

GOA STATE INFORMATION COMMISSION

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

APPEAL No.130/SIC/2015

Mrs. Antonetta Afonso,
H.No. 27, Seraulim,
Salcete Goa.

..... Appellant

V/s.

1. Public Information Officer
Office of the Mamlatdar of Mutation, Margao,
South Goa Collectorate Building,
Margao Goa.

2. Dy. Collector and SDO Salcete,
Late Mathany Saldhana Complex,
Margao Goa

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 23/07/2015

Decided on: 14/08/2017

ORDER

1. Facts in brief leading to the present appeal are that the information seeker Mrs Antonetta Afonso by an application, dated 27/3/15 sought certified copies of all the contents of mutation files(s) bearing no.562 related to survey no. 42/9 of seraulim village and mutation files(s) bearing no. 564 related to survey no. 42/17 and survey no. 42/26 of seraulim village ,Salcete taluka from the PIO of office of the Mamlatdar , south Goa at Margao who is the respondent herein . The said application was filed by the appellant u/s 6 (1) of the RTI Act, 2005 .
2. As the said application was not responded by the Respondent No.1 PIO within stipulated time as contemplated u/s 7 of RTI Act , and as Respondent PIO failed to provide her the said information ,the appellant preferred 1st appeal on 7/5/15 before the first appellate authority .

3. It is the case of appellant that she received reply from respondent PIO only on 7/7/15 informing her that the talathi has informed and reported him that there is mutation no.401 of village seraulim and there are no any files bearing no. 562 and 564 of village seraulim available with the Talati's office.
4. It is the case of the appellant that after the first appeal was heard , PIO again kept promising to give the said information but again failed to do so .
5. Being aggrieved by the action of Respondent, the present appeal came to be filed by the appellant on 23/7/15 on the grounds as set out in the memo of appeal .In the present appeal the appellant has prayed for the directions to the Respondent NO. 1 to provide her correct and complete information and also for invoking penal provisions .
6. In pursuant to the notice of this commission, the appellant opted to remain absent .On behalf of Respondent NO.1 initially circle inspector of said office Shri Ramakant naik appeared and filed reply on behalf of respondent PIO on 1/8/17 . The PIO Shri Vishal Kundaikar appeared on 14/8/2017 and filed his affidavit. No copy of the reply and affidavits could be furnished to the appellant on account of her continuous absence, Argument of the PIO heard.
7. Vide said reply and arguments contended that the appellant was informed vide their letter dated 7/7/15 that no such information is available in the records. Further it has been submitted that as per the records it is found that the last mutation case was registered in the Form IX (mutation register) is 401 and hence there is no case registered with the no. 562 and 564 . The copy of the said register was enclosed to their reply in support of their contention .
8. From the scrutiny of the records , it is seen that the Respondent PIO right from the inception has informed that information is not available in their office.

9. PIO is duty bound to furnish the information as available on record of the public authority. PIO is not required to create the information for the purpose of furnishing the same to the information seeker. The said observations of mine are based on the ratio laid down by the Apex court in civil appeal no.6454 of 2011 ;Central Board of Secondary education v/s Aditya Bandopadhyaya and also as per the definition of **information** as defined in section 2 (f) of RTI Act.
10. In the above given circumstances Since the information is not available with the public authority the same cannot be directed to be furnished.
11. I do not find any cogent and convincing evidence brought on record by the appellant against Respondent PIO to hold that the said information was available and PIO has intentionally and deliberately not provided the same, as such the prayer of penalty sought by the appellant also cannot be granted.
12. Since the respondent PIO vide his reply filed on 1/8/17 have volunteered to provide and give inspection of any document which is in the custody of Mamlatdar of Salcete , the appellant if so desired can do so with prior appointment with the respondent PIo .

The appeal disposed accordingly the proceedings stands closed.

Notify the parties.

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

