

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri. M. S. Keny, State Chief Information Commissioner

Appeal No. 55/SCIC/2010

Dr. Aureliano Fernandes,
Associate Professor,
Rosary Apartments,
Miramar - Goa

... Appellant.

V/s.

1. Public Information Officer,
Dr. M. M. Sangodkar,
Registrar, Goa University,
Taleigao Plateau,
Panaji - Goa

... Respondent No. 1.

2. First Appellate Authority,
Dr. Dileep Deobagkar,
Vice Chancellor, Goa University,
Taleigao Plateau,
Panaji - Goa

... Respondent No. 2.

Appellant alongwith Adv. A. Mandrekar.
Smt. A. Agni for Respondent No. 1.

J U D G M E N T **(07.10.2011)**

1. The Appellant, Dr. Aureliano Fernandes, has filed the present Appeal praying that SIC may clarify whether A.P.I.O. who is lower in rank to P.I.O. is authorized as per R.T.I. Act, 2005 to reply on behalf of F.A.A.; that SIC may clarify whether A.P.I.O. who is lower in rank to P.I.O. is authorized to dispose the R.T.I. Appeal; that SIC may clarify whether A.P.I.O. who is lower in rank to P.I.O. is authorized to dispose of R.T.I. Appeal, without hearing the Appellant and that P.I.O. and F.A.A. be directed to provide information as prayed from point No. I to XV.

2. The brief facts leading to the present Appeal are as under:-
That the Appellant filed an application dated 12.09.2009 seeking certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (P.I.O.)/Respondent No. 1. That the Appellant had requested that the information be supplied within 48 hours under Section 7(1) of R.T.I. Act, 2005 since it concerned life, livelihood,

employment of the Appellant so as to enable the Appellant to reply to a Memorandum served to him dated 08.09.2009. That Respondent No. 1/P.I.O. did not even reply to his R.T.I. Application or did not reply why information cannot be given, thus denying the information and under Section 7(2) is deemed to have refused the request. The Appellant then filed an Appeal dated 15.09.2009 before First Appellate Authority (F.A.A.)/the Respondent No. 2. That the F.A.A. too did not respond within 48 hours and under Section 7(2) is deemed to have refused the request. That the A.P.I.O. in his letter dated 06.10.2009 stated that he had been directed by F.A.A. to convey the justification that the information asked for was voluminous and due to paucity of adequate manpower the time bar of 48 hours was not manageable. That the A.P.I.O. also stated that the information would be furnished within 30 days of receipt of the application and disposed off the appeal without hearing the Appellant. That on 12.10.2009 P.I.O. wrote a letter stating that he was unable to furnish the information within 30 days. Then correspondence flowed between the parties. That by letter dated 26.10.2009 the P.I.O./Respondent No. 1 furnished the information, i.e. 14 days after the due date for supplying the information. Being not satisfied the Appellant preferred an appeal before the F.A.A./Respondent No. 2. By Judgment and Order dated 22.01.2010 disposed off the Appeal. Being aggrieved by the said Judgment and Order the Appellant has preferred the present Appeal on various grounds/reasons which are fully set out in the Memo of Appeal.

3. The Respondents resist the Appeal and the reply of the Respondent No. 1 is on record. In short, it is the case of Respondent No. 1 that the allegations made in the Appeal are denied in the Order as the same are alleged. That as is apparent from the records the Appellant filed an application under Right to Information Act containing 150 questions making request to supply the information material and at the outset it is submitted that section 7(1) of RTI Act is not attracted in the matter and it is denied that demand of applicant for information is to be complied within 48 hours. That information concerns life, livelihood and employment of the Appellant is not justified. That the Appellant's application dated 12.09.2009 containing 150 questions has been duly replied by letter dated

26.10.09. That the information has been provided wherever it is possible to provide the information and this is evident from the reply dated 26.10.2009. That wherever the information is not available in the record of Goa University such endorsement is made. That wherever it is possible to supply information the same is supplied and endorsement is made to that effect dated 26.10.2009. In respect of question No. 1, 5, 6, 8, 11, 12, 20, 21, 22, 23, 26, 98, 99 and 122 information has been rejected as the information sought is regarding confidential matters and the same is exempted in terms of section 8(1) (e), (g), (j) of the RTI Act. In respect of certain queries the information has not been provided as the same was not available, wherever the information sought is of personal nature or does not come within the purview of RTI Act or where the query is ambiguous or vague information has been declined as is apparent from letter dated 26.10.2009. That the provisions of section 8(1) (e), (g), (j) and (h) among other provisions set out provided for exemption from disclosure of information, section 8(e) provided information available to a person in its fiduciary relationship is exempted unless the competent authority is satisfied that disclosure of such information is warranted in public interest. That similarly, information disclosure of which could endanger the life and physical safety of any person identified and source for information or assistance is given in confidence for the law in enforcement and security purpose is exempted from disclosure. Section 8(j) provides that information which relates to personal information and disclosure of which has no relationship with public and which would create unwarranted invasion of privacy of individual such information is exempted from disclosure. That the allegation that the Respondent No. 1 did not reply to RTI application or did not reply why information cannot be given was that the Respondent no. 1 is deemed to have refused the request under Section 7(2) of the RTI Act is denied in the Order of the same which is enclosed. That the Appellant himself has produced documents on record which demonstrated that every point of time the applicant was kept informed that the information sought by him which consists of 150 queries was required to be compiled wherever possible and that as soon as the same is compiled the information would be given to him. That the Respondent furnished the information to the Appellant by reply dated

26.10.2009. Wherever the Appellant is asked the disclosure of reasons the same is not supplied so also wherever information is not available is not furnished. It is the case of the Respondent that considering the volume of information sought by the Appellant it is apparent that Respondent University would not be able to give the information sought within a short span of time. That no false reasons have been given by P.I.O. or that the PIO indulged in misuse of provisions of the RTI Act. The reasons and grounds stated are specifically denied by the Respondent No. 1. That the F.A.A. has held that answer sheets, names of examiners cannot be revealed to the citizen under RTI Act, based on the Judgment of State Chief Information Commission in the case of Gajanan Haldankar v/s. Public Information Officer, and accordingly query at Sr. No. 5, 6 and 12 have been rejected by the Appellate Authority. That the contention of the Appellant that the Order is not sustainable because copy of the order and judgment of SCIC was not furnished to him cannot be accepted. That the issue and disclosure of names of examiners would be exempted under section 8(1) (e) is well settled and covered by the Judgment of this Commission and no direction need be issued to the PIO and FAA to supply the information in query No. 5, 6, 11 and 12. That the Appellant has failed to demonstrate as to how the disclosure of information would not amount to invasion of privacy. That there is no public interest involved. That the information sought at Sr. No. 20-23 and 2-28 cannot be supplied to the Appellant. That there is no attempt made by P.I.O. to withhold vital information. That information with regard to query No. 31 and 32 being personal the said information cannot be supplied to the Appellant. That information at query No. 31, 32 and 33 has been disallowed for varied reasons as disclosed in the letter dated 26.10.2009 and which has been upheld by the F.A.A. That the Appellant has made incorrect submissions that there is refusal to provide information when it is available from the records of the University. The Respondent No. 1 denies the grounds set out by the Appellant specifically. In short, according to Respondent No. 1 the available information has been furnished and exempted information has not been given. According to Respondent No. 1 Appeal is liable to be dismissed.

4. Heard the arguments. Learned Adv. Shri A. Mandrekar argued on behalf of Appellant and Learned Adv. Smt. A. Agni argued on behalf of Respondent No. 1. Both sides advanced elaborate arguments. Adv. for Appellant has also filed written arguments alongwith various rulings, xerox copies of which are on record.

Advocate for Appellant referred to the facts of the case in detail. According to him application is dated 12.09.2009 and information is on 150 points. Information is furnished on 26.10.2009. He next submitted that the same was to be furnished within 48 hours. However it has not been done. That no reply is received from P.I.O. within two days and within 30 days. He next submitted that information that is provided is incomplete, incorrect and false. He also referred to the First Appeal and submitted that Appellate Authority failed to decide the Appeal. In short, according to him there is delay and incomplete and false information has been furnished. Adv. Agni also referred to the facts of the case. She referred to the application, reply furnished. According to her looking at the volume of information delay is bound to be there. She also referred to the three letters from Respondent. According to her there is hardly delay of 14 days. She next submitted that the person seeking information has to prove about life and liberty, otherwise it would be frustrated. She also submitted about names of examiners and referring to the queries raised she submitted that this could not be given within 48 hours. She also submitted that some queries cannot be answered, some are vague queries. Referring to the arguments of the Appellant she submitted that which answers are false is not shown. According to her looking at the voluminous nature of information the same is not liable to be given within 48 hours. She also referred to the prayers in the Appeal and prayers in the written arguments. According to her there is no provision for cost. She also referred to the judgments relied by Advocate for Appellant.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the Advocates of the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is seen that the Appellant, vide application dated 12.09.2009 sought certain information. The information consisted of 150 items/points at Sr. No. 1 to 150 and the same included documents, reports, file notings, etc. The same was sought within 48 hours as the same pertains to Appellant's sustenance, livelihood, employment and therefore his life and that of his dependants as the Appellant has been served with a Memorandum. It appears that information was not furnished within 48 hours. I have perused Appeal dated 15.09.2009, letter addressed to the Appellant dated 06.10.2009 and also letter dated 12.10.2009 from P.I.O. to the Appellant. I have also perused the letter dated 12.10.2009 from Appellant to P.I.O., etc. By letter dated 21.10.2009 the P.I.O. informed the Appellant that requested information is being compiled and the same will be submitted to him on 26.10.2009. It is seen that by letter dated 24.10.2009 the Appellant invited the attention of P.I.O. to Section 7(1) and 7(6) of the R.T.I. Act and requested to provide information free of charge. By letter dated 26.10.2009 the information was furnished.

Being not satisfied the Appellant preferred an Appeal before the First Appellate Authority. By order dated 22.01.2010 the Appeal was disposed off. The F.A.A. directed the P.I.O. to provide to the Appellant information sought at 2(a), 2(g) that is, names of students and 2(4) the remaining part information exempting the question "why" within 2 weeks from the receipt of the order. The Appellant was directed to approach P.I.O. with specific query with respect to the para 2(b) (h) (k) and (r).

It appears that Appellant is not satisfied and as such he has landed before this Commission.

6. It is seen that about 42 queries were raised before the F.A.A. as can be seen from the Memo of Appeal. Before this Commission it is prayed to direct P.I.O. and F.A.A to furnish information to points I to XV. Whereas in written arguments it is submitted that information is not furnished to about 80 queries. This appears to be at variance.

7. It is seen that information is sought in respect of 150 items, i.e. 1 to 150. First I shall refer to the information furnished. That is information is furnished to items at Sr. No. 2, 3, 7, 9, 10, 14, 15, 16, 17, 19, 24, 29, 30,

34, 39, 40, 42, 49, 51, 52, 53, 54, 55, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 78, 79, 81, 83, 84, 85, 86, 87, 88, 89, 93, 95, 96, 97, 100, 101, 106, 107, 139, 143, 145, 146, 147, 148, 149 and 150.

In respect of items at Sr. No. 41, 44, 45, 46, 47, 48, 50, 56, 58, 59, 72, 75, 76, 80, 82, 90, 92, 94, 102, 103, 104, 106, 108, 109, 111, 113, 114, 120, 123, 125 and 147 the information has not been provided as the same is not available. Under R.T.I. non-available information cannot be furnished. Consequently, no obligation on the part of P.I.O. to disclose the same as the same cannot be furnished.

I have perused some of the rulings of the Central Information Commission.

(i) In Shri B. S. Rajput *v/s.* Council of Scientific & Industrial Research (CSIR) (F.No.CIC/AT/A2008/00464 dated 15.09.2008) where Respondent pointed out that all information barring one information (corresponding to Appellant's RTI request dated 13.06.2007) had been provided, the Commission held that it has no reason to disbelieve the categorical assertion of Respondent and the document in question missing is more than 20 years old. Thus document being untraceable cannot be physically disclosed and resultantly there is no disclosure obligation on the Respondent.

(ii) In Shri V.P. Goel *v/s.* Income Tax Department (F. No.CIC/AT/A/2008/00455 dated 10.09.2008) where the Appellate Authority held that since the information requested is not maintained by the officers of Public Authority in regular course of business it did not qualify to be an information 'held' by the public Authority in terms of section 2(j) of the R.T.I. Act. The Commission observed that it is not possible to overrule the order of Appellate Authority who has very correctly decided that information which is not maintained or held by the Public Authority cannot be disclosed.

The rule of law now crystallized by the various rulings of C.I.C. is that information/document that is not available cannot be supplied. The Right to Information Act can be invoked only for access to permissible information.

8. Normally the points raised in the Memo of Appeal are to be considered. The said points are about 42 which were raised before F.A.A. In the written arguments filed by the Appellant it is submitted that information in respect of 80 points is not furnished. In the ends of justice I shall take all those 80 points. After taking into consideration the above points where information is not available the following points remain. They are as under:-

1, 4, 5, 6, 8, 11, 12, 13, 18, 20, 21, 22, 23, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 38, 43, 49, 69, 74, 81, 91, 95, 98, 99, 105, 111, 115, 116, 117, 118, 119, 122, 123, 124, 125, 126, 128, 129, 132, 135, 137, 140, 141, 142, 144. In all, about 53 points, now I shall refer to these points.

Regarding point at Sr. No. 1 P.I.O. agreed to furnish information before F.A.A. So the same either might have been given if not the same can be furnished.

Sr. No. 4 is as under:- Photocopy of all submissions by concerned students, any faculty members, examiners.

Reply is as under:- The information has not been provided since it is not clear what the applicant means by "all submissions" and to whom.

To my mind the same needs clarification as information sought should be specific.

Regarding 5, 6, and 8 the same have been rightly rejected. This Commission also held about evaluated answer sheets and names of examiners that the same cannot be disclosed. So also items at Sr. No. 11 and 12.

Regarding 13 the same can be provided in respect of the year 2009-2010.

Regarding 18 the same is not available. Regarding Sr. No. 20, 21 and 26 the same can be furnished if inquiry is complete.

Sr. No. 22, 23, 25, 27, 28, 32 and 33 is rightly rejected.

Regarding 34, information is furnished.

Sr. No. 35, 36 and 37 is rightly rejected. Sr. No. 38 is not available from record.

Sr. No. 49 query has been answered.

Regarding Sr. 74, number of complaints, if any, can be given without disclosing the names of students.

Regarding 81, information is furnished. In case the Appellant wants he can specify and or clarify as to which meeting.

Regarding 91, the same is not available.

Regarding 95, the same is furnished.

Regarding 98 and 99, copies of deposition and transcripts of questions, if any, can be provided.

Sr. No. 105 rightly rejected.

Regarding 112 the same can be granted, however, Appellant to specify about complaint/deposition.

Regarding 115 to 119 copy of Judgment is already furnished. Normally P.I.O. is not supposed to state so, in terms of Section 2(h) 2(i) and 2(j) of the R.T.I. Act.

Regarding 122 since the Appellant is a party the same should be furnished to him now.

Regarding 123 the information be furnished in the available form.

Regarding 124 the Appellant to clarify and P.I.O. to furnish the information.

Regarding 125 information is furnished and 126, 128, 129, 132 and 135 is rightly rejected.

Regarding Sr. No. 137 dates can be furnished.

Regarding 133, 140, 142 and 144 the Appellant to clarify/specify and thereafter P.I.O. to furnish the same.

Regarding 141 Appellant to specify and evaluation of thesis can be furnished.

To my mind the information as mentioned above can be furnished.

9. Advocate of Appellant contends that information was not furnished within 48 hours. According to him the same was not furnished within 30 days and that there is delay of about 13/14 days. According to Advocate for Opponent the Appellant was informed and that information was voluminous.

Proviso to Section 7(1) lays down that where information sought for concerns life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.

Life and liberty are two of the most important facets of our existence. R.T.I. Act envisages that information pertaining to life and liberty of a person should be disclosed urgently. This has to be applied only in exceptional cases and the question as to whether information sought concerns life and liberty of a person has to be carefully scrutinized in proper perspective and imminent danger has to be substantially proved.

In my view in the present case this provision has no application. I am fortified in this view by the observation of C.I.C. in Mahesh Kumar Gupta *v/s.* National Institute of Technology, Kurukshetra (Decision No. CIC/SG/2010/000197/7132 dated 12.03.2010). In this case the Appellant had moved a R.T.I. Application claiming that he was likely to be suspended, the information should be provided within 48 hours as per the provisions of Section 7(1) of the R.T.I. Act. It was observed "The possibility of suspension to service is certainly cannot be considered as a matter affecting life and liberty and the applicants must use this provision with responsibility."

Another aspect is regarding delay. There is about 13/14 days delay. However, the Appellant was informed that it would take some time. Besides, information consists of 150 queries which is voluminous. Under the circumstances P.I.O. cannot be faulted as there is no malafide intention. In any case the same is liable to be condoned.

10. In view of all the above, I pass the following Order;_

ORDER

The Appeal is partly allowed. The Respondent No.1/P.I.O. is hereby directed to furnish information to the Appellant in respect of items at Sr. No. 1, 13, 20, 21, 26, 74, 98, 99, 112, 122, 123, 137. In respect of Sr. No.74, number of complaints can be given without disclosing names and in respect of Sr. No.137 dates can be furnished as mentioned in para 8 herein above, within thirty (30) days from the receipt of order. In respect

of item No.4. 81, 112, 124, 133, 140, 142, 144 and 141, the appellant to clarify and/or specify as mentioned in the reply dated 26/10/2010 and also para 8 hereinabove and thereafter P.I.O. to furnish the information. Appellant to clarify/specify within 8 days of the receipt of this order and thereafter the P.I.O./respondent No.1 to furnish the information. The whole process to be completed within 30 days.

In respect of items at Sr. No.41, 44, 45, 46, 47, 48, 50, 56, 58, 59, 72, 75, 76, 80, 82, 90, 92, 94, 102, 103, 104, 106, 108, 109, 111, 113, 114, 120, 123, 125 and 147, the request is rejected as information is not available.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 7th day of October, 2011.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

