

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

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

Appeal No.97/SCIC/2016

Madonna Almeida,
H.No.257/1. 3rd ward, Bagdem,
Colva Salcete Goa. -----Appellant

V/s

- 1) The Public Information Officer,
South Goa Planning Dev. Authority,
Osia Complex Arcade, 3rd fl.,
Margao-Goa.
- 2) The First Appellate Authority,
The Chairman South Goa Planning Dev. Authority,
Osia Complex Arcade, 3rd fl.,
Margao-Goa. ----- Respondents

Filed on :20/05/2016

Decided on: 15/06/2017

A) FACTS IN BRIEF:

a) The appellant by her application, dated 22/02/2016, filed u/s 6(1) of the Right to Information Act 2005(Act for short),sought information on point (A) to (D) therein . According to appellant the said application was replied on 18/03/2016, wherein part of the information sought at points (A) and (B) was furnished and regarding information at point (C),PIO called upon the appellant to pay Rs.4000/- as the fees thereof.

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b) According to appellant she paid the said amount of Rs.4000/- being the cost of two plans, but the PIO refused to certify the copies of the plan as requested. It is further according to appellant that the PIO also failed to furnish part of the information at (C) viz. the list of alterations and minor changes done in outline development plans.

It is also her grievance that the PIO has also failed to mention in his reply the name and address of First Appellate Authority (FAA).

c) Against said reply of PIO, dated 18/3/2016, the appellant preferred first appeal to respondent No.2, being the FAA, who issued notice to the parties but no order is passed by said authority till date.

d) The appellant therefore approached this Commission with this second appeal u/s 19(3) of the act with a prayer to provide information, as also for imposing penalty and for appropriate action for not providing information.

e) Notice of this appeal was issued to parties pursuant to which the Adv. S. Parab appeared on behalf of PIO. However no vakalatnama is filed on record inspite of undertaking. On 12/05/2017, the PIO filed his affidavit in reply cum legal submissions. In the said reply the PIO has also prayed to consider his said affidavit in reply as his written arguments.

f) The oral arguments of the appellant were heard. The appellant also filed her written arguments. In the course of her oral arguments she admitted that the information at points (A) and (B) is received and also admitted that

the information as sought at point (D) required material particulars and hence she does not press for information at point (D) of her application. Considering her said submissions the controversy in the present appeal is thus narrowed down to the requirement at point (C), of the appellant's application, dated 22/02/2016.

2) FINDINGS:

a) I have perused the application filed u/s 6(1) of the act, dated 22/2/2016. At point (C) thereof the appellant has sought information as under:

“(c) Kindly provide information on the outline development plans prepared till date including the list of alteration and minor changes done in all the outline development plans including certified copy of ODP in force as on date of this application.”

Thus the appellant's application had two requirements:

- i) List of alterations and minor changes in ODP.*
- ii) Certified copy of ODP.*

b) By reply, dated 18/03/2016 with respect to said point (C), the PIO has informed appellant that the authority has prepared only two ODP, being one for Margao Area and other for Ponda area and that the same can be obtained on payment of Rs.2000/- per plan. Thus from the above reply the PIO has offered to furnish the copies of the plan. He has not offered to furnish the list of alterations and minor changes done in the plan. Thus part of the information has not been dealt with by PIO.

c) According to appellant she paid the said total amount of Rs. 4000/- for two plans on 30/03/2016 but the PIO refused to certify the copies of the plan.

The PIO in his affidavit in reply cum submissions, dated 12/5/2017, has dealt with this contention of appellant in para (7) therein. According to PIO it was not possible to provide details regarding the alterations as the same were not separately collected and that the plan which was offered to the appellant was a certified copy of the plan, which reflects the details.

The PIO has further contended that the appellant has not produced the copy of the plan furnished to her and wants this Commission to draw an inference that the plans furnished to appellant are duly furnished and that hence the appellant has deliberately hidden the same from this Commission. However PIO has also not produced on record any acknowledgement of the appellant of having received/furnished the copies duly certified by him.

It is further contention of PIO in para (9) of his said reply that on the copy of his reply, dated 18/03/2016, the appellant has endorsed that she has received the Xerox copy of the plan on 13/04/2016 and that if the plans were not certified, the appellant ought not to have accepted the same. I also find that no such copy of such reply, dated 18/03/2016 acknowledged on 13/04/2016 is filed by PIO alongwith the affidavit in reply. Hence in the absence of such documents drawing of any conclusion that the appellant has been

furnished with the certified copies of the plan, would be premature.

d) In his reply, PIO has raised an objection for certifying the information furnished. According to him the act does not provide for all information to be certified. I am unable to subscribe to this view and this misconception in the mind of PIO is required to be clarified.

e) While considering the extent and scope of information that could be dispensed under the act, 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 has observed :

“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 from 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 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 documents drawing of any conclusion that the 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.....”

In other words PIO is not the creator of the records but only a custodian of the records for being dispensed to the seeker in the form and nature in which it is held by the public Authority. Hence the PIO is not responsible for the contents of the records.

f) Section 7(9) of the act requires the information to be furnished ordinarily in the form in which it is sought. Said section 7(9) reads:

“ 7. Disposal of request.__(1) -----

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resource of the public authority or would be detrimental to the safety or preservation of the record in question.”

Considering the above requirements, in case the seeker seeks the information in the form of simple copies they should be provided in said form and in case his/her requirement is in the form of certified copies the simple thing required from the PIO is Certification of such copies indicating that they are from the records and that they

are dispensed by him in discharge of his duties as a PIO. Such certification does not divert the resources nor affects the safety or preservation of the records. Such certification also does not cast burden on PIO as it neither warrants the authenticity of the originals nor veracity of its contents.

g) In the case of ***John Numpeli (Junior) V/s The Public Information Officer & others (Writ Petition No.31947 of 2013)***, while rejecting a similar the stand taken by PIO that there is no mandate or provision in the act to certify the copies issued under the act and that act does not contemplate it and that it only intends to provide access to information for citizens, the Hon'ble High court of Kerala has directed the PIO to issue fresh set of documents and to certify the same as copies issued under the Act. While issuing such direction the Hon'ble High court has ruled that all that the PIO would have to do is to certify that the copy is one issued under the Right to Information Act 2005.

h) Considering the above provision of section 7(9) of the act and the ratio as laid down by Hon'ble High Court of Kerala in the case of *John Numpeli (Supra)*, I hold that as applied by the appellant, she is entitled to received the copies of the plans duly certified by PIO that these are issued under the act.

i) Even otherwise the contention of the PIO per his affidavit in reply that the copy of the ODP plans were duly certified by him itself suggests that he has no objection for certifying the same.

j) Regarding the list of alterations and minor changes as is required by appellant, my attention is drawn by the appellant to the provisions of section (39)(1) of The Goa Town & Country Planning Act. Said provision requires that after coming into operation of Development Plan for an area and at least in every ten years thereafter, the PDA after carrying out fresh surveys as may be considered necessary or directed by the board and Government, prepare a fresh development plan in consultation with local authorities concerned and submit the same to board and Government for alterations and additions considering necessary.

At sub section (3), after coming into operation of Development Plan, the PDA, with approval of Government, make minor changes. It is further provided that such changes should be in public interest.

Thus from the above, it is clear that any changes in ODP are proceeded by approval of Government based on the public interest. Hence, the suggestions, alterations etc. form part of the records of PDA and are dispensable under the act.

k) In the facts and circumstances of the case I find merits in the appeal and hold that the appellant is entitled to have the information as sought by her at point (C) of her application, dated 22/2/2016. Considering the controversy raised herein regarding the certification of the documents, I find it would be appropriate that such information is filed before this commission so that the

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same can be handed over to the appellant after verification. Consequently I proceed to dispose the appeal with the following:

ORDER

The Appeal is allowed. The PIO, South Goa Planning & Development Authority Margao, shall issue fresh set of outline development Plans as applied by the appellant by her application, dated 22/2/2016 duly certified as the one issued under The Right to Information Act 2005. PIO shall also furnish to the appellant list of alterations and minor changes done in the outline development plans.

The information as above shall be filed by the PIO before this commission on 28/6/2017 at 10.30.a.m. for onward furnishing the same to the appellant free of cost.

The prayer for penalty as prayed in the appeal shall be dealt with appropriately after compliance of this order.

Pronounced in open proceedings.

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

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V/s

- 1) The Public Information Officer,
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Osia Complex Arcade, 3rd fl.,
Margao-Goa.
- 2) The First Appellate Authority,
The Chairman South Goa Planning Dev. Authority,
Osia Complex Arcade, 3rd fl.,
Margao-Goa. Respondents

O R D E R

Dated 15/09/2017

- 1) By order, dated 15/06/2017 this Commission has directed the PIO to furnish to the appellant the outline Development Plans (ODPs) as applied by her by , dated 22/02/2016 duly certified. The PIO was also further directed to furnish to the appellant list of alterations and minor changes done in the ODPs.
- 2) Accordingly on 08/08/2017 the PIO filed on record of this Commission two plans viz one being the ODP 2016 Margao Planning Area and the second second being the ODP 2016 of Ponda Planning Area. Alongwith the said plans the PIO also has submitted list of applications received for objections/suggestions on Margao ODP after re notification from page 18 to 36.

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Similarly the list of applications received for objections /suggestions on Ponda ODP after re notification from pages 19 to 20 is also filed by PIO. The said records are filed by PIO as the records purported to have been applied by appellant by her said application dated 22/02/2016. Copies of the said records were furnished to the appellant.

3) The appellant has filed her written arguments on 28/08/2017. As per her said arguments she had sought information as on the ODPs prepared till date of her application. According to her inspite of the orders of this Commission the PIO has with held the information. In support of her arguments the appellant, by relying on the judgment passed by Hon'ble High Court of Bombay at Panaji in W.P. Nos. 133 of 1997 and No.59 of 1990, submitted that many outline development plans have been prepared besides those filed before this Commission.

The appellant has further submitted that the PIO has further withheld the information pertaining to list of alteration and minor changes done in all ODP.

4) Considering the above submission of the appellant, it is her contention that till the date of her application filed u/s 6(1) of the Act, several ODPs were prepared and that several alterations and minor changes were effected in ODPs and inspite of which only part information is furnished to her by withholding some ODPs and some details of alterations and minor changes.

5) The PIO, though has furnished the two ODPs and the details of objection and alterations effected, no where it is recorded that the said plans are the only plans prepared till the date of appellant's application. In case there are more plans and alteration and changes effected than those submitted by PIO the appellant shall be entitled for said plans. In case there are no more plans prepared and changes effected during said period, the PIO has to clarify the same specifically.

6) In the above circumstances, with a view to consider the requirement of the appellant, I hereby direct the PIO to furnish to the appellant all the outline development plans prepared for the Margao Planning Area and Ponda Planning area till 22/02/2016 as also the list of alterations and minor charges done in all ODPs till said date.

The PIO is also directed to file an affidavit affirming the number of outline Development plans prepared and the alteration and minor changes effected during said period for said two planning areas. In case there are no any ODPs or changes effected besides those furnished by PIO, then PIO shall state so in his affidavit.

7) The affidavit as above shall be filed by PIO on 29/09/2017 at 10.30 am. Further, orders shall be passed after filing of such affidavit.

Sd/-

(Mr. Prashant S. Prabhu Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

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Nr. SGPDA, Market Complex, Margao-Goa.
- 2) The First Appellate Authority,
The Chairman South Goa Planning Development Authority,
4th floor D-Wing, Osia Complex Arcade,
Nr. SGPDA, Market Complex,
Margao-Goa. ... Respondent

Date: 24/11/2017

ORDER

1. This commission, by order, dated 15/6/2017, while allowing the present appeal has directed the PIO herein to issue fresh set of outline development plans as applied by appellant by her application, dated 22/2/2016, duly certified as issued under the act. He was also directed to furnish to the appellant list of minor changes done in the outline development plans.
2. On 11/7/2017 the PIO filed on record the certified copy of ODP plan and the list of objections and suggestions on the outline development plans. The appellant has contended that though several ODPs were prepared and objections received, only two plans were furnished. Appellant had made a

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reference to writ petition nos. 133 of 1997 and 59 of 1990, before the Hon'ble High court wherein according to her the respondent authority had contended that several ODPs were prepared but only two copies are furnished.

- 3.** In view of the said submissions of the appellant, to prove the fact as to how many ODPs were prepared and the objections were received, the PIO was directed to file affidavit to substantiate as to how many ODPs were prepared and objections received.
- 4.** Accordingly the PIO filed the affidavit affirming that only one ODP plan called ODP 2016 that is one ODP for Margao and one for Ponda were prepared plans of which are filed on record.
- 5.** The appellant contention vide her written submissions dated 13/10/2017 is that the PIO has withheld the information. According to her the said affidavit does not disclose the actual number of outline development plans prepared by it. According to her the appellant has failed to file affidavit affirming the actual number of outline development plans.
- 6.** Considering the objection as raised by the appellant it can be gathered that according to her the PIO has made a statement in the affidavit contradictory to the one made before the High Court. Thus the appellant wants the commission to direct the PIO to furnish the further information as also for penal action.

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7. The Right to Information act envisages for assisting the seeker to seek the information which is existing with the authority. According to the PIO the existing information consist of only one ODP 2016. This statement is on oath. The same has therefore to be presumed as true.
8. It appears that the appellant wants this commission to hold that there were more than one ODPs prepared. Appellant also wants and investigate into the matter as to how many plans were prepared, by conducting inquiry. In support of her contention appellant relies upon the copies of the orders in writ petition.
9. The rights of the commission under the act are defined. The act envisages for assistance to the seeker in obtaining information. In the present case the PIO has furnished certain information. According to the appellant the same is incomplete or false. Admittedly the information sought was copy of ODP plans and what is supplied is the same alongwith affirmation that there is only one ODP. In case the appellant finds the affidavit filed herein is false the same can be challenged before the appropriate forum for perjury or otherwise. Act does not confer powers to this commission to inquire into the veracity of the affidavit. While dealing with the scope and powers of the commission Hon'ble High Court of Delhi in **LPA No.785/2012 HANSI RAWAT & ANR. V/S PUNJAB NATIONAL BANK & ORS.** has observed :

"Before the learned Single Judge also, the contention of the appellants was that the information given is not correct. The learned Single Judge went through the RTI application of the appellants and the response thereto and found that the information sought had already been furnished. The learned Single Judge has further observed that the only obligation of the respondent Bank, from which information had been sought, under the RTI Act, was to give information available and no further and the said obligation had been fulfilled.

*The counsel for that appellants does not controvert the factum of a number of RTI applications having been filed by the appellants themselves or through other persons to the PIO of the respondent Bank. **He has however drawn attention to the information sought at serial Nos. 11 to 14 and 26 of the RTI application and the response thereto and on the basis thereof has contended that information has not been provided and/or the information provided is incorrect.***

***The proceedings under the RTI Act do not entail detailed adjudication of the said aspects.** The dispute relating to dismissal of the appellant No.2 from the employment of the respondent Bank is admittedly pending consideration before the appropriate fora. The purport of the RTI Act is to enable the appellants to*

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*effectively pursue the said dispute. **The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished.** Moreover, there is a categorical finding of the CIC, of the appellants misusing the RTI Act, as is also evident from the plethora of RTI applications filed by the appellants. In view of the said factual findings of the CIC and which is not interfered by the learned Single Judge, we are not inclined to interfere with the order of the learned Single Judge."*

10.In the backdrop of the above facts and the law, as the information is furnished by the appellant the appeal is required to be disposed. Considering the fact that the information was furnished initially, though in uncertified form, I find no malafide in dealing with the application u/s 6(1) of the act, to attract provisions of penalty.

In the result the present proceedings are dropped.
Appeal disposed accordingly.

Notify the parties.

Pronounced in the open proceedings.

Sd/-

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

