

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

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 83/2022/SCIC

&

Appeal No. 85/2022/SCIC

Adv. Aires Rodrigues,
C/G-2, Shopping Complex,
Ribandar-Retreat, Ribandar-Goa.

.....Appellant

V/S

1. Mr. R. Mihir Vardhan,
Secretary to Goa Governor,
Raj Bhavan, Dona Paula-Goa.

2. Mr. Gaurish J. Shankhwalkar,
Public Information Officer,
Goa Raj Bhavan, Dona Paula-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 21/03/2022

Decided on: 18/04/2023

FACTS IN BRIEF

1. Both these appeals involve common questions of law and facts and, therefore are decided by this common judgement.
2. For convenience, I refer to facts of Appeal in Appeal No. 83/2022/SCIC.
3. The Appellant, Adv. Aires Rodrigues r/o. C/G-2 Shopping Complex, Ribandar- Retreat, Ribandar-Goa vide his application dated 11/10/2021 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Goa Raj Bhavan, Dona Paula-Goa:-

"Under the Right to Information Act be pleased to furnish the following information at the earliest possible:-

1. *A copy of the official letters addressed by His Excellency the Governor of Goa to the Honourable Prime Minister of India from November 3rd 2019 to August 18th 2020.*
 2. *A copy of the official letters addressed by his Excellency the Governor of Goa to the Honourable Union Home Minister from November 3rd 2019 to August 18th 2020”*
4. The said application was responded by the PIO on 08/11/2021 in the following manner:-
- "The above information sought by you was searched and it is not available in the files and records of this office. There is a system of directly communicating / writing with the office of higher authorities by the Hon'ble Governor and copies of such confidential and personal correspondence / records is not usually handed over to the Governor's Secretariat."*
5. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Secretary to the Governor on 15/11/2021 under Section 19(1) of the Act, being the First Appellate Authority (FAA).
 6. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 30/12/2021.
 7. Aggrieved and dissatisfied with the order of the FAA dated 30/12/2021, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the Respondents to furnish the information and impose penalty upon Respondents in terms of Section 20 of the Act.
 8. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 06/04/2022, Adv. Chirag Angale appeared on behalf of Respondents and placed on record the reply of the

PIO on 07/06/2022. He also submitted that he does not want to file reply on behalf of the FAA.

9. It is the case of the Appellant that, by his application dated 11/10/2021 he sought a copy of the official letters addressed by the Governor of Goa to the Hon'ble Prime Minister of India and Hon'ble Union Home Minister from 03/11/2019 to 18/08/2020. However, said information has been denied to him on the ground that said information is not available in the records of the public authority.

Further according to him, the information can be denied to the applicant only when the said information has been exempted under Section 8 and/or 9 of the Act, therefore, the reply of the PIO is devoid of any judicious reasoning.

10. On the other hand, the PIO through his reply dated 07/06/2022 contended that, the RTI application of the Appellant is vague and ambiguous and did not specify the particulars of the letters and therefore, the Appellant himself was unsure whether such information existed or not.

Further, according to the PIO, upon receipt of the RTI application he conducted complete search of the records and since said information is not available in the records he replied to the Appellant that said information is not available in the records.

Further, according to him, since there exists a system of directly communicating / writing with the office authorities by the Hon'ble Governor, the copies of personal correspondence were not handed over to the Governor's Secretariat, hence, said letters are not available in the records of the public authority.

11. Perused the pleadings, reply, written arguments, scrutinised the documents on record, considered the oral submission and judgements relied upon by the rival parties.

12. The rival contention of the parties now fall for my consideration

13. In this context it would be necessary to refer to the provisions of Section 2(f) and 2(j) of the Act, which reads as under:-

"Definitions. – *In this Act, unless the context otherwise requires, --*

*(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material **held** in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

*(j) "right to information" means the right to information accessible under this Act which is **held by or under the control** of any public authority and includes the right to__*

- i. inspection of work, documents, records;*
- ii. taking notes extracts or certified copies of documents or records;*
- iii. taking certified samples of material;*
- iv. obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

From the plain reading of the above, it is clear that, information can be something that is available in a material form and same is retrievable from the official records. Section 2(j) suggests that, PIO is required to supply such material in any form as held or under the control of public authority.

14. In the course of hearing on 08/07/2022 the Appellant stressed upon the Commission to call for the copy of inward/ outward register maintained by the public authority to ascertain the true fact of the issue. Therefore, the Commission directed the PIO to produce the copy of inward / outward register on the next date of the hearing. Upon the direction, the PIO produced on record the copy of inward/ outward register in a sealed envelope before the Commission on 05/08/2022.
15. During the course of arguments, the Appellant submitted that he wanted to inspect the copy of inward / outward register produced by the PIO. Accordingly the inspection of inward/ outward register was given to the Appellant on 09/11/2022 in the chamber of Secretary, Goa State Information Commission at Panaji-Goa.
16. Upon the inspection of the inward/ outward register of the public authority, the Appellant vide his application dated 06/01/2023 raised that at serial No. 4540, 4744, 5286, 292, 500, 530, 923, 1895, 1897, 1924, 2933 and 2935 he found entries registered with regards to the letters received from Hon'ble Prime Minister of India and Hon'ble Union Minister for Home, according to the Appellant, same is contrary to stand taken by the PIO/ FAA.
17. The PIO responded to the said application by filing his reply on 07/02/2023 and contended that, official letters received by the Hon'ble Governor from the Hon'ble Prime Minister and the

Hon'ble Union Home Minister are received in close sealed envelope and the same are handed over directly to the P.S. to the Hon'ble Governor.

He further stated that the PIO does not know about the content of the letters and these letters do not constitute the part of records and files maintained by the public authority.

18. Adv. Aires Rodrigues, being the Appellant argued that even though the correspondence and letters received in the name of Hon'ble Governor in a close envelope, said letters are the part of the records and same is not specifically exempted under any provisions of the RTI Act. He also argued that the PIO is the incharge of the entire Raj Bhavan and therefore, has access to all the records, whether, it is in the custody of subordinate or superior authorities and submitted that he is entitled for said information.

19. The PIO resisted the claim of the Appellant and through his written arguments submitted that, the nature of the information sought for by the Appellant is in respect of private / confidential communication exchanged between the Hon'ble Governor of Goa and the Hon'ble Prime Minister of India and the same could not be even remotely have any rationale / nexus with the functions of the Raj Bhavan as a Public authority and consequently no any duty/ obligation could be cast upon the PIO to maintain such private information in terms of law.

Further, according to the PIO, he had specifically communicated to the Appellant that, since there persists the system of directly communicating / writing with the office of higher authorities by the Hon'ble Governor, the copies of such personal/ confidential correspondence/ records were not handed over to the Governor's Secretariat and hence, said records are not being under

the control of the public authority and/ or in the absence, the Act does not cast any obligation upon the PIO to maintain such records which constitute to be entirely private / confidential correspondence.

Further, according to the PIO, the nature of the information is not satisfying the parameters / test laid down by the mandate of Section 2(j) read with 2(f) of the Act, consequently, the PIO was not cast with the statutory obligation to maintain the said information under Section 4 of the RTI Act.

20. I have perused the Inward/ Outward Register maintained by the office of the public authority and minutely gone through the entry which is identified by the Appellant, viz the entry No. 4540 which was inwarded in the office of the public authority on 08/11/2019 is the D.O. Letter No. 1655263/2019/HMP received from the Home Minister, Delhi and marked as '*received in close envelope in the name of the Hon'ble Governor*' and the said letter has been marked to P.S., likewise all the letters/ correspondence received in the name of H.E. Governor in a close envelope, were forwarded to P.S. Governor.

21. There is also one more aspect which is required to be taken into consideration is that the register not only shows said letters received through close envelope but also letters received as D.O. letters, and same is specifically mentioned in the entry registry. It is considered that D.O. letters are informal communication between the Government Officers of the similar rank. Said correspondence includes personal information in addition to the usual official information. Neither the content of the same is appealable nor permitted to share its copies to other officials, being this communication is considered as confidential communication, cannot be classified as official communication.

22. The point is that the said D.O. letters do not relate to the administration or operation of a public authority or related to or having any nexus to public activities. A public authority can under Section 2(j) provide access only to such information which is recorded, stored and circulated by the public authority for subsequent use

Therefore the Commission is not in agreement with the contention of the Appellant that the PIO is entitled for each and every document entered in Entry Registry. In the light of Section 2(j) of the Act, if the PIO is not empowered to call entire records from the Hon'ble Governor and maintain it in its records, eventually no obligation lies on the PIO to furnish the said information.

23. The Chief Information Commission in the case **Priyavadan H. Nanavati v/s Institute of Chartered Accounts of India (CIC/AT/A/2007/00327)** has held that:-

"The expression 'held' or 'under the control of' used in sub-section 2(j) of the Act are significant. These expression mean that information can be said to be under the control of a public authority only when such public authority holds that information authoritatively and legitimately. Information which a public authority might receive casually will not qualify to be held or under the control of the public authority".

24. The position of law with regards to issue, particularly relating to term 'held by or under the control of any public authority', has been crystallized by Hon'ble Supreme Court in the case **Central Public Information Officer, Supreme Court of India v/s Subhash Chandra Agarwal (C. A. No. 10044/2010)**. Para No. 18 of said judgement is extracted herein below:-

"18. What is explicit as well as implicit from the definition of 'information' in clause (f) to [Section 2](#) follows and gets affirmation from the definition of 'right to information' that the information should be accessible by the public authority and 'held by or under the control of any public authority'. The word 'hold' as defined in Wharton's Law Lexicon, 15th Edition, means to have the ownership or use of; keep as one's own, but in the context of the present legislation, we would prefer to adopt a broader definition of the word 'hold' in Black's Law Dictionary, 6th Edition, as meaning; to keep, to retain, to maintain possession of or authority over. The words 'under the control of any public authority' as per their natural meaning would mean the right and power of the public authority to get access to the information. It refers to dominion over the information or the right to any material, document etc. The words 'under the control of any public authority' would include within their ambit and scope information relating to a private body which can be accessed by a public authority under any other law for the time being in force subject to the pre-imposed conditions and restrictions as applicable to access the information."

25. Similarly, the High Court of Delhi in the case **Registrar of Companies & Ors. Dharmendra Kumar Garg & Anrs. (W.P. No. 11271/2009)** has observed as under:-

"31. In the context of the object of the [RTI Act](#), and the various provisions thereof, in my view, the said expression 'held by or under the control of any public authority' used in [section 2\(j\)](#) of the RTI Act deserves a

wider and a more meaningful interpretation. The expression 'Hold' is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as 'to keep' i.e. to retain, to maintain possession of, or authority over.

32. *The expression 'held' is also defined in the Shorter Oxford Dictionary, inter alia, as 'prevent from getting away; keep fast, grasp, have a grip on'. It is also defined, inter alia, as 'not let go; keep, retain'.*

33. *The expression 'control' is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:*

"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"

34. *From the above, it appears that the expression 'held by' or 'under the control of any public authority', in relation to 'information', means that information which is held by the public authority under its control to the exclusion of others."*

26. The High Court of Uttarakhand in the case **Asian Education Charitable Society & Anrs. v/s State of Uttarakhand & Ors. (AIR 2010 Uttarakhand 72)** has held as under:-

"When information is not with the Public Authority, it cannot be an information which is held by the public authority and therefore, it would not be covered under the definition of 'right to information' given under Section 2(j) of the Act. Under the aforesaid definition, 'right to information' means an information which is accessible under this Act, and which is held by or under the control of any public authority. If information is not already 'held by' a public authority, the public authority cannot be compelled to furnish such information under the Act"."

27. While considering the extent and scope of information that could be dispensed under the Act, the Hon'ble Supreme Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay (Civil Appeal no.6454 of 2011)** at para 35 has observed:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect

or collate such non available information and then furnish it to an applicant.”

28. The High Court of Patna in the case **Shekhar Chandra Verma v/s State Information Commissioner (LPA 1270/2009)** has held that:-

"10. In our view, RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an inquiry and thereby 'create' information, which appears to be what the information seeker had required of the Appellant."

29. The High Court of Delhi in the case **The Registrar, Supreme Court of India v/s Commodore Lokesh K. Batra & Ors. (W.P. No. 6634/2011)** has held that:-

"Insofar as the question of disclosing information that is not available with the public authority is concerned, the law is now well settled that the Act does not enjoin a public authority to create, collect or collate information that is not available with it. There is no obligation on a public authority to process any information in order to create further information as is sought by an applicant."

30. It is also pertinent to note that, the practise of conveying the confidential correspondence directly to the higher authorities has been prevailing and widely accepted practise in all hierarchical structure to maintain confidentiality of sensitive issue. The RTI Act has been enacted with a view to providing for setting out a practical regime of right to information for the citizen to secure access to information under the control of public authorities, in order to promote transparency and accountability. The object and aim of the Act was considered by the Hon'ble Supreme Court in the

case of **Institute of Chartered Accountants v/s Shaunak H. Satya (AIR 2011 S.C. 3336)**. In that context and dealing with some of the provisions of the Act, it is observed as under:-

"18..... One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information."

31. In the case in hand, it is a consistent stand of the PIO that, upon receipt of the RTI application he conducted due and diligent search in the files and records maintained by the public authority and since the said information is not available, he informed the Appellant that purported information is not available in the records. As stated earlier, Right to Information means only access to information which is actually held or in existence with the public authority at a relevant time. The Act does not cast an obligation upon the public authority to collect or create non available information and then furnish it to the Appellant. The Commission is

of the view that there is no malafide denial of information by the PIO, since the information sought for by the Appellant is not held by or under the control of public authority and therefore not in existence, the Commission cannot issue any direction to the PIO to furnish non-existing information.

32. On meticulous reading of the order passed by the FAA dated 30/12/2021, it appears that the order of the FAA is just and equitable in the facts of the case. I do not find any palpable error in reasoning of the order, therefore, it does not warrant any interference.

33. In the background of the above precedents and the facts and circumstances discussed hereinabove, I do not find anything on record to show that the PIO has acted contrary. The Appellant has filed RTI application on 11/10/2021 same is replied by the PIO on 08/11/2021, therefore the PIO responded to the request of the Appellant within stipulated period. Consequently, the Commission does not find any fault in the conduct of the PIO in order to impose penalty as prayed by the Appellant. In the above circumstances, I find no merit in the appeal and therefore dispose the appeal with the following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner