

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 17 OF 2015

1. The Goa Public Service Commission,
represented by Public Information Officer,
GPSC, Panaji Goa.
2. The Public Information Officer,
Goa Public Service Commission,
Panaji Goa. Petitioners

V e r s u s

1. The Goa State Information Commissioner,
Goa State Information Commission,
Ground Floor, “Shram Shakti Bhavan”,
Patto Plaza, Panaji Goa
2. Dr. Kalpana V. Kamat,
Caldeira Arcade, 1st Floor,
Bhute Bhat, Mestawado,
Vasco Goa. Respondents

Mr. P. Dangui, Advocate for the petitioners.

Respondents though served absent.

Coram:- M. S. SONAK, J.

Date:- 15th May, 2017

ORAL JUDGMENT

Heard Mr. P. Dangui, learned counsel appearing for the

petitioners. The respondents, though served neither present nor represented.

2. The Goa Public Service Commission (GPSC), which is a Constitutional Authority challenges the order made by the Goa State Information Commissioner, Panaji Goa, (GSIC) to the extent, the order directs the petitioner/GPSC to furnish information to the respondent no.2 "free of charge".

3. Admittedly, the charge for furnish of such information is Rs.16/-. This means that GPSC is aggrieved with the direction of the GSIC requiring the GPSC to waive the amount of Rs.16/-, in the matter of furnishing information to the respondent no.2.

4. Mr. Dangui, learned counsel for the GPSC submits that the GPSC, was not impleaded as respondent in the appeal before the GSIC. Further, he submits that in terms of Section 7(6) of the Right to Information Act, 2005, a person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in

sub-section (1). In this context, Mr. Dangui points out that there was no failure on the part of the GPSC to comply with the requirements specified in sub-section (1) and therefore, direction to supply information without charge of Rs.16/- from the respondent no.2 is ultra vires of the provisions of the Right to Information Act.

5. In this case, GSIC at para 14 of the impugned order has stated thus :

“14. The appellant has to appreciate the fact that Section 20(1) or 2 of the RTI Act can be invoked only if the reply given by the PIO is delayed without any explanation, or is significantly away from norms or incomplete or misleading or there is malafide intention. If the Appellant feels that the reply has the above mentioned lacunae then she has to specifically point out the instances of such a lacunae. Presently, the appeal memo does not specify any such lacunae. I therefore see no merit in the appeal except to mention that the then PIO should have transferred questions No.1 and 8 to the GPSC, rather

than asking the applicant to approach them.

I therefore direct that the present PIO shall forthwith transfer the questions No.1, 7, 8 and 11 to GPSC if applicant still feels relevance of those questions and makes such an application to him within 1 month of this order. If the questions are transferred, then the GPSC should give a reply within a month, free of charge.”

(Emphasis supplied)

6. From the aforesaid, it is apparent that the direction to GPSC to furnish information free of charge i.e. by waiving the amount of Rs.16/- was made after taking cognizance of the circumstance that respondent no.2 was unnecessarily hassled in the matter of receipt of information, which, she was entitled to receive under the Right to Information Act, 2005. In terms of Section 6(3) of the Right to Information Act, 2005 where an application is made to a public authority requesting for an information, which is held by another public authority or the subject matter of which, is more closely connected with the functions of another public authority, then, the public authority, to which such application is made, shall

transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer. The proviso to Section 6(3) of the Right to Information Act, 2005 in fact provides that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application. Admittedly, there was a lapse on the part of the PIO of Director of Education to whom the application seeking information was addressed by respondent no.2 in compliance with the provisions of Section 6(3) of the Right to Information Act, 2005. On account of such failure/lapse, it is also obvious that respondent no.2 was hassled in the matter of receipt of information, which she was entitled to receive under the provisions of the Right to Information Act, 2005. If, after taking into consideration the plight of respondent no.2, the responsible authority like GSIC makes a reasonable direction of waiver of fee of Rs.16/- to another Constitutional authority i.e. GPSC, some grace is naturally expected from the GPSC in the matter of such nature. Instead in the present case, the GPSC, perhaps, out of

oversensitivity of certain officials has chosen to overact and institute the present petition in order to insist with respondent no.2 is directed to pay an amount of Rs.16/- towards furnish of information. Admittedly, respondent no.2 is at no fault in the matter and despite being at no fault in the matter is the one who was hassled in the bargain.

7. This is not matter of principle or some matter of precedent. In fact, if the GPSC was indeed serious to recover the amount of Rs.16/-, then, the GPSC, was duty bound to have impleaded the PIO of Director of Education as respondent, so that the PIO could have been directed to pay the amount of Rs.16/- to the GPSC. In the facts and circumstances of the present case, there is no warrant to require respondent no.2 to pay Rs.16/- for availing information which she was entitled to receive within prescribed period under the provisions of the Right to Information Act, 2005. However, for the reasons best known, the GPSC has failed to implead the PIO of Director of Education as respondent to this petition. The petition is required to be dismissed, *inter alia* for want of non joinder of necessary party.

8. The GPSC, in the matter of this nature has to not only keep in mind the perspective of the citizen, who has been hassled for receipt of information, but the GPSC, which is itself a Constitutional authority has to be conscious of the legal status and the position of the GSIC as well. Such kind of litigation between such two institutions, particularly when there is no question of any serious principle involved, hardly augurs to the functioning of both these institutions, which are extremely vital and important.

9. On the basis of some hyper technical plea, even assuming same has some substance, the extra ordinary jurisdiction of this Court should neither be invoked and if invoked, need not be exercised. The extra ordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India is to promote justice. If justice is by product of some alleged technically incorrect order, such jurisdiction will not be readily exercised and some illegal or inequitable position restored, in the name of the correction of some alleged technical error. This is an additional reason for dismissing this petition.

10. Mr. Dangui, points out that no sooner the PIO transferred the questions, the GPSC within the period prescribed, furnished necessary information to respondent no.2. He submits that for no fault on the part of the GPSC, the GPSC was deprived the amount of Rs.16/- which amount, the GPSC was entitled to recover from respondent no.2 to furnish information. The contention however overlooks the fact that there was no fault on the part of respondent no.2 and yet it is the respondent no.2 who was obviously hassled. In such circumstances, it is unreasonable on the part of the GPSC to insist upon recovery of the amount of Rs.16/- from respondent no.2. As noted earlier, at the highest, the GPSC could have made such claim against the PIO of Director of Education. Having failed to make such claim, or even implead the PIO of Director of Education as respondent in this petition, the GPSC cannot, seriously complain about the deprivation of the amount of Rs.16/-.

11. This petition is in fact required to be dismissed with costs. The GPSC, in the name of recovery of Rs.16/- from

respondent no.2 has spent much greater amount, only towards typing and stationery, not to speak about the Advocate fees or valuable judicial time. However, since such costs will ultimately have to be borne from out of the amount contributed by the tax payer, no costs are being imposed. However, it will be appropriate if the Chairperson of the GPSC, or some senior functionary, objectively reflects upon the present matter, so that, the Officers of the GPSC are not oversensitive to the directions issued by the GSIC and propose the institution of petitions of present nature. Undoubtedly, when some issue of principle is involved, the GPSC would be well within its rights to contest the orders made by the GSIC. However, this is really not a case involving any principle as such.

12. Rule is accordingly discharged. In the facts and circumstances of the present case, although, this is a fit case for imposition of costs, no costs, are imposed for the aforesaid reasons.

M. S. SONAK, J.

at*