

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Prashant S. P. Tendolkar,
State Chief Information Commissioners.
Smt. Pratima K. Vernekar,
State Information Commissioner

Appeal No. 55/SIC/20014

Alexinho F. Monserrate
Santarbatt, Piedade,
Diwar, Ilhas –Goa.

..... Appellant.

V/s

- 1) The Public Information Officer,
Executive Engineer, Works Div.II,
PWD, Patto, Panaji –Goa.
- 2) First Appellate Authority,
Public Work Department,
Altinho, Panaji –Goa.

..... Respondents

Filed on: 19/05/2014
Disposed on: 22/6/2016

Facts:

By application dated 26/02/2014 filed U/S 6 of The Right to Information Act 2005 (Act), the appellant sought for certain information from the PIO in respect of his 10 queries contained therein. The said application was replied by the PIO by reply, dated 01/04/2014.

2. Being not satisfied with the said reply, the appellant filed first appeal before the First Appellate authority(FAA) which was disposed on 22/04/2014. By the said order the FAA held that since all the document issued, the matter was disposed.

3. Being aggrieved by the said order of FAA, the appellant has filed the present appeal seeking information as also for penalty and compensation.

4. Out of the information sought the appellant has restricted his claim in this appeal for information only to query numbers (1),(7) and(10) and hence while dealing with the present appeal we are restricting our consideration vis a vis the information sought to query numbers (1),(7) and(10).

5. After notifying the parties the matter was heard. The appellant argued orally as also by way of reply to the submission of Respondent No.1 whereas Respondent No.1 filed written submission.

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Findings:

6. We have perused the records and considered the arguments advanced by the parties. By the initial application under query No.(1) the appellant has sought the work estimate and panchayat resolution in respect of the tender referred therein. This query has two parts. Firstly the work estimate and the second Panchayat Resolution. It is the contention of the appellant that the PIO has furnished the information of the work estimate but not provided the information regarding the Panchayat Resolution.

7. In respect of the panchayat resolution the PIO in his reply, dated 01/04/2014 has enclosed a copy of resolution passed in the fortnightly meeting held on 15/01/2011. The appellant has objection to same as the said resolution firstly is not on the letter head of the Panchayat nor it bears signature of the officers. It is in this background that the appellant contends that the same is not from the custody of the panchayat records and hence doubtful. It is in this background that he contends that the said piece of information is false misleading and fictitious.

8. Section 2(f) of the act provides that information that can be sought and can be given is as is held in any form by Public Authority. In this situation it was necessary on the part of the PIO to furnish to the appellant the copy of the resolution as was furnished to it by the panchayat. Such information should be in the same form and nature as is held by the public authority.

9. In the argument of the PIO regarding point (1) in his written arguments it is submitted that a copy of panchayat resolution No. 4 as existing in the work file was furnished. It is further argued that as per the orders of the Commission, PIO called for a copy of the same resolution from the panchayat which according to the panchayat is not in existence. These make the appellant to doubt that the concerned information is false and misleading.

Considering the argument and the facts I find that the information as was furnished namely copy of the resolution, if was in the same form, nature and contents, it should have

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been certified so. Thereafter the appellant cannot have any grievance as he is entitled to have the same in the same form as is filed with the PIO. In this situation for the purpose of affirming the statement of the PIO that the said resolution furnished by him to the appellant is the same, as existing, it is necessary that it is accordingly certified and if any Irregularity or illegality has occurred in passing the resolution than the appellant is free to take up such issue before appropriate forum seeking the relief and the PIO is not answerable to it.

10. Coming to query No.(7) which contains two parts. According to the PIO he has complied with the same. As per the reply the said information is annexed at pages 16 to 39 which are marked in this file as (11) to(30)(v).If one peruses the said information the said documents are the objections and complaint and the matter related to such complaints. No where we find the action taken report on this complaints and objection, which was precisely the information sought by the appellant. On perusal of the arguments of the PIO it appears that the PIO argues to support as to how some resolution or letters are valid genuine etc. At para (2) of the said arguments he has submitted that remedial steps were adopted to proceed with the work smoothly. He also suggest how the said work was proceeded smoothly or that how it was undertaken validly.

We are afraid to concur with this contention. Under the act this commission has no scope to discuss and deliberate over the subject matter involved in the information. What is required to be considered is whether the information as existing is furnished. Thus we find that query no.(7) is not fully answered.

11. In reply to query no.(10)Coming to query No.10, the information furnished by the PIO that the Government have entered into several correspondence. According to the PIO these correspondence is the action taken. This correspondence was annexed by the PIO to his reply as pages (41) to (44) which are at pages 6 to 9 of the appeal memo. It is

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the contention of the PIO that as the said documents relied upon by the appellant himself is action taken report, no other report remains to be provided. By this the PIO submits that the information which is contained at pages 6 to 9 of this second appeal as relied upon by the appellant, is the only action taken report. No further information is available and hence according to him query at point No.(10) stands answered.

12. The appellant has a grievance and has prayed for penalty and compensation. We express our inability to concede to this request. Regarding query No.1, as observed above and as per the arguments of the PIO the resolution submitted to the appellant was the same which was submitted to it. Only thing that is missing is that a specific certification that it is a same document which is in its records. The validity of such resolution due to lack of signature of the custodian or on account of the presence of the signature of the Minister is an issue to be dealt with another authority. We do not find any malafide in such act of the PIO. Similarly of the reply to query No.(7) partially also cannot be a ground to infer malafide. The prayers (1) and (2) of the appellant are in the nature of penal action. The strength of evidence required in such proceedings is laid down by the Hon'ble High Court of Bombay at Goa in **writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others** wherein it is held;

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”

In the circumstances and considering above findings we dispose this appeal with the following :

ORDER

PIO shall furnish to the respondent:

- i) A Xerox copy of the resolution No.(4), dated 15/01/2011, as was filed in his office certifying thereon that it is the true Xerox copy of the document submitted in its office.

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- ii) The PIO shall also furnish to the appellant the action taken report on the entire objection filed by aggrieved residents

of the locality, if any, and if no action is taken then to inform accordingly to the appellant.

Considering the circumstances as discussed above relief in terms of prayers (1) and (2) are rejected. Appeal disposed of accordingly.

Parties to be communicated.

No further appeal is provided against this order under the Act.

Pronounced in the open proceedings.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji -Goa

Sd/-

(Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission
Panaji -Goa

