

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.144/SIC/2010

Shri Sadanand D. Vaingankar
R/o.Madhalawada, Harmal,
Pernem, Goa 403524

... Appellant.

V/s.

1. S.P.I.O. Joint Director of Accounts,
Accounts Section,
Director of Education, Panaji, Goa
 2. Public Information Officer
Head Master,
Harmal Panchakroshi High School ,
Harmal, Pernem, Goa
 3. F.A.A. Director,
Directorate of Education,
Panaji-Goa
 4. The Chairman
Harmal Panchakroshi Shikshan Mandal,
Harmal, Pernem, Goa
- ... Respondents

Appellant absent.

Respondent No.1, 3 and 4 absent.

Respondent No.2 present.

J U D G M E N T
(25/01/2012)

1. The Appellant, Shri Sadanand D. Vaingankar, has filed the present appeal praying that the appeal be allowed; that the respondent No.2 and 4 be directed to furnish the information as per the order of First Appellate Authority; that respondent No.1, 2 and 4 be directed to pay fine; that respondent No.1 and 2 be recommended for disciplinary action under service rules as applicable to them and that appropriate action be taken against respondent No.4 as per R.T.I. Act for not furnishing the information.

2. The brief facts leading to the present Appeal are as under:-
That the appellant, vide an application dated 18/12/2009, sought 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 received a letter dated 1/1/2010 from respondent No.1 with a request to respondent No.2 to furnish information under intimation to his office. That on 4/2/2010 the appellant filed the appeal before First Appellate Authority/Respondent No.3. That during the hearing on 2/3/2010 the respondent No.2 filed the written statement stating that his office had not received the letter of respondent No.1 or the application dated 18/12/2009 of the appellant. That respondent No.1 could not produce any evidence to show that copy was sent and hence as per directions of F.A.A. Copy of the same was handed over to respondent No.2. That the appellant received the letter dated 1/1/2010 from respondent No.1 with a request to respondent No.2 to furnish the information under intimation to this office. That on 4/2/2010 the appellant filed the appeal before First Appellate Authority/respondent No.3. That during the hearing on 2/3/2010 the respondent No.2 filed the written statement stating that his office had not received the letter of respondent No.1 or the application dated 18/12/2009 of the appellant. That respondent No.1 could not produce any evidence to show that copy was sent and hence as per directions of F.A.A. Copy of the same was handed over to respondent No.2. That the appellant received the letter dated 11/3/2010 from respondent No.2 forwarded to respondent No.4. i.e. Chairman, Harmal Panchakroshi Shikshan Mandal, Harmal, Goa for further action. That the appellant received the order dated 12/3/2010 of F.A.A. directing the respondent No.2 to furnish the information and thereby allowing the appeal. That no information has been furnished till date. Being aggrieved the appellant has preferred the present appeal.

3. The respondents resist the appeal and their replies are on record. It is the case of respondent No.1 that the appeal filed by the appellant is not maintainable so far as respondent No.1 is concerned for the reason that application dated 18/12/2009 was transferred to the Headmaster/P.I.O. of Harmal Panchakroshi High School vide letter dated 1/1/2010 and requesting the Headmaster to furnish the information. That the application was transferred as there was no information available in the office of the respondent No.1.

It is the case of the respondent No.2 that the information was not under his jurisdiction. That the application was forwarded to the Chairman of Harmal Panchakroshi Shikshan Mandal, Harmal and was intimated to the appellant. That inspite of the knowledge to the appellant through the order of the F.A.A. under R.T.I. served on appellant that Chairman of the society is not Public Authority the appellant is harassing the respondent No.2. According to respondent No.2 he may be dropped.

It is the case of respondent No.4 that the appellant is not at all entitled for any information from respondent No.4 as the same does not fall within R.T.I. Act

4. Heard the arguments. The appellant remained absent most of the time. Initially respondent No.1 and Adv. R. C. Chodankar on behalf of respondent No.4 were present. Later on they too remained absent. Respondent No. 2 was present. I have heard him. In any case I am proceeding on the basis of records.

5. I have carefully gone through the records of the case and also considered the arguments advanced by respondent No.2. The point that arises for my consideration is whether the relief prayed is to be granted or not ?

It is seen that by application dated 18/12/2009, the appellant sought certain information from the P.I.O. Office of Director, Directorate of Education, Panaji-Goa. By letter dated 1/1/2010, the P.I.O. Respondent No.1 forwarded the request/application dated 18/12/2009 to the Headmaster, Harmal Panchakroshi High School, respondent No.2. Copy of this letter was sent to the appellant and he was requested to collect the required information from the said school. Since information was not furnished the appellant preferred an appeal before the First Appellate Authority/respondent No.3 herein. During hearing of the appeal the respondent i.e. P.I.O./respondent No.2 herein filed written statement stating that he did not receive the letter of the Jt. Director or the application dated 18/12/2009 of the appellant. That during the course of hearing the copy of the letter dated 1/1/2010 was handed over to the P.I.O.(Headmaster) with enclosures. P.I.O. agreed to provide information within 15 days. Accordingly appeal was disposed off by order dated 12/3/2010. The relevant part of the order is as under :-

“The appeal filed by the appellant is allowed with the direction to the P.I.O. to provide the information to the appellant as agreed to.”

By letter dated 11/3/2010 the respondent No.2 forwarded the application dated 18/12/2009 of the appellant to the Chairman, Harmal Panchakroshi Shikshan Mandal, Harmal, Goa. The copy of the same was sent to respondent No.1 as well as appellant.

No information is furnished so far. Apparently the respondent No.1 and 2 do not have the said information as per their replies.

6. Under R.T.I. the information which is available with the Public Authority is to be furnished. Respondent No.1 states that the said information is not available with his office. Respondent

No.2 states that the information is not in his jurisdiction. Since information is not with them they are not obligated to furnish the same. R.T.I. Act enjoins the Public Authority to furnish the information available with the public authority.

7. It appears that information is with the Chairman i.e. Respondent No.4. As per his reply the complainant is not entitled for any information from the respondent No.4 as the same is not falling within R.T.I. Act.

An order dated 14/6/2010 passed by F.A.A. in First Appeal No.33/2009 is produced on record. Incidentally this appeal was also filed by the appellant herein and Head Master of Harmal school and Chairman of Harmal Panchakroshi Shikshan Mandal was also a party. The operative part of the order is as under:-

“The appeal filed by the appellant against Headmaster P.I.O. of the school is not maintainable as the said P.I.O. has no access to the records of the society. So also, the appeal is not maintainable against the Chairman of the society namely Harmal Panchakroshi Shikshan Mandal which is not a Public Authority under R.T.I. Act. The appeal is therefore rejected.”

The appellant was aware of this order. The appellant has not shown in the present appeal that respondent No.4 is covered by R.T.I. Act. Whether respondent No.4 comes within the purview of R.T.I. Act is to be decided first. The appellant has to show that respondent No.4 comes within the definition of 2(h) of the R.T.I. Act without this it is not possible to hold that respondent No.4 is Public Authority under R.T.I. The appellant has not shown this. Besides there is nothing on record to come to this conclusion.

To my mind the appellant has to establish this properly.

8. I must mention here that some procedure has not been followed. Respondent No.2 did not receive the application. The same was given to him during First Appeal stage. No doubt applications are sent by respondent No.1 to Respondent No.2 and Respondent No.2 to Respondent No.4 within time i.e. 30 days. Copies are sent to the appellant. However they should have followed the proper procedure under R.T.I. and appellant should have been informed clearly about non-availability of information. In any case since the same is in time the respondent to take care of the same in future.

9. Since information is not available with respondent No.1 and 2, the same could not be furnished. However the appellant is at liberty to file proper application before concerned. Hence I pass the following order:-

ORDER

No intervention of this Commission is required as information is not available with respondent No.1 and 2. Appeal is disposed off.

Needless to add that appellant is at liberty to file proper application before proper forum.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 25th day of January, 2012.

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

