

**GOA STATE INFORMATION COMMISSION**  
**‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa**

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

**Appeal No. 173/SCIC/2017**

Shri Krishna N. Mayenkar,  
H. No.125, Karraswada,  
Mapusa, Bardez-Goa.

..... Appellant.

V/s

- 1) The Secretary (SPIO),  
Village Panchayat of Penha De Franca,  
Britona Bardez Goa.
  - 2) The Block Development Officer-I,  
The First Appellate Authority,  
Mapusa Bardez –Goa.
- ..... Respondents.

Filed on :25/10/2017

Disposed on:29/03/2018

**1) FACTS IN BRIEF:**

a) The appellant herein by his application, dated 28/06/2017 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under five points therein.

b) The said application was replied on 26/07/2017 furnishing part of the information and with respect to the remaining part of information it was informed that the same is not available. However according to appellant the information as sought was not furnished on false grounds and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

b) The FAA by order, dated 28/9/2017 disposed the same by holding that the information can be furnished only if held by PIO.

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c) According to the appellant the PIO is in possession of the information and he is liable to furnish the same and has therefore landed before this commission in this second appeal u/s 19(3) of the act.

d) Notices were issued to the parties. The PIO on 2/2/2018 filed a reply to the appeal. The appellant appeared initially but from 12/2/2018 he failed to remain present. In view of the continuous absence of the appellant the submissions of the PIO were heard and he was directed to file affidavit in support of his contentions of non availability of the information.

e) The PIO on 12/2/2018 filed affidavit. As per his said affidavit it is affirmed by the PIO that information at points (3) and (4) are not available in the panchayat records. The information at points (3) and (4) is the copy of the application for transfer and the documents accompanying the transfer application respectively. According to PIO the transfer of house tax was made on the bases of a resolution no.96 dated 13/5/2003 and no documents are available. It is further according to PIO that after the order of FAA he made search and no documents as sought are found in the records of Panchayat.

## **2. FINDINGS :**

a) I have perused the records and considered the controversy involved. According to PIO the information as sought at points 3 and 4 are not available. Appellant contends that the said documents are supposed to exist as apparently they

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form the bases of transfer of house tax. Being so he contends that the PIO has failed to furnish the information.

b) If one considers the status of PIO Vis a vis the act, the PIO is the custodian of records which are required to be dispensed to the seeker. The PIO is not the creator of the records nor is he answerable for non existence of the records unless he is personally responsible therefore. Though the act requires dispensation of information such information is what exist and as it exist.

c) 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 form 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 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.** A public authority is also not required to furnish information which require drawing of inferences and/or making 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."

d) In the present case the appellant contends that the information sought should exist in the office. Even by admitting for a while the same, if for any reason even by fraud the same is removed the PIO cannot be called upon to investigate and collect back the same and thereafter furnish it to seeker. In case of fraud there are other agencies to investigate and take appropriate action and in the course of such investigation, the same is recovered the same can be made available to seeker. In the present case, as of the date the same does not exist as it is not generated or taken out of the records or destroyed. The fact of non availability is affirmed by the PIO on oath in his affidavit. The same is not controverted by the appellant. I therefore cannot disbelieve the same.

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f) In the light of the above facts and the position of law I find no malafide on the part of PIO in his response u/s 7(1),dated 26/7/2017.Hence I find no merits in the appeal. Needless to say that the appellant's rights to initiate steps for recovery of documents or initiating action against PIO if the affidavit filed by him is found false, are to be kept open. consequently I dispose the present appeal with the following:

**O R D E R**

The appeal is dismissed. However the right of the appellant to initiate steps for recovery of documents or initiating action against PIO if the affidavit filed by him is found false and to seek same information if the records are traced, are kept open.

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