

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

Appeal No. 07/SCIC/2013

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

Shri Ashok Desai,
309, 3rd floor,
Damodar phase-II,
Nr. Police Station,
Margao-Goa. Appellant.

V/s

- 1) The Public Information Officer,
Shri Prashant P. Shirodkar,
The then Chief Officer,
Canacona Municipal Council,
Presently Dy. Collector & SDO Canacona,
Present place of posting through
The Chief Officer of CMC,
At Chaudi Canacona –Goa.
- 2) The First Appellate Authority,
Shri Sandip Jacques,
Director of Municipal
Administration & Urban Development,
At. Ground floor, of the Collectorate Bldg.,
Panaji –Goa. Respondents

Filed on : 10/01/2013

Disposed on: 27/1/2017

1) FACTS:

a) The appellant herein by his application, dated 30/12/2011, filed purportedly u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO raising several questions therein. The said application was replied by PIO on 27/1/2012 answering the same. As per the said reply of PIO , more particularly as per answer no.6 therein, the said works as referred by the appellant in his said application dated

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27/01/2011 were based on the resolution adopted by the concerned public authority.

This made the appellant to seek further information and hence by his second application dated 2/7/2013 filed u/s 6(1) of the act the appellant sought the 'certified copy of the resolution adopted by the Municipal Council as referred in para (6) of the said reply dated 27/1/2012.'

b) The said information was furnished to the appellant on payment of the fees on 27/7/2012 where by a copy of the resolution was furnished to the appellant.

c) Appellant being aggrieved by the said reply and the information, filed first appeal to the respondent no.2, who by order, dated 12/10/2012, disposed the said appeal holding that the information was neither refused nor there is any false, incomplete or misleading information.

d) The appellant, being aggrieved by the said order of FAA has therefore landed before this commission in this second appeal u/s 19(3) of the act.

e) Initially the parties appeared but as no dates were fixed for the appeal for long time fresh notices were issued to the parties. In spite of receipt of notices the parties failed to appear. Hence the matter was taken up based on the records. The PIO has filed the reply to appeal. No arguments are filed by the parties.

2) FINDINGS :

a) On going through the records it is seen that the application, dated 30/12/2011, was replied on 27/1/2012. The appellant has no grievance against the same. Only thing that was required by the appellant was further information as per the said reply, dated 27/1/2012 i.e. the copy of the resolution as referred to at answer no.6 therein.

b) Accordingly the second application, dated 2/7/2012 was filed by appellant seeking information viz. the copy of the resolution. The same was furnished by the PIO pursuant to its letter, dated 19/7/2012.

c) It was the grievance of the appellant in the first appeal, more specifically at paras (9) and (10) of appeal memo of first appeal that in the said resolution there is no mention or no authority to lay the pavers below the roof of any house and touching the walls of any house and or below the house no.92/A and touching the wall of house no.92/A.

It is because of this reason, that at para (10) of the first appeal memo, appellant contends that the information is not specific, incorrect, misleading and false and devoid of factual matrix.

d) In other words from the above averments the appellant wants that as the resolution was not authorizing the council to lay the pavers below the roof of any house and touching the walls of any house and or below the house no.92/A and touching the wall of house no.92/A, it should be held as incorrect information.

e) Section 2(f) of the act defines information as under:

*“2(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 for”*

And section 2(j) of the act gives the extent of right to the seeker as under:

*“2(j) right to information” means the right to information accessible under this Act which is **held by** or **under the control of any public authority** and includes the right to:*

- i. inspection of work, documents, records;*
- ii. taking notices, extracts or certified copies of documents or records;*
- iii. taking certified samples of material;*
- iv. obtaining information in the form of diskettes, floppies, taps, video cassettes or in any other electronic mode or through printouts **where such information is stored** in a computer or in any other device;”*

A conjoint reading of these provisions shows that a seeker can exercise his rights in the form and manner as specified in section 2(j) in respect of the records as specified in section 2(f) which are held or under control of public Authority.

f) Regarding the nature of information that can be sought from PIO, 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 of the judgment has observed :

“35.-----But where the information sought is not a part of the records 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.-----“

g) In the present case it is not the case of the appellant that the resolution, as it exist in the records of the municipality are not in the same words as is furnished to him. The only ground taken by the appellant to hold the said information as incorrect, misleading etc. is based on his contention that the said resolution does not confer rights to the authority to undertake such works . In other words the appellant suggests that as some works is undertaken by Municipality illegally and beyond the powers granted under the resolution, it should be held that an incorrect information is furnished. Such an objection cannot lie for scrutiny under the act. Under the act the PIO is expected only to dispense the information as it exist in the records of the public authority. Existence of information

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and execution of works by authority beyond the contents of information are two different aspects, to be dealt with by two different forums. In case the information as it exist is not furnished it is this forum who can deal with but in case of any acts of the concerned authority are violative of the said information, the same has to be dealt with by the authority provided for dealing with such violation.

i) In the light of the above judgment of the Hon'ble Supreme court, we find that the information as is available in the records of the Public Authority has been furnished. Regarding the authority of the council vis a vis the said resolution may lie for scrutiny of the other forum but not before the commission under the act.

j) In the light of the above, we find no illegality or irregularity in the order passed by the FAA requiring interference and hence we find no merits in the appeal and is liable to be dismissed. We therefore proceed to dispose the present appeal with the following:

O R D E R

The appeal stands dismissed.

Notify the parties.

Proceedings closed.

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