

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

Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner

Appeal No.89/SCIC/2017

Fr. Nonato Araujo
R/o H. nO.245, Near Canara Bank,
Fatorda, Margao-Goa. Appellant.

V/s

1) The Administrator of Comunidade,
Salcete, Margoa-Goa.
2) The Managing Committee/
Escrivao of Comunidade
Loutlim. Respondents.

Filed on : 23/6/2017

Disposed on:10/1/2018

1. FACTS IN BRIEF:

a) The appellant herein by his application, dated 7/3/2017 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several points therein.

b) The said application was replied on 13/4/2017 informing the appellant that the said information is not available with the respondent, PIO and that on 14/3 2017, the same is forwarded to the Escrivao of Comunidade of Loutolim for obtaining the information and that the said escrivao has not submitted the reply. According to appellant the information as sought was not furnished and hence the appellant filed first appeal to the respondent No.2 being the First Appellate Authority (FAA).

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b) The FAA by order, dated 9th May 2017, allowed the said appeal and directed Escrivao of Comunidade of Loutolim to furnish the information to PIO for furnishing to the appellant.

c) In spite of the said order the information is not furnished and hence the appellant has landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 22/9/2017 filed a reply to the appeal.

f) In the course of hearing on 14/11/2017 the PIO file an affidavit stating that as the information is held by Comunidade of Loutolim he has directed the escrivao of Comunidade of Loutolim to furnish the information in terms of article 88 of the code of Comunidade. He has further stated that he was informed that the managing committee of the Comunidade has resolved that the act is not applicable to Comunidade and hence information is not furnished. It is thus according to PIO the information cannot be furnished.

2.FINDINGS:

a) I have perused the records and the various correspondence as are attached to the appeal and filed in the course of hearing. It is not in dispute that the information pertains to the Comunidade of Loutolim. It is also not in dispute that the information was sought from the escrivao of the said Comunidade viz. Shri Keshav Naik. Being so said Shri Keshav Naik has the status of deemed PIO who was to furnish the information to PIO for onward furnishing to the appellant.

b) From the averments in the affidavit of PIO, it appears that the escrivao has refused information on the ground that the Comunidade has resolved to hold that the act **is not applicable to it.**

I am unable to subscribe to the reason for refusal of information. Firstly the applicability of the act cannot be by choice. Consequently any such resolution passed to decide the applicability of act to any entity is redundant. Presuming for a while that the Comunidade is a private body, the control over such body is exercisable by the administrator which is the public authority.

c) Under article 88 of the Code of Comunidade it is the office of the administrator who exercise the control over the Comunidades. The administrator is also granted powers of superintendence over the properties as also important records and documents of the Comunidade and thus administrator can seek the required records from it. The liability of the Comunidade to send records to administrator is contained in article 88(i) and at 88(ii) the document and records of Comunidade are required to be with the registrar who shall be responsible to the administrator.

d) Section 2(f) of the act defines information as under:

“2. Definitions.__ *In this Act, unless the context otherwise requires,___*

(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data

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*material held in any electronic form **and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;***

e) In the present case in exercise of the powers under said article 88 of the code of Comunidade, the PIO of the administrator had sought the information and the escrivao was liable to furnish the same even if the same is a private body. The role of escrivao thus becomes as of a deemed PIO.

f) Considering the above position I find that the appellant was entitled to have the information. The same was not furnished by the escrivao to the PIO for onward supply to appellant. In the aforesaid circumstances I find it appropriate to direct the PIO to obtain the said information from escrivao and submit the same to the appellant.

Considering the conduct of the escrivao in not furnishing the information to PIO inspite of earlier directions, I find that there was the refusal in furnishing information by the then escrivao, Shri Keshav Naik, was not bonafide and hence, as deemed PIO, he is liable for penalty under the act.

g). In the above set of facts I proceed to dispose the present appeal with the following :

ORDER

i) The PIO to demand from the escrivao of Comunidade of Loutolim, within TEN DAYS from the date of the receipt of this order, the information as sought by the appellant vide his application, dated **7/3/2017** and thereafter furnish the same to the appellant free of cost.

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ii) The escrivao shall furnish the same to the PIO within SEVEN DAYS from the date of receipt the demand from the PIO as aforesaid.

iii) Issue notice along with a copy of this order, to the concerned PIO Shri Keshav Naik as the deemed PIO, to show cause as to why penalty as contemplated under section 20(1) and/or 20(2) of The Right to Information Act 2005 should not be ordered against him.

iv) The PIO herein shall serve the notice at (iii) above on Shri Keshav Naik and produce the acknowledgement of service of notice on or before next date fixed herein.

v) Reply to the notice to be filed in person by Shri Keshav Naik on 6/2/2017 at 10.30 a.m.

Parties be notified.

Appeal disposed accordingly.

Pronounced in the open proceedings.

Sd/-

(Mr. Prashant S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji-Goa