

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

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Appeal No. 155/2022/SCIC

Mr. Damodar Barve,
F-2, A-2, Yashodhan Building,
Near Saibaba Temple,
Verla Canca, Mapusa-Goa 403510.

.....Appellant

V/S

1. The Public Information Officer,
The Headmaster,
Shri. Kamleshwar High School,
Korgao, Pernem-Goa 403512.

2. The First Appellate Authority,
Shailesh R. Zingde,
Dy. Director of Education,
North Educational Zone,
Mapusa-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 07/06/2022

Decided on: 15/03/2023

FACTS IN BRIEF

1. The Appellant, Shri. Damodar Barve r/o. F-2, A-2, Yashodhan Building, Near Saibaba Temple, Verla Canca, Mapusa-Goa vide application dated 24/12/2021 filed under the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Head Master, Shri Kamleshwar High School, Korgao, Pernem-Goa:-

- 1) The obligation carried out by PIO since 01.01.2007 as per various provisions of Section 4 of RTI Act 2005.*
- 2) Name, designation and addresses of the person who helded the post of PIO commencement of the RTI Act 2005.*
- 3) Name of the PIO/s who not carried out any work as per obligations mentioned under Section 4 of the RTI Act 2005.*

4) Name, designation and educational qualification of the existing PIO. Also furnish the work carried out by him under various provisions of Section 4 of the RTI Act 2005.

5) Name/s of the PIO hold the post till date not able to carry out any work as per Section 4 of the RTI Act 2005, **due to laziness or incompetence.**

Necessary fee will be paid.

Wish you will do the needful."

2. The said application was responded by the PIO on 21/01/2022 in the following manner:-

"Point No 1:- Not Available

*Point No 2:- Shri. Raghunath R. Patil,
Retired Headmaster,
Shree Kamleshwar High School, Deulwada-Korgao,
Pernem-Goa.*

Point No 3:- Not Available

*Point No 4:- Name of the PIO: Shri. Bhalchandra B. Hiroji
Designation : Headmaster / Existing PIO
Edu. Qualification: M.A., B.Sc., B.Ed.*

Further part of

point No 4:- Not Available

Point No 5:- Not Available"

3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Deputy Director of Education, North Educational Zone, Mapusa-Goa being the First Appellate Authority (FAA).

4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 09/03/2021.

5. Feeling aggrieved and dissatisfied with the order of the FAA, the Appellant landed before the Commission by this second appeal

under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information.

6. Notices were issued to the parties, pursuant to which Adv. S. Vaigankar appeared on behalf of the Appellant on 11/07/2022. Adv. A. Nasnodkar appeared on behalf of the PIO and placed on record the reply of the PIO on 11/07/2022. The FAA, Shri. Jaywant Naik appeared on 11/07/2022, however opted not to file any reply in the matter.
7. I have perused the pleadings, reply, perused the order passed by the FAA and scrutinised the documents on record.
8. It is the case of the Appellant that, he sought various information with regards to the name of the designated PIO and the obligation carried out by the said PIO under Section 4 of the Right to Information Act, since 01/01/2007. However, according to him the PIO has furnished the information on point No. 2 and 4 and denied the information at point No. 1, 3 and 5 and therefore prayed that PIO may be directed to furnish the complete information.
9. On the other hand, the PIO submitted that, he has provided the available information to the Appellant after verifying the records of the public authority within the stipulated time and present appeal is filed by the Appellant only with the malicious intent to harass the PIO and public authority.
10. Considering the rival contention of the parties, it will be appropriate to refer Section 4 of the Act, which reads as under:-

"4. Obligations of public authorities.__ (1) Every public authority shall__

(a) maintain all its records duly catalogued and indexed in a manner and the form which

facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated."

From the bare reading of the above provision of law, Section 4 of the Act casts a duty on every public authority to maintain the record in such a manner to facilitate the supply of information held or under the control, it is significant to note that, the obligation of a public authority are basically the obligation of the head of the authority and not the PIO.

Secondly, the public authority obliges to give information suo motu subject to availability of resources. Moreover, Section 4(4) of the Act does provide that all such material should be disseminated after taking into consideration the cost effectiveness, local language and the most effective method of communication.

11. As far as present case is concerned, the Appellant sought information with regards to obligation of the PIO as per the provisions of Section 4 of the Act. Whereas Section 4 of the Act pertains to obligation of a public authority. Eventually the information sought by the Appellant with regards to point No. 1,4 and 5 is irrelevant and infructuous and hence the PIO rightly replied as "information not available".

The High Court of Himachal Pradesh in the case of **State of Himachal Pradesh & Anrs. v/s Archit Sant & Anrs. (2017 (4) ALL MR (JOURNAL) 35)** has held that:

"8..... The PIO could only supply the material in any form as held by public authority in terms of Section 2(f). the Act does not require the Public Information Officer to deduce some conclusion from the material and supply the conclusion so deduced to the Appellant."

12. On going through the application filed by the Appellant under Section 6(1) of the Act dated 24/12/2021, at point No. 4, the Appellant sought the name and educational qualification of the existing PIO.

In fact, there is no provision under the RTI Act which prescribes the qualification or experience that the PIO's are required to possess. Section 5 of the Act makes it clear that any officer can be designated as the PIO, thus no specific requirement is mandated for designating an officer. Though in the present case, the PIO has provided the educational qualification of the PIO such information in fact was not required to be maintained by the public authority hence the Act does not cast an obligation upon the PIO to furnish such information to the Appellant.

13. It is also urged by the Appellant that, the FAA was erred in disposing the first appeal, inspite of his objection filed before the Director, Directorate of Education at Porvorim-Goa on 09/03/2021, against the FAA during the pendency of the first appeal. He also contended that in the said complaint he alleged the bias attitude of the FAA. However except a general statement he has not produced anything on record to prove his allegation.

Another aspect which is required to be noted that, upon receipt of the complaint, the Directorate of Education, Porvorim also did not issue any direction or instruction to the FAA, not to hear or dispose the first appeal. While rendering allegation in the

matter of attributing bias is now well settled that mere general statement will not be sufficient for the purpose of indication of bias, there must be cogent evidence available on record to come to the conclusion. A useful reference needs to be made to the judgement of Hon'ble Supreme Court in the case **Jasvinder Singh & Ors. v/s State of Jammu and Kashmir & Ors. ((2003) 2 SCC 132 SC)** where it is held that:-

"The burden of proving malafide lies heavily on the person who alleges it. A mere allegation is not enough. The party making such allegation is under the legal obligation to place specific material before the court to substantiate the said allegation."

14. Under Section 19(1) of the Act, the First Appellate Authority is performing quasi-judicial functions. Moreover, under Section 19(6) of the Act, the first appeal is required to be disposed within 30 days of the receipt of the appeal or within such extended period not exceeding total of 45 days. Therefore, I do not find any error in deciding the first appeal by the FAA in time bound manner. Besides the order of the FAA is just and equitable in the facts of the case.
15. On further perusal of the RTI application of the Appellant dated 24/12/2021, which is reproduced at para No. 1 hereinabove, same is in bad taste and inappropriate. The Appellant must recognise that, the RTI Act has granted him the right to seek and obtain information from public authorities under the Act. However, has not been granted any right to use accusatory remark in RTI application in order to settle personal scores. The Appellant is required to keep in mind the object and purpose behind enactment of this cherished Act.

16. The High Court of Andhra Pradesh in **Divakar S. Natarajan v/s State of Information Commissioner A.P. (AIR 2009 (NOC) 1362 (AP))** has observed as under:-

"26. The Act is an effective device, which if utilised judiciously and properly, would help the citizen to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act, to be more practical and realistic."

17. Since the information is not available in the records, I cannot issue any directions to the PIO to furnish the non-existing information. The appeal is devoid of any substance. Hence dismissed.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner