

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 130/2016

Sushant Ray,
1434/A, GREENLAND, Mazilvaddo,
Benaullim, Salcete Goa.
V/s

.....Appellant

1. Public Information Officer
Department of law & Judiciary,
Law Establishment Division,
Government of Goa,
Secretariat, Porvorim Goa.
2. Public Information Officer,
The Supdt. Of Survey & land Records,
Panaji Goa.
3. First Appellate Authority,
The Director Directorate of
Settlement & Land Records,
Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 11/07/2016

Decided on: 31/08/2017

ORDER

1. By this appeal the appellant Shri Sushant Ray assails the order dated 28/3/16 , passed by the Respondent No.3 in appeal no. 02/DSLRL/RTI/Est/126/2016
2. The facts in brief which arises in the present appeal are that the appellant herein , by his application dated 28/12/15 , sought information on four points as stated therein in the said application from respondent no,1 ,PIO of Ministry of Law Government of Goa, Secretariat, Porvorim, Goa. The said information was sought in exercise of his right under section 6(1) of The Right to information Act ,2005 .
3. On the receipt of the said application by respondent no.1 , by his letter dated 29/12/15 transferred the said application to the respondent no.2 PIO of Director of Settlement and land Records panajim Goa u/s 6(3) of RTI Act for providing information to the

appellant and the respondent No. 2 the PIO of land and Survey records vide letter dated 18/1/2016 informed the appellant that the information sought by him does not come within the definition of section 2(f) of Right to Information Act 2005 being in nature of legal advice. And thereby rejected the request of the appellant. It was also further informed vide said letter that copies of acts and rules are available in open market to any general public.

4. Being not satisfied with the reply of respondent No. 2 PIO, the appellant preferred first appeal before the Director of Settlement and Land Records on 27/1/16 being first appellate authority who is the respondent No. 3 herein .
5. The respondent No.3 FAA by an order dated 28/3/16 dismissed the appeal of the appellant for default
6. The appellant being aggrieved by the decision of respondent no.3 FAA, has approached this commission by way of second appeal challenging the said order of respondent no.3 FAA dated 28/3/16 on several grounds as raised in the memo of appeal .
7. In pursuant to the notice of this commission, the appellant appeared in person. Respondent no.1 Shri Chandrashekhar Naik present and filed his reply on 14/3/17. On behalf of the Respondent No. 2 Shi Chetain Jahav appeared and filed his reply on 10/2/17. Respondent No.3 FAA was represented on some occasion by Shri Kuchelkar, Sandeep Chodankar, and by Anisha Matodkar reply filed by Respondent No. 3 on 14/3/17 resisting the appeal.
8. Written arguments were filed by the appellant on 08/08/17. Respondent no.2 PIO Dominia Nazareth advanced arguments orally. Representative of Respondent No. 3 Smt. Anisha Matodkar submitted that her reply may be treated as arguments and Respondent No. 1 Shri Chandrashekhar submittd that he is an formal party in the proceedings and as such his reply maybe treated as argument.
9. The appellant vide his written synopsis have contended as follows:-
 - (a)that the respondent no.3 FAA has passed a ambiguous order without giving appropriate reasons.

(b) Respondent No.3 FAA contradicts his own order and the reply filed before this commission.

(c) The respondent no.2 PIO has deliberately denied him information by saying that it is available in the open market as such it is his case that PIO take s pride in harassing the appellant .

The appellant had relied upon citation in writ petition (C)7453/201, Union of India V/s Adarsh Sharma) and In writ petition (c)3845/2007 Majipure Rehaiman V/s Central Information Commission contended that the Respondent should have rendered reasonable assistance to him in seeking information, unless the Act prohibits disclosures.

10. Respondent no.2 PIO Domiana Nazareth during arguments submitted that information at point no. 1 and 2 as sought by the appellant vide his application dated 28/12/15 is given at section 188 of the Land Revenue Code (part-I) of Act 1968. With regards No. point No. 4 she submitted that the land revenue code 1968 read with civil procedure code is applicable code in the proceedings in the court of inspector of Survey and Land records so also in the courts of Superintendent of survey and land records with regards to point No. 3 she submitted that it does not come within a definition of information.
11. I have scrutinized the available records in the file so also the submission made by both the parties .
12. The present PIO have specified the provisions and have duly answered the queries of the appellant at point no 1, 2, and 4 .

On perusal of the Point no. 3 it is seen that the appellant is trying to ask the opinion , same cannot be directed to be furnished in view of the ratio laid down by the Apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of “information “and “right to information “under clause (f) and (j) of section 2 of the Act . If the

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 .”

13. Yet in another decision Hon’ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“ The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sence of justification because the citizen makes a requisition about information justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information”

In the present case the present PIO during oral arguments since have clarified on all points, as such I am of the opinion that no intervention of this commission is required as far as prayer 2 of the appellant.

14. The prayer 1 of the appellant cannot be granted as the present proceedings are registered as appeal. Inquiry can be conducted u/s 18 (2)only in complaint cases
15. With regards to other prayers which are nature of penalty and compensation, for the purpose of considering liability for Hon’ble High Court of Bombay Goa bench at Panaji in writ petition 205(2007) that the Shri A.A. Parulekar A. A. Parulekar v/s Goa State information commission has observed

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

“unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied”.

Yet in another case The Delhi High Court writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

In the present case the then PIO has replied appellant within 30 days. There is no sufficient and cogent evidence brought on records by the appellant that the denial of information was with malafide intention or and that respondent have provided

incomplete, incorrect information, as such levy of penalty is not warranted considering the facts of the present case.

16. For seeking compensation, the burden lies on the claimant to produce evidence sufficient to grant compensation. In the recent case as there was no evidence of detriment or losses suffered by the applicant, as such compensation cannot be ordered.
17. In the facts and circumstances of above case I found no grounds to impose penalty and compensation on the Respondents.

Appeal disposed accordingly proceedings stands closed.

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

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

Pronounced in the open court.

Sd/-

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

Ak/-

