

GOA STATE INFORMATION COMMISSION

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

Appeal No. 257/SIC/2011

Shri Ganpat R. Sangodkar,
H.No. 773/1(a),
Surlabhat , Pilar,
Po St.Lawrence,
Malwara, Agacaim, Goa.

.....Appellant.

V/s

1. The First Appellate Authority,
The Registrar of Co-op. Societies,
Central Zone, Panaji Goa.

2. State Public Information officer,
The Asst. Registrar of Co-op. Societies,
Central Zone, Panaji Goa,
Panaji Goa.

..... Respondents.

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 30/11/2011

Decided on:15/1/2018

ORDER

1. The facts in brief as are involved herein are that the appellant Shri Ganapat R. Sangodkar by his application dated 18/4/2011 filed under section 6(1) of the right to information Act ,2005 sought from the Respondent No. 2 public Information officer, certified copies of the auditors statement showing status of member contribution towards share capital, Land purchase and land development from the period 31/3/2001 to 31/3/2011 in respect of Bambolim Cooperative housing society limited (Registration No. ARCS/CEZ/191/(a)/H & G/GOA).
2. The said application was responded Respondent No.2 PIO on 27/4/2011 thereby calling upon him to visit their office for purpose of

inspecting the available audit report and obtaining the desired information on payment of necessary fees.

3. The Respondent no. 2 PIO after the inspection was carried out by the appellant, vide letter dated 24/5/2011 called upon appellant to deposit Rupees 98/- for the said information and further informed that the audit report for the cooperative year ending 31/3/2011 are not available in records of their office.
4. It is the case of the appellant that when he visited the office of PIO on 23/5/2011 and on inspection observed that the statement showing the status of members contribution towards share capital, Land purchase and land development from the year 2002 to 2011 is not available on records. However, the copy of the statement showing status of members as on 31/3/2001, which was available under audited memo for the period from 1996 to 2001 was furnished to him.
5. It is further case that since the complete information was not furnished to him he preferred first appeal before Registrar of cooperative societies on 17/6/11 being the first appellate who is the Respondent No. 1 herein and the Respondent no. 1 by his judgment dated 9/8/2011 dismissed the said appeal of the appellant.
6. Being aggrieved by the response of the Respondent No. 2 PIO and aggrieved by the order passed by the Respondent NO. 1, the appellant approached this commission by way of second appeal on 30/11/2011.
7. In the second appeal the appellant has prayed for direction as against Respondent NO., 2 for providing him the required information as sought by him vide application dated 18/4/2011 and for refund of his amount.
8. Addendum to appeal was also filed by the appellant on 13/3/2012 seeking relief of compensation and also invoking penal provision.
9. In view of the said addendum a new penalty case was open as the penalty case no. 41 of 2014.

10. In pursuant to the notice of this commission the appellant was present in person. The records reveals that the Respondent No. 2 PIO filed his reply on 25/5/2012 alongwith enclosure R-1. Records also reveals that additional reply was also filed by the Respondent nO. 2 PIO on 19/11/2014 thereby enclosing the letters dated 18/11/2014 one addressed to the auditor Shri C.M. Tenane and second addressed to appellant by Shri P.A. Parab and the showcase dated 17/11/2014 issued by Shri P.A. Parab to the said society as well as Board of Directors.
11. It is the contention of the appellant that on payment of Rs. 98 he was given the copies of two sets of audited report, however the statement showing status of members contribution toward share capital, land purchase and land development as on 31/3/2002 till 31/3/2011 as sought by him was not the part of the said report. It is his further contention that he refuse to except the same as he did not contained members contributed schedule . It is his further contention that said documents are accessible to the office of Respondent under the Goa cooperative societies Act 2001 as such he ought to have provided the same. It is his further contention that the statement showing status of members contribution towards share capital is important constituent of annual audited report and it forms a part of balance sheet as per rule 62(1) (form N).
12. Vide reply dated 25/5/2012, the Respondent PIO contended that in the balance sheet which is a part of the statement of account and audit report, a status of members contribution towards the share capital land purchase and developed etc. have been stated. PIO further contended that the appellant was provided the copies of auditor statement which contained the status of members' contribution. It is his further contention that information sought is not originated from the office of the PIO and the copies of audit

report was provide by the statutory auditors to their office. It was further contended that the said cooperative society was not an public authority .

Vide additional reply dated 19/11/2014 it is submitted that a letter was made to certified auditor on 18/11/2014 bringing to his notice regarding not enclosing the relevant schedule which forms to part and parcel of the audit report and requested to submit a necessary enclosures . It was also contended that letter was also made on 13/4/2012 to the Chairman / Secretary of said Bambolim Cooperative housing society limited requesting them to obtain the said information accordingly for the period 31/3/2001 to 31/3/2011. It was also condened that showcause notice was issued to the said society and its Board of Directors on 17/11/2014 interms of provisions of 97th constitutional Amendment Act , 2011 & section 61 (a) & section 72 (2) of the Goa Cooperative Societies Act 2001 & Rule, 2003 (duly amended).

13. In the nutshell the Respondent No. 2 PIO have submitted that they have tried to secure the said information from the Statutory auditor of the said society so also from the society itself but could not succeed and for that reasons they could not provide the same.
14. The present PIO Shri M.N. Kalangutkar, filed affidavit on record on 15/1/2018 substantiating above stand and catogarily submitted that said information still does not available in their records and showed his inability to furnish the same.
15. I have scrutinize the records available in the file .
16. The PIO is suppose to furnish the information as available on the records of the public authority and cannot be excepted to create information. In the said audit reports , such schedules /list of individual members contribution even though it is mandatory was not enclosed, it is neither the responsibility of PIO to examine the audit

report for its supporting enclosures, nor / neither empowered to direct the statutory auditors to prepare list of members contributions Never the less in the present case the PIOs/Assistant Registrar Cooperative Societies , Central Zone, Panaji have tried their level best to secure the said information but their efforts were in vain since neither the auditors, nor the Board of Directors of the said society took pain in furnishing the same.

17. the Apex 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 ."***

18. 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 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".

19. By subscribing to the above ratios laid down by Apex Court, I am of the opinion that the information which is not available in the records of the Public authority cannot be directed to be furnished.

20. The Appeal proceedings disposed according .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.

Pronounced in the open court.

Sd/-

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

Ak/-