

GOA STATE INFORMATION COMMISSION

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

Appeal No.119/2016

Bharat Kandolkar,
Vaddy Candolim,
Bardez Goa.

..... Appellant

V/s.

1. Public Information Officer,
The Director of Panchayat,
North Panaji Goa
2. First Appellate Authority,
The Director of Panchayat,
North Panaji Goa

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:30/05/2016

Decided on:31/07/2017

ORDER

1. The information seeker Shri Bharat Kandolkar by an application, dated 1/2/16 sought information on five points pertaining to the order in first appeal No , DP/APPEAL/RIA/22/2015 dated 5/11/15 , circular dated 10/7/2000 and judgment of Hon'ble High court of Bombay reported in Goa 2000 (2) Goa L.T.168 from the Respondent No.1 PIO of Deputy director of Panchayats , Panaji, Goa . The said information was sought under section 6(1) of Right to information Act ,2005 .
2. The said application of the appellant was responded by the Respondent No.1 PIO on 24/2/16
3. Being not satisfied with the reply of RespondantNo.1PIO , the appellant preferred 1st appeal before the Director of Panchayat on 4/3/16 being first appellate authority who is the Respondent No.2 herein .The Respondent No. 2FAA by an order dated 4/4/2016 disposed the said appeal.

4. Being aggrieved by the action of Respondents, the present appeal came to be filed by the appellant on 30/5/16 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 him correct and complete information and also for invoking penal provisions .
5. In pursuant to the notice of this commission, the appellant was present along with Adv Atish Mandrekar .On behalf of Respondent NO.1 initially Shri Sudhir Kerkar appeared and then Shri Mahesh Khorjuakar appeared.
6. During the course of hearing on 12/6/17 , the Adv for the Appellant submitted that they are satisfied with the information provided at serial No. 1,2,4 and 5 . He further submitted that answer given at query No.3 is not satisfactory and as not per his requirement.
7. This commission directed the Respondent PIO to once again verify their records with regards to the information at point No. 3 .
8. The then PIO Shri Mahesh Khorjuakar filed his reply on 22/6/2017 . Vide said reply he contended that information at point No.3 was called from the Panchayat section and illegal section of the Directorate of Panchayat, Panaji and it was informed to him by the said departments that no such information is available .
9. The Advocate for the appellant placed on record copy of the writ petition No. 90/2000 filed before the Hon'ble High Court Bombay at Goa and submitted that the Deputy director of Panchayat had filed an affidavit in the said proceedings stating that the Director of Panchayat has already issued circular 10/7/2000 giving guidelines/directions in the matter of complaints of illegal construction of all the Panchayat in the state to strictly implement that provision 66 of Goa Panchayat Raj Act 1994. And as per the circular, the Village Panchayat Secretary is supposed to submit a monthly report to the Block Development officer and then the

Block development Officer inturn should submit the information/report to the Director of Panchayat in the Performa enclosed to the said circular. As such it is his Contention that he is entitled for said information from respondent No. 1 PIO. During arguments he also submitted that in appeal No. 134/2016 the public authority was directed by this Commission to obide and adhere to the instructions given in their circular for maintaining movement register and on such ground he sought for the intervention of his commission and prayed for directions to the concerned parties for adhering to the said circular.

10. I have perused the record available in the file also considered submissions of the both the parties.
11. From the scrutiny of the records , it is seen that the Respondent PIO right from the inception has informed that information at point No.3 is not available in their office.
12. 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 Bandhopadhaya.
13. In the above given circumstances Since the information at point No. 3 is not available with the public authority the same cannot be directed to be furnished.
14. The facts of the appeal No. 134/16, Shri Uday Priolkar V/s PWD Panaji and present appeal are different and not synominious. In the appeal No. 134/16 the said Public authority was required to obide and adhere to the instruction given in the said circular and to maintain the said document/register.

In the present case the circular is issued by Public authority i.e Director of Panchayats to all Sarpanch and those are responsible to

obide by said circular issued by the Director of Panchayat as such directions for adhering the said circular dated 10/7/2000 as sought by the Advocate for the appellant cannot be given as it is beyond the scope and jurisdiction of this commission to issue such directions as neither the Secretaries of the Panchayats nor the BDOs are the parties to the present appeal.

15. I also do not find any cogent and convincing evidence against Respondent PIO to hold that the incomplete or incorrect information is provided to appellant intentionally and deliberately. As such the prayer of penalty sought by the appellant also cannot be granted.
16. The appellant at para 11 of his memo of appeal has claimed no inspection of the records have not been given to him which was also sought by him by his application 1/2/16 . As the reply dated 24/2/16 given u/s 7(1) of the RTI Act by Respondent No. 1 PIO reveals that the respondent PIO is s willing to give inspection of the files, I feel the ends of justice will meet with following directions.

Order

The Respondent PIO is hereby directed to give the inspection of the respective documents, files, Registers as sought by the appellant in his application dated 1/2/2016, within 15 days from the date of the receipt of the order. The convenient date for the inspection should be mutually fixed by both the parties and the appellant is hereby directed to contact the Respondent PIO for the same within four days from the receipt of the order.

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.

Proceeding closed.

Sd/-

(Ms.Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa