

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

Appeal No.270/SIC/2011

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

The Comunidade of Mapusa,
Having its Office at Comunidade Building,
Horta Paroquial, Mapusa,
Bardez –Goa
Through its attorney
Shri A. B. Braganca,Of Mapusa,
Bardez-Goa. Appellant.

V/s

- 1) The Public Information Officer,
Office of the Administrator of
Comunidades (North Zone)
Court Junction,
Mapusa, Bardez-Goa.
- 2) Mr. Narayan P. Parab,
Dangui Colony,
Alto Duler,
Mapusa –Goa. Respondents.

FILED ON: 7/12/2011
DECIDED ON: 4/7/2017

J U D G M E N T

1. By this appeal the appellant assails the order, dated 26th September 2011, passed by the Additional Collector-II and First Appellate Authority(**FAA**) in Case no.RTI/AC-II/09/11/APL/151,filed by the respondent no.2 herein.
2. The facts in brief which arises in the present appeal are that one Shri Narayan Parab, the respondent no.2 herein, by his application, dated 19/7/2011,sought information from the respondent no.1 herein. The said information

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was sought by respondent no.2 in exercise of his rights under section 6(1) of The Right to Information Act 2005(**RTI ACT For short**).

3. As per the said application the information sought by respondent no.1 were the certified copies of the receipts issued by the appellant Comunidade to encroachers for regularization of encroachment and the details pertaining to the general body meeting held.
4. On receipt of the said application by the respondent no.1, being the PIO, by his letter, dated 19th July 2011, sought the assistance from the appellant u/s 5(4) of the RTI Act, requesting it to submit the information to him within seven days from the date of receipt thereof by it.
5. The appellant, through its attorney, by its reply, dated 27/7/2011, objected the said demand and refused to furnish the said information.

The respondent no.1, by its letter, dated 23/9/2011, once gain called upon the appellant to part with the information which was also replied on the same grounds by the appellant by refusing to furnish the information.

6. The respondent no.2 having failed to receive the information from the PIO, filed said first appeal to the FAA, being case no.RTI/AC-II/09/11/APL.
7. The FAA by its order, dated 26th September 2011, allowed the appeal and directed the respondent no.1 to furnish the information as sought by him within 15 days from the date of receipt of the order.

8. Pursuant to the said order of FAA, the respondent no.1, PIO, by her letter, dated 31/10/2011, once again called upon the appellant to produce the required information within three days from the date of receipt of the letter.
9. Instead of furnishing the said information to the respondent no.1 as demanded, the appellant has filed this appeal to this commission u/s 19(3) of the act challenging the said order of the FAA, dated 26/9/2011.
10. As a point of law was found to have been involved the appeal was placed and heard by division bench of this commission.
11. Along with the appeal the appellant has also moved an application seeking leave of this commission to file the appeal. The same was granted.
12. The notice of the appeal was given to the respondents. The respondent no.1 filed its reply to the appeal. However the respondent no.2 did not file any say to the grounds as raised in the appeal by the appellant.
13. The appellant has challenged the order, dated 26/9/2011, passed by the FAA on several grounds as raised in the memo of appeal. The salient grounds being that the impugned order is passed without notice to the appellant and is in contravention of the spirit and letter of section 11 of the Right to information Act. It is the further contention of appellant that the information is held by the Administrator of Comunidades in the fiduciary capacity being the guardian and/or the tutor of the applicant and hence cannot be furnished.

It is further according to appellant that the impugned order fails to take into consideration that the appellant is only under the tutelage of the Government and administrator and not under their control and that the appellant is not a public authority or body or institution of self government established under the Constitution, Law of the Parliament or the State Legislature or financed by the Government.

According to appellant the appellant is a pre-existing body/institution administration of which was codified by the colonial masters under the code of Comunidades and that even under the Code of Comunidades the Colonial masters had only kept the Comunidades under its tutelage and not control and that the impugned order is bad for want of jurisdiction as the order is not passed by an officer superior/senior in rank to the original authority under the provisions of the Code of Comunidade.

Thus according to appellant, on all the above counts, the impugned order is bad in law and is liable to be set aside.

14. The respondent no.1 has resisted the appeal interalia on the grounds that under Article 5 of the "Code of Comunidades, the Comunidades are under the administrative tutelage of the State, State i.e. the Government has appointed respondent No.1 as Administrator of Comunidades North Zone hence he is the public authority for Comunidades as well as Public Information Officer under RTI Act. According to PIO by

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virtue of article 1 of the code, Comunidades or Gaoncarias existing in the District of Goa, Shall be governed by the bye laws contained in this Code and specially by the private law of each of them and under said article 5, being under administrative tutelage, they are under and not fully independent or supreme bodies, but subordinates to the State so far its administration is concern. Hence the Administrator of Comunidades being public authority is the controller of administration of the Comunidades whose competence is expressly stated in Article 125 of the Code.

According to PIO he, being the Administrator of Comunidades as well as Public Information Officer under RTI Act 2005, it is within his authority to take the assistance of Acting Secretary who is also APIO, in seeking directing, ordering, forwarding, communicating and calling for the information from the respective Comunidades by any mode of communication, as and when required.

According to PIO, being subordinate, it is obligatory on the part of respective Comunidade to promptly act upon in furnishing, informing, providing and forwarding the respective information relating to the respective Comunidade whenever called for and failure may amount to insubordination/disobedience/indiscipline.

15. According to PIO though private bodies, Comunidades are being controlled by virtue of various restrictions under Code of Comunidades and as per

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16. Section 2(h)(d)(i) of the Right to Information Act 2005, the Comunidade come under purview of the said Act and are liable to provide the information to the Administrator of Comunidades. It is further according to PIO Administrator of Comunidades is empowered to take necessary action under Article 125 of the Code to discipline the administration and hence the question of any natural justice does not arise.

16. The appellant filed its written submissions. In addition to the written submissions, Adv. V. Menezes appearing for appellant also advanced oral arguments on behalf of the appellant. The respondents did not advance any arguments.

17. We have perused the records and also considered the arguments of the appellant. The submissions of Adv. Menezes are **three fold:**

- i) That the **Comunidade is not a public Authority** as defined u/s 2(h),(d) and (i) of the Act.
- ii) That Administrator appointed as **PIO has no jurisdiction to call for private information.**
- iii) That the **appellant has not been joined as a party to any proceedings before lower court** nor has been heard thereby violating the principles of natural justice.

18. To substantiate the first contention that the Comunidade is not a public authority, Adv. Menezes has raised several points in support of such defense. He has

also relied upon the judgments passed by the Hon'ble Supreme Court, Hon'ble High Courts of Bombay and Delhi.

In the course of his oral arguments Adv. Menezes, by referring to an order, dated 3/2/2010, passed by this commission in appeal no.107/SIC/2009, in the case of Comunidade of Serula, submitted that by said order this commission has held the Comunidade as a Public Authority and that the said order is under challenge in writ petition no.422 of 2012 pending before the Hon'ble High Court of Bombay, at Goa and that the said order, dated 3/2/2010 is stayed. Adv. Menezes produced on record the copy of the order, dated 24th July 2013 passed by the Hon'ble High Court in said Writ Petition no.422 of 2012.

We have perused the said order in the writ petition no.422 of 2012. Though the Hon'ble High court has not passed any final orders either confirming or setting aside the order of this commission, we find that it would be appropriate not to deal with the said issue whether the Comunidade is a public Authority under the act and be guided by the orders that shall be passed in the said writ petition. Hence we refrain from giving any finding whether the appellant is a public Authority or not. We therefore proceed to decide the present appeal on the other two grounds as raised by the appellant.

19. The second point of disagreement of the appellant is that the administrator has no jurisdiction to call for the

private information contained in the private books of Comunidade.

To deal with this contention it would be appropriate to consider the provisions of "Code of Comunidades" (**code for short**) which governs the establishment and functioning of the appellant and the role of Administrator in the affairs of the Comunidade.

20. Article 118 of the code, *as amended by Goa Act no.3 of 1998, dated 17/1/1998*, prescribes the appointment of the administrator in the following words.

" Art.118.-In each of the administration office of the Comunidades of Goa, Salcete and Bardez, the respective administrator shall be appointed by the Governor General, on deputation from amongst the junior grade officers of Goa Civil Service and possessing the minimum qualification of 3rd cycle of Lyceum"

The duties of the clerk of Comunidade under the Code, as amended by Goa Act no.3 of 1998, dated 17/1/1998, are as contained at article 88. It reads:

"Art.88- The clerk of the Comunidades- shall, in particular, be bound to:-

a) Keep the books and accounts;

b) Keep custody and maintain the achieves, which they can do at their residence, with the permission of the administrator when the Comunidade does not have its own building for that purpose;

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All the land dealings and transactions shall be kept open and shall be made available at least for ten years. Copies of such land dealings or any such important matters shall be sent to the Administrator of Comunidades, for maintaining duplicate copies in his office.

c)-----

d) Provide information which the administrator may require, within the period of five days and the necessary clarifications that may have been requested by any member;

e)-----

f)-----

g)-----

h)-----

(emphasis supplied)

21. Thus under the code, the office of administrator, which is a public authority under the Act, has been granted access to the information held by the Comunidades.

22. Section 2(f) of RTI Act defines information as under:

"2. Definitions.__ *In this Act, unless the context otherwise requires,___*

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

*(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form **and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; "***

(emphasis supplied)

23. Thus considering the requirement of the act and even assuming that the appellant herein is private body, the information pertaining to it can be accessed by a public authority viz. the office of administrator under 88(d) of the code. The code further makes it mandatory on the part of Comunidades to part with the information to the office of Administrator whenever called by it. Thus under the RTI Act, PIO of Administrator of Comunidade, a public authority can call for such information. In the circumstances we find no irregularity or illegality on the part of the respondent no.1 in seeking information from the appellant. Consequently we are unable to concur with the submissions of Adv. Menezes that the administrator, as PIO, has no jurisdiction to call for information from appellant, even if the same is contained in the private books in the custody of Comunidade.

24. Now coming to the third contention of the appellant that the FAA has not heard the appellant before passing the impugned order and that therefore the order is hit by

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principles of natural justice, it is to be noted that the RTI Act provides two classes of private information which can be disseminated. The first one is provided u/s 11 of the RTI Act. Said section 11 reads:

" 11. Third party information.____ (1)
*Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, **which relates to or has been supplied by a third party and has been treated as confidential by that third party,** the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, ***disclosure may be allowed if the public interest in disclosure outweighs in***

importance any possible harm or injury to the interests of such third party.

(emphasis supplied)

Thus the requirement of notice or hearing private parties before parting with the information would occur only in cases of information which relates to or has been supplied by a third party and has been treated as confidential by that third party.

In the present case the information called for by the Administrator is in exercise of its rights under article 88(d) of the code which itself regulates the functions of the appellant. The appellant is bound to provide the same to the administrator. In this case there is no element of confidentiality involved. The nature of information as held by public Authority u/s 11 of the RTI Act and the one held by PIO herein under article 88(d) of the code are thus distinguishable. Consequently the question of hearing the appellant does not arise.

In the above circumstances we are unable to subscribe to the third contention of the appellant that there is violation of principals of natural justice.

25. In the facts and circumstances of the case and without touching the issue whether the appellant is a public authority or not under the RTI act, being under consideration of the Hon'ble High court as submitted by the advocate for appellant and further even assuming that the appellant is a private body, we hold that the

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information pertaining to it can be accessed by the office of the Administrator under the code and the same can be disseminated under The Right to Information Act 2005 by the PIO.

In the circumstances we find no merits in the appeal and consequently we dispose the same with the following :

O R D E R

The appeal is dismissed. The impugned order, dated 26/9/2011 passed by the first appellate authority is upheld.

Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

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

