

GOA STATE INFORMATION COMMISSION

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

Appeal No. 216/2017

Shri Ali Makbul Shaikh,
H.No,391, near Govt. Hospital,
Carriamoddi, Curchorem-Goa.

..... Appellant

V/s.

1. Sudhir S. Kerekar,
State Public Information Officer (PIO),
Deputy Collector & SDO,
Pernem Goa.

2. First Appellate Authority (FAA),
Addl. Collector-I,
Collectorate Building,
Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:7/12/2017

Decided on: 24/1/2018

ORDER

1. The appellant Shri Ali Makbool Sheikh, has filed a present appeal praying that the Respondent No. 1 PIO be directed to furnish the information sought by him vide his application, dated 9/8/2017 and also for invoking penal provision raised against Respondent No. 1 PIO.
2. The facts in brief leading to present appeal are that the appellant, Shri Ali Makbul Shaikh submitted an application on 9/8/2017 seeking certain information at point No. 1 to 3 pertaining to application and documents submitted by Shri Rohan Rana for regularisation of structure with an area of 66 Sq.meters in the property bearing survey No. 70/9 at Arambol, Pernem, Goa under

the Goa regularization of unauthorized construction Act,2016.The said information was sought under section 6 of the Right to Information Act, from the PIO of office of Dy. Collector and SDO Pernem, Goa. Who is the Respondent No. 1 herein.

3. The above application was responded by the PIO of office of Dy. Collector and SDO Pernem Goa vide his letter dated 1/9/2017 interalia informing the appellant that the application received for regularisation of structures under the Goa regularization of unauthorized construction Act, 2016 are forwarded to the office of Mamlatder of Pernem for necessary action and the appellant was directed to approach the PIO of Office of Mamlatdar of Pernem for necessary information.
4. Being aggrieved by such a response of PIO, the appellant therefore preferred 1st appeal on 18/9/2017 before the Additional Collector at Panajim being first appellate authority.
5. The respondent No. 2 first appellate authority by an order dated 6/10/2017 directed the PIO and Dy. Collector Pernem to collect all the required information from the office of Mamlatdar and to provide it to appellant within 10 days, free of cost.
6. According to the appellant the order of the first appellate authority was not complied by Respondent No. 1 PIO and as he did not received the information, as such he was forced to approach this commission on 6/12/2017 by way of second appeal filed u/S 19(3) of RTI Act,2005 .
7. In pursuant to the notice of this commission, the appellant was represented by Shri Firoz Khan On behalf of Respondent No. 1 Shri Sudhir Kerkar was present. Respondent No. 2 absent.
8. Reply filed by Respondent PIO on 24/1/2018. Copy of the same was furnished to the representative of appellant .

9. It is the contention of the appellant that he had sought for the certified copies of the said information in order to initiate legal action against one Mr. Rohan Rana as the said unauthorised construction falls within 500 mtrs from HTL of CRZ and as per the section 3 of the Goa regularization of unauthorized construction Act,2016 an authorised officer shall not entertain any application under sub section 1 if said unauthorised construction fall within the limit of the area covered under the costal regularisation Zone.
10. The Respondent submitted that the information as sought by the appellant is not available in their office and the same is available in the office of Mamlatdar of Pernem. As such it is not possible for him to provide the same.
11. I have scrutinised the records and considered the submission made by both the parties.
12. Section 6(3) of the RTI Act clearly states

“where the information is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and to inform the applicant immediately about such transfer. And that it should be made within 5 days from the date of receipt of the application”.
13. In the present case the respondent PIO have not taken the recourse to section 6(3) of RTI Act. The Respondent PIO directing to appellant to approach PIO of office of Mamlatdar is not in accordance with the procedure laid down in the RTI Act. It was abundant duty of PIO to transfer the said application to the PIO of Office of Mamlatdar Pernem interms of section 6(3) of RTI Act

which the PIO herein has failed to do so. The said provision is incorporated in the RTI Act in order to grant fast relief to the information seeker. Hardships have been caused and lots of time of the applicant has been wasted in pursuing said application. Such a thing could have been avoided if PIO had transferred the said application to the respective public authority at the initial stage itself. The PIO is hereby directed to be vigilant henceforth while dealing with the RTI applications.

14. 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*".

15. In view of the ratio laid down by the Apex court in Aditya Bandhopadhaya (Supra), I am of the opinion that first appellate authority have erred in passing such order directing Respondent PIO to collect all required information from the PIO of the office Mamlatdar Pernem and then to provide the same to the appellant.

16. The representative of appellant during the course of hearing submitted that he has got no grievance if the said application is transferred u/s 6(3) to the concerned authority and he graciously waived the prayed of penalty.
17. Since the information is available with the office of the Mamlatdar Pernem, I am of the opinion that the opportunity has to be given to the PIO of the said office to deal the said application in accordance with law and I feel ends of justice will meet with the following order.

ORDER

The respondent No. 1 PIO is hereby directed to transfer the said application dated 9/8/2017 filed by the applicant under section 6(1) of the RTI Act, to the PIO of office Mamlatdar Pernem within 5 days from the date of receipt of the order in terms of section 6(3) of RTI Act and the PIO of office of Mamlatdar is hereby directed to dispose the said application within the stipulated time as contemplated u/s 7 of RTI Act.

Appeal disposed accordingly.

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 against this order under the Right to Information Act 2005.

Proceeding stands close.

Sd/-

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

