

CHAPTER - 7

7.1 IMPORTANT JUDGMENTS :

The Goa State Information Commission which is constituted under the RTI Act, 2005 adjudicates upon the RTI Complaints and RTI appeals filed before it. During the hearing of these cases, various lacunae and shortfalls of Government Departments come to the notice of this Commission. Attempts are made by this Commission to put things in order by way of directions through its Judgments.

The following are some important Judgments passed by the Hon'ble Goa State Chief Information Commissioner, Smt. Leena Mehendale.

1. Complaint No: 123/SIC/2012.

Shri. Jeremias S. B. Rodrigues,
R/o. Nagoa, Bardez, Goa.

----- Complainant.

v/s.

Public Information Officer, and
Block Development Officer of Bardez Block,
Mapusa, Goa.

----- Opponent.

1. The complainant had filed a complaint before the Director of Panchayat, that an illegal construction was started by M/S P.V. Builders but the Sarpanch and Secretary of Village Panchayat of Arpora Nagoa were not taking action to stop illegal construction. It was followed up by an RTI applications dated 27/01/2012 asking information about action taken. The information on action taken was "supplied" and reveals that a Memorandum was issued to the BDO Bardez on 14/02/2012 to take action and submit compliance report.

2. The BDO apparently failed to take any action despite the Memo from the Directorate. Hence the Complainant made another application under RTI Act

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dated 09/03/2012, requesting the information about the action taken by BDO. The BDO has not replied to the above question under RTI Act.

3. Present complaint is a typical case where a typical Government department has failed to make a appropriate enquiry and action on complaint of illegal construction and thereafter has felt shy to acknowledge that they have not taken any action. Hence have chosen not to answer the RTI question rather than acknowledging the NIL information.

4. This is one of those cases which occasionally force the Information Commissioners to go into the very question of efficacy and relevance of the RTI Act of 2005. Although apparently the stated objectives of this Act do not mention **GOOD GOVERNANCE** as one of them, but only stop at Transparency, Accountability and Informed Citizenry, it has to be understood that these 3 objectives have no meaning unless they are a step forward in bringing Good Governance.

5. On the first look it may appear as anomaly that the objectives of RTI Act does not talk of Good Governance, but it is quite understandable as to why it is so. There is always a presumption about the word "GOVERNANCE". It inherently includes the word "GOOD". Hence normally the term "governance" is not required to be qualified as "good" Governance. Similarly, for the RTI Act too there is a presumption that it has to lead to "good governance", even if it does not specifically say so.

6. Hence although it is important to deal with individual Second Appeals coming up before the Commission, and to correct the lacunae in the orders of PIO or FAA as the case may be, that action by itself will achieve only a part of the RTI objectives. Such decisions as well as the Act itself will be failing if together they cannot bring about a systemic change in the working of the Government Departments by giving clues to the Senior Officers as to what are the recurring aberrations in the working of their Junior Officers. It is in this spirit that we have to look at the role of the FAA and the Head of the

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Department. It is in this spirit that sections 19(1) requires a senior ranking officer of the **same** department to act as FAA and give applicant the benefit of his superior administrative ability and better understanding over that of PIO. It is also in this spirit that Section 4 puts obligations on the Head of the department who is a Public Authority. In ultimate analysis, it is the Public Authority who would take the credit or discredit for the replies given by PIO and the redressal given by the FAA.

7. A NIL INFORMATION is a relevant information. There are several forms through which government asks information from citizens such as applications for a job, income tax return, passports, information for voters list etc, in which the citizens are specifically directed to state "NIL" when answer to a particular question is Nil.

8. Hence all the PIOs need to understand that a NIL information fits in the definition of Section 2(f) and must be stated while replying to RTI applications. At this stage I also feel obliged to guide the PIOs as to what is a NIL information. The evidence of an information in government parlance is to be found only in the noting or directions given in the concerned file. Similarly an evidence of NIL information is found by the **absence of any noting or direction** in the concerned file. Hence a Nil information is an information within the meaning of Section 2(f) of the RTI Act and its existence is to be acknowledged when there is absence of any noting on the file, showing any direction or at least an intention of a proposed action. They are duty-bound to furnish Nil information in following format. "As seen from the relevant file, no action has yet been taken or intended and the information is NIL".

9. Before passing order, I have to make two more observations-

- (I) From the appeals and complaints filed before the office of SCIC, I find a sizeable number of cases pertaining to the Department of Panchayat in which the original applicant is alleging about some illegal construction taking place at the Village level and possible

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connivance of the Village Panchayat Officer. Under the Village Panchayat Act it is the Responsibility and Authority of Village Panchayat itself to stop illegal construction. In addition it is also the Responsibility and Authority of BDO and also of the Directorate of Panchayat to enquire into such alleged illegal constructions and to stop them if there illegality is revealed. When these authorities fail to take action despite complaints made, the complainants generally file RTI applications to ask as to what action has been taken by the concerned authority on their complaints. Thus, such RTI questions are in a limited sense, a commentary on the working of the department.

- (II) If any of the 3 competent authorities (V.P. Officer, or BDO or Director) has enquired into the complaint and found the construction to be legal, they have to give atleast this one line statement to the RTI applicant. If they have enquired and found the construction to be illegal, again they have to give this information. under RTI and proceed with proper Administrative action. If an enquiry is in progress, they have to inform accordingly. However, if they have not made any enquiry, nor any noting on any file which will indicate their application of mind or their intention of any action, then they have to furnish NIL information in the format indicated in para 6 supra.

10. Prayer clause A about furnishing information is allowed with direction that the present PIO, that is, the present BDO Bardez is directed to give proper reply to the RTI application dated 09/03/2012. I must also add that in case no action has been taken by any BDO between the period 14/02/2012 till now, then the present PIO is duty- bound to furnish the nil information in following format. *“as seen from the concerned files, no action has so far been initiated from 14.02.2012 onwards till date”*.

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2. Complaint No : 151/SIC/2013.

Shri. Shripad Y. Gauns,

R/o. Mapusa, Goa.

v/s.

Public Information Officer, and

Chief Officer of Mapusa MMC,

Mapusa Municipal Council.

1. This case has a very limited but important point which should work as a guideline to all PIOs.
2. The PIO has supplied many documents but the critical document namely the Convergence Sanad Certificate is stated to be *“not available in the concerned file”*. This is information given on 17/12/2013.
3. The PIO has failed to apply his mind, resulting in incorrect information. This is a typical case where distinction has to be made between *“information was never supplied to the public office”* and *“information was supplied but is now unavailable”*.
4. The case pertains to a permission given for construction of a building and the same cannot be given without the document “Convergence Sanad”, being supplied by the builder.
5. Hence, before replying it was the duty of the PIO to check from list of documents supplied by the builder and inform whether the Convergence Sanad Certificate was supplied by the builder while asking for construction licence No. 188 dated 23/10/2001, or permission was given without bothering to verify/demand the Convergence Sanad Certificate.
6. Needless to mention that if the builder had supplied the copy of Convergence Sanad Certificate, then somebody from the office of the PIO has willfully destroyed it, for which the HOD must institute enquiry and lodge FIR as well as demand a copy from builder to complete the record and ensure that it is supplied it to complainant.
7. HOD has to bear in mind that under the RTI Act, it is he who is the Public Authority and the PIO is only a “one-window-official” for the purpose of giving

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information – a link between the Public Authority and the public. Hence, while the PIO has to take the bulk of responsibility in respect of RTI applications, when the PIO fails due to mismanagement of the office, then the onus shifts on to the HOD.

3. Complaint No : 511/SIC/2010.

Shri. Franky Monteiro,
R/o.Loutolim, Salcete, Goa.

v/s.

Public Information Officer, and
Village Panchayat Secretary(Loutolim),
Loutolim, Goa.

1. The complainant herein had submitted 3 RTI applications all stating that information was requested under Goa RTI Act. The PIO had refused information on the ground that there is no Goa Information Act. The First Appellate Authority had allowed all the 3 First Appeals on the ground that PIO is expected to be aware that there is a Central RTI Act applicable all over Goa rather than harp on the word "Goa RTI Act" .The PIO to furnish information. This order of the FAA was not carried out by the PIO. In all the 3 second appeals, the SCIC through the judgment dated 23/06/2010 has upheld the order of FAA and directed the PIO to supply information. The Writ petition filed by PIO before High Court of Bombay at Goa against the orders of SCIC has also been dismissed, on 06/12/2010.

2. In the instant case, the complainant vide his RTI Application dated 21/06/2010 had sought copies of correspondence. The PIO had refused the said information stating that the information sought is applied under Goa RTI Act, 2005 which is not in force.

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3. It is thus seen that on the date of replying to the RTI application the PIO had already received 3 Orders from First Appellate Authority and another 3 Orders from SCIC, clearly mentioning the mistaken stand taken by him and directing him to furnish information even if asked under "Goa RTI Act". He has continued this attitude with regard to the 4th RTI application.

4. Hence, this case is also held as a fit case to call explanation u/s 20(1) and pass penalty as in 2 earlier penalty cases.

5. Complaint is allowed. The then PIO is held as willful defaulter. Hence a Penalty case under Sec 20(1) and 20(2) for exemplary punishment.

4. Appeal No: 133/SIC/2012.

Shri. Lambert P. A. Godinho,
R/o. Bicholim, Goa.

v/s.

Public Information Officer, and
Headmaster,
Santa Cruz High School,
Santa Cruz, Goa.

1. "What are the rights of an employee to know about entries in his Annual Confidential Report and what are the limitations?" That is the subject matter of this case.

2. The Appellant had requested to furnish certified photocopies of his own Confidential reports .

3. The appellant approached the First Appellate Authority who has dismissed the appeal.

4. Earlier a ruling passed by the Goa State Information Commission in Appeal No. 83/2006/WRD dated 29/03/2007. Hence it is pertinent to note the details of the said case.

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5. The Appellant of that case too had requested "to provide copies of the complete set of ACR . *We are of the opinion that such an important document which determines the fate of a Government officials in the entire career should be made known to the officials in advance from time to time and their participation in the actual assessment of performance would be essential for good Governance. We have, therefore, no doubt and hesitation in holding that the contents of ACR should be made known to the employees on regular and annual basis. The ACRs already available with the Department should be made available to the Appellant for his examination and taking of notes.*

This facility be accorded only in respect of his own ACR. All citizens do not have such a right to access the ACRs of particular employees of the Public Authority. This is so because it becomes a third party information and no public interest is served in disclosing the working of a Government official over a period of time.

Further, giving certified copies to the officials even of their own ACRs, will involve handling of the documents by a number of officials which will make it completely open which is also not desirable. A particular employee can ask for inspection and take notes including videography or taking digital photographs of his own ACR's by making a proper application to the Public Information Officer and pay necessary fees . We direct the Public Information Officer to make available to the Appellant access to his own ACRs and allow him to take photographs, if he so desires.

6. In present case before me, the appellant has orally stated that he does not object to his ACR file being seen by/handled by several people during certification. I also feel that the matter has to be freshly appreciated. Much time has passed between 2007 and the present case. The Supreme Court and Government of India have reformed the ACR rules bringing more transparency. Hence I hold that applicant is entitled to certified copies of his ACR if he gives in writing that he does not object to his ACR file being seen by/handled by several people during certification.

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7. Coming to the reply of PIO. His reason for rejecting Information had the backing of the judgment passed by SCIC in Appeal No. 83/2006/WRD. Hence his action cannot be considered as attracting any action under Section 20 (1).

5. Complaint No: 162/SCIC/2012.

Shri. Anoop Singh Gaur (POELP),
INS Sujata,
C/o.FMO Naval Base (Venduruthy).

v/s.

Public Information Officer, and
Assistant Director of Transport,
Vasco, Goa.

1. In this case, the Complainant had applied for “change of ownership” of motorbike Registration No. HR-14-C-3466 purchased by him.
2. For the purpose of registration, he approached the RTO alongwith relevant documents but permission for registration of “change in ownership” was refused for want of ID Proof. The applicant had attached an ID proof which was same as filed by his other friends earlier.
3. The RTI application was filed on 17/07/2012 bringing it to the notice of the then RTO that the same RTO had accepted an exactly similar ID proof as sufficient ID proof for registration of another vehicle of his friend from the same ship and a differentiation was being made in his case by rejecting his registration.
4. The intention of the Complainant was to prove the willful difference in the treatment given to him by RTO. Therefore under RTI, he requested the certified copies of the documents submitted by Sandeep Kumar in the above mentioned 2 cases of “change of ownership”. A reply was given to him on 16/08/2012 stating that,

“This office is unable to provide a required information under Sec. 8(1) under RTI Act, 2005.”

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5. During hearing on 18/06/2014, the PIO/Asstt. Director of Transport of Vasco, Abhay Naik submits the following on the question of grant of “change in ownership”

After going through the record, it is clarified that the Authorization letter shown by the applicant/complainant is similar to the authorization letter submitted by the other staff members working at the same War Ship INS SUJATA at the time of registration of vehicle.

If he or any other Naval Staff members approach this office and produce the same documents for Transfer of Ownership/Re-Registration of Vehicle, then I will process his documents on priority basis, as per order of this forum.”

Thus the PIO has avoided to state the rule position.

6. However, it is necessary to ensure that similar discriminatory grounds as per the personal whim and fancy of the RTO should not be used in future for rejecting the applications of other Naval Staff. The present PIO/Asstt. Director of Transport at Vasco has been asked to give a legal form to the above mentioned reply, (especially the last Para) by issuing an appropriate circular, and by sending a copy to the Complainant herein.

6. Appeal No : 123/SIC/2012.

Shri. Jose de Vieira Menezes,
Margao, Goa.
v/s.
Public Information Officer, and
Member Secretary,
South Goa Planning and Development Authority,
Margao, Goa.

1. The RTI application asked about “zoning of the property.”

2. The reply by PIO within time was as below : –

“With reference to the above you are informed herewith that the

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Authority issues zoning guidelines on payment of prescribed fees by the applicant thereby giving zoning information on the roads affected if any as per Outline Development Plan provisions. In view of the above the information as sought by you cannot be furnished under Right to Information Act”.

3. The FAA has passed the order agreeing that *“the PIO has only acted as per the procedure adopted by the Authority in dealing such matters and informed the Appellant about the procedure laid for obtaining the same information.”*

4. Therefore, PIO should *“make available the copies of the finally notified O.D.P and the provisionally notified O.D.P after intimating the Appellant the cost of the same under SGPDA Rules and after having received the said amount”.*

5. Finally, the appellant paid Rs. 4000/- as per the FAA’s order, and the PIO on 28/06/2012 supplied him documents namely copy of

- Provisional ODP of Margao and
- Finally approved ODP of Margao.

6. The Appellant in the Second Appeal referred to Para 7 of Appeal memo. The PIO and FAA have failed to reply it Question 4 read as below:

“ In case the Zoning is different from the draft ODP and the present ODP, kindly let me know on whose request or at whose instance the change has been carried out and also furnish me certified copies of the application praying for the change in zoning and the documents accompanying such application.”

7. Present PIO was asked to clarify during the hearing. He stated that *“information to point no. 4 is that “there is no application received praying for change of zone of Chalta No. 2 of PT sheet 60”.*

8. Thus, the present PIO has given information to question 4, it can be taken that the RTI questions are fully answered. The department and previous PIO should be careful in future about the manner of reply of the PIO. If he wanted

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the Appellant to pay higher fees as required under SGPDA, he is entitled to inform so to the appellant but he cannot make a blanket statement- "information cannot be furnished under RTI". He is bound to furnish information. Only the fees charged will be higher, if SGPDA so requires.

7. Appeal No : 206/SIC/2012.

Shri. T.C. Bhandari,
C/o. Bharat Conductors Pvt. Ltd.,
Zuarinagar, Goa.

v/s.

Public Information Officer, and
Executive Engineer (Training),
Panaji, Goa.

1. The facts giving rise to the present appeal between the RTI applicant and the PIO in a nutshell are that *Appellant has received part information & remaining has become stale and irrelevant and not pressed for. Also he wants no action u/s 20 but a detailed direction to Department as regards U-turns and reluctance for allowing inspection.*

2. The appellant had asked for certified copies of the following :

"For procurement of Conductors, after expiry of RATE CONTRACT Order on 31st, March, 2012, the Electricity Dept. had moved the matter for Govt. approval on procurement by inviting the OPEN TENDER, Cancellation of the Tender and further action taken for procurement of Conductors after cancellation of the Tender and all relevant documents, file notings of the Govt. of Goa, concerned authorities including the copies of the documents referred in the notings in the matter from 1st April, 2012 to till the date of your reply to me.

3. Appellant requested to inspect the file and the documents copies. The PIO

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invited him to inspect file on 1/8/2012. The appellant approached the PIO on 06/08/2012 and 21/08/2012. Meantime, PIO prepared a reply to the RTI application signed it on 17/8/2012, but this information was not given to appellant when he approached the PIO on 21/8/2012. The reply was posted on 23/8/2012 and received by the appellant on 24/8/2012 in which the PIO had claimed exemption under section 8(1) d and 8 (1) e of the RTI Act 2005.

4. The FAA directed the deemed PIO to provide inspection of the Office copy of the concerned file to the appellant and to provide copies of documents desired by him.

5. It is thus obvious that since the Executive Engineer (Procurement) maintains a copy of the file, the PIO should have procured it from the deemed PIO Executive Engineer procurement and should have provided inspection. Instead he claimed exemption under Section 8(1) (d) and 8(1) (e)

6. The appellant points out that *it is the main objective of the RTI that a common man can avail any Govt. document, can inspect any work in progress and can ask questions related to any aspect of the work. In this way, every Citizen of India can directly participate in the Govt. mechanism and its proceedings.*

7. *It is the mantra of the good governance that there is optimum transparency in the Govt's works and processes and that anyone should be allowed for easy access to the maximum amount of informations of such PUBLIC TENDERS rather than mis-applications and taking shelter on wrong interpretation of the RTI ACT & Rules".*

8. Obviously, the interpetition of section 8(1)(d) and 8(1)(e) was wrongly done by the PIO which is borne out from the fact that the FAA has directed the concerned Executive Engineer incharge of procurement to supply information.

9. It is also important to comment on the attitude of PIO. Information was asked only for the period 01/04/2012 to 31/08/2012 (only for 5 months), on following points –

- Those pages under which the Electricity Department had moved file for the Govt. Approval.
- The cancellation of earlier tender if any, on account of expiry of rate contract.
- Action taken for procurement of conductors.
- Relevant documents and file notings in the matter for receiving or accepting new tender and finalizing the contract.

10. Obviously there is absolutely no scope for section 8(1) (d) or 8 (1) (e) and for claiming fiduciary relationship.

11. It has also been held in earlier judgments by Information Commissions and High Court, that information contained in public tender cannot be given benefit of exemption under section 8(1) (d) and 8(1) (e).

12. It is also important to keep in mind that when tenders are called a date is prescribed when all the tenders will be opened in presence of all who have filed the tenders and only one of the tenders is selected and passed for executing the work. Thus tenders are made public on the date of their opening, only with the exception, that if the date is postponed or for any other reason, it is decided by the Government not to open the tender documents, but cancel and invite fresh tenders then those unopened tenders should not be opened and should be destroyed in due course of weeding. It appears that these basic principles were properly understood by FAA but not by PIO which has resulted in requiring the

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appellant to peruse the matter at different levels after filing application on 18/7/2012 till the date of decision which is nearly 2 years.

13. The appellant was gracious enough to state that he does not want any action under section 20(1). The department should however ensure more training to its officers, and better quality of replies by PIO as well as better quality of implementation of FAA's order.

14. Even the behavior of the PIO is casual & careless. He had prepared a reply on 17/8/2012 which was actually dispatched on 23/8/2012 but the same was not disclosed to the appellant when he approached the PIO on 21/8/2012.

15. With the above detailed observation and after noting that the information was given after FAA order on 9/11/2012, I order this second appeal as closed at the request of Appellant.

8. Complaint : 146/SCIC/2013, and Complaint : 13/SCIC/2014.

Dr. Aashish Kamat,
Margao, Goa.

v/s.

Public Information Officer, and
Directorate of Education,
Porvorim , Goa.

1. RTI applications dated 13/05/2013, 28/11/2013 and 08/01/2014 were filed before the PIO. It appears prime-facie that PIO has not furnished replies to any of the 3 RTI applications.

2. The RTI applicant had also made the First Appeals. All the 3 First Appeals have remained undisposed. The PIO orally informs that the then First Appellate

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Authority has since retired and the present FAA and Director of Education has taken charge on 01/09/2014 it appears that he has not taken stock of RTI first appeals kept pending by his predecessor.

3. On inquiry with the PIO it is confirmed that none of the 3 RTI applications have been replied to. She however undertakes to furnish all the relevant information free of cost (being delayed information).

4. The PIO and FAA appeared unaware that they have to file Annual Report with the State Information Commission regarding the status of disposal of RTI applications and first appeals. It is therefore desirable that the Director arranges a proper training program so that he himself and his officers can properly appreciate the provisions of RTI Act. He is also directed to maintain a register of first appeals including information about second appeal and directions passed therein.

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