

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No. 75/2018/CIC

Shashikant P. Narvekar
H.No. 591/2,
Parra Bardez
Goa. 403510

...Appellant

V/s

- 1) The Dy. Town Planner,
Office of Senior Town Planner,
Town & Country Planning Department,
North Goa District,
Having its Office,
At 302 Govt Building complex,
Mapusa – Goa. 403507
- 2) The Senior Town Planner,
First Appellate Authority,
Town & Country Planning Department,
Mapusa-Goa. 403507

...Respondents

Filed on: 05/04/2018

Disposed on: 27/08/2018

1) FACTS IN BRIEF:

a) The appellant herein by his application, dated 06/10/2017 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought information from the Respondent No. 1, PIO seeking the details as to which document/information submitted by him was incorrect or wrong on the bases of which the revocation order was issued. This application was referring to a letter from the PIO, dated 23/08/2017, inter alia revoking the technical clearance order and completion order issued by respondent Authority.

b) The appeal memo though states that the respondent failed to furnish the details of said information, there is no averment whether the application u/s 6(1) was at all replied to. In any case deeming the

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action of PIO as refusal, appellant filed first appeal to the respondent No. 2, being the First Appellate Authority (FAA).

c) The FAA by order, dated 02/02/2018, allowed the said appeal and directed PIO to make available the concerned file to the appellant so that the required documents can be identified by appellant.

d) The appellant being aggrieved by said order of FAA 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 in the course of hearing on 27/06/2018 submitted that he has furnished the information to appellant and that he desires to produce the concerned file to be inspected by the appellant. Accordingly on 31/07/2018 the entire concerned file was produced before this Commission.

2) FINDINGS:

a) Perused the records and considered the rival contentions of the parties. The information sought by the appellant are the documents which forms the bases of the revocation of the completion order and Technical clearance order issued by the authority. While seeking such information, appellant presupposes that such documents exist.

b) In the course of submissions, it was the submission of PIO that no such documents existed and that for the purpose of verification of such non existence the entire file pertaining to the subject was offered for inspection. According to him there was no separate document existing in reference to which such orders were issued.

c) Considering the peculiar situation, when the file was produced the same was given for inspection by the appellant. Accordingly the appellant inspected the same and by his memo, dated

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08/08/2018 he submitted that the documents as sought could not be located. The appellant prayed therein for appropriate order.

d) The information as defined under the act is the one which exist in a tangible form as detailed in the said act. The scope of information, which can be dispensed under the act, is discussed by 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

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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."

- e) Considering the scope as held by Hon'ble Supreme Court above, admittedly as the information does not exist in the form of documents no order can be passed to create the same for the purpose of dispensation.
- f) The contention of appellant is that the revocation of the completion order and Technical clearance order is without document to support such revocation. The contention of appellant appears to be correct and such as situation may help him in any proceedings if initiated to set aside revocation. But non existence will not entitle him to seek any assistance from this Commission. Under the act in view of the limitation as above by the Hon'ble Apex Court.
- g) Considering the above situation, this Commission finds that the ends of justice can be met by furnishing to the appellant the file as produced by PIO, to the appellant with as affirmation from PIO that besides said records no further records on the said subject exist and by allowing the appellant to seek further information based on said records, if required. In the circumstances the appeal stands disposed with the following:

O R D E R

The appellant may collect the file filed by PIO before this commission as information, within 15 days, free of cost. PIO to file affidavit within 10days affirming that besides the records contained in said file placed before this commission, no other documents exist, with the dept regarding the construction/carrying

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out the extension of First floor of house no. 591/2 situated at Parra Village, in survey no. 165/1.

The Right of the appellant to seek further/additional information on the bases of the contents of the file are kept open.

Appeal disposed off accordingly. Parties to be notified. Proceedings closed.

Pronounced in open hearing.

Sd/-

(P. S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji - Goa