

GOA STATE INFORMATION COMMISSION

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No. 64/SCIC/2016

Shri Joao C. Pereira,
H. No.40, Acsona,
Utorda, Majorda,
Salcete –Goa.

..... Appellant

V/s

- 1) The Public Information Officer/
Block Development Officer,
Mormugao Block,
Vasco da Gama.
- 2) FAA/Dy. Director of Panchayats,
Mathany Saldanna Complex,
Second floor, Margao-Goa.

..... Respondents

Filed on 22/04/2016

Disposed on 25/05/2016

1. FACTS:

- a) The appellant herein by his application dated 29/01/2016 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certified copy of the inquiry report prepared and submitted by Block Development officer to the Director of Panchayat on the memorandum, dated 05/01/2016 pertaining to vigilance inquiry ordered against one Shri Sidhesh Faldesai.
- b) The said application was not responded to by the PIO within time and as such deeming the same as refusal appellant filed first appeal to the respondent No.2.

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C) The First Appellate Authority (FAA) by order, dated 15/04/2016 dismissed the said appeal, holding that the information sought was never available with PIO.

d) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 28/02/2017 filed a reply to the appeal. The FAA also filed reply on 29/03/2017

f) The PIO as per his said reply dated 28/02/2017, submitted that subsequently the Director of Panchayat conducted the inquiry and undertook to produce the same before this Commission. Accordingly, vide memo dated 17/03/2017 the PIO filed the copy of the inquiry report on record of this commission.

g) The Appellant in the course of hearing on 29/03/2017 submitted that the report submitted by the PIO on 17/03/2017, does not pertain to the complaint filed by him pursuant to which the memorandum, dated 5/1/2016, as referred to his application, dated 29/01/2016 and that it pertains to some other proceedings. The PIO remained absent and hence further clarification could not be obtained. Hence the matter was posted for orders based on the records.

2) FINDINGS

a) I have perused the records more particularly the application dated 29/01/2016, filed u/s 6(1) of the act vide his said application, the appellant has sought the "**certified copy of the inquiry report prepared and submitted by BDO**

to Director of Panchayat on the memorandum No.15/22/DP/Vig.Inq/Mormugao/16/15, dated 05/01/2016 pertaining to Shri Sidhesh Faldesai. The said application is not found to have been replied within time as was mandatory u/s 7(1) of the act, which has lapsed on 30/02/2016.

b) In the first appeal filed by appellant it is contended by PIO, who is the present BDO himself, that the then, BDO Miss Prajakta Goltekar, has not conducted any inquiry in response to said memorandum and in the same letter present BDO undertook to conduct inquiry and submit report to Director of Panchayat and copy to appellant. This reply was filed before FAA On 29/03/2016.

The FAA by admitting this version of PIO, has concluded that the as no inquiry was conducted and no report is prepared, the information as sought was not in existence as on the said date.

c) The appellant vide his memo of second appeal has a grievance that the FAA, instead of dismissing the first appeal ought to have directed the PIO to reply the application, dated 29/01/2016 or furnish the information as sought .

d) On going through the records it is found that the appellant has sought for the report of inquiry. Said report as per the reply of PIO before the first appellate authority, was not in existence and that the same shall be created by conducting inquiry.

e) If one analyze the extent of information as is dispensable under the act the provisions of section 2(f) are relevant, which reads....

“2. Definitions:-----

(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;”

f) While considering the extent and scope of information that could be dispensed under the act, the Hon’ble Supreme court in the case of: ***Central Board of Secondary Education & another V/s Aditya Bandopadhyay*** (Civil Appeal no.6454 of 2011) at para 35 has observed :

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a 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. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise,

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provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

g) Thus what a seeker is entitled to under the act is the information which is existing as on the date of application and that is available till the application is replied u/s 7(1) of the act within a maximum period of thirty days.

h) In the instant case, as per the reply of PIO before the FAA, the information as sought was not in existence as on the date of application and at least till 29/03/2016 on which date the said reply is filed. The PIO being also the BDO have volunteered to conduct the inquiry and submit the report and a copy to appellant. But such a gesture is redundant as it would amount to creation of information for being furnished to appellant, which is beyond the scope of information as held by the Hon'ble Supreme Court in case of *Aditya Bandopadhyaya* (Supra).

i) One thing, which can be noted here in that the PIO, though on 29/03/2016, i.e. in reply to FAA submits that no information is available such a reply was not given by PIO within thirty days of the said application u/s 6(1) of the Act. In this background I find some force in the contention of appellant that he ought to have been informed accordingly, if information was not available.

j) In the course of proceeding before this Commission, with reference to the inquiry report filed on record by the PIO now, it is the contention of Appellant that the said report does not

refer to the **memorandum No.15/22/DP/Vig.Inq/Mormugao/16/15, dated 05/01/2016**. In the report filed now before me, I also do not file any reference to said memorandum dated 5/1/2016. This ambiguity could not be clarified as PIO did not remain present for the purpose of clarification.

l) In the facts and circumstances, I find that the order of the FAA is required to be set aside. The Appeal is therefore to be allowed, which I hereby do with the following:

O R D E R

The appeal is allowed. The PIO is directed to inform the appellant specifically whether any inquiry report is prepared and submitted by BDO to Director of Panchayat on the **memorandum o.15/22/DP/Vig.Inq/Mormugao/16/15, dated 05/01/2016** as referred in the application dated 29/1/2016 filed u/s 6(1) of the act. If the same is prepared the PIO shall furnish the copy of such report to appellant free of cost. Rest of the prayers of the appeal are rejected.

Notify the parties. Proceedings closed.

Pronounced in open proceedings.

Sd/-

(Mr. Prashant S. Prabhu Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji-Goa

Appeal No. 64/SCIC/2016

Goa State Information Commission,
Kamat Towers, 7th floor, Patto,
Panaji –Goa.

Dated:08/06/2017.

To,
Shri Joao C. Pereira,
H. No.40, Acsona,
Utorda, Majorda,
Salcete –Goa.

..... Appellant

V/s

- 1) The Public Information Officer/
Block Development Officer,
Mormugao Block,
Vasco da Gama.
- 2) FAA/Dy. Director of Panchayats,
Mathany Saldanna Complex,
Second floor, Margao-Goa. Respondents

**Sub: Correction of date in Order passed in
Appeal No. 64/SCIC/2016**

Sir,

On going through the order dated 25/05/2016 passed by this Commission in the above Appeal it is found that the date of said order at page (1) is wrongly typed as "25/05/2016", which should be read as "**25/05/2017**". You are, therefore, requested to take note the above correction.

Yours faithfully,

Sd/-

(Irene Sequiera)
Secretary

Goa State Information Commission

PF

