

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

---

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

**Appeal No. 91/SCIC/2017**

Mr. Jerry Braganza,  
Near St. Jerome's Church,  
Mapusa Bardez-Goa. .... Appellant

V/s

- 1) The Public Information Officer,  
Goa State Urban Development Agency,  
6<sup>th</sup> floor, Shramshakti Bhavan,  
Patto Plaza, Panaji –Goa.
- 2) The First Appellate Authority,  
Goa State Urban Development Agency,  
6<sup>th</sup> floor, Shramshakti Bhavan,  
Patto Plaza, Panaji –Goa. .... Respondents.

Filed on : 27/6/2017

Disposed on:15/11/2017

**1) FACTS:**

- a) The appellant herein by his application, dated 15/2/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under three points therein.
- b) The said application was replied on 9/3/2017 requesting the appellant to collect the information at point 1 on payment of fees. According to PIO, vide said reply, the information sought at points 2 and 3(A, B & C ) does not come under the purview of the RTI Act.

According to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2 being the First Appellate Authority(FAA).

c) In spite of the said appeal the FAA failed to pass any order on the said appeal within the stipulated time and the appellant has therefore landed before this commission in this second appeal u/s 19(3) of the act.

d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 9/10/2017 filed a reply to the appeal .The FAA also filed his reply to the present appeal. Appellant filed his written arguments. Oral submissions of the PIO were heard.

e) It is the contention of appellant that the FAA by not disposing the appeal within stipulated time had committed dereliction of duties. According to the appellant the PIO furnished the information on 9/10/2017 in the course of hearing of this appeal and that the same was not furnished as the department of G.S.U.D.A. wanted to complete the contracted works by preventing the Appellant from approaching the Civil Court. Hence due to willful delay, harassment to the Appellant and wasting precious time of the Appellant, fine should be imposed on the P.I.O. as per sec 20 of the R.T. I. Act.

With further reference of the reply of PIO it is appellants contention that the contents of the reply are fully false and all answers have been maliciously fabricated without any proof thereto and that the PIO should swear an affidavit to this Court in support. According to appellant the Respondent No.1 has falsely submitted

...3/-

that the contractor was told to do the work during the night, when the Vice Chairman of G.S.U.D.A. himself, in the presence of all those present that night, stated that the contractor was told to do the work during the day and on no condition work was to be done in the night and that there was absolutely no demarcation given by the Mapusa Municipal Council as they do not work at night and that demarcation could also not have been given during the day as it would be visible to the Appellant and all the shopkeepers in the building.

It is further contention of appellant that the claim that joint inspection was done to the satisfaction of the Appellant is totally false and that the Appellant was physically present in the hot sun and got the work done with the contractor without even any shadow of the technical staff. According to appellant the request is rejected without quoting any section thereto, does not hold any good and that information at 3(a) and 3(b) of the original application of the Appellant warranted a mere 'yes' or 'no' answer and question at 3(c) is asking for reasons which is still not answered.

According to appellant the P.I.O. is acting as a mouth piece for the FAA showing connivance between the P.I.O. and F.A.A and that the claim of Respondent No.1 that explanation will be sought from dealing hands, office renovation work was going on, monthly mechanism will be strengthened, staff will be sensitized, etc is all eye wash and excuses to wriggle out of a sticky situation.

f) In his oral submissions the PIO submitted that he has offered the information to the appellant against the payment of fees. While elaborating his stand by referring to the reply he submitted that the

information which in tangible form only can be given and the same was running into 16 pages. According to him the information at point (2) was later complied on oral instruction of the appellant and respondent.

With reference to information at points 3(a),(b) and (c) was not in the form of material records and hence beyond the purview of the act and hence could not be given.

g) PIO has tried to justify the omission of the FAA in not dealing the appeal within time. I refrain from considering the said explanation as any explanation for ones own omissions or commissions should be from the concerned person. The PIO, who was an adversary to the First appeal, cannot vouch for the act of the FAA. The FAA has filed his reply giving certain reasons for non disposal of the appeal.

## **2. FINDINGS :**

a) I have considered the pleadings and also the contentions of the parties. I have also considered the application dated 15/2/2017, filed u/s 6(1) of the act by the appellant. On going through the application and the background under which the same is filed it appears that the appellant has some complaints about certain work undertaken by the department GSUDA. In respect of said work the information is sought. The information at point (1) is offered by PIO on 9/3/17 which is within the time stipulated u/s 7(1) of the act. Hence I find no delay in responding the application.

b) Coming to point 2 of the application, for information, what is sought is the action taken by the authority on his complaint/letter, dated 30/1/2017. It is to be noted that the PIO is the custodian of the information of the authority. He has to disseminate the

...5/-

information which is held by him. One cannot expect any information from PIO which is not in the pool of the Authority.

Considering the said role of PIO he was expected to furnish the documents regarding action taken on the complaint of appellant, if records exist and if not the he was to reply accordingly. In the present case PIO has replied that the site was inspected and that the contractor was issued certain instructions etc. It is not known whether the said information was furnished based on any records or based on the knowledge of the PIO. I find that the PIO could have replied the said point by clarifying whether any records exist on the point of action taken.

c) Coming to point 3(a), (b) and (c) I find that the information as was sought was in the form of reasons and in respect of the work undertaken by other officer. Considering the status of the PIO and the scope of his liability under the act I find that such an information is beyond the purview of the act. While dealing with the applications under the act the PIO is not supposed to give any reason, or advise or opine on anything which is not in existence. I am fortified in this view on the bases of the ratio laid down by 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 ,which is as under :

*"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 form 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*

...6/-

*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, 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."*

In the back ground of the above ratio, I find that the information as sought at point 3(a), (b) and (c) are beyond dispensation.

d) Coming to the first appeal, It is the contention of FAA that the appeal was received however due to lapse on the part of the dealing hand the same was not placed before him. It is also the contention of the FAA that due to renovation work of the office, the appeal has lost sight. The FAA has also assured to strengthen the monitoring mechanism in said office for RTI matter.

...7/-

I accept the above explanation. I consider the above submissions as commitment of the FAA and expect that such lapses would not occur in future.

e) Considering the above circumstances and the facts of the case in hand I find it appropriate to decide the present appeal with the following:

**ORDER**

The appeal is partly allowed. PIO shall furnish to the appellant within TEN DAYS from the date of receipt of this order by it, copies of all the existing correspondence, if any, initiated with any department/ agency/ individual, with reference to the appellant's letter, dated 30/1/2017 addressed to GSUDA and if not then to inform accordingly.

Request of the appellant in respect of information at points 3(a),(b) and (c) are rejected.

Considering the peculiar circumstances of the case the reliefs at prayers (b) to (e) are rejected.

Order to be communicated.

Proceedings closed.

Pronounced in open hearing.

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