

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 02/2018/SIC-I

Shri Shivdas Harichandra Borkar,
The Escrivao,
Comunidade of Cortalim
Cortalim, Salcete- Goa.
Pin Code: 403701

.....Appellant.

V/s.

1. Shri Tome Carvalho,
R/o H.No.116
Nauta, Cortalim Goa Pin code 403701

2. The Public Information Officer
Administrator of Comunidade,
South Zone, Margao- Goa.

..... Respondents

Filed on: 5/1/2018
Decided on: 21/05/2018

AND

Appeal No. 11/2018/SIC-I

Shri Tome Carvalho,
R/o H.No.116
Nauta, Cortalim
V/S

-----Appellant

1. The Public Information Officer
Administrator of Comunidade,
South Zone Margao- Goa.

2. The Escrivao,
Comunidade of Cortalim,
Through the Administrator,
Comunidade of South Zone,
Margao- Goa.

-----Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 15/1/2018
Decided on: 21/05/2018

1. As both the Appeal arising of common RTI application filed u/s 6(1) of Right To Information Act, 2005 and as the issue involved herein is identical , both the appeals are disposed by this common order.

2. The brief facts in above appeal No. 2 of 18 which is herein after referred to as first appeal are as under:

a) Respondent No. 1 Shri Tome Carvalho by an application dated 25/05/2017 filed under section 6(1) of the RTI Act, sought for certified copies of the certain documents from Respondent No. 2 herein. Since Respondent No. 1 was not satisfied with the reply given by Respondent No. 2 he preferred 1st appeal before the FAA on 13/07/2017 wherein present appellant and Respondent No. 2 were impleaded as Respondents and the FAA passed order dated 10/10/2017, wherein the directions were given to Respondent No. 2 herein to furnish the information to the Respondent No. 1 free of cost, within 16 days from the receipt of the order.

b) In this background the appellant have approached this Commission by the present appeal thereby seeking relief of quashing and setting aside impugned order.

c) Vide memo of appeal the appellant have contended that the order has been passed by the First Appellate Authority in a mechanical manner without application of mind and the said is not speaking order. It was further contended that the impugned order makes a private body amenable to the provisions of the 'Act' which is contrary to the Act and the Administrator of Comunidade can provide only the information which is within his powers and possession. In the said appeal the original information seeker Shri Tome Carvalho and Public Information Officer (PIO)/Administrator of

Comunidade, South Zone Margao have been made parties.

d) Notices were issued to the parties. The appellant was represented by Advocate Carlos Alvares Ferreira. Respondent No. 1 was present in person. Respondent No. 2 was represented by then PIO Shri Deepesh Priolkar and by Shri Vivek Desai.

e) Reply filed by Respondent No. 1 on 15/02/2018. No reply came to be filed on behalf of Respondent No. 2. The copy of the reply filed by Respondent No. 1 was furnish to opposite parties.

f) Vide reply the Respondent No. 1 have contended that the appellant is a Public Authority in terms of article 461 of code of Comunidade and the Respondent No. 2 who is lawfully appointed as Information Officer under RTI Act, can call for the said information from the Appellant in terms of Article 88(4) of the code of Comunidade. It was further contended that interms of article 461 of code of Comunidade, the books of the Comunidade and its archives are deemed to be '**Public**' in terms of 2423(2) of Civil Court, therefore the appellant cannot shy away from his responsibility to issue the said documents which are public documents.

3. The brief facts arises in the appeal No. 11 of 2018 which is herein after referred to as second appeal are as under:-

a) The appellant Shri Tome Carvalho, by his application, dated 25/5/2017, filed u/s 6(1) of The Right to Information Act, 2005 sought certain information/ certified copies of the documents from the PIO of Administrator of

Comunidade, South Zone Margao Goa, on 5 points as stated therein in the said application

- b) The said application was responded by Respondent PIO herein on 3/7/2017 inter alia informing appellant that information is not available in their office records and that the said application was forwarded to Respondent No.2 Escrivao of Comunidade of Cortalim vide letter dated 25/5/2017 for obtaining the required information and the Respondent No. 2 Escrivao of Cortalim Comunidade have submitted the resolution dated 19/6/2017 of the managing committee. Vide said reply the Respondent No. 1 provided him the copy of the resolution of managing committee dated 19/6/2017.
- c) As the information as sought was not furnished, the appellant filed first appeal on 13/7/2017 before the Collector I, South Goa at Margao Goa being the first appellate authority.
- d) The First appellate authority by an order dated 10/10/2017 directed the respondent No. 1 PIO to furnish the information free of cost within 15 days from the receipt of the order.
- e) According to the appellant since the information was not furnished to him despite of the order from the first appellate authority he made letter to the Respondent no. 1 on 30/10/2017. However despite of same no information was provided to him.
- f) The appellant being aggrieved by said action of PIO, has approached this commission on 12/1/2018 in this second appeal u/s 19(3) of the Act with the contention that the information is still not provided and seeking order from

this Commission to direct the PIO to furnish the information as also for other reliefs.

g) Notices were issued to both the parties. In pursuant to notices of this commission, Appellant was present in person. The Respondent No. 1 then PIO Shri Dipesh Priolkar was present along with Shri Vivek Desai and the respondent No. 2 was represented by Senior Advocate Shri Carlos Alvaries.

h) Vide memo of appeal the appellant have contended that Respondent No. 2 is the staff of Comunidade of Cortalim and the all the information held by respondent no. 2 is under control and authority of the Respondent No. 1 who approves all decision on all records held in custody of Respondent No. 2 . It is further contention that the Respondent no. 2 is mischievously placed it for the meeting of the managing committee which is uncalled for as he had sought the said information under the RTI Act. It is his further contention that respondent No. 1 failed to perform his statutory duty under the RTI Act by not issuing the necessary information as a document which was sought by him is a public document which are part and partial of respondent No. 1. It was further contended that the respondent NO. 1 failed to abide the order dated 10/10/2017.

Appellant submitted that interms of article 461 the books of Comunidade and its archaives shall be deemed public for the purpose of para 2 of article 2423 of civil code and as per article 5, the Comunidades shall be under the Administrative tutelage of the state and the Administrator can call for the said records under article 88(d) of the code of Comunidade . As such it is his

contention that he is entitled for the said information under the RTI Act and the respondent NO. 1 ought to have provided the same.

i) Advocate of Respondent No. 2 submitted that the Comunidade of Cortailm is a private body as it is not controlled nor substantially financed by Government, as such it is his contention that Comunidade being pvt. bodies doesn't come within the purview of RTI Act. He further submitted that appellant being components/shareholder of said Comunidade can also apply under the code of Commiunidad but not under RTI Act. He further submitted that first appellate authorities have not passed any speaking order nor the order is well reasoned. He further submitted that the managing committee is willing to provide him the information to the appellant which is sought by him on 14/9/2017 and on 12/1/2018 under the code of comunidade. In support of his contention he has relied upon the decision given by the Apex Court incase of Thalappan Service Co-operative bank limited V/s State of Kerela,(2013)16 Supreme Court cases page 82.

j) The representative of PIO Shri Vivek Desai sought time to furnish the requisite information to the appellant and accordingly the same came to be furnished to the appellant on 21/05/2018 .

4. The appellant then after verification of the information submitted that as desired information is furnished, he is not pressing for prayer to impose penalty. Accordingly endorsed his say on the memo of appeal.

5. Being in nature of counter appeals and as per records the information as sought for by the appellant in second appeal, who is also Respondent no. 1 in the first appeal has been furnished , though it is contended by Respondent No. 2 in second appeal as the same is purportedly under the code of Comunidade and not under RTI Act, suffice to hold that information as was applied is received by the seeker

6. Coming to the point which arises herein whether a Comunidade is a private body or a public authority as defined u/s 2(h)(d) (i) of the Act, it is to be noted that such an issue is pending decision before Hon'ble High Court of Bombay, at Goa in writ petition NO. 422 of 2012. Hence I find it appropriate not to deal with the issue whether the Comunidade is a public authority under the Act or not and be guided by the orders that shall be passed in the said writ petition.

7. However assuming for a while by admitting the contents of the appellant in first appeal that the Comunidade is a private body and that the Administrator has no jurisdiction to call for private information contained in the private books of comunidade, to deal with this contention it would be appropriate to consider provisions of " Code of Comunidade which Govern the Establishment and function of the appellant in first appeal and the role of Administrator in the affairs of the comunidade and also the provisions of RTI Act, 2005.

8. Section 2(f) of Right to Information Act , defines information as under :
 - 2.Definitions.- In this Act, unless the context otherwise requires,-
 - (a).....
 - (b).....
 - (c).....
 - (d).....

(e).....

(f) "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models data material held in any electronic form and **information relating to any private body which can be accessed by a public authority under any other law for the time being in force,**

From the above, the information can be sought from a private body by the public authority.

9. As per the application of the appellant in second appeal, the appellant has sought copy of the resolution passed by the Managing committee of the Comunidade of Cortalim and approval granted by the office of Administrator of Comunidade, South Goa/office of PIO. Hence what is sought is as existing with the PIO himself.

However in case such resolution is not presented in the office of Administrator, by exercising the powers under section 88 (d) of the code of Comunidade, the same can be called and dispense to the seeker by invoking powers of section 2(f) of the RTI Act as above.

10. While summing up my above findings, as the information at point No. 1,2,and 3 as sought by the appellant vide his application dated 25/5/2017, are admittedly in the office of PIO, hence the same could have been furnished under the RTI Act and even if information at point no. 4 is not held, the same can be provided u/s 2(f) above.

11. The above findings is also based on the ratio laid down by the Hon'ble Delhi High Court in case of Poorna Prajna Public School

vs Central Information Commission, in WRIT PETITION (CIVIL) NO. 7265 OF 2007 wherein it has held:-

“Information as defined in [Section 2\(f\)](#) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is —information|| as defined in [Section 2\(f\)](#) of the RTI Act. The term —held by the or under the control of the public authority|| used in [Section 2\(j\)](#) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body.

If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of [Section 2\(f\)](#) of the RTI Act”.

12. In the above circumstances relief sought by the appellant in the second appeal at prayer (a) , (b) and (c) becomes redundant , consequently relief (i),(ii) and (iii) in the first appeal does not required any consideration being infructuous.
13. In the above back ground, I dispose the both the appeals with the following order :

ORDER

Both the above appeals stands dismissed.

Proceedings stands closed

Notify the parties.

Pronounced in the open court. 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.

Sd/-

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

Ak/-