

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

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Complaint No. 17/2022/SCIC

Shri. Uday A. Chari Priolkar,
R/o. H.No. C-5/55,
Mala, Panaji-Goa 403001.

.....Complainant

V/S

1. Ulhas Bhaje,
Resident TR Residency C-2,
Flat No. S-1, Taleigao-Goa.

2. The Deputy Director (Admn)/
The Public Information Officer,
Institute of Psychiatry & Human Behaviour,
Bambolim-Goa 403202.

3. The First Appellate Authority,
Institute of Psychiatry & Human Behaviour,
Bambolim-Goa 403202.

.....Opponents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 12/05/2022

Decided on: 08/06/2023

FACTS IN BRIEF

1. The Complainant, Shri. Uday A. Chari Priolkar r/o. House No. C-5/55, Mala, Panaji-Goa has filed the present complaint under Section 18(3) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') with the prayer to stay the order dated 05/05/2022 passed by the Commission in Appeal No. 277/2021/SCIC and to review the said Order.
2. Notices were issued to the parties, pursuant to which the Complainant appeared on 30/06/2022, Opponent No. 1 appeared alongwith his representative Shri. C. Radhakrishnan and filed preliminary objection in the matter on 30/06/2022, the representative of the PIO, Shri. Sebby Dias appeared and placed on

record the compliance report dated 13/05/2022. The Opponent No. 3 (FAA) duly served opted not to appear in the matter, rebutting the content of preliminary objection, the Complainant filed his rejoinder on 28/07/2022.

3. Perused the content of complaint memo, reply/preliminary objection of the Opponent No. 1, compliance report of Opponent No. 2, scrutinised the documents and considered the written as well as oral submissions of the rival parties.
4. It is the case of the Complainant that, pursuant to the first appeal filed by the Opponent No. 1, the FAA, the Dean/ Director of Institute of Psychiatry and Human Behaviour (IPBH), Bambolim, Goa issued notice to the Complainant on 21/09/2021 under Section 11 of the RTI Act. The Complainant raised his objection vide letter dated 28/09/2021, with the Opponent No. 3, requesting him not to disclose his personal information. However, Opponent No. 3 decided the first appeal without joining the Complainant as a party and therefore, the FAA has denied his legitimate right to participate in the first appeal. Further, according to the Complainant, he is not a party even in the second appeal, thus Opponent No. 1 obtained the order from the Commission by misguiding the facts.

Further, according to the Complainant that, the Commission had passed the order without giving opportunity to him being third party, therefore, the order of the Commission is illegal and arbitrary thus violating the principles of natural justice, and prayed for review of the order passed by the Commission.

5. The Opponent No. 1 by way of his preliminary objection contended that, the above complaint proceeding is not maintainable as the same is filed under Section 18(3) of the Act. According to him there is no provision to file a complaint under Section 18(3) of the Act.

He also contended that, the present complaint is as good as review petition. According to him since the RTI Act is a special legislation and unless there is a specific provision in law, it is not open for any party to seek a review of the order.

Further, according to him, the information sought for is attendance sheet of public servant and same is related to the day today functioning of the public authority and generated by the public authority. Neither said information belongs to him or provided by the Complainant to the public authority nor treated as confidential information by the Complainant.

6. The representative of the Opponent No. 1 invited my attention to the prayer clause. The Complainant landed before the Commission, seeking the following reliefs:-

- 1. To request to stay the Order passed on 05/05/2022 by the Commission.*
- 2. To issue notices to the respondents and to review the order passed by the Commission.*

On bare perusal of the prayer clause, it reveals that, the Complainant is seeking the review of the Order passed by the Commission. Therefore, at this stage I will not proceed with the merits of the case.

7. It is also pertinent to note that, consequent to order of the Commission dated 05/05/2022, the PIO has complied with the Order and furnished purported information to the information seeker i.e. (Opponent No. 1) vide letter No. 3/11/82-EST/Part/X/478 dated 13/05/2022. In view of the above, the present complaint proceeding become infructuous and redundant.

8. Apart from that, I am also not convinced that there is violation of principles of natural justice. Section 11 of the Act does not cast an

obligation on the PIO to resort to third party procedure in all cases. Section 11 of the Act can be invoked only if the PIO proposes to disclose information which is personal to any party. However, this Section does not give a third party an unrestricted veto to refuse disclosing information. It only gives the third party an opportunity to voice its objection to disclosing of information. The PIO however, is expected to keep the third party's objection in view while taking a decision about disclosure of information. In the present case, information sought is the attendance sheet of the public servant and related to the functioning of the public authority and generated while performing the statutory duty with the public authority, and by no stretch of imagination, said information can be treated as personal information. Therefore, the contention of the Complainant is unsustainable.

9. As far as RTI Act is concerned, the Act does not vest the power of review with the Commission. The Order dated 05/05/2022 in the Appeal No. 277/2021/SCIC is self explanatory and a reasoned order based on the documents and submissions of the parties.

10. The Hon'ble Supreme Court in the case **Patel Narshi Thakershi & Ors. v/s Pradymansinghji Arjunsinghji (CDJ 1970 SC 455)** in paragraph 4 of the said judgement is observed as:-

"4..... It is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government has power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

11. The Central Information Commission in the case **Mani Ram Sharma v/s Central Information Commission (CIC/WB/A/2009/00016)** has held that:-

"The Right to Information Act cannot be sought to be used to circumvent the procedure of the law. Moreover, under the right to Information Act, the Chief Information Commissioner has no authority to review a decision of the Commission."

12. The High Court of Delhi in the case **Delhi Development Authority v/s Central Information Commission (W. P. No.(c) 12714/2009)** has held that:-

".....Neither the RTI Act nor the rules framed thereunder grant the power of review to the Central Information Commission or the Chief Information Commissioner. Once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review"

13. There is also a recent decision of the High Court of Bombay in the case **Shri Sandip Bhagvatrao Bhakare v/s Shri. Santosh Mohanlal Dave & Ors. (2022 (4) ALL MR 265)** which fortified the above ratio which reads as under:-

"15. It is a settled position of law, that the provisions of a Statute have to be construed and read to have the meaning, power and authority, which is specifically conferred by the provisions of the said Statute and not otherwise. Nothing can be imported into the Statute which has not been provided therein, by adopting any device or means."

14. In view of above, I am of the opinion that present complaint is not maintainable. considering the above, complaint proceeding/ review petition is dismissed being not maintainable.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner