

BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.
CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner

Appeal No. 134/SIC/2014

Public Information Officer,
The Secretary V. P. Penha de Franca,
Mr. Subodh V. Prabhu,
Porvorim, Bardez-GoaAppellant
(original Respondent)

V/s
Mr. Minguel Vas,
R.o. H. NO. 81, Waddo, Socorro,
Bardez, Goa Respondent
(original Appellant)

Appeal Filed on 31/12/2014

Disposed on. 6/07/2016

ORDER

1. Brief fact of the case are that information seeker Shri Minguel Vaz , Respondent No. 1 herein had filed Appeal before FAA (First Appellate Authority) against the decision of Public Information Officer (PIO), Secretary, Village Panchayat, Penha de France in the matters relating to construction licences issued during the period from 16/10/1994 till 16/10/2014 of the plots situated in the below mentioned survey Nos.
 - a) Survey No. 101/4
 - b) Survey No. 102/2
 - c) Survey No. 106/1 or 106/0
 - d) Survey No. 128/1 or 128/0
 - e) Survey No. 129/1 or 129/0
 - f) Survey No. 138/1 or 138/0
 - g) Survey No. 154/1 or 154/0
 - h) Survey No. 156/1 or 156/0
 - i) Survey No. 171/9
 - j) Survey No. 172/1 or 172/0
 - k) Survey No. 176/1 or 176/0
 - l) Survey No. 179/1 or 179/0

m) Survey No. 176/1 & 169/1 or 176/0 and 169/0

And had sought certified copies of the following document a) 1st page of the construction license b) 1st page of temporary possession certificate or any other ownership/Lease documents and 3) Extension certificate issued by the Communitade

2. The FAA by an order dated 11/12/2014 directed PIO to furnish the information and the certified copies of the documents within period of 2 weeks from the date of receipt of Order.
3. Being aggrieved by the order of FAA the present Appeal came to be filed by PIO of public authority.
4. After constitution of this Commission, fresh notices were issued to parties Registered A.D. notice issued to the Appellant has written back with endorsement unclaimed. The Respondent No. 1 remain present personally on 24/06/2016 and the reply came to be filed by the Respondent.
5. Since the Appellant PIO despite of due notice opted to remain absent, and having failed to substantiate his case this Commission had no other option then to hear arguments of Respondent No. 1 and then to disposed the present Appeal based on the records of appellant available in the file.
6. The present appeal before this Commission is filed by PIO against the decision of FAA. PIO is the information

provider, and not the seeker of the information. Section 19 (3) of Right to Information Act, deals with the appeal procedure and the above provisions are made in the interest and for the benefit of information seeker. There is also no provision in the Right to Information Act to consider an Appeal filed by PIO's against the order of FAA as the very purpose of this Act is to provide the information. The Appellant could not point out any provisions under which they came in appeal against the Order of First Appellate Authority (FAA).

(a) In my considered opinion the appeal process created u/s. 19 of the RTI Act is purely for the use of an aggrieved RTI applicant or any person who may be treated as a third party to an RTI application but not for the purpose of the PIO or FAA or the Public Authority itself. The relevant provisions are reproduced below:

“19. (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal

to such Officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: ...

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, u/s. 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under section 19 (3) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

(b) Thus scope of section 19 implies that only two categories of persons may challenge the decision of a PIO a) an aggrieved RTI applicant and b) a third party who is aggrieved by a PIO's decision to disclose information pertaining to he/she/it which is treated as being confidential by that third party.

(c) Further, section 19(1) only permits an aggrieved RTI applicant to submit a first appeal to an FAA on two grounds only, *i.e.*, if no decision has been received from the PIO or if he is aggrieved by a decision of the PIO, namely, rejection of the request or partial disclosure. A third party to an RTI application may also submit a first appeal to the FAA u/s.

19(2). Therefore the first appeal process does not contemplate any other right of appeal vesting in any other person including any other officer of the public authority.

(d) It should be noted that section 19(3) refers to a second appeal and not a fresh appeal against a decision made u/s. 19(1) which means an appeal that may be submitted is only against the FAA's order by the aggrieved RTI Applicant or an aggrieved third party. It is not open for any other person including any officer of the public authority such as the concerned PIO or the Public authority itself to approach the concerned Information Commission challenging the order of the FAA. So in my opinion, a public authority does not have any right of appeal at the first or second appeal stage u/s.19 of the RTI Act.

In the matter of Chief Information Commissioner And Another vs. State of Manipur and Another [(2011) 15 SCC 1], the Hon'ble Supreme Court of India explained the scheme of appeals provided for in the RTI Act in the following words:

“35. ... Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person

who is aggrieved by refusal to receive information.

Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. ...

At para 43 it has been held. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information.” [emphasis supplied]

Nowhere in its detailed explanation of the scheme of section 19 does the Hon'ble Supreme Court recognize the right of a public authority to any of its officers to challenge a decision of their PIO or FAA made under the RTI Act.

9. In the aforesaid circumstance I am of the opinion that the order passed by the FAA does not give any scope to the PIO to

challenge the order passed by his senior before the second appellate authority. In the circumstances i.e. hold that the second appeal is not maintainable as the PIO has no locus standie to challenge the said order of his senior officer i.e. the FAA.

In view of above the Appeal is not maintainable. However in the interest of justice Appellant herein is directed to comply with the order of FAA. Appeal therefore stands dismissed. Proceeding are accordingly closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrived party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa