/01/2021 with notings and the copy of call letter is enclosed.
4	Furnish the present upto date progress report as well as the present upto date status report with regards to the above refereed Annexure "A" which is self explanatory.	As per the reply given at Point No. 1 above.
5	Furnish the names and designations of your officials entrusted the duties of processing Annexure "A" which is self explanatory and presently with who, it is lying pending for further course of action in a time bound manner.	LPSI Vibha Volvoikar

3. Not satisfied with the reply of the PIO, the Appellant filed first appeal before the Superintendent of Police, North District 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 20/04/2022.
5. Being aggrieved and not satisfied with the order of the FAA dated 20/04/2022, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with prayer to

set-aside the order of the FAA and to direct the PIO to provide the complete information and to impose penalty on the PIO for not providing correct information.

6. Parties were notified, pursuant to which the representative of the FAA, Shri. Manguesh Mahale appeared on 20/06/2022. The PIO filed his reply through entry registry on 21/06/2022. The representative of the PIO, Shri. Sunil Patil, PSI attached to Mapusa Police Station appeared on 21/07/2022. The FAA opted not to file his reply in the matter.
7. Perused the pleadings, reply of the PIO and scrutinised the documents on records.
8. The grievance of the Appellant is that, on 28/01/2021, Adv. Gautam Pednekar illegally trespassed into his house bearing house No. 35/A situated at Khorlim, Mapusa Goa and threatened the family of the Appellant with dire consequences. Therefore he lodged complaint against Adv. Gautam Pednekar on 29/01/2021. Upset over no action taken on his complaint dated 29/01/2021, he sought information from the PIO regarding the action taken report and up to date progress report / status report of his complaint.

Further according to him consequent upon his complaint NO FIR was lodged against Adv. Gautam Pednekar for illegal trespassing in his property.

9. On the other hand, the PIO submitted that upon receipt of complaint from the Appellant on 29/01/2021, Lady Police Sub-Inspector, Vibha Volvoikar issued a call letter to the Accused Adv. G. Pednekar on 03/02/2022 and conducted the inquiry and furnished her report to the Police Inspector, Mapusa Police Station on 05/02/2022. The PIO submitted that the copy of the said report was furnished to the Appellant vide letter No. SDPO/MAP/RTI-

30/91/2022 dated 10/02/2022 i.e within stipulated time, which is duly endorsed by the Appellant.

10. On perusal of the report conducted by the LPSI, Vibha Volvoikar dated 05/02/2022, it is categorically mentioned as under:-

"Action taken:

It is submitted that during the course of enquiry in above application, I secured the presence of Adv. Gautam s/o Naguesh Pednekar, age 40 yrs r/o HNO. 107, Mapusa, Bardez Goa who stated that he do not know Mr. Jawaharal Shetye and the allegation against him are false and baseless and that he had not trespassed in to the property of Mr. Jawharlal Shetye. Recorded his statement and appended to the case papers.

Hence the above application may please be file. Original reference and statement recorded are enclosed herewith.

For favour of kind information please."

11. After notifying both the sides, the FAA was pleased to dispose the first appeal on 20/04/2022, the operative part of the said order reads as follows:-

"On 07.04.2022 appellant filed an application for permission seeking leave not to remain present for the hearing due to personal reason and requested to pass the order on the merits of the case.

During the hearing Shri. Neenand Deulkar APIO/PI Mapusa PS remained present on behalf of PIO/ SDPO Mapusa. On-going through the appeal of appellant it is

submitted that he had filed RTI application dated 12.01.2022 before the PIO/SDPO Mapusa and he is not satisfied with the reply furnished to him by PIO/SDPO Mapusa.

In this regards APIO/PI Mapusa PS stated that correct and complete information sought by the appellant were rightly provided to the appellant as per the information available on record of Mapusa Police Station as per the norms of RTI Act within stipulated time as specified under RTI Act without causing any delay.

Since the available information is duly provided to the appellant, the say of PIO/SDPO Mapusa is upheld and appeal is dismissed accordingly.”

12. It has been consistent stand of the PIO that available information has been furnished to the Appellant, however the Appellant alleged that information furnished by the PIO is incorrect and misleading.
13. The role of the PIO is information provider and he cannot be treated as a creator of the information. He can only facilitate in providing information which is available with his records in material form and is retrievable from the official records. The PIO cannot either confirm or deny perception of the Appellant. The PIO cannot be held responsible for the merits or accuracy of the information provided to the information seeker or furnish the reasoning of the decision taken by the competent authority.
14. The High Court of Andra 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 its fold large variety of sources 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 sources or item of information."

15. The Delhi High Court in the case **Union of India v/s Central Information Commission & P.D. Khandelwad (Writ Petition No. 8396/2009)** has observed as under:-

"..... Central or State Information Commissions cannot examine the correctness of the decision / directions of the public authority or the competent authority or the appropriate government under the RTI Act.

48..... Central or State Information Commission have been created under the statute and have to exercise their powers within four corners of the statute. They are not substitute or alternative adjudicators of all legal rights and cannot decide and adjudicate claims and dispute other than matters specified in Section 18 and 19 of the RTI Act."

16. In the present case, the public authority after receiving the Enquiry report dated 05/02/2022 provided the copy to the Appellant. The said report indicate that no action was initiated by the Police authority, therefore No action taken report is available in the records of the public authority. The PIO further cannot justify or provide the reason for decision taken by Investigating Officer, as it is outside the purview of the PIO under the Act. This can be matter for agitation before the concerned higher authority and not under this forum.
17. Under Section 7(1) of the Act, the PIO is required to dispose the application of the Appellant within 30 days. In the instant case, the PIO has replied to the RIT application on 10/02/2022 i.e within stipulated time. Therefore, I find no ground to impose penalty on the PIO as prayed by the Appellant.
18. Considering the facts and circumstances hereinabove, I find no merit in the appeal and therefore same is disposed off with the following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner