

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

Appeal No. 219/2018/SIC-I

Shri Nilesh Raghuvir Dabholkar,
House No. 275/2, Dabholwada,
Chapora Anjuna, Bardez-Goa

....Appellant

V/s

- 1) The Public Information Officer (PIO),
The Mamlatdar of Bardez and
Administrator of Devalayas,
Government building,
Mapusa-Bardez Goa.
- 2) The Deputy Collector and S.D.M of Bardez,
First appellate authority (FAA),
Government building,
Mapusa-Bardez Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 11/09/2018

Decided on:14/11/2018

ORDER

1. The second appeal came to be filed by the appellant Shri. Nilesh Dabholkar on 11/09/2018 against respondent no 1 PIO of Office of Mamlatdar of Bardez and Administrator of Devalayas at Mapusa and against respondent no. 2 First appellate authority under sub section 3 of section 19 of RTI Act, 2005.
2. The facts in brief leading to present appeal are that the appellant vide his application, dated 24/04/2018 had sought for certified copy of the donation documents/gift deed/sale deed if any exhibited in favour of Shri Siddeshwar Devasthan, in respect of the land named Belwachi Galli (bedkeche Gallit) situated at Charpora village of Bardez Taluka which was surveyed under survey no 381/3 admeasuring an area of 0.25.50 sq.mts possessed by Shri Siddheshwar Devasthan. The said application

was filed in exercise of his right under sub section (1) of section (6) of RTI Act, 2005 and the said information was sought from PIO of office of Administrator of Devalaya at Mapusa who is the Respondent No.1 herein .

3. It is the contention of the appellant that no reply was received from the Respondent No. 1 PIO nor information was furnished to him within the stipulated time of 30 days as contemplated under the RTI Act, as such he after the completion of 30 days, made multiple visits to the office of respondent no 1 requesting to furnish information sought in the said application, however the clerk never gave any heed to appellant request and gave him lame excuses on one or other pretext.
4. It is the contention of the appellant being aggrieved by such an action of respondent no 1 PIO and as no information furnished to him he preferred 1st appeal on 22/06/2018 before the Deputy Collector of Bardez who is the respondent no 2 herein being First Appellate Authority (FAA).
5. It is the contention of the appellant that the respondent no 2 FAA passed an order on 14/08/2018 directing respondent PIO to provide the information sought by the appellant. However according to the appellant the respondent no 1 PIO failed to provide the said information to him despite of the directions from the respondent no. 2 First Appellate Authority (FAA).
6. It is the contention of the appellant that after the order of FAA he received a reply from Respondent PIO on 24/08/2018 thereby informing him that information sought in the application is not available in their office as such they had forwarded his RTI application to the President of Siddheshwar Devasthan, Chapora, Anjuna with directions to furnish the point wise information to their office and incase the Devasthan submits the said information the same would be furnished to him. The copy of the letter dated

03/08/2018 made to the President of Siddheshwar Devasthan by Respondent No. 1 PIO was also enclosed to the said reply.

7. In this background the appellant have approached this commission in this second appeal as contemplated under section 19 (3) of RTI Act, 2005 seeking relief of directions to PIO to furnish him the information as sought by him vide application dated 24/04/2018.
8. The notice of this appeal was sent to both the parties. In pursuant to which appellant appeared alongwith Advocate Vishal Matonkar. Respondent PIO was represented by Shri Ashok Naik. Respondent no 2 FAA opted to remain absent.
9. Reply filed by respondent no 1 PIO on 05/11/2018 alongwith enclosures. Respondent PIO also filed his affidavit on 14/11/2018.
10. It is the contention of the appellant as contended in memo of appeal that the respondent no 1 being the custodian of records and administrator of all Devalayas in taluka of Bardez and as such they should have provided information to him and the failure to provide information sought by him is bad in law and illegal.
11. The Respondent PIO vide his reply and affidavit have contended that the information sought by the appellant vide his application dated 24/4/2018 is not available in the records of their office. It was further contended that he has made efforts to secure the same from the Managing Committee of the said Devasthan and vide letter dated 3/8/2018 he had made a written request to the President to furnish the said information to him within a weeks time for onward submission to the appellant , he further contended that vide letter dated 15/10/2018 he again send a reminder to the president of Siddheshwar Devasthan to furnish point wise information within 2 days. However the president of the said Devasthan did not pay heed to his request and refused to provide him information on the ground that Devasthan are not public authority as defined u/s 2(h) of the Right to Information

Act, 2005, hence not liable to give any information under the RTI Act. In support of the said contention he has relied upon the letter dated 25/10/2018 addressed to the Mamlatdar of Bardez at Mapusa by the President of Siddheshwar Devasthan and the letters made by him dated 3/8/2018 and letter dated 15/10/2018 made to the President of Siddheshwar Devasthan.

12. I have considered the records available in the file so also submission of the parties.
13. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

“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 .”

14. Yet in another decision, the Apex court in case of peoples Union for Civil Liberties V/s Union of India, AIR 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 an passed an order”.

15. Thus from the ratio laid down by the apex court, only the existing and available information in the form of data/records, the applicant can have accessed to such information.

16. The Delhi High Court in LPA No. 14/2008 Manohar Sing V/s N.T.P.C. has held;

“The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of which reply was sent and hence the directions to furnish the records if the same is not in existence cannot be given.”

17. Since the PIO in the present case have taken the stand that no such documents as sought by the appellant are available in their office records and the Devasthan had not submitted the said information to the PIO despite of their repeated request hence no any direction can be issued to Respondent PIO to furnish the same as it would be redundant. However the right of the appellant to seek the same information from any other appropriate authority is kept open

The appeal disposed accordingly. 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