GOA STATE INFORMATION COMMISSION

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Appeal No. 199/2022/SCIC

Shri. Deepak Gracias,
R/o. Karishma Apartments, 'C' Block,
Opposite Cine Vishant,
Behind Punjab National Bank,
Aquem, Margao, Goa 403601. .....Appellant

V/S

1. The First Appellate Authority,
The Member Secretary,
South Goa Planning & Development Authority,
4th Floor, D-Wing, Osia Commercial Arcade,
Margao-Goa 403601.

2. The Public Information Officer,
South Goa Planning & Development Authority,
4th Floor, D-Wing, Osia Commercial Arcade,
Margao-Goa 403601. .....Respondents

Shri. Vishwas R. Satarkar State Chief Information Commissioner

Filed on: 12/07/2022
Decided on: 30/01/2023

FACTS IN BRIEF

1. The Appellant, Shri. Deepak Gracias, r/o. Karishma Apartments, 'C' Block, Opposite Cine Vishant, Behind Punjab National Bank, Aquem, Margoa-Goa by his application dated 06/04/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought the following information from the Public Information Officer (PIO), South Goa Planning and Development Authority (SGPDA), Margao-Goa:-

    1. *Status report of the show cause notice with reference No. SGPDA/P/5742/322/18-19 dated 30/05/2018.*
    2. *Findings and Proceedings of matter bearing reference No. SGPDA/P/5742/322/18-19 dated 30/05/2018.*

2. The said application was responded by the PIO on 05/05/2022 in the following manner:-

> *"With reference to your application referred above pertaining to file No. SGPDA/P/5742, the information sought by you cannot be furnished as the file is presently with the advocate as the matter is in the High Court."*

3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal under Section 19(1) of the Act on 09/05/2022 before the Member Secretary, South Goa Planning and Development Authority at Margao Goa, being the First Appellate Authority (FAA).

4. The FAA by its order dated 07/06/2022 allowed the first appeal and directed the PIO to furnish the information once the advocate returns the file to the office.

5. Since the PIO has failed and neglected to comply the order of the FAA dated 07/06/2022, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act, seeking the following reliefs:-

> *a) "Respondent be directed to provide the requested information.*
> *b) Respondents be directed to pay compensation of Rs. 250 per day for delay in providing the information.*
> *c) Grant any other relief as this Hon'ble Court deems fit and proper."*

6. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 26/08/2022. The PIO and FAA did not appear before the Commission inspite of valid service of notice.

Fair opportunities granted to the PIO and the FAA to appear for the hearings viz 26/08/2022, 19/09/2022, 19/10/2022, 25/11/2022, 20/12/2022 and 30/01/2023. Hence I am disposing this appeal upon hearing the Appellant and considering the documents on record.

7. Under Section 7(1) of the Act, the PIO requires to dispose the request by furnishing of information on payment of requisite fee or rejection of the request on ground mentioned in Section 8 and / or Section 9 of the Act.

8. On perusal of records, it reveals that, the PIO has denied disclosing the information with the reason that the relevant file is with the advocate as the matter is pending in the High Court. Pendency of the suit in the High Court cannot be the reason to deny the information. This is not the case, where any Court of law has expressly stayed to disclose the information and disclosure of which may constitute contempt of Court. The PIO cannot impose new set of non-existent exemption to deny the information other than the ones enumerated under Section 8 and/or 9 of the Act, therefore, the above denial of information is not in consonance with the provisions of the Act.

9. The High Court of Delhi in the case of **State Bank of India v/s Mohd. Shahjahan (W.P. (c) 9810/2009)** has held as under:-

> "22. *The very object and purpose of the RTI Act is to make the working of public authorities transparent and accountable. For the purpose of the RTI Act, all information held by a public authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the public authority is able to demonstrate why the information held by it*

should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the public authority to show why the information sought from it should not be disclosed."

Therefore, in my considered opinion the PIO has denied the information without any basis of law. The PIO is bound to provide the information that is available in the official records of the public authority.

10. Hon'ble Supreme Court in the case **Ferari Hotels Private Ltd. v/s The State Information Commissioner, Greater Mumbai & Ors. (C. A. No. 9064/2018)** it was observed as under:-

"16. The only exemption from disclosure of the information of whatsoever nature, with the public authority is as per Section 8 and 9 of the said Act. Thus, unless the information sought for falls under the provisions, it would be mandatory for the public authorities to disclose the information to an applicant."

11. Despite ample opportunities, the PIO has failed and neglected to appear and file his reply in the matter, hence, shown lack of concern to the process of the RTI Act and thus failed to discharge his duty and responsibility which amounts to abuse of process of law.

12. After hearing both the parties, the FAA was pleased to allow the first appeal on 07/06/2022, the operative part of the order of the FAA, reads as under:-

"ORDER

Being the First Appellate Authority, I heard both the Parties i.e. the Appellant and Respondent. The Member

Secretary (SGPDA)/ First Appellate Authority hereby directs Respondent / PIO that he should immediately issue the information if available in the record of the South Goa Planning & Development Authority once the advocate returns the file to this office.

The matter stands disposed."

From the bare reading of the above findings, it appears that the FAA did not apply his judicious mind in passing the order. The FAA failed to evaluate that there is no provision anywhere in the Act to the effect that information can be refused to be disclosed if relevant file was in the possession of an advocate for obtaining legal advice. The order of the FAA dated 07/06/2022 is obscure and did not specify time limit to disclose the information.

Having regard to Section 3, the citizens have the right to access to all information held by or under the control of any public authority except those excluded or exempted under the Act. The PIO denied the information on wrong footing and the same is not tenable by law.

13. The whole purpose of the Act, is to bring about as much transparency as possible in relation to activities and affairs of public authorities. Section 20 of the Act, clearly lays down that in case the information has not been supplied to the information seeker within the time limit, without any reasonable cause, then the Commission shall impose the penalty.

14. The High Court of Kerala in the case **Janilkumar v/s State Information Commission & Ors (LNIND 2012 Ker. 982),** has held that failure to furnish information is penal under Section 20 of the Act.

15. The High Court of Bombay, Goa bench in the case **Johnson B. Fernandes v/s The Goa State Information Commission &**

Anr. (2012 (1) ALL MR 186) has held that, law contemplates supply of information by the PIO to party who seeks it, within the stipulated time, therefore, where the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.

16. In the present case the Appellant also prayed that, both the Respondent be directed to pay the compensation of Rs. 250/- per day for delay in providing the information. However, he did not make out any specific plea for amount of loss or shown quantum of actual damage caused to him. Such a relief cannot be granted to the Appellant being irrational and completely unfounded. To substantiate it, a reference can be conveniently made to the recent judgement of the High Court of Bombay, Goa Bench in the case **Santana Nazareth v/s State of Goa & Ors. (2022 (6) ALL MR 102),** paragraph 4 of the said judgement being relevant is quoted below:-

> *"4..... compensation as in Section 19(8)(b) is intended to be provided to the information seeker by the public authority on proof of loss or sufferance of detriment by the former because of negligence, carelessness or recalcitrance of the later. Merely because the petitioner was found to have suffered hardship did not entitle her to payment of compensation unless a case of loss or sufferance of detriment was specifically set up in the appeal."*

Therefore, I am not inclined to grant the relief at prayer No. (b) sought by the Appellant.

17. Considering the ratio laid down by the various High Courts, the Commission comes to the conclusion that, it is a fit case for imposing penalty under Section 20 of the Act against the PIO.

However, before any penalty is imposed, the principle of natural justice demands that an explanation be called for from the concerned PIO, as to why he failed to discharge the duty cast upon him as per the RTI Act. I therefore pass the following:-

ORDER

- The appeal is allowed.
- Mr. Rosario Paulo Gomes, the Public Information Officer at South Goa Planning and Development Authority, Margao Goa is hereby directed to provide the information to the Appellant free of cost as per his RTI application dated 06/04/2022, within the period of **FIFTEEN DAYS** from the date of receipt of the order.
- The PIO, Mr. Rosario Paulo Gomes is hereby directed to show cause as to why penalty should not be imposed on him in terms of Section 20(1) of the Act.
- The reply to the show cause notice is to be filed on **27/03/2023 at 10.30 am.**
- The appeal is disposed accordingly.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner