

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 59/2017

Pradeep Mono Naik Desai,
R/o. H. No. 45, Quitol,
Fatarpa, Quepem-Goa

.....Appellant

V/s

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

At Comunidade Building, Margao-Goa

2. The Assistant Public Information Officer/
Escrivao of Commnidade of Margao,
at Comunidade Building, Margao Goa

3. The First Appellate Authority,
Additional Collector-I,
Office of Collectorate South ,
Margao-Goa

....Respondents

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

Appeal filed on : 8/05/2017

Decided on: 6/08/2018

ORDER

1. The appellant Shri Pradeep Mono Naik Desai by his application dated 26/12/2016 requested certain information from Respondent No. 1 PIO of Office of Administrator of Comunidade pertaining to records of archives of Margao Comunidade of the Paddy field known as "1/2 DE SOLCHOCHOVOTO", Sordio crop, Lote No. 237, Unicolando, recorded in the name of Satiavoti Bandodkar of Murida Grande Nuvem, Salcete of serial No. 1960 at page 216 overleaf to page 217 of Livro de Contas Correntes No. 95, Volume II of the year 1976. The appellant sought following information of above subject.

- a) Provide attested copy of the Livro De Contractos.
 - b) Provide attested copy of the Livro De Tomb.
 - c) Provide attested copy of the Livro De Agrimessor.
 - d) Provide attested copy of the Contas Correntes.
2. According to the appellant he received letter dated 10/01/2017 from Respondent No. 1 PIO interalia informing appellant that his application was forwarded to the Respondent No. 2 Escrivao of Comunidade of Margao vide Office Memorandum dated 28/12/2016 for obtaining required information and in the said connection the Respondent No. 2 submitted resolution of Managing Committee dated 6/01/2017, informing that Comunidade Margao doesnot come under the purview of RTI Act, 2005. Vide said letter also the appellant was informed that required information sought by him is not available in his office records.
3. Being aggrieved by such response of Respondent No. 1 and 2 the appellant preferred 1st appeal on 31/01/2017 before Additional Collector (1) South Goa who is Respondent No. 3 herein being First Appellate Authority (FAA).
4. The Respondent No. 3 FAA by an order dated 24/03/2017 directed Respondent No. 2 Escrivao of Margao Comunidade to give all the information sought by the Appellant within period of 10 days to the Administrator.
5. According to the appellant despite of the order of Respondent No. 3, FAA no information came to be furnished to him within stipulated time, as such being aggrieved by the action of both the Respondents No. 1 and Respondent No. 2, the appellant has approached this Commission on 8/05/2017 thereby

seeking directions to Respondent No. 1 and Respondent No. 2 for providing him information as sought by him by his application dated 6/12/2016 and for other reliefs of penal nature and compensation.

6. The matter was taken up for hearing and listed on board. In pursuant to notice of this Commission, appellant appeared initially during few hearings and then he opted to remain absent. Respondent No. 1 Shri Paresh Faldessai was present alongwith the PIO Shri Deepesh Priolkar. Respondent No. 2 Shri Amaro Afonso was present alongwith Advocate Savio Correia.
7. Reply filed by Respondent No. 1 PIO on 9/10/2017. Additional reply came to be filed by Respondent No. 1 on 31/10/2017, on 5/1/2018 and on 8/6/2018. Respondent No. 2 Escrivao filed his reply on 21/11/2017. An application came to be filed by Respondent No. 2 on 13/12/2017 for impeding Comunidade of Margao as one of the party. Said application was disposed by this Commission on 16/05/2018.
8. As appellant did not show any interest and as considered time has elapsed, the Commission felt it appropriate to hear Respondents and to dispose the appeal on merits.
9. The appellant vide memo of Appeal contended that under code of Comunidade 1961, the each respective Comunidade as well as Administrator of Comunidade is responsible for maintenance of records and are Custodian of records and as such Respondent No. 1 PIO and Respondent No. 2 Escrivao are lawfully bound to provide the information under the RTI Act.

Vide memo of appeal it is contention of Appellant that Respondent No. 1 and Respondent No. 2 have by collusion and conspiracy suppressed/denied information deliberately to defeat the provisions of RTI Act, 2005

10. Vide above replies, it is submitted by Respondent No. 1 PIO that he had issued memorandum to Respondent No. 2 to provide information to the applicant as per article (88)(d) of code of Comunidade. It was further contended most of the Managing Committee of Comunidade of South Goa Margao do not furnish information on the ground that Comunidade doesnot come under the purview of RTI Act, 2005. It was further contended that inspite of his directions Respondent No. 2 Escrivao failed to furnish the required information to the appellant as such he had issued Showcause Notice dated 27/10/2017 to the Respondent No. 2. It was further contended that the information sought by the appellant is not available in the custody of Respondent No. 1 but he said information is held with Office of Comunidade Margao. And he showed his inability to provide the same on account of non availability of the records.

11. The Advocate Savio Correia submitted that Respondent No. 2 that is Escrivao of Comunidade of Margao has not been designated as APIO and there is no such Order has been issued to him as APIO as such it is his contention that Respondent No. 2 has been wrongly arraigned to this Appeal and he has to be dropped from this proceedings. He further submitted that even assuming for a while that he has been appointed as Assistant Public Information Officer (APIO) the only role is to accept the application and to transfer the same to PIO. It is further contended that the Respondent No. 2 not

given opportunity whatsoever by the Respondent NO. 3, FAA to present his case and the Order dated 24/03/2017 was passed arbitrarily and in undue haste. It was further submitted that notice was issued by FAA on 9/03/2017 to appear on 24/03/2017 without any enclosure such as memo of appeals etc. as such a letter was made by him on 21/03/2017 but Respondent No. 3 failed to provide same as such no reply could be filed before FAA on 24/03/2017 and that the FAA without giving Respondent No. 2 time disposed the 1st appeal on the said day itself by coming to wrong findings that the Escrivao was trying to delay information. It was further contended that he received the copy of Order of FAA dated 24/03/2017 only on 5/04/2017 followed by Memorandum dated 13/04/2017 of Administrator. It was further contended that Respondent No. 2 Escrivao vide letter dated 8/05/2017 informed Administrator that the appeal is proposed to be filed before the Information Commission but the Administrator rejected the said request. It was further Contended that Escrivao then called extraordinary meeting on 29/05/2017 as he was prevented by Administrator to file appeal and as there was memorandum dated 13/04/2017 directing to furnish him information.

12. Advocate S. Correia further submitted that Comunidade is not Public Authority as defined u/s 2(h) of RTI Act, 2005 and the Comunidade are in existence even before code of Comunidade came into existence. He further contended that earlier each Comunidade had separate code of Law as such by code of Comunidade it has been codified as one, hence it is his contention that Comunidade is not creature of any State Legislation.

He further contended that annexure "A" enclosed to his reply dated 21/11/2017, nowhere mentions that finance was granted directly or indirectly by Government and all heads of income are set out therein.

It is his further contention that Comunidade does not perform any public duties or statutory duties or functions related to Public Administrations and the day today affairs of the said Comunidade are managed by Managing Committee elected by Components/Share Holders/Gaonkars as such it is contention that the Respondent No. 2 is only Ex-officio Member of managing Committee without voting rights and his functioning is supervised by the Chairman of the Managing Committee as per section 8 of article 72 read with sub article (3) of article 72 of Code of Comunidade.

13. It is further contended that the Respondent No. 2 is only Custodian of the records of Archives of Comunidade and is responsible to the Administrator. He further contended that records and archives are properties of Comunidade which is private body as such Respondent No. 2 Escrivao cannot part away with the information and cannot act against the direction of the Managing Committee. He also contended that the Respondent No. 1 PIO in his reply dated 9/10/2017 before this Commission has also admitted such a fact.

14. He further submitted that the article 445 and 461 could be stressed to limited purpose and if the tumbo books are produced in the Court then the same suppose to be considered as Public documents.

15. It was further contended that report of Commission constituted by the Government also held that Comunidade are private body and it is sufficient to exclude from Section (h) (d) (i) of the RTI Act 2005.
16. It was further contended that powers of Administrator u/s 125 nowhere gives Administrator powers to call for records and to provide it for 3rd party. Nor any powers given to Administrator to direct Escrivao to furnish any copies of the records. The Administrator under subsection 8 of section 125, he can only come and inspect the records of the Comunidade.
17. It was further contended that inspite of the above factors he made every efforts to secure the information from the Managing Committee of Comunidade but he was prevented from doing so by Managing Committee. It is contention that on receipt of the memorandum dated 28/12/2016 from Respondent No. 1 Administrator he immediately placed the said matter before Managing Committee and the Managing Committee passed resolution that no information could be furnish as they donot came under the definition of Public Authority.
18. In the nutshell it is case of the Respondent No. 2 Escrivao that he has made an efforts within his powers to provide the information. His grievance was that Opportunity to be heard was not given to him by the FAA which is against the Principal of natural justice and that article 125 has to be read with article 457 /and doesnot give powers to call for records from Escrivao and Administrator only gets powers to inspect the records of Comunidade. It is also his further

contention that Information Commission doesnot have jurisdiction over Authority that are not Public Authority and over officials who are neither PIO's and APIO's.

19. I have perused the records and also considered that submissions made by the parties. At the outset, since the Hon'ble High Court at Goa in writ petition No. 422 of 2012 is seized with the issue whether the Comunidade is a public authority or not, as such I find it appropriate not to deal with issue whether the Comunidade is private authority or not and be guided by the orders that shall be passed in the said writ petition.

20. Nevertheless on perusal of application it is seen that appellant is seeking information pertaining property document registered in the name of Satiavoti Bandodkar and the fees etc. paid by her. In other words the appellant is trying to seek property documents executed between third party i.e. Satiavoti Bandodkar and Margao Comunidade. Though the appellant is not required to state the purpose for which information sought, however the Appellant has nowhere spelt out or not come out with any specific case that the said information of third party was sought by him in a larger public interest.

21. Be that as it may:-

As per article 116 and article 117 states that for each taluka of Goa, Salcete and Bardez there shall be independent office of Administraor of Comunidade and the Administrator Office of the Comunidade are considered for all purposes as public offices.

Further as per the circular issued by the Department of Information and Publicity the Administrator of Comunidades, South Zone, Margao at serial No. 97 have been declared as Public Authority and Administrator has been designated as PIO.

22. The article 133 states "every year all the Comunidade books, close files and useful paper which are 10 year old shall be send to general archives which shall be in the Charge of Administration.

Article 134:- states that "the books shall be preserved in close shelf properly separated Comunidade wise or least in separate shells for each Comunidade.

Article 135:- states that the Secretary of the Administration is the conservator of general archives and as such, it shall be his responsibility to receive all books and papers referred to in article 454, paragraph 2, by issuing necessary receipt to the Clerks of Comunidade on one of the duplicates of the inventory referred to in article 137, para 2 and it shall be responsible for their preservation, by fulfilling all the duties imposed by this code to the Clerks of Comunidade as regards the archives of each Comunidade.

In Article 137 § 2 :- states that "in the first fortnight of April, in each year the President of the Managing Committee, the Attorney and the Clerk of Comunidades, forming a Commission, should sort out the books, closed files and papers which under the terms in sole paragraph of article 133, should be sent to the general archives and the Clerk shall send them to the Administrative Office before the 30th of same month accompanied by an inventory, in duplicate, signed by all the members of committee.

§ 3. The failure to comply with what is contained in preceding paragraph, the President of the Committee, the Clerk and the Attorney of the Comminidade shall be liable to pay each one a fine of Rs. 300 \$ by Order of the Administrator.

23. As per article 454 § 2 also " the finished books and papers more than year old shall be collected in the archives of the administration office under the sole paragraph of article 133."

24. Hence on bare reading of article 133 to article 140 read with article 454, it is clear that duties lays down of maintenance of records, its preservation etc of Comunidade are by Administrator and Secretary in its general archives.

25. Article 88 also speaks that:- "the land dealings or any such important matters shall be sent to the Administrator of Comunidade for maintaining duplicate copies in his office. All the documents and records of the Comunidades shall be under the custody of Registrar, who shall be responsible to the Administrator of Comunidades."

26. In other words under the rules laid down under code of Comunidade 1961, the Administrator of Comunidade as well as individual Comunidade independently responsible for the maintenance of records.

27. As such the Commission sought the clarification from Advocate for Respondent No. 2 who informed Commission that the information sought by appellant is about 50 years old. Considering the facts of the present case since records sought by the Appellant are more then 50 years, it was for the

Administrator of the Comunidade, South Goa at Margao to maintained and preserve the past books of Comunidades being a Custodian of general archives.

28. An clarification was also sought from Respondent No. 1 PIO to which both the Respondents namely Shri Paresh Faldessai and then PIO Deepesh Priolkar submitted that the Administrator Office at Margao has not kept any past records in general archives of any of the Comunidades coming under their jurisdiction interms of their article 133 to 140 of the code of Comunidade and it was further submitted by present PIO Shri Paresh Faldesai that the information sought by the appellant doesnot come under the ambit of article 133 to 140 code of Comunidade.
29. Since it is specific case of Respondent No. 1 PIO that records sought by appellant are not available with them, and are not required to be maintained by Administrator as per requirement of article 133 to article 140 of code of Comunidade, and despite of several efforts they unable to secured the same from Comunidade of Margao as such considering the above position. I am unable to pass any further directions to furnish information as it would be redundant now.
30. The peculiar facts and circumstances of this case does not warrant levy of penalty and compensation, hence the same cannot be granted.
31. However till date since the general archives are not maintained by the public authority concerned herein i.e. Office of Administrator of Comunidade South Zone at Margao, by invoking the powers granted to this Commission u/s 25(5)

read with 19 (8)(IV), I hereby recommend public authority concerned herein i.e. Office of Administration of Comunidade, South Zone at Margao Goa to strictly comply to the provisions as laid down in article 133 to 140 of code of Comunidade.

With the above directions, appeal proceedings stands closed.

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.

Sd/-

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

Kk/-