

GOA STATE INFORMATION COMMISSION
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Appeal No. 91/2023/SCIC

Dattaprasad Prabhugaonkar,
H.No. 234, Maxem,
Canacona, Goa.

.....Appellant

V/S

1. The Public Information Officer,
Office of the Hon'ble Speaker Goa Legislative Assembly,
Assembly Complex, Porvorim-Goa.

2. The First Appellate Authority,
Secretary Legislature,
Goa Legislative Assembly,
Assembly Complex, Porvorim-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 09/03/2023

Decided on: 30/08/2023

ORDER

1. The Appellant, Shri. Dattaprasad Prabhugaonkar, r/o. H.No. 234, Maxem, Canacona-Goa vide his application dated 15/09/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of the Hon'ble Speaker, Goa Legislative Assembly, Porvorim-Goa.
2. Since the said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant preferred first appeal before the Secretary Legislature, Goa Legislative Assembly, Porvorim-Goa, being the First Appellate Authority (FAA).
3. The FAA by its order dismissed the said first appeal on 13/12/2022.
4. Being aggrieved and dissatisfied with the order of the FAA dated 13/12/2022, 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 free of cost and other reliefs.

5. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 28/04/2023, the PIO, Shri. Mohan Gaonkar appeared and filed his reply on 28/04/2023, the representative of the FAA, Mr. Hercules Noronha appeared and placed on record the order of the FAA dated 13/12/2022.
6. Perused the pleadings, reply and scrutinised the documents on record.
7. On going through the application filed under Section 6(1) of the Act dated 15/09/2022 it appears that, the Appellant is seeking the certified copy of the document/ correspondence related to one meeting held on 04/06/2022 at Shree Mallikarjun College, Delem, Canacona Goa with regards to 1st Deliberation in creating Canacona Development Plan 'Vision Canacona'.
8. The PIO through his reply dated 28/04/2023 contended that, upon the receipt of the RTI application from the Appellant, the PIO enquired with the office of the Hon'ble Speaker and it was informed to him that, the Hon'ble Speaker being the MLA of Canacona Constituency has conducted said programme/ Meeting in an exercise to develop Canacona Constituency and for that purpose imputes have been sought from the public.

The PIO contended that, no fund of public authority or Government was utilised to conduct said meeting. He further contended that, said meeting does not pertaining to any official matter concerned with the Goa Legislative Secretariat and hence no information is available in the records of the public authority.

9. An important question that arises in the case is as to whether what the Appellant is asking can be treated as a 'right to information' within the meaning of Section 2(j) of the Act. The term 'right to information' defined under the Act as under:-

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

(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 provision it is clear that, the Act confers on all citizens a right to access information and this right has been defined under Section 2(j) of the Act. An analysis of this Section would make it clear that the right relates to information that is held by or under the control of any public authority.

10. On the other hand, Section 2(f) defines the 'information' as something which is available in the material form and same is retrievable from the official records of a public authority. It cannot be something that is not part of the record. The role of the PIO

under the Act is of information provider and he cannot be treated as a creator of the information.

11. Hence in case of information which is not held by or under the control of a public authority as defined under the Act, than this right to information is not available in respect of that information. This right to information is available from a public authority but not from the private authority. Elected representative including MPs, MLA and local body members are not covered under the RTI Act in individual capacity.
12. On going through the impugned order of the FAA dated 13/12/2023, the FAA opined that:-

"After going through the various contentions, the First Appellate Authority disposes of this petition without grant of relief to the appellant as the matter does not pertain with official matter connected with the Legislative Assembly or the Speaker's Officer and it could not be ascertained by either parties as to which Government Departments the same pertains to. Hence, the appeal is dismissed without any costs to either parties."

13. The extent and scope of the information and the nature in which it is to be dispensed is elaborately discussed and laid down by the Apex Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay (Civil Appeal no.6454 of 2011)** as under:

"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.** A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in [section 2\(f\)](#) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the [RTI Act.](#)”*

14. The Appellant miserably failed to establish that the information was generated by the public authority. As the information is not at all in existence due to non-generation, nothing can be ordered to be furnished to the Appellant.
15. In the light of above, I do not find any error in the judgement passed by the FAA dated 13/12/2023 and hence I am not inclined

to interfere in the said order of the FAA. In view of above I disposed the present appeal with following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner