

GOA STATE INFORMATION COMMISSION

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

Appeal No.15/SCIC/2017

Franky Monteiro,
H.No. 501, Devote,
Loutolim, Goa.

..... Appellant

V/s.

1. Public Information Officer
The Administrator of Comunidades,
South-Goa, Margao Goa.
2. First Appellate Authority
The Additional Collector-I,
South Goa-Margao Goa. ...Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 21/2/2017

Decided on: 14/8/2017

ORDER

- 1 The appellant Shri Franky Monteiro by his application dated 28/9/16 filed u/s 6 (1) of RTI Act sought from Respondent No. 1 PIO of office of the Administrator of Comunidade ,Margao, Salcete, Goa certain information on 6 point as stated therein in the said application .
- 2 The said application was responded by Respondent No. 1 PIO on 21/10/16 there by providing the information at point No. 5 and the information at point No. 1 to 4 was denied to him on the ground that said was not coming within the definition of section 2(f) of RTI act and the information at point No. 6 was not provided to him on the ground that it pertains to third party and the same is forwarded to the concerned person for their consent as per section 11 of the RTI act .

- 3 Being not satisfied with the reply given by Respondent No.. 1 PIO , the appellant filed first appeal u/s 19(1) before the Respondent No. 2FAA herein on 31/10/16 and the Respondent no. 2 FAA by an order dated 10/1/2017 disposed the said appeal by upholding the say of Respondent No. 1 PIO .
- 4 Being aggrieved by the decision of the Respondent No. 2 First appellate authority dated 10./1/17, the appellant approached this commission by way of second appeal on 21/2/17 with a prayer for providing him information as sought by him vide his request dated 28//9/16 and for invoking penal provisions against respondents .
- 5 In pursuant to the notice of this commission , the appellant as well as Respondent no.2 FAA opted to remain absent . Respondent No. 1 PIO was represented by Ms. Sulaksha Dessai who filed reply on behalf of respondent no.1 PIO on 17/6/17 and also additional reply on 4/7/17. Vide additional reply the information at point no.6 i.e photo copy of qualification/certificates of Shri Tukaram Gawde , acting head clerk of the office of the Administrator of comunidade of south Goa was enclosed to the said reply . The copy of the both the replies could not be furnished to the appellant on account of his continuous absence .
- 6 Vide reply dated 17/6/17 , the respondent no.1 has contended that information at point no.5 was provided to the appellant vide letter dated 21/10/16 .The appellant have not disputed the same, however it is the contention of the appellant that said information is incorrect.
- 7 I have perused the records available in the file . On perusal of the application u/s section 6 , it is seen that appellant at point no 1 to 4 has raised certain queries and sought about the provisions of the code of comunidade under which certain acts as mentioned by him in said paras could be done or not done by Administrator and by head clerk .

8 The Hon'ble apex court in case of Aditya bandopadya has held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act . The RTI Act provides access to all information that is available and existing . this is clear from the combined reading of section 3 and the definition of “information ” and “right to information ”under clause (f) and (j) of section 2 of the Act . If the 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 .”

9. Yet in another decision Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“ The definition of information cannot include within its fold answers to the question why which would be same thing as asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sense of justification because the citizen makes a requisition about information justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information .

10. Based on the ration laid down by the courts in the above judgement , I am of the opinion that the information sought by the appellant at point no.1 to 4 doesn't come within the perview of definition of “INFORMAION’ as defined in section 2 (f) of RTI act , and as such no directions can be issued to the PIO for furnishing the said information at point No. 1 to 4. .

11. On perusal of information provided at point no. 5 , . what was sought by the appellant was “the date and post at which Tukaram Gaude was employed in office.

It is seen that information which was provided to appellant vide letter dated 21/10/2016 , is the office order dated 30/10/15 wherein said Tukaram Gawade who was officiating as Escricao/UDC was given additional charge as acting Head clerk /secretary. It appears that the appellant wanted to know since when he is working/employed in the said office . The said information is not disclosed to the appellant .

12. The information at point No. 6 which is submitted along with additional reply by Respondent No. 1 PIO before his commission could not be submitted to the appellant on account of his Continuous absence.
13. Since it is the contention of the appellant that incorrect information was provided to him, the onus was on him to prove the same. The appellant herein has failed to substantiate his case visa-vis some evidence as such hold that appellant has failed to discharge his such burden.
14. Further For the purpose of considering such liability the Hon!ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed
"The order of penalty for failure to akin action under the criminal law . It is necessary to ensure that the failure to supply information is either intentional or deliberate "
"unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied and has occasion to complied with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied".
15. By applying the ratio aid down in above case, I find that there is no cogent and sufficient evidence brought on record by the appellant that the Respondant PIO has deliberately and intentionally provided

him incorrect information , Hence the prayers which are in nature of penal action cannot be granted .

In the above given circumstances following order is passed

ORDER

Appeal is partly allowed .

- (a) The Respondent no.1 PIO is hereby directed to provide correct and complete information at point no.5 and 6 sought by the appellant vide his application dated 28/9/16 .
- (b) The prayer (b) to (d) are not granted .

The appeal is disposed accordingly 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.

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

