

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Appeal No.287/SCIC/2011

Shri Rui Ferreira,
R/o. H. No.E-1,
Near Panjim Church,
Panaji – Goa 403 001

... Appellant.

V/s.

1. Shri N. P. Signapurkar
Public Information Officer,
Under Secretary (Personnel-II), ,
Govt. of Goa,
Secretariat, Porvorim-Goa
2. Shri Yetindra M. Maralkar,
The First Appellate Authority,
Joint Secretary (GA),
Govt. of Goa,
Secretariat, Porvorim-Goa

... Respondents

Appellant present.

Respondent No.1 and 2 absent.

Adv. Smt. H. Naik for respondent No.1 present.

J U D G M E N T
(12/06/2012)

1. The Appellant, Shri Rui Ferreira, has filed the present appeal praying that the P.I.O. be directed to furnish to the appellant the information sought vide his application dated 30/6/2011 at Sr. No.1(a) and (b) free of cost and that cost/fine be imposed on the P.I.O. for non-furnishing of the information sought by the appellant within the prescribed time limit as contemplated under the Act.

2. The brief facts leading to the present appeal are as under:-

That the appellant, vide an application dated 30/06/2011, 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 by letter dated 5/7/2011, transferred the said application to the P.I.O. Under Secretary, Personnel II, Government of Goa, Secretariat, Porvorim. That the P.I.O. vide his reply dated 28/7/2011 furnished incorrect information at point No.1 of the appellant's R.T.I. application and, therefore, the appellant preferred first appeal before the First Appellate Authority (F.A.A.)/respondent No.2. That the F.A.A. disposed off the appeal in a totally arbitrary and biased manner without applying his mind thereby violating the provisions of the R.T.I. Act in passing the impugned order. Being aggrieved by the impugned order, the appellant has preferred the present appeal on various grounds as set out in the memo of appeal.

3. In pursuance of the notice the respondent did not remain present. However Adv. Smt. H. Naik appeared on behalf of respondent No.1/P.I.O. Adv. for respondent No.1 did not file any reply as such but she advanced arguments.

4. Heard the arguments. The appellant submitted that information regarding point No.1 is not furnished what is furnished is only incomplete information. He next submitted that all other information is furnished.

During the course of her arguments Adv. Smt. Naik submitted that whatever information was available was furnished. She submitted that complete information is furnished. According to her if information is incomplete inquiry can be held

5. I have carefully gone through the records of the case and also considered arguments advanced by the parties. 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 30/06/2011 the appellant sought certain information consisting of 5 points Sr. No.1 to 5. The said application was received on the same day. By letter dated

5/7/2011 the P.I.O./Under Secretary to C.S. transferred the same to the P.I.O. Under Secretary Personal in terms of Sec.6(3)(ii) of the R.T.I. Act. Copy of the same was forwarded to the appellant. By reply dated 28/7/2011 the P.I.O./Under Secretary (Personnel II)/respondent No.1 furnished the information. In respect of point No.5 the appellant was requested to clarify which file notings were sought. It appears appellant did not clarify as seen from the records. Being not satisfied the appellant preferred an appeal before the First Appellate Authority. Appeal was filed in respect of point at Sr. No.1 only. By order dated 30/9/2011 the F.A.A. observed :-

“ It is observed that the appellant had furnished all required documents available in the file as sought by the appellant. As regards to clarification I agree with the contention of the respondent that he cannot create the information. However, appellant can seek all the information available in the file. I am further satisfied that the information sought by the appellant at point No.1 in his application dated 30/6/2011 is not falling within the purview of Right to Information Act and cannot be classified as information. Therefore, no intervention of this authority is necessary in the present appeal.

In view of above, I pass the following order :-

The appeal dated 26/8/2011 received in this office through Central Registry on 12/9/2011 filed by the appellant stands rejected and accordingly the appeal is disposed off.”

6. It is seen that request was turned down on the ground that P.I.O. cannot create information. F.A.A. also observed that at point No.1 is not falling within the purview of R.T.I. Act.

At the outset I must say that under R.T.I. information as 'held' by the Public Authority is to be furnished. P.I.O. is not supposed to create information. Under R.T.I. P.I.O. cannot give the

personal opinion on any matter. So also opinion, explanation and clarification cannot be furnished. A combine reading of Sec.2(f), 2(i) and 2(j) would show that a citizen is entitled for disclosure of information which is in material form with the Public Authority.

Now it is to be seen about point No.1 I shall reproduce point No.1 and 2. They are as under :-

“1. Whether the present Goa Public Service Commission (GPSC) Chairman Shri Prakash Narayan Dessai was a government employee for 10 years prior to the date of appointment i.e.7/12/2006 in terms of Article 316(1) of the Constitution of India as mentioned at page 85/N of the Personnel Department file for the appointment of GPSC Chairman.

Reply given is as under :

Shri Prakash N. Dessai, Chairman (GPSC), was in the teaching field since 1975 and had also worked as a Principal in the Higher Secondary School for 10 years i.e. from Jan, 1996 and was also assigned additional charge of Vice Chairman of Goa Board of Secondary and Higher Secondary Education, as per records available in this department.

2. Whether the said Shri Prakash Narayan Dessai was eligible to be appointed as Chairman of the GPSC in terms of Articles 316(1) of the Constitution of India as a lone/single member of the present GPSC.

Reply given is as under :

Yes.

Strangely Point No.1 and 2 are of similar nature. I have perused the minutes at Exhbt.5 and particularly para 2. The same appears to be a requirement. Opinion and requirement are two different things. In fact information is furnished to point No.2. If this is furnished there is no harm in furnishing information to the point No.1.

I have perused some of the rulings of C.I.C. on the point.

(i) In M. L. Vishwakarma V/s. Survey of India, Jabalpur 482 002 (F. No.CIC/AT/A/2007/00040 dated 28/3/2007). In this case appellant had received from the Central Administrative Tribunal (CAT) Jabalpur Bench a favourable order which also imposed cost on the respondents. One of the item i.e.item (b) read as follows :-

“(b) Whether any memorandum of the Charge sheet is issued to them as per C.C.S.(C.C.A.) Rules 1965 before fixing the responsibilities and recovery of panel interest from their salary.”

The C.P.I.O. stated “the ensuing action in this regard is yet to materialize”. The A.A. stated “ the identity of the person or persons should not be disclosed.” CIC observed as under :-

“ I am not able to appreciate the logic of A.A. in not disclosing an information in a matter which concerns implementation of a Tribunal’s orders. To my mind it is a straight forward question to which a straight forward answer should be given. The answer could be anything $\frac{3}{4}$ it may state the names of those from whom this amount has been recovered, or it may state that it has not been recovered from any officer of the public authority, but has been released from the budget of the public authority. It is not open to the A.A. to say that no such information could be disclosed.”

(ii) In Rajendra Prasad V/s. Principal Accountant General (Civil Audit) (File No.CIC/AT/A/2008/01195 decided on 30/1/2009 all that the appellant had asked was the exact criterion which was followed in selecting the awardees and the notification/instruction in which these criteria were contained. The request was rejected but on appeal CIC granted the same holding that cloud of secrecy in selection process is more injurious to public interest than the transparency in its operation.

In the case before me the point No.1 is cannot be construed as opinion as mentioned above as well as Exhbt.5 on record, it is a requirement. Besides point No.2 has been answered as "Yes". Since point No.2 has been answered, point No.1 could be replied being of the same genus. Besides answer to point No.1 is also contained in point No.2 in view of Exhbt.5.

Regarding 1(a) and (b) it is seen that available documents have been furnished.

During the course of the arguments when questioned the appellant submits that only 1 is not furnished and what is furnished is incomplete information.

7. Now it is to be seen about aspect of delay. The application is dated 30/6/2011. The same was transferred U/s.6(3)(ii) by letter dated 5/7/2011 i.e. within time. Reply is furnished by letter dated 28/7/2011. Therefore the same is within time. So the question of delay does not arise.

8. In view of the above, I pass the following order.:-

ORDER

The appeal is allowed. The respondent No.1/P.I.O. is hereby directed to furnish the information to the appellant in respect of point No.1 of his application dated 30/06/2011 within 20 days from the receipt of this order.

The appeal is accordingly disposed off.

Pronounced in the Commission on this 12th day of June, 2012.

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