

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

Appeal No. 188/2017

Engineer Rabindra A. L. Dias,
Dr. Pires Colony, Block "B",
Cujira, St. Cruz, Tiswadi-Goa

.....Appellant

V/s

1. The Public Information Officer,
O/o. The Deputy Collector-I and S. D.O.,
Mathany Saldanha Administrative Complex,
Margao, Salcete-Goa

2. The First Appellate Authority,
O/o. the Additional Collector-I,
Mathany Saldanha Administrative Complex,
Margao, Salcete-Goa

..... Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 12/11/2017
Decided on: 31/05/2018

ORDER

- 1.** The Information seeker Shri Rabindra Dias by his application dated 20/04/2017 sought from Respondent No. 1 Public Information Officer (PIO) of the Office of the deputy Collector and SDO at Margao, authenticated photo copies of the records pertaining to letter addressed by Mrs. Sushila Dias which was Inwarded vide Inward No. 190 dated 4/01/2017. The said information was sought on 32 points as stated therein in the said application which was filed under section 6(1) of the Right To Information Act, 2005.
- 2.** It is contention of the appellant that the dealing hand of the Office of Respondent PIO handed over noting sheet directing cashier to accept amount of Rs. 195/- towards the certified copies. It is contention of the appellant in pursuant to the said noting sheet he paid the amount vide receipt No. 2/2017/3144 dated 11/05/2017.

- 3.** It is contention of the appellant that despite of payment of required fees, no information was furnished to him within stipulated period. As such appellant was compelled to file the 1st appeal before the Additional Collector who is Respondent No. 2 herein being First Appellate Authority (FAA).
- 4.** It is contention of the appellant that the Respondent No. 2 FAA did not disposed the said appeal within 30 days, as such he objected for conducting further hearing by Shri Agnelo Fernandes.
- 5.** It is contention of the appellant that he received order dated 18/08/2017 in the 1st appeal.
- 6.** It is contention of the appellant that since no information was furnished to him he approached this Commission by way of present second appeal on 13/11/2017 under section 19(3) there by seeking relief of providing him the information and for other relief.
- 7.** In pursuant to the notice of this Commission, appellant appeared in person. Respondent PIO Shri Uday Prabhudessai appeared and filed his reply on 27/3/2018 and on 27/4/2018. The copy of the same was furnished to the appellant .
- 8.** In the course of the hearing the respondent PIO offered to give inspection of relevant documents /files and also volunteers to furnish him the information available in their records. The appellant also agreed for such an arrangement. Accordingly appellant undertook to carry out inspection on 24/4/2018 .
- 9.** On the subsequent date of hearing i.e. on 27/4/2018 the information was furnished to the appellant which was received under protest by appellant before accepting the said information, appellant verified the same viz-a-viz the original.
- 10.** Arguments were advanced by both the parties
- 11.** The appellant submitted that it is primary responsibility of PIO to whom an application submitted to obtain and provide the information to the applicant. He further submitted that Dy. Collector,

Collector and Mamlatdar is in the ambit of same public authority and transferring the application to the Mamlatdar u/s 6(3) is not in accordance with law. It was further submitted that the form I & XIV was not given and information given is under in the signature as Deputy Collector and not as "PIO". It was further submitted that first appellate authority refused to mark his present. He further submitted that he visited Margao and spent of Rupees 3200/- as such compensation has to be paid to him. In support of his contention he cited some decision given by the central information commission.

- 12.** PIO Shri Uday Prabhu Desai submitted that the Mamletdar is a separate public authority and there are designated PIO and they are independent custodian of their record. It was further submitted that the appellant has inspected their file on 23/4/2018 and two sets of certified copies in respect of original and notarise copies found on their record are provided to the appellant and uncertified Xerox copies are issued to the appellant in respect to the Xerox copy available in the records. He further submitted that the said Xerox copies were produced by the parties therein in the said mutation appeal. It was further submitted by PIO that no separate correspondence was made u/s 7 as appellant approached their office and was told to make payment which was effected by him. It was further submitted that as many RTI application are filed by the appellant the clerk of their office by mistake took the endorsement on wrong notings. It was submitted that the information was provided to the appellant on 11/5/2017 and as appellant was not satisfied the same was again furnished free of cost during the present proceedings. It was further submitted that as the information at point NO. 11, 16 and 21 to 28 was not available with them, the same is transferred to Mamlatdar vide letter dated 20/4/2018 and point No. 16 is transferred to civil registrar vide letter dated 2/5/2018.

- 13.** In the nutshell it is the case of the PIO that he has furnished the available information to the appellant after the payment of required fees were deposited by the appellant .
- 14.** I considered the records available in the file and also the submission of both the parties.
- 15.** The first point arises for my determination is that whether the PIO is responsible to collect and collate the information from other public authority for the purpose of furnishing.
- 16.** In this context Hon'ble Delhi High Court in case of The registrar Supreme Court---V/S Comondore Lokesh K. Batra & others, LPA 24/15 and Cm No. 965/15 has held at para 15 & 16.

“As already noticed above, “right to Information” under section 2(j) means only the right to information which is held by any public authority . We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the appellant “.

- 17.** Yet in another decision in the Supreme court of India in case In civil Appeal No. 6454 of 2011, Central Board of Secondary Education and Anr. Vs Respondent Aditya Bandopadhyay and others at para 35 has held.

“ 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 of the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority , to collect the collate such non-available information and then furnish it to an applicant”.

- 18.** The High Court of Patna also express a similar view in Shekar Chandra V/S state information Commissioner Bihar and observed that the RTI contemplated giving only such information which is

available and held in record. It does not expect the Public Authority to carry out enquiry and collate information and then to make it available to the applicant .

- 19.** Thus in view of ratios laid down by the above courts , I am not in agreement with the contention of the appellant that PIO ought to have collected the information and ought to have furnished him.

- 20.** Though the respondent PIO contended that appellant received the documents under protest, on 12/06/2017 the note sheet relied by the Respondent PIO doesn't reveals it was pertaining to application dated **20/4/2017**. On the contrary the entries on the same reflects pertaining to application dated 21/03/2017 and the date on the said note sheet below the signature of PIO is recorded as 29/03/2017. The receipt dated 11/05/2017 also does not specify the payment made in respect of which RTI application as such I am not convinced with submission of PIO that Clerk of their Office inadvertently took the entry on wrong noting.

- 21.** When the matter was fixed for orders, an application/written arguments came to be filed in the registry of this office on 25/05/2018. Vide para 3 of the said submissions, the appellant had contended that requisite copy of the document which was sought by him is intentionally denied, as such clarification was sought from him and his contention is that information at point No. 10, 16, and point no. 21 to 28 sought vide application dated 20/04/17 have not been furnished to him. It is also further contended that the covering letter dated 2/05/2018 addressed to the Civil cum Sub Registrar Margao and letter dated 25/04/2018 addressed to Mamlatdar of Salcete Margao by Respondent PIO purportedly interms of section 6(3) of RTI Act, 2005 have not been addressed to PIO. Opportunity is granted to PIO to reply in respect of the queries raised by the appellant.

22. The PIO remained absent neither filed any counter reply to the submissions of the appellant. The PIO have specifically submitted that the information at point no. 11, 21 to 28 since not available have been transferred to the Mamlatdar of Salcete u/s 6(3) on 25/04/2018 and point No. 16 is transferred to Civil cum Sub Registrar, Margao, vide letter dated 2/05/2018 and that the copy of the same is forwarded to appellant, the said fact has not been disputed by appellant. Since the information pertaining to the above points are available with the other public authority, as such Respondent No. 1, PIO herein cannot be directed to provide the same. The PIO of the said concerned authority is required to deal the same independently in accordance with law. As such I find no intervention of this Commission is required with respect to above points. However, with regards to point no. 10 since PIO has not come out with an specific case that the same is not available with them, commission presume and hold that the same is available with Respondent No. 1. As such the same is required to be provided to appellant free of cost.

23. Vide memo of appeal and also by corrigendum dated 8/5/2018, and also vide written submission dated 25/05/2018 Appellant has prayed for granting him compensation. It is his contention that he was compelled to travel by own car for the scheduled dates of hearing before the first appellate authority and as a result has spend Rs. 2000/- to travel from Santa cruz to Margao and vice versa. Besides the noting sheet in RTI Appeal/EST/21/2017, he has not produce any cogent and convincing evidence of the detriment caused to him. Nevertheless the records shows that appellant himself had restrained first appellate authority from passing order . If such an approach was not adopted by appellant, the possibility of first appellate authority allowing his first appeal cannot be ruled out. In the said circumstances, I am of the opinion that this is not an fit case for granting Compensation to appellant.

- 24.** It is contention of the appellant that the Respondent No. 1 PIO has violated the provision of the Act by not furnishing information in time and as such he should be penalise u/s 20 of the Act.
- 25.** There is nothing on record to show that the application dated 20/04/2017 was responded or that information was furnished within a stipulated time by the PIO or that he had shown his bonafides by providing the information even during First appeal. The records of FAA also doesnot reveal that if PIO had taken a stand of providing information to appellant on 12/06/2017. Apparently there is delay in furnishing information.
- 26.** Moreover in this case the PIO since the information at point No. 11, 21 to 28 was not available with Respondent No.1, he ought to have in terms of section 6(3) of RTI Act, transferred the same to the concerned public authority within 5 days from the date of receipt of application. There is also delay in transferring the application with regards to above points to concerned Public Authority.
- 27.** I find primafiacia that PIO failed to furnish information within 30 days as contemplated under RTI Act. However before imposing penalty an opportunity is required to be given to explain his version.
- 28.** In the above given circumstance, I pass the following order:-

ORDER

- a) The appeal is partly allowed.
- b) The Respondent PIO is hereby directed to furnish the information at point no. 10 as sought by appellant vide application dated 20/04/2017 within 15 days from the date of the receipt of the order.
- c) Issue showcause notice to PIO to showcause as to why action u/s 20 (1) of RTI Act should not be initiated against him for

not responding application interms of section 7(1) of RTI Act 2005 and for delaying the information returnable on 13/06/2018 at 10.30. a.m.

- d) In case the PIO at the relevant time , to whom the present notice is issued is transferred , the present PIO shall serve this notice alongwith the order to him and produce the acknowledgment before this commission or before the next date fixed in the matter alongwith the full name and present address of the then PIO.

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

Kk/-