

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 145/SCIC/2009

Mr. Sadanand D. Vaigankar,
304, Madhalawada Harmal,
Pernem, Goa – 403 524.

..... Appellant.

V/s.

1. Public Information Officer,
The Joint Director of Accounts,
Directorate of Education,
Panaji - Goa.
2. Public Information Officer,
The Headmaster,
Harmal Panchakroshi High School,
Harmal, Pedne – Goa.
3. First Appellate Authority,
The Director,
Directorate of Education,
Panaji - Goa.
4. The Chairman,
Harmal Panchakroshi Shikshan Mandal,
Harmal, Pedne – Goa.

..... Respondents.

Appellant in person.

Adv. S. Parab for Respondent No. 2.

JUDGEMENT **(15-04-2010)**

1. The Appellant, Sadanand Vaigankar, has preferred this Second Appeal praying that appeal be allowed; that Public Information Officer/Respondent No. 2 be directed to furnish the information as per order of First Appellate Authority; that Respondent No. 4 be directed to furnish the information as per Order of First Appellate Authority; that Respondent No. 4 be directed to furnish the information as per order of the First Appellate Authority; that Respondent No. 2 and 4 be directed to pay fine as applicable; that Public Information Officer/Respondent No. 2 be recommended for disciplinary action under service rules applicable to him.

...2/-

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

That the Appellant made an application dated 16/7/2009 to seek information from the Public Information Officer, O/o Director, Directorate of Education, Panaji – Goa, under Right to Information Act ('RTI Act' for short). That the Appellant received a letter No. DE/GIA-1/RIA/2009-10/361 dated 23/7/2009 from Accounts Officer, Directorate of Education (Respondent No. 1) mentioning that under section 6(3) of the Act, the Appellant's application dated 16/7/2009 has been transferred to Public Information Officer/Headmaster, Harmal Panchakroshi High School, Harmal, Pedne – Goa/Respondent No. 2. That the Respondent No. 2 by letter No. HPHS/2009-10/134 dated 14/8/2009 returned the original application to Respondent No. 1 and as such refused to receive the application for information. That since information was not furnished the Appellant preferred the First Appeal before First Appellate Authority ('F.A.A.' for short). That F.A.A. passed the order directing the Respondent No. 2 to obtain and furnish the information to the Appellant free of cost within 15 days of the date of Order. That the Respondent No. 2 addressed a letter dated 3/10/2009 to Respondent No. 4/Chairman, Harmal Panchakroshi Shikshan Mandal, Harmal, for further action in the matter. It is also the case of the Appellant that Respondent No. 2 and 4 have made delay and as such liable to fine. Since the information has not been furnished, the Appellant has preferred this Appeal.

3. Respondents resist the Appeal and their say is on record. It is the case of the Respondent No. 1 that on receipt of the Application of Appellant and on perusal of the same he observed that the information sought by the Appellant was pertaining to Harmal Panchakroshi Shikshan

Mandal, a registered society which runs Harmal Panchakroshi High School, Pernem – Goa. That the Respondent No. 1 transferred the Application in terms of section 6(3) of the RTI Act to the Head – Master who is designated as Public Information Officer and copy of the same was endorsed to the Appellant to pursue the matter with concerned Public Information Officer of the school. That the Respondent No. 2 returned the application to the Respondent No. 1 stating that it was beyond his jurisdiction to furnish the information pertaining to the society. Respondent No. 1 also refers to the First Appeal Order passed directing Respondent No. 2 to furnish information after obtaining the same from the Chairman of the Society. Respondent No. 1 refers to Rule 37 and 46 of the Goa School Education Rules. It is the case of Respondent No. 1 that based on the said rules he directed the Respondent No. 2 to obtain and furnish the information to the Appellant.

4. It is the case of the Respondent No. 2 that the Appeal is not maintainable for non-joinder of necessary parties. That information sought is not within the jurisdiction of Respondent No. 2. That Respondent No. 4 was not a party before the First Appellate Authority. Respondent No. 2 also refers to First Appeal etc. In short it is the case of Respondent No. 2 that as per Order of F.A.A. the Respondent No. 2 had asked for information from Respondent No. 4.

5. In their reply Respondent No. 3 states about appeal, order passed etc. It is the case of Respondent No. 3 that Rules 46 of the Goa School Education Rules, 1986 provides for Scheme of Management to every school and that under rule 46 the School Managing Committee manages the affairs of the school and since the school is run by the Society the

School Managing Committee shall be subject to the control and supervision of the society and being so the society also forms the part of the School Management.

6. It is the case of the Respondent No. 4 that the present Appeal is not maintainable as Respondent No. 4 was not made a party before the F.A.A. That no grounds mentioned as to why Respondent No. 4 was not made a party before F.A.A. nor any ground is mentioned as to why Respondent No. 5 is made a party. That the present Appeal is not maintainable. That no application is made seeking leave to add Respondent No. 4 as party. That even otherwise the Appellant has no locus standii to seek information as sought. It is also the case of Respondent No. 4 that the reasons for furnishing free information is not known and information sought is running into number of pages and same if is permitted the Respondent No. 4 has to suffer huge loss and there is no provision and finance to that effect.

7. The counter reply of the Appellant to the reply of Respondent No. 2 and 4 is on record.

8. Heard the arguments. The Appellant argued in person. Respondent No. 1 and 4 also argued in person. Adv. S. Parab argued on behalf of Respondent No. 2.

9. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. At the outset, it is to be noted that present Appeal is not being aggrieved by the Order of F.A.A. but mainly for non-compliance of the Order of F.A.A. To be noted further that Respondent No. 4 was not a party before F.A.A.

It is seen that Appellant filed an application dated 16/7/2009 under Right to Information Act seeking information from Public Information Officer, Directorate of Education. The information sought was in connection with Harmal Panchakroshi Shikshan Mandal, Harmal, Pedne – Goa. Strangely the Application was made to Respondent No. 1. Public Information Officer/Respondent No. 1 by his letter dated 23/7/2009 (Exhibit B on record) sent/transferred under section 6(3) to the Head Master/Public Information Officer, Harmal Panchakroshi High School, Respondent No. 2. By letter dated 14/8/2009 (Exhibit E on record). Respondent No. 2 replied that it is beyond his jurisdiction to furnish the information and application was returned. Respondent No. 2/Public Information Officer also states about Society. It is pertinent to note here that applicant does not take any step in that direction. Even after this reply Respondent No. 1 does not take any step in sending/transferring the application to the Society. The Appellant prefers the First Appeal but Respondent No. 4 is not joined as party. Respondent No. 2 has filed the reply Exhibit G on record. In the reply Respondent No. 2 states that information sought is in respect of Harmal Panchakroshi Shikshan Mandal which is an independent Society of which the undersigned (Respondent No. 2) is neither a supervisory officer nor Public Information Officer nor having any access to the said record. Even after this reply Society or Respondent No. 4 is not joined as party. F.A.A. has passed the Order whereby the Headmaster/Public Information Officer is directed to obtain information from the Chairman of the Society as the school is run by Harmal Panchakroshi Shikshan Mandal and furnish the information to the Appellant.

10. Respondent No. 1 and 3 in their reply refer to Rule 37 and 46 of Goa School Education Rules, 1986. In para 6, Respondent No. 1 states that in terms of Rule 37 one of the condition for recognition of school is that the school is run by a society registered under the Societies Registration Act or Public Trust. In para 7 it is stated that under Rule 46, the School Managing Committee manages the affairs of the school and since the school is run by Society, the School Managing Committee shall be subject to the control and supervision of the Society and being so the Society also forms the part of the School Management.

If this is the position then it cannot be said that Society is subordinate to the school.

I have perused the order of F.A.A. As per the same the Appellant did not ask the audited statement of the school but of the society. There is also mention in the order about the reply of Respondent No. 2 and that he does not have the access to the records of the society. Yet the Headmaster is directed to obtain the information from the Chairman of the Society. Even at this stage society or its Chairman is not made a party.

It is not known if any person/Public Information Officer does not have access to the records then how he would furnish information.

11. It is to be noted that object of the RTI Act is to ensure greater and more effective access to information under the control of Public Authority. Section 6 of the Act postulates that a person who desires to obtain any information under the Act shall make a request in writing or through electronic means to the authorities specifying the particulars of the information sought by him. Under section 7(1) Central Public Information

Officer or State Public Information Officer as the case may be shall provide the information within 30 days of the receipt of the request on the payment of such fees as may be prescribed or reject the request on any of the grounds specified under section 8 and 9 of the Act. Section 6(3)(ii) also provides for transferring the request to the other concerned authority who may hold the information. Section 11 of the Act relates to third party information. Third party has been defined under section 2(n) to mean a person other than the citizen making a request for information required to be disclosed as confidential that authority is required to give a written notice to such third party of the request. It is to be noted that whenever any applicant is asking for information involving third party such information is to be given under section 7 of the Act only after following procedure prescribed under section 11(1) of the RTI Act 2005 and also keeping in mind section 7(7) of the RTI Act.

12. In the instant case the concerned authorities did not appreciate that the Respondent No. 4 was not a party before Public Information Officer or F.A.A. No notice was issued to Respondent No. 4. Bare minimum requirement of the principle of natural justice was not followed.

13. Looking at the factual backdrop of this case, I feel that something is lacking and both the parties should get full opportunity. Respondent No. 4 should get a chance to put his case before F.A.A. and also get his valuable right of First Appeal. The F.A.A. in turn to hear the Third party/ Respondent No. 4 and then decide the Appeal. Solely with this view and in the ends of justice I wish to remand the matter back to F.A.A. so that procedure prescribed be followed and accordingly dispose the matter within the time schedule prescribed by RTI Act, 2005.

14. Needless to say that this authority has not expressed any opinion on merits of the case.

15. In view of all the above, I pass the following Order: -

ORDER

The Order dated 30/9/2009 passed by First Appellate Authority in First Appeal No. 33/2009/430 is set aside and the matter is remanded back to the First Appellate Authority. The First Appellate Authority to hear the parties afresh including Respondent No. 4 and dispose off the Appeal within the time schedule prescribed by RTI Act.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 15th day of April, 2010.

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

