

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

Appeal No. 29/SCIC/2016

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

Franky Monteiro,
H. No. 501, Devote,
Loutolim Salcete,
Margao –Goa.

..... Appellant.

V/s

1)Public Information Officer,
The BDO II of Salcete,
2nd Floor, Collector Bldg,
Margao –Goa.

2)The First Appellate Authority,
The Dy. Director of Panchayat South,
Margoa –Goa.

..... Respondents.

Filed on:17/02/2016

Decided on:16/02/2017

1) FACTS:

a) The appellant herein by his application, dated 05/11/2015 filed u/s 6(1) of the Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO under several points therein.

b) The said application was replied on 30/11/2015. However according to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2.

c) The First Appellate Authority (FAA) by order, dated 21/01/2015, dismissed the said appeal.

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

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e) Notices were issued to the parties, pursuant to which the appellant appeared on same hearings.

The PIO on 16/08/2016 had filed a reply to the appeal. The FAA also filed the reply on 16/08/2016.

f) The parties filed written submissions.

2) FINDINGS:

a) We have perused the records. By his application, dated 05/11/2015, the appellant at first two points i.e. at (1) and (2) has sought the opinion of the PIO whether certain practice and procedure are necessary/mandatory. Such information being in the nature of opinion does not come under the purview of information under the act. Hence we find such requirements as beyond the scope of Act.

b) Regarding the information at point (3) and (4), the same requires PIO to provide the compliance report of B.D.O., Salcette to the letter of panchayat dated 11/02/2014 to BDO Salcette as also the action taken on the said letter.

These requirements are answered by PIO stating that the said letter, dated 11/02/2014 contains the section of Panchayat Raj Act 1994 and that it will be burden for panchayat exchequer, without such provision in act. This reply appears to be ambiguous, irresponsible and misleading. By these two points at (3) and (4) the simple things that were sought by appellant was the compliance to panchayat letter, dated 11/02/2014 to B.D.O. and the action taken report thereon. The PIO in such situation was required to furnish the compliance if any, and the action taken on the said letter dated 11/02/2014 as available in the records held by it. In spite of the same the PIO has tried to mislead the appellant. He has

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not explained in his reply as to how it amounts to compliance of appellant's requirements and as to how furnishing of such information is burden to panchayat exchequer.

Similarly the PIO has adopted a very casual and irresponsible approach to requirement at point (4) stating that verbal instructions were issued. It is strange to believe that the Public Authorities are operated on verbal instructions. The information to be dispensed is as it exist with the public Authority. If no information exist then it could have been answered accordingly. In any case the entire gesture of the PIO Shri P. K. Naik, appear to be an eyewash and exhibit a casual approach.

c) Be that as it may in the reply filed before this Commission by the PIO, it is his contention that the said letter dated 11/02/2014 is not available. If so the question remains to be answered is as to which letter dated 11/02/2014, the PIO Shri P. K. Naik has referred to on 30/11/2015 in his reply under section 7(1) to appellant. In his said reply he refers to the contents of said letter dated 11/02/2014 suggesting that he has perused the letter physically and now in his reply filed to this Commission dated 16/08/2016 he states that it is not available. Further in his submissions he argues that information being non existing could not be furnished. The entire conduct on the part of PIO appears to be suspicious and an example as to what should not be the approach of PIO in dealing with RTI application.

d) Coming to the order of the first appellate Authority, it is the version of F.A.A. that in the course of hearing, the appellant has received the information at Sr. Nos. 3 and 4 of the

application. This part of the order is denied by appellant and has alleged bias against the FAA. We do not find any records wherein such statement of the appellant is recorded before F.A.A.

Even otherwise such a finding is unbelievable. According to the reply of PIO before FAA the PIO has stated that information as sought by appellant is furnished vide said letter, dated 30/11/2015. As per the reply filed by PIO before this Commission, according to him the letter dated 11/02/2014 is not available. Thus we find that the finding of FAA that appellant has admitted having received the information at point (3) and (4) is not in tune with the records. We therefore find force in the submissions of appellant that the findings of FAA are preverse. In the circumstances we find that the order of FAA is not sustainable.

e) Considering the above facts and the records, we find that the order of the F.A.A is required to be set aside and this appeal has to be allowed with a direction to PIO to furnish to the appellant the information as above.

Considering the approach of then PIO Shri P. K. Naik, in dealing with the application filed by appellant u/s 6(1) and his response under section 7, we further find that this is a case to impose penalty against him as contemplated under section 20(1) and/or (2) of the Act. But before imposing such penalty he is required to be heard.

f) Considering the above facts based on the records and with above observations, we proceed to, dispose the present appeal with the following:

O R D E R

The appeal is partly allowed. The order, dated 21/01/2015, passed by First Appellate Authority is set aside. PIO is hereby directed to furnish to the appellant free of cost. The information sought by him at points Nos. 3 and 4 viz:

- (i) The action taken by office of BDO on the letter dated 11/02/2014 received from Village Panchayat of Loutolim and the present status thereof.
- (ii) Copy of the reply, if any, sent by office of B.D.O. to the said letter dated 11/02/2014, received from Village Panchayat of Loutolim.

Within TEN DAYS from the date of receipt hereof by it.

PIO, Shri P. K. Naik is hereby directed to show cause as to why action as contemplated u/s 20(1) and /or 20(2) of The Right to Information Act 2005, should not be initiated against him for knowingly giving incorrect incomplete and misleading information to the appellant reply returnable on 16/03/2017 at 03.30 pm .

The present PIO of office of BDO Salcete shall serve the notice issued by this Commission, to the then PIO Shri P. K. Naik and produce his acknowledgement before this Commission on or before the above date.

Notify the parties.

Appeal disposed.

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

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa

Penalty No.

In

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Franky Monteiro,
H. No. 501, Devote,
Loutolim Salcete,
Margao –Goa.

.....

Appellant.

V/s

. 1) Shri P. K. Naik
The Public Information Officer,
The BDO II of Salcete,
2nd Floor, Collector Bldg,
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Respondent.
