

# 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. 103/2017**

- 1) Shri Anthony J. D'souza,  
House No. 1193,  
Anna Vaddo, Ximer,  
Candolim, Bardez-Goa. .... Appellant

V/S

- 1) The Public Information Officer,  
Office of the Village Panchayat Candolim,  
Bardez -Goa.
- 2) Mr. Francis Fernandes,  
Ex-Public Information Officer,  
Village Panchayat of Candolim,  
Presently posted and working at  
Thivim Village Panchayat,  
Thivim-Goa.
- 3) The First Appellate Authority/  
Block Development Officer-1  
Mapusa, Bardez-Goa. .... Respondents

**FILED ON :17/07/2017**  
**DECIDED ON :27/7/2018**

## **1.FACTS IN BRIEF:**

- a) The fact in brief as pleaded by the appellant are that the appellant by an application dated 21/09/2016 filed under The Right to Information Act 2005 (Act for short) sought information from the Public Information Officer, Village Panchayat of Candolim, Bardez-Goa(PIO).Said application was replied by PIO vide his letter no. VP/C/33/2684/2016-17 dated 27/10/2016.

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b) According to appellant as he was not happy with the information provided by the PIO, vide his said reply dated 27/10/2016, he filed a fresh application dated 08/11/2016 under the act with the PIO. The said application was replied by reply, dated 08/12/2016.

c) According to appellant considering the said applications dated 21/09/2016 and 08/11/2016 and the replies dated 27/10/2016 and 07/12/2016 the PIO's herein were guilty of violating the act by not furnishing complete information by misleading the Appellant by providing false information. The appellant has drawn comparison between the said two applications.

According to him in the application dated 21/09/2016, the Appellant has asked at Sr. No.1 of the said application for certified copies of the action taken after the site inspection carried out on 04/02/2016 and 21/04/2016 and that in reply dated 27/10/2016, at point No. 1, the PIO Mr. Rui Cardoso, has stated that after inspection, it is found that there is no prima facie case in the matter and hence the proceedings are closed.

Whereas in his application dated 08/11/2016 at Sr. Nos. 1, 2 & 3, he has asked for the copies of the site inspection report and Panchanama prepared during their inspection and also copies of the decision/resolution taken by the Panchayat. To said application PIO. Mr. Francis Fernandes, vide his letter No. VP/C/33/3192/2016-17 dated 07/12/2016 at Sr. No. 1 to 3, replied that there are no inspections recorded on 04/02/2016 and 21/04/2016 and proceedings are still pending.

d) Thus according to the appellant the information is totally contrary to the earlier information provided vide letter

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No. VP/C/332684/2016-17 dated 27/0/2016 by the previous PIO and prima facie showed that one of the replies of the Public Information Officer i. e. either 27/10/2016 or 07/12/2016 contained false information.

e) It is further according to appellant that with respect to questions at Sr. nos. 8, 9,10 & 11 of the application, dated 08/11/2016, the PIO has merely stated “asking query interpretation, seeking opinion of the P.I.O. is outside the purview of R.T.I. Act 2005.” Which according to him is not a valid information or reply.

f) It is with these grievances that the appellant approached the First Appellate Authority (FAA) in first appeal in respect to the second application, dated 08/11/2016, which appeal was disposed on 3/5/2017 after seeking clarification from the PIO.

g) The appellant being aggrieved by the said order of the FAA the appellant has filed this second appeal u/s 19(3) of the act on the grounds as set out therein.

h) According to appellant FAA failed to see that two different Public Information Officers had given totally contrary information in their replies dated 27/10/2016 and 07/12/2016 and that without deciding the application dated 19/04/2017 proceeded to dispose off the Appeal. According to appellant FAA failed to see that the excuse given by the Respondent No. 1 in his clarification dated 06/03/2017 that the Respondent No. 2 had not been briefed properly and therefore gave information that the inspection is pending, is false and that the Respondent No.1 is guilty of dereliction of duty as he has not kept records/destroyed records of the inspections which allegedly took place on 04/02/2016 and 21/04/2016 and

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was furnishing information based on information in his mind which is contrary to the Right to Information Act.

i) On the above grounds the appellant has prayed for direction to direct the PIO to furnish the information sought vide application, dated 8/11/2016 as also for penalty against the PIOs for furnishing false and misleading information.

j) Notices of this appeal were sent to the parties pursuant to which they appeared. Adv. K. Pednekar appeared on behalf of the appellant, whereas Adv. S.V. Dessai appeared for respondent no.1 and Adv. K. Ekoskar appeared for the respondent no.2. Written arguments were filed on behalf of the parties. Advocates for the parties were also heard orally.

## **2. FINDINGS:**

**a)** Perused the records and considered written arguments and the oral submissions advanced on behalf of the parties. Before this Commission there are two applications filed by appellant u/s 6(1) of the act. The first one dated 21/09/2016 and the other dated 8<sup>th</sup> November 2016.

**b)** The appellant herein has sought several prayers in this appeal, being to direct the PIO to furnish information sought vide his application, dated 08/11/2016. The appellant has also sought relief of imposition of penalty against the PIO. Advocate for appellant, in the course of hearing of this appeal, on 09/02/2018 has clarified that the appellant wants this Commission to consider the relief for furnishing information as sought in the said application, dated 08/11/2016.

**c)** For considering the appellants first prayer for ordering information, this commission on perusal of the said

application, dated 08/11/2016, finds that the appellant at point (1) has sought certified copies of the inspection report and panchanama on 04/02/2016. The PIO in his reply has answered that there is no site inspection conducted on said date. Consequently no copies are generated hence are not furnished.

**d)** Similarly point (2) and (3), which also pertains to copies of site inspection fixed on 21/04/2016, are not supplied by PIO as no such documents exist in the records in view of not conducting site inspection.

**e)** Requirements of points (4) and (5) are interrelated. In response to said requirements of appellant the PIO has informed that no resolution is passed. Regarding the factual position the PIO has furnished to appellant a copy of reply to B.D.O. Mapusa. Thus the said points are replied by PIO.

**f)** The information sought at points (6) to (11) pertains to the information in respect of complaint filed by appellant. It is informed by the PIO that the complaint is not registered as no complaint register is maintained, which is the reply to point (7). In respect of (6) copy of the complaint is furnished.

At points (8) to (11) of the application the appellant has sought the reason for non registration and pendency of the complaint dated 15/04/2016. In this respect it is to be noted that the PIO is the custodian of the information of the Authority. He does not create or generate information. PIO thus is not responsible to know the reasons for creation or non creation of records. PIO has to dispense the information in the form and as it exit with the authority.

g) 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 from 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.”*

**h)** With reference to the complaint, dated 15/04/2016, which is referred to by appellant, the PIO, by furnishing the copy to the appellant has informed him that the same is not registered as no complaint register is maintained. Consequently there cannot be further progress or decision therein. In any case and assuming for while that the complaint dated 15/04/2016 filed by appellant was required to be acted upon by the panchayat but actually not done, the reason for not proceeding with the same. does not constitute dispensable information under the act.

Considering the request for information vide said application, dated 8/11/2016 and the reply of PIO, Commission finds that the same is appropriately dealt with by the PIO by furnishing the information which was dispensable under the act.

**i)** Regarding the relief of imposition of penalty, in the arguments advanced on behalf of appellant it is submitted that the reply, dated 27/10/2016 and the reply, dated 7/12/2016 are contradictory. Appellant thus submits that considering the said contradiction it should be held that the information provided by one of the replies is false and misleading. Referring to the first appeal the appellant states that the reasons for variance in information as given by PIO is due to the fact that it was given by two different PIO's and that the earlier PIO has not briefed the later.

According to appellant said grounds are not genuine and in fact there was false and misleading information. In sum and substance the appellant desires that the commission should compare the contents of both the replies and find out as to which one is false or misleading and thereafter to deal with the concerned PIO with penalty.

It is to be noted that the veracity of the information supplied should be assessed with reference to the application under which information is sought. In the present case the appellant had no grievance against the reply dated 27/10/2016 of the PIO. In case the information therein was false the same should have been pointed out in an appeal. The said reply has attained finality.

In respect of the second reply dated 7/12/2016, as discussed and held above by the commission, the same is dealt with by the PIO appropriately. It is not the grievance of the appellant that the information per said second reply is false or misleading etc.

**j)** Hon'ble High Court of Bombay, Goa bench at Panaji, in ***Writ petition No. 205/2007, Shri A. A. Parulekar V/s Goa State Information Commission and others***, while dealing with the nature of penalty under the act has observed:

*“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.”*

...9/-



**k)** The scope of the commission to test the veracity of the information furnished by PIO was considered by Hon'ble High Court of Delhi in the case of **Hansi Rawat u/s Punjab National Bank & others (LPA No.785 of 2012)** wherein it is observed.

*“4. Before the learned Single Judge also, the contention of the appellants was that the information given is not correct. The learned Single Judge went through the RTI application of the appellants and the response thereto and found that the information sought had already been furnished. The learned Single Judge has further observed that the only obligation of the respondent Bank, from which information had been sought, under the RTI Act, was to give information available and no further and the said obligation had been fulfilled.*

*5. The counsel for the appellants does not controvert the factum of a number of RTI applications having been filed by the appellants themselves or through other persons to the PIO of the respondent Bank. He has however drawn attention to the information sought at serial Nos. 11 to 14 and 26 of the RTI application and the response thereto and on the basis thereof has contended that information has not been provided and/or the information provided is incorrect.*

*6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2*

*from the employment of the respondent Bank is admittedly pending consideration before the appropriate for a. the purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished. Moreover, there is a categorical finding of the CIC, of the appellants misusing the RTI Act, as is also evident from the plethora of RTI applications filed by the appellants. In view of the said factual findings of the CIC and which is not interfered by the learned Single Judge, we are not inclined to interfere with the order of the learned Single Judge.”(emphasis supplied)*

**1)** The appellant herein requires this commission to compare two responses of both PIOs and decide as to which of the information is false and thereafter fix the responsibility by imposition of penalty. Such an exercise by this commission would lead to criminal investigation. Considering the nature of penalty proceedings and the scope of this Commission to decide the veracity of information as held in the case of **Shri A. A. Parulekar V/s Goa State Information Commission and others (supra)** and in the case of **Hansi Rawat u/s Punjab National Bank & others (supra)**, Commission finds that Scrutiny of the replies of two PIOs is beyond the jurisdiction of this Commission.

**m)** Advocate for appellant, in support of her contention has relied upon the judgment of the Hon'ble High Court of Bombay, Goa bench at Panaji in the case of ***Mulla Murtaza & ors V/S Mr. Suraj Naik & ors (Contempt Petition no.80 of 2011 IN Writ petition no.125 of 2010)***. On perusal of the same, the commission finds that the fact therein are totally distinguishable. In the said case certain orders were passed by the High Court which were not complied with by the Sarpanch for five years. On seeking explanation the two sarpanchs who were so elected at different times were trying to shift the responsibility on each other. Such plea was not accepted by the High Court and further directed the Government through Director of Panchayat to place before the court a report regarding the functioning of the panchayat. Thus it is clear that the said exercise was ordered by the Hon'ble court under writ jurisdiction. Thus the ratio laid therein cannot be applied in this case.

**n)** In the above set of facts and the provision of the act, this Commission finds no merits in the appeal. The relief as prayed for therefore cannot be granted. The appeal is therefore disposed with the following.

**O R D E R**

The appeal is dismissed. Proceedings closed. Notify the parties.

Pronounced in open hearing.

Sd/-  
**(Shri. Prashant S.P. Tendolkar)**  
Chief Information Commissioner  
Goa State Information Commission  
Panaji –Goa

