

GOA STATE INFORMATION COMMISSION

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Appeal No. 143/2023/SCIC

Mr. Savio Brito,
H. No. P/10, Portais,
Reis Magos,
Bardez-Goa, 403114
V/s

.....Appellant

1. The Public Information Officer (PIO),
Education Department,
Porvorim, Bardez, Goa

2. The First Appellate Authority (FAA),
Education Department,
Porvorim, Bardez-Goa

..... Respondents

Shri. Vishwas Satarkar, State Chief Information Commissioner

Filed on: 28/04/2023

Decided on: 26/02/2024

ORDER

1. The Appellant, Mr. Savio Brito r/o. House No. P/10, Portais, Reis Magos, Bardez Goa vide his application dated 17/10/2022 filed under section 6(1) of the Right to Information Act (hereinafter to be referred as Act), sought following information from the Public Information Officer (PIO), Education Department, Porvorim-Bardez, Goa.

" With respect to Planning Section for the following three years from 1st January 2009 to 31st January, 2009, 1st January 2010 to 31st December 2010, 1st January 2011 to 31st December, 2011 kindly furnish certified copies.

(a) Inward register.

(b) Outward register."

2. The said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant filed first appeal before the Director, Directorate of Education, Porvorim, Goa on 16/12/2022, being the First Appellate Authority (FAA).
3. Since the FAA also failed and neglected to hear and dispose the first appeal within the stipulated time, the Appellant preferred this Second appeal before the Commission under section 19(3) of the Act, seeking various reliefs.
4. Notices were issued to the parties, pursuant to which, the Appellant appeared in person on 19/06/2023, the PIO Mr. Cajetan Fernandes appeared and filed his reply on 24/07/2023.
5. I have perused the pleadings, reply, rejoinder, scrutinized the documents and considered the submission of the Appellant.
6. The PIO, through his reply dated 24/07/2023, contended that, the documents sought are not traceable in the office as they are quite old and weeded off by the department. Further, according to the PIO, that the Directorate of Education (headquarters) moved into new building premises at Porvorim with effect from 22/08/2011 and all the old records/registers/files etc. which are not important were disposed of accordingly. He also contended that information sought for is voluminous and bulky. Considering the above submission of the PIO, the Commission directed the Appellant to restrict his demand and specify his requirements, in order to drain the information.

7. Accordingly, the Appellant appeared on 06/12/2023 and filed one application and submitted that he is restricting his demand for the information is as under.

Inward Register from 01/12/2009 to 31/12/2009 (one month)
Inward Register from 01/01/2010 to 31/07/2010 (seven months)

The PIO, Mr. Cajetan Fernandes collected the copy of the rejoinder on 24/01/2024 and the matter was fixed for compliance on 09/02/2024. However, the PIO failed and neglected to appear for the subsequent hearings viz. 09/02/2024, 19/02/2024 and 26/02/2024.

8. Having gone through the reply filed by the PIO dated 24/07/2023, same is very casual and trivial in nature. The PIO contended that copies of Inward and Outward Register are not traceable as they are weeded off, being old records. Except a bare statement, nothing is produced on record to show that the records are legally weeded off. It is, therefore, abundantly clear that, the PIO has raised the contention of weeding out of records merely on the basis of a misfounded apprehension without any cogent and conclusive proof.

9. The RTI Act, is based on the principle of maximum disclosure. The principle of maximum disclosure means all the information held by the public authorities is accessible to the public, except in very limited circumstances as contemplated in Sections 8 and 9 of the Act. It is not the case of the PIO that the information is not at all generated in the office of public authority, however he denied the information as the same is weeded out being old

documents. The PIO could not substantiate his claim by supporting any documentary evidence.

10. The PIO has denied the information without any basis of law and the Commission can see no reasonable cause for the denial of information. The record reveals that no efforts of whatsoever nature has been taken by the PIO to provide the information and only to get rid of the RTI application, he mechanically replied that the information is weeded out /not traceable.

11. Under section 19(5) of the Act, if the PIO denies the information to the information seeker, the PIO has to provide a valid reason for such a denial. In other words, the onus to prove the denial of information solely lies on the PIO and the PIO cannot be exonerated from the legal obligations merely using the term "records are not traceable"

12. The Hon'ble 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."

13. The whole purpose of the Act is to bring about as much transparency as possible in relation to the activities and affairs of public authority. The failure of the PIO to discharge his statutory functions as mandated under the law cannot be countenanced. The Hon'ble High Court of Delhi in the case **Mujibur Rehman V/s Central Information Commission (LNIND 2009 DEL 8657)** has held as under:-

"The Court cannot be unmindful of the circumstances under which the RTI Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider Section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure, they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends, which time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

14. The Hon'ble High Court of Kerala in the case **Janilkumar v/s State Information Commission & Ors (LNIND 2012**

Ker.982), the Court has held that failure to furnish information is penal under section 20 of the Act.

15. The Hon'ble High Court of Bombay, Goa Bench in the case **Johnson B. Fernandes V/s The Goa State Information & 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. Considering the fact and circumstances of the case, the Commission is of the considered view that the PIO has failed to concede the mandate of the Act, I, therefore, pass the following order:

ORDER

- The appeal is allowed.
- The PIO, Mr. Cajetan Fernandes, The Deputy Director of Education, Planning Section, Porvorim, Bardez, Goa is hereby directed to provide the information to the Appellant free of cost, viz. the copy of Inward Register from 01/12/2009 to 31/12/2009 (one month) and 01/01/2010 to 31/07/2010 (seven months) within 15 days from the date of receipt of the Order.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner