

GOA STATE INFORMATION COMMISSION

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

Appeal No. 45/SIC/2015

And

Appeal No.46/ SCIC/2015/

Shri Subhiraj Prabhakar Naik,
R/o H.No.96/7,Nagmoddem,
Navelim, Salcete Goa.

.....Appellant.

V/s.

1. Mr. Prabhakar Namdev Kamati,
The State Public Information Officer,
The Secretary V.P. Of Paroda,
Salcete-Goa ..Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 24/04/2015

Decided on: 12/10/2017

ORDER

1. Brief facts leading to the present appeal are that the appellant Shri Subhiraj Naik by his application dated 10/09/2014 sought certain information on 26 points as stated therein in the said application from the Respondent No. 1 Public Information Officer (PIO) Secretary, Village Panchayat of Paroda, Salcete Goa.
2. According to the Appellant the said application was not responded by Respondent No. 1 PIO as such deeming the same as denial he preferred 1st appeal before the BDO under

section 19(1) of Right to Information Act 2005 being First Appellate Authority (FAA) who is the Respondent No. 2. herein. The said appeal was filed by clubbing 3 RTI applications dated 21/06/2014, 19/07/2014 and 10/09/2014. And the Respondent No. 2 FAA passed an order dated 28/01/2015 thereby partly allowing the appeal, Where in the information at question No. 6, 10 and 14 of application dated 21/06/2014, question at point No. 6 of application dated 10/07/2014 and question No. 10 and 11 to 26 of RTI application dated 10/09/2014 where directed to be furnished to the appellant within 7 days from the date of passing of the order free of cost. Vide said order the Respondent PIO was also directed to deposit the same in the O/o. BDO.

3. It is case of the appellant that the Respondent PIO had deliberately deposited the same after 7 days from the date of passing of the order by FAA vide letter dated 6/02/2015.
4. According to the Appellant only the copy of the resolution and NOC was issued as such being not satisfied with the information furnished to the appellant the appellant preferred the present appeal on 24/04/2015 on the grounds that Respondent PIO deliberately and willfully refused to issue the information to the appellant in respect of point at Sr. No. 14 of the application dated 21/06/2014. It is further contended since the Respondent refused to issue the same the appellant again requested for the same vide application

dated 10/09/2014 and again the Respondent refused to furnish him the same. It was further contended that Respondent PIO also refused to issue the information in respect to the points at Sr. No. 10(i) to 10(Vi) and 11 to 26 of the said application dated 10/09/2014 on the ground that it is not coming within purview of definition of information. According to the appellant the said was deliberately done in order to conceal the violation of subsection (VII) of section 113-A of Goa Panchayat Raj Act 1994 and the rules made there under. It was further contended that the said grounds was taken by PIO only to hide illegalities undertaken by Respondent and other Office bearers of said Panchayat. According to him the said NOC which was issued to Babu Sitaram Naik dated 22/05/2013 was given without issuing any construction License, without issuing any approval from the Town and Country Planning Department, without receiving any construction License fees, without collecting any house tax, thus according to the appellant the Sarpanch and Panchayat had violated sub rule (ii) of the rule 54 of Goa Panchayat Raj Rules 1998. It was further contended that Respondents had provided protection to the said NOC which is fabricated by the said Panchayat in order to create false evidence to benefit the said Mr. Babu Naik in regular Civil Suit No. 44/08/B subjudice before Hon'ble Civil Court at Quepem.

5. In pursuant to the notice of this Commission the appellant appeared in person. The Respondent represented by PIO Shri Prabhakar Kamati. The reply filed by the Respondent PIO on 16/05/2016 thereby resisting the appeal. The Respondent also filed additional replies on 7/06/2016, 31/10/2016, 5/01/2017 and on 21/02/2017. The said additional replies were filed by the PIO since the appellant was not satisfied with the initial information provided to him by the PIO. The counter replies was filed by the appellants on 23/03/2017 which was duly replied by the PIO on 22/05/2017.
6. Written arguments duly submitted by the appellant on 6/07/2017, 6/09/2017 and on 25/09/2017.
7. I have scrutinize documents on record also considered the submission made by the appellant.
8. At the outset it is seen that the various applications of the various dates were filed by the appellants which were replied independently on various dated by the PIO. In some, the information was either furnished or partly furnished, thus each application constitutes an independent cause of action for the appeal with reference to relief and limitation, as such independent appeals would lie and not consolidated as is done herein. Though the subject matter is common each application constitute a distinct and separate cause of action for the purpose of grant of relief. It is not permissible to club

all said application together. Such an excise would take away the valuable right of defense, which has accrued in favour of Respondent and may result in grant of time bar relief. In the present case even though the present appeal involves an defect in nature of misjoinder of cause of action, this Commission in the interest of justice and considering the intent of RTI Act decided to overlook the defect in the appeal.

9. In the written synopsis file by the appellant on 26/09/2017 he had sought for prayer for directions to furnish information to questions at point No. 10 (i) to 10(vi), 13, 15, 20, 21(i) and 21(ii) of the application dated 10/09/2014 to be furnished to him. On verification of the application dated 10/09/2014 visavis the information furnished to him vide letter dated 06/02/2015 after the order of FAA, it was denied on the ground that information is not coming within meaning of "information" under the Right to Information Act 2005. The information which came to be furnished to the Appellant on 07/06/2016 the answer at point No. 10(i)(a) to (d) and others were given as "not applicable". Point 13, was denied on the ground that appellant is asking opinion of the Respondent. And at the question 15 it was information that this are part as per the provision of Panchayat. Question 20 and 21(i) and 21(ii) was replied as "yes". Since the appellant was not satisfied with the information was furnished to him above and had raised certain queries this Commission direct

to clarify the same as such the Respondent by reply dated 31/10/2016 and reply dated 21/02/2017 furnished additional information to the Appellant thereby clarifying the queries of the appellant. It was also clarified that beside the information which was furnished there was no other information available in the Panchayat records and the other information sought was in the nature of opinion.

10. The Respondent in addition to the information furnished also submitted additional reply dated 23/03/2017.

11. On perusal of the written submissions of the appellant, it is seen that he is challenging the procedure adopted by the Panchayat in passing resolution and issuing NOC and it is specific contention that resolution was adopted by the Panchayat without complying with the relevant provisions under the GPR Act and the Goa (Regulation of Land Development and Building Construction) Act. It is his arguments that the Respondent PIO was aware of non compliance of provision under the aforesaid Act by the Panchayat, its Sarpanch and other members by adopting the resolution. It is second contention that since PIO has mentioned that no final NOC is issued by the Panchayat as there is no provisions to issue NOC but only construction permission or license can be issued as such it is his contention that final NOC which was furnished to him by the PIO was given by the Panchayat unlawfully and in violation of GPR Act. It is also further contended that the provision

under 47 and 66(3) of the GPR Act are not complied by Panchayat and the Respondent was aware of the fact that resolution and the said final NOC were fabricated documents. It is his contention that executive powers to issue license and to execute resolution are entrusted to Secretary and that as per 66(3) the Panchayat ought to have issued directions to stop the construction. He had further contended about referred question/points are in relation to duties, powers and responsibility entrusted by the Government to the Secretary. As such it was his duty to report to BDO regarding any illegal Act, misconduct or misuse or abuse of powers any infringement of the said provision of the GPR Act by the Sarpanch or Members of Panchayat and he has failed to do so.

12. The Appellant herein appears to have been aggrieved by the mode and manner in which the said resolution and NOC was issued by the Panchayat. It is his grievance that Secretary failed to report the said to the BDO.

13. The Public Authority has appointed and designated the "Secretaries" of each Panchayat as PIO's for the purpose of performing duties under RTI Act, 2005. Eventhough the same person is officiating as "Secretary" and "PIO", his duties under both the designations are distinct and separate. Under the RTI Act, his duty is to provide information as it

exists to the information seeker and he is not supposed to create any information.

14. The appellant is trying to mix up both the duties. For not performing his duty as "PIO", the action can be taken against him under section 20 of the RTI Act. Whereas if any irregularities or illegalities conducted by him as "Secretary" the action needs to be take by his superior and this Commission is not empowered to deal with such issue.

15. Be that as it may be on verification of the application dated 10/09/2014 the question at sr. No. 10(i) to 10(vi), 13, 15, 20, 21(i) and 22(ii) the appellant is trying to seek the information in the form of opinion.

16. The Hon'ble supreme Court in "**Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others (Civil Appeal No. 6454 of 2011)**", while dealing with the extent of information under the Act at para 35 has observed:

"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** . 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, 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 of 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."

17. 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" .

18. The Apex court in case of Peoples Union for Civil Liberties V/s Union of India; AIR 2004 Supreme Court 1442 has held

“under the provisions of RTI Act of Public Authority is having an obligation to provide such information **which is recorded and stored but not thinking process which transpired in the mind of authority which has passed an order**”.

19. By applying the same ratio to the present appeal, I find that information sought by the appellant in the form of opinion and queries does not come within the purview of definition of information. Hence, I find no irregularity or perversity in the reply of PIO or in the order of First Appellate Authority.

20. It appears from the available records in the file that PIO has not responded application dated 10/09/2014 of applicant within stipulated time of 30 days in terms of section 7(1) so also prima facie it appears that order of the FAA Authority was also not complied within 7 days as such Showcause notice is required to be issued to him PIO under section 20(1) of RTI Act and he has to be given opportunity to explain the same.

21. In the above given circumstances following order is passed

Order

1. Appeal is partly allowed.
2. Prayer (a) is not granted
3. Issue showcause notice to then Public Information Officer u/s 20(1) of the RTI Act, calling upon him to explain why penalty should not be imposed on him for not responding application within stipulated time and for delaying information.
4. Matter fixed for reply of then Respondent PIO to showcause notice on 6/11/2017 at 10.30. a.m.

5. Appeal proceeding 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 under the Right to Information Act 2005.

Sd/-

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

Kk/-