

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

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

Appeal No.27/2018/SCIC//

Mr. Julio F. Heredia,
353, Casa Heredia,
Piedade-Diwar. Appellant.

V/s

1) The Public Information Officer(PIO)
GIDC, Patto,
Panaji -Goa.
2) The Managing Director,
GIDC, First Appellate Authority,
Patto, Panaji -Goa. Respondents.

Dated:08/05/2018

O R D E R

1) The appellant by his application dated 03/102/2017 has sought information at (13) points marked as (a) to (j) of the application. The PIO finally by his reply, dated 09/01/2018 has furnished the information to the appellant.

2) From the said reply dated 09/01/2018 of PIO the information at points (b) (f), (h) & (i) are not furnished on the ground that the same is not available. Besides stating that it is not available, the PIO has not clarified the reason for non availability i.e. as to whether it was not existing/ generated at all or whether it was existing and destroyed/ weeded out or whether the concerned files are missing. In the absence of such clarification no specific orders in respect of prayer (1) of the appeal can be passed.

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3) In the above circumstances, PIO Shri Ajay Gaude is hereby directed to clarify the reason for non availability of said information at points (b), (f), (h) and (i) on an affidavit. Notify the PIO.

Pronounced in open proceedings.

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

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..... Respondents.

Filed on:24/01/2018

Disposed on: 09/10/2018

O R D E R

- 1) The appellant herein by his application, dated 03/10/2017 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 (a) to (n) therein.
- 2) The said application was replied on 27/10/2018 intimating the appellant that information was available and to collect the same on payment of fees specified therein. Appellant collect the said information on 31/01/2018. However according to appellant the information as was furnished had two sets of answers. According to appellant, the PIO failed to furnish correct information to point (b) to (n) and hence the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

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- 3) According to appellant inspite of notice the then PIO failed to appear before FAA and was represented by new PIO Shri Ajay Gaude. The appellant has given date to collect the information as 09/01/2018 but further adjourned the hearing to which appellant objected.
- 4) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act
- 5) Notices were issued to the parties, pursuant to which they appeared. The PIO on 26/02/2018 filed reply to the appeal. Arguments were heard.
- 6) In the course of arguments the PIO submitted that though the initial reply was filed on 27/10/2018, subsequently in the course of First appeal an additional reply was furnished to appellant which is dated 09/01/2018 wherein the entire information was furnished. The appellant has relied upon the said reply in his appeal as Annexure -7 to his appeal memo. The said reply was not disputed by the appellant.
- 7) On perusal of the said reply dated 09/01/2018, it is seen that the information which was due has been furnished. However in respect of information at points (b), (f), (h) and (i) were not furnished as not available. In view of not clarifying of the reason for non availability of the information, by order, dated 08/05/2018, the PIO was directed to clarify the reason for non availability of information on an affidavit. Accordingly on 28/08/2018 the PIO filed an affidavit.
- 8) On perusal of the said affidavit it is seen that the information at points (b) and (f) is not available and the information at point (h) is not available as the plan of the concerned plot is not revised after 2013. Regarding point (i) though it is in the nature of opinion, is replied.

9) The ratio as laid down by Hon'ble Supreme Court in the case of Central Board of Secondary Education V/s Aditya Bandopadhyay relevant portion reads:

“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 no 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 of assumptions.”

Thus considering the said ratio, I hold that the information as is available, has been furnished and the information at points (b) (f) and (h) is not furnished as it does not exist. Hence no order for furnishing of information is can be passed.

10) Regarding the prayers (2) and (3) of the appeal, it is seen from the records that the information as was available has been furnished during first appeal on 09/01/2018. The

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appeal was filed on 30/11/2017. The High Court of Calcutta in the case of **Metropolitan Cooperative Housing Society Ltd. and another V/S The state Information Commission and others (W.P.12292(W) of 2009)** it is held:

“16. I need not on this petition decide whether the second respondent correctly decided the issue as to whether the first petitioner is a public authority within the meaning of the RTI Act or not, for the reason that the appeal before him was not competent. A right of appeal must be traceable in a statutory provision is settled law. Section 19 of the RTI Act does not confer any right on an information seeker to prefer either first appeal or second appeal if information as claimed by him is directed to be furnished by the original authority or the first appellate authority, as the case may be. Here the first appellate authority allowed the claim of the fifth respondent. If anyone could be regarded as person aggrieved by the decision of the first appellate authority, it were the petitioners. The fifth respondent having succeeded in his claim before the first appellate authority, he could not have filed second appeal. The order dated 25/06/2009 is also not sustainable in law on this sole ground.”

Thus by applying the principals as laid down above. I find no grounds to invoke my rights under section 20(1) and/or 20(2) of the Act.

11) In the above circumstances nothing survives in the appeal and hence the same stands disposed. However the right of

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the appellant to seeks further information on non existing data, is kept open, if it is exist at any time later. Proceedings closed. Notify parties.

Pronounced in open proceedings.

Sd/-
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