

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

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

Appeal No. 94/SCIC/2017

Mr. Bapu Yeso alias Yeshwant Virnodkar,
Girkarwad – Kepe,
Arambol, Pernem –Goa. ----- Appellant

V/s

- 1) The State Public Information Officer,
Dy. Town Planner,
The Goa Town & Country Planning Department,,
Pernem-Goa.
- 2) The First Appellate Authority,
Senior Town Planner (North),
The Goa Town & Country Planning Department,
Mapusa-Goa. ----- Respondents.

Filed on : 27/06/2017

Decided on: 07/11/2017

1) FACTS:

- a) The appellant herein by his application, dated 11/01/2017 filed u/s 6(1) of The Right to Information Act 2005 (Act) sought certain information from the Respondent No.1, PIO under two points therein, viz certified copies of the approved site plan and approved construction plan.
- b) The said application was replied on 17/01/2017, by PIO rejecting the request, on the ground that it is exempted u/s 8(1) (g) and (j) of the act contending that the disclosure of approved plans of third party is likely to endanger life and

physical safety of the persons concerned or assistance given in confidence for security purpose would likely to cause unwarranted invasion of privacy of individual. According to appellant the information as sought was not furnished, the appellant filed first appeal to the respondent No.2.

The First Appellate Authority (FAA) by order, dated 26/05/2017, partly allowed the said appeal and directed PIO to furnish the information viz. the certified copy of approved site plan and rejected the request for issuance of approved construction plan.

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 representative of PIO on 12/09/2017 filed a reply to the appeal alongwith copy of approved site plan purportedly furnished to appellant as the entire information.

f) Though initially the representative of appellant Shri Vaman Khorjuvekar admitted that the entire information is furnished subsequently he filed an application on 12/09/2017, inter alia submitting that what is submitted and furnished is the information at point (1) i.e. the certified copy of the site plan and that the information at point (2) i.e. the certified copy of approved plan was not furnished.

g) Notice of the said application was given to PIO the Town and country Planning Department. The PIO filed his written submissions to the said application of appellant, dated 12/09/2017. According to PIO, vide his submission, as the

information sought was exempted from disclosure u/s 8 (1) (g) and (h) of the act, a consent was required from third party and which was accordingly issued but the third party objected for the disclosure. The PIO however has neither attached copy of any such letter sent to such third party nor has specified the details of such letter. The PIO has also relied upon the communication received from the Head Quarters of the Department advising the PIO to follow certain orders passed by the Central Information Commission.

According to PIO if the information sought is provided it would disclose appellant all accesses and exists of the building of third party and that it would endanger life and physical safety of inhabitants or assistance given in confidence for security purpose and is likely to cause unwarranted invasion of privacy. It is further according to PIO when information was pertaining to third party it was obligatory on his part to obtain consent of third party u/s (11) of the act and that herein it was not consented and hence the decision to withhold information was in accordance with law.

h) In his written submissions, the appellant by differentiating the personal information herein and the one under the cases of *Pawan Kumar V/s Chander Mohan* and that *Sudesh Kumari Sharma V/s AE(B)/KBZ North Delhi Municipal Corporation*, which is relied upon by the PIO, submitted that the information there was pertaining to individual person but that the information herein pertains to a hotel occupied by guests on temporary bases and hence the question of any harm in case of disclosure of position of rooms does not arise.

2) FINDINGS:

a) I have perused the records and considered the submissions of parties. In this case as the information at point (1) i.e. certified copy of site plan is already furnished I refrain from giving any findings on the said requirement. I restrict my finding only in respect of point (2) which is the certified copy of the approved plan.

b)The grounds for rejection of the said document/information is that the said information pertains to third party and that if issued would endanger life and safety of persons concerned etc. and hence exempted u/s 8(1)(g),(h) and (j) of the act.

C) Section 8(1) (g),(h) and (j) of the act reads:

8. Exemption from disclosure of information. _____ (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___*

(a)-----

(b) -----

© -----

(d) -----

(e) -----

(f) -----

(g) *information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose;*

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(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) -----

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

d) Thus from reading of above the exemption from disclosure u/s 8(1)(g) is to protect the life, physical safety, identification of source of information or assistance given in confidence for the purpose of law enforcement or security. In this case the information sought does not come under any of the above categories.

Regarding the exemption u/s 8(1)(h), in this case the information sought is not the subject of any investigation, the exemption u/s 8 (1) (h) as referred in written arguments is not available to the PIO.

In the present case the document sought is the plan of building as approved by the Public Authority. Such document thus is a public document generated by public Authority in exercise of its public duty. The same is not personal information. It is not in dispute that the information pertains to the resort which involves public activities. Any deviation from the planning rules or building bye laws would effect public rights, safety or convenience. Thus the ground of rejection u/s 8(1) (f) also is not available to PIO. Such information cannot be denied to Parliament or State Legislature being generated by a Government Authority and hence cannot be denied to citizen.

e) It is also the contention of PIO that the information sought is a third party information and hence when objected cannot be furnished. For considering this section (11) of the act is required to be considered which reads:

Section (11) of the Act provides the procedure for dispensation of third party information in following words :

" 11. Third party information.____ (1) *Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the*

request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

f) Thus is it clear that for the purpose of holding the information as Third Part Information, it should relate to or has been supplied by that third party and has been treated as confidential by that third party. In this case the application u/s 6(1) of the act was filed on 11/1/2017 and the same was responded u/s 7(1) of the act by PIO on 17/1/2017 and information was refused without giving any notice to third party within five days as is mandatory under section (11) above. The said response was marked/sent to third party. Thus though request is rejected on 17/1/2017, at the time of rejection there is no objection of the third party. The ground for rejection of request at that time appears to be not supported by objection of the third party. The so called objection had no relevancy as the

same was received by PIO after rejection of the application. Such an exercise is not provided under the act. Section (11) of the act requires the PIO to decide the application only after the say of the third party is obtained.

g) Be that as it may, considering the nature of information sought, what is sought is the copy of the plan. Though a plan is prepared by the party, he gets license from the Public Authority who is the absolute authority to grant permission. Thus though the said plan relates to third party, the approved plan was generated from the Public authority in exercise of its public function. Hence said approved plan is a public document.

h) While dealing with a similar issue, the High Court of Madras in ***Ms. V. V. Mineral V/s the Director of Geology & Mining and others (Writ Petition (MD) No.5427 of 2007 and M.P.(M.D.Nos.1,2 and 3 of 2007)*** has observed at paras 11 & 12 thereof as under:

"11. Therefore, the principal contention that a right accrues to the petitioner to object may be correct in the context if a document is exclusively submitted by any person to the Government authorities such as property statements, income tax returns etc., but in a case of lease deeds and transport permits which emanate from the statutory authorities and where the petitioner cannot be said to be in exclusive possession, he cannot have a right to object to its being divulged as a third party. The

lease deeds pertaining to minerals as well as transport permits are not documents prepared or to be kept by a prospecting mine operator but prospecting a mine or mineral is a privilege conferred by the State to the individuals, who accepts the norms prescribed under Mines and Minerals Act 1957 and the rules framed there under.

12. In the present case, when the third respondent as an Information Officer, ordering notice to the petitioner and taking their objection and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issues may not arise, especially, when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On the other hand, such a disclosure may held any party to act upon those documents and take appropriate steps."

Again at para (14) of the said judgment while deciding the scope of the competent authorities to be guided by the principals of public interest in the following words:

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"14. Therefore, when the impugned order is passed by the first respondent, he clearly reiterated that the order of the third respondent was wrong and the documents sought for is not covered by Section 8(1)(d) of the Act. Even otherwise, as referred to above, Section 8(1)(d) only talks about a commercial confidence, trade secrets, which disclosure will harm competition position of the third party. Further, the section do not prescribe any total bar and it is for the competent authority to be satisfied with a large public interest, which warrants the disclosure of such information."(emphasis supplied)

And finally while dealing with the extent to which the same can be applied the High court has held:

"16. From the above it is clear that when RTI Act was enacted it does not give any full immunity for disclosure of a third party document. But, on the other hand, it give the authorities under RTI Act to weight the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information.

17. Therefore, no total immunity can be claimed by any so-called third party.

Further, if it is not a matter covered by Section 8(1) (d) of the Act, the question of any denial by the Information Officer does not arise. Therefore, on appeal preferred by the petitioner, the first respondent held that it is not an issue covered by Section 8(1) (d) of the Act. If it is only covered by Section 8(1) (d) of the Act, the question of denial of Information by the authority may arise.

18. (omitted)

19. If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But, regarding a public document, if sought for by an individual whatever the motivation of such individual in seeking document has no relevancy as the central RTI Act had not made any distinction between a citizen and a so-called motivated citizen. Hence, the submission in this regard has to fail.”

i) The PIO has also relied upon some orders passed by the Central Information Commission (CIC). It needs mention that the orders passed by Central Information Commission cannot operate as precedents or authority over this commission as both the Commission have concurrent powers. However if one goes through the order of CIC, which is relied upon by the PIO,

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the same is distinguishable. As state above the same refers to safety of individual and not of corporate. Secondly the information in said case is pertaining to the residential building involving private activity whereas herein what is sought is the plan of a hotel project, which involves public interest.

j) In the light of the above discussions and my findings, I hold that the information as sought for by the appellant at point (2) viz. the copy of the approved plan has to be furnished to the appellant.

Though the appellant has prayed for penalty, considering the peculiar facts of this case I am not inclined to hold that the denial was malafide or intentional as the same was refused on certain grounds within the logic of the PIO. Hence the said relief of the appellant cannot be considered.

With the above findings I dispose the present appeal with the following:

O R D E R

The appeal is partly allowed. The PIO is directed to furnish to the appellant the information as sought by him at point (2) of his application, dated 11/1/2017 i.e. the approved construction plan of building and compound wall, free of cost, within TEN DAYS from the date of receipt of this order by him. Rest of the prayers are rejected.

Notify the parties.

Proceedings closed,

Pronounced in the open proceedings.

Sd/-

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

