

GOA STATE INFORMATION COMMISSION

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Appeal No. 27/2023/SCIC

Mr. Edwin Herculano Peres,
H. No. 152, Non Mon Bandar,
Khariwada, Vasco-Da-Gama,
Goa, 403802

.....Appellant

V/s

1.The Public Information Officer (PIO),
District and Session Court,
South Goa Margao, 403601

2.The First Appellate Authority (FAA),
District Judge-I and additional Session Judge,
South Goa, Margao-Goa 403601

.....Respondents

Shri. Vishwas Satarkar, State Chief Information Commissioner

Filed on: 17/01/2023

Decided on: 14/02/2024

ORDER

1. The Appellant, Mr. Edwin Herculano Peres, r/o. H. No. 152, Non Mon Bandar, Khariwada, Vasco-Da-Gama, Goa, vide his application dated 04/11/2022 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), Chief Administrative Officer, District and Sessions Court, South Goa, Margao-Goa

"Certified copies of Chargesheet filed in the Criminal Writ petition No. 132 of 2018 in the High Court of Bombay at Goa having FIR No. 52/2018 Registered at Vasco Police Station."

2. The Said application was responded by the PIO on 09/11/2022 in the following manner:

"The undersigned regrets to express her inability to furnish the information asked for since your application dated 04/11/2022 pertains to the Judicial Proceedings or Records, as such cannot be provided in view of Rule 10(3) and Rule 21 of the Goa Daman and Diu and Dadra and Nagar Haveli, Right to Information Rules 2009 framed by the Hon'ble High Court of Bombay and published in the Official Gazette, Series-I No. 25 dated 17/09/2009

You may obtain certified copies from the respective Courts as per the procedure prescribed in Criminal Manual."

3. Being aggrieved and dissatisfied with the reply of the PIO, the Appellant filed first appeal before the District Judge-1 and Additional Sessions Judge, South Goa at Margao Goa on 29/11/2022, being the First Appellate Authority (FAA).
4. Since the FAA 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, with the prayer to direct the PIO to furnish the information, to impose penalty and to initiate disciplinary action against the PIO for not furnishing the information.
5. Notices were issued to the parties, pursuant to which, the Appellant appeared in person on 23/02/2023, Adv. K. L. Bhagat appeared on 21/04/2023 on behalf of the PIO and placed on

record the reply of the PIO and subsequently filed reply on behalf of the FAA dated 27/06/2023.

6. Perused the pleadings, replies, scrutinised the documents on record and considered the oral and written submissions of the rival parties.
7. It is the case of the Appellant that he filed a Criminal Writ Petition before the Hon'ble High Court of Bombay at Goa Bench, seeking relief for quashing FIR No. 52/2018 registered by the Police Station at Vasco, Goa, against him.

Further according to him, when the said writ petition came up for hearing on 09/07/2019, the Public Prosecutor appearing on behalf of the State submitted it before the Court that consequent to the investigation a charge-sheet was filed in the matter, based on the submission made by the Public Prosecutor, the Hon'ble High Court was pleased to dismiss the said writ petition as being infructuous.

Since the Hon'ble High Court disposed of his writ petition based on the submissions of the Public Prosecutor, the Appellant has applied to the Public authority thereby seeking the certified copy of the said charge-sheet from the PIO.

Further, according to the Appellant, the PIO has denied furnishing the information with the reason that the information sought, pertains to the Judicial Proceeding or Records and, as such cannot be provided in view of the Goa Daman and Diu and Dadra and Nagar Haveli, Right to Information Rules 2009 framed by the Hon'ble High Court of Bombay. According to the Appellant, the information has been denied to him on wrong footing and submitted that he is entitled for the copy of the charge-sheet. In support of his claim, he relied upon the

judgment of Central Information Commission in the case Usha Kant Asiwali V/s Directorate of Vigilance, GNCTD (CIC/DS/A/2013/001754-SA).

8. On the other hand, the PIO through her reply contended that the information sought by the Appellant pertains to one Criminal Writ Petition No. 132/2018 in the Hon'ble High Court of Bombay at Goa having FIR No. 52/2018, registered at Vasco Police Station, which was in respect of Judicial Proceeding.

According to the PIO, as per Rule 10(3) of Goa Daman & Diu and Dadra and Nagar Haveli District Courts, Right to Information Rules 2009 framed by the Chief Justice of the Hon'ble High Court at Bombay, provides the mechanism for accessing such information. Therefore, by responding his RTI application, she informed the Appellant to obtain said information as per the existing Rules. To substantiate her case, she produced on record the copy of Notification by the High Court of Judicature at Bombay published in Official Gazette dated 17/09/2009.

9. The FAA, through her reply dated 27/06/2023, contended that at the relevant time when the Appellant filed the first appeal on 29/11/2022, the post of District Judge-I and Additional Sessions Judge, South Goa, Margao-Goa was vacant on retirement on superannuation of the Judicial Officer, who was designated as the FAA. The Hon'ble High Court of Judicature of Bombay vide notification dated 17/01/2023 assigned the charge to Adhoc District Judge-I and Additional Sessions Judge, South Goa, Margao as FAA, to deal with RTI matters, and due to aforesaid situation, the FAA could not entertain, hear and dispose of the first appeal within the stipulated time.

10. At this stage, it would be appropriate to cite the judgement of Hon“ble Delhi High Court in the case **The Registrar Supreme Court of India v/s R.S. Misra (2017 244 DLT 179)**. The Court has observed as under:-

"53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.

55. Section 2(j) of the RTI Act reveals that the said Act is concerned only with that information, which is under the exclusive control of the 'Public authority'. Providing copies /certified copies is not separate from providing

information. The SCR not only deal with providing 'certified copies' of judicial records but also deal with providing 'not a certified copy' or simply a 'copy' of the document."

11. Reiterating above ratio of the Delhi High Court, the Hon^{ble} Supreme Court in the case **Chief Information Commissioner v/s High Court of Gujarat & Anrs. (MANU/SC/0275/2020)** has held that:-

"32. We fully endorse above views of the Delhi High Court. When the High Court Rules provide for a mechanism that the information/certified copies can be obtained by filing an application/affidavit, the provisions of the RTI Act are not to be resorted.

"43. We summarise our conclusion:-

(i) Rule 151 of the Gujrat High Court Rules stipulating a third party to have access to the information/obtaining the certified copies of the documents or orders requires to file an application/affidavit stating the reasons for seeking the information, is not inconsistent with the provision of the RTI Act; but merely lays down a different procedure as the practice or payment of fees etc. for obtaining information. In the absence of inherent inconsistency between the provisions of the RTI Act and other law overriding effect of RTI Act, would not apply.

(ii) The information to be accessed/certified copies on the judicial side to be obtained through the mechanism provided under the High Court

Rules, the provisions of the RTI Act shall not be resorted to."

12. I have carefully gone through the judgment relied upon by the Appellant in the case of Usha Kant Asiwali V/s Directorate of Vigilance, GNCTD (Supra) in my considered opinion that, the factual position therein is quite distinguishable and not applicable in the present case.

13. In the present case, the PIO replied the RTI application within stipulated time and communicated the factual position to the Appellant. It is not the case that, the PIO was unwilling to furnish the information with malafide intention. Therefore, I find no ground to impose penalty on the PIO as prayed by the Appellant.

14. Insofar the delay caused in deciding the first appeal has been reasonably explained by the incumbent FAA. The Commission is satisfied with the explanation of the FAA.

15. Considering the aforesaid position of law and applying the same to the facts of the above case, I am of the considered opinion that the Appellant has failed to make out any case in the matter, and hence,

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

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner