

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.539 & 540 OF 2008

1. Public Information Officer,
Registrar, Goa University,
Taleigao Plateau,
Dona Paula, Goa.

2. The Appellate Authority,
Hon'ble Vice Chancellor,
Goa University, Taleigao Plateau,
Dona Paula, Goa. Petitioners

V/s

1. Dr. U.A. Vinaykumar,
Reader in Philosophy,
Goa University, Taleigao Plateau,
Dona Paula, Goa.

2. Goa Information Commissioner,
Through its Commissioner,
Ground Floor,
Shrama Shakti Bhavan,
Patto, Panaji Goa. Respondents

Ms. A. Agni, Advocate for the Petitioners.

CORAM : F.M. REIS, J.

DATE : 29th JANUARY, 2013

ORAL JUDGMENT :

Heard Ms. A. Agni, learned Counsel appearing for the petitioners.

2. The above Writ Petitions No.539 of 2008 and 540 of 2008 seek for the following reliefs:

a. For a Writ of certiorari, a writ in the nature of certiorari any other appropriate writ direction or order thereby quashing and setting aside the order dated 30/07/2008 giving direction to the petitioner herein to file a complaint i.e. FIR to the concerned Police Station about the missing of registers within 2 weeks and further for dismissal of the complaint dated 4/07/2008 as the required information is not available with the petitioners.

3. Both the above petitions were taken up together for hearing as it is pointed out by the learned Counsel appearing for the petitioners that the points involved for consideration in both the petitions are the same.

4. Ms. A. Agni, learned Counsel appearing for the petitioners has assailed the impugned order on the ground that once the Authorities came to the conclusion that the information sought by the respondents was not available, the question of directing the petitioners to lodge an FIR in connection with the examination of the documents does not arise. The learned Counsel has taken me through the provisions of Section 19(8) of the Right to Information Act, 2005 (herein after referred to as 'the said Act') and pointed out the power conferred on

the Commission with that regard. The learned Counsel further pointed out that such powers are to be exercised only for the purpose of maintaining the records, etc. with regard to the information to be supplied. The learned Counsel further pointed out that the directions which have been issued by the respondent no.2 are without any jurisdiction and, as such, the same deserve to be quashed and set aside. The learned counsel has also taken me through the provisions of Section 25 of the said Act and pointed out that the powers conferred therein are only with regard to maintaining the activities and by no stretch of imagination can it be considered that the lodging of an FIR in connection with the examination of documents can be included therein. The learned Counsel has taken me through the impugned order and pointed out that the respondent no.2 has come to the conclusion that the documents are not found and, as such, the question of issuing such direction to lodge an FIR are totally without any jurisdiction. In support of her submissions the learned Counsel has relied upon the judgment of the Apex Court reported in **2011 (8) SCC 497** in the case of **Central Board of Secondary Education & Anr. V/s. Aditya Bandopadhyay & Ors.** wherein the Apex Court has held thus:

At this juncture, it is necessary to clear some

misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

5. The respondents though served failed to remain present.

6. Considering the said observations of the Apex Court the question of supplying information of the record which are not

available with the petitioner would not arise. The Apex Court in the said judgment at para 65 observed thus.

The power under section 19(8) of the Act, however, does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under Section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under clause (a) of section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of sections 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub-sections (3) and (4) of section 4 of the Act. If the 'information' enumerated in clause (b) of section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.

7. The said observations clearly demonstrate that the power under Section 19(8) of the said Act is intended to be used by the Commission to ensure that every public Authority maintains these records duly catalogued and indexed. The powers under the said Act however do not extend to require a public Authority to take any steps

which are not required or contemplated to secure the compliance of the provisions of the Act or to issue directions beyond the provisions of the said Act.

8. Considering that the directions issued by the respondent no.2 to lodge an FRI are not in compliance with the order within the powers conferred on the Commission, I find that the respondent no.2 was not justified to pass such direction. The directions issued are beyond the powers conferred on the respondent no.2 which cannot be sustained and deserve to be quashed and set aside.

9. In view of the above, rule is made absolute in terms of prayer clause (a).

F.M. REIS, J.

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