

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

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

Appeal No.74/ SCIC/2017

Shri Santana Piedade Afonso,
H. NO.263, Comba-Cenral,
Cuncoim, Salcet-Goa.

Appellant.

V/s

- 1) The Public Information Officer,
O/o Mamlatdar of Salcete Taluka,
Margao-Goa.
- 2) The First Appellate Authority,
O/o The Dy. Collector & SDO-I,
Margao-Goa.

Respondents

Filed on :12/6/2017

Disposed on:12/3/2018

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 12/10/2016, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought inspection of mutation file no.163 pertaining to survey no.494/32 in village Curtorim, Salcette Goa.
- b) According to appellant the said application was not responded to by the PIO but after several visits to office of respondent furnished the information on 23/1/2017.
- c) According to appellant the information furnished was pertaining to one Jose Menino Francisco Xavier Mascarenhas pertaining to survey no.409/16 and 409/17 and not of survey no.494/32 as sought by him.

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d) Appellant contending that he has not received the information filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

e) The FAA by order, dated 5/5/2017, allowed the said appeal and directed PIO to allow the appellant to inspect file number 163 in respect of Mariano Vincente Barreto of survey no.494/32.

f) Accordingly by letter, dated 10/5/2017 the PIO informed the appellant that the file no.163 was traced out and found that the same pertains to one Jose Menino Francisco Xavier Mascarenhas and in respect of survey nos. 409/16 and 409/17 and not survey no.494/32.It was also informed by the PIO that there is no mutation file in respect of survey no.494/32 available in the name of Barreto Mariano Vincent. The application for information was thus disposed.

g) The appellant being aggrieved by said reply of PIO, has landed before this commission in this second appeal u/s 19(3) of the act.

h) Notices were issued to the parties, pursuant to which they appeared. Initially the PIO did not file any reply. However as the issue involved was ambiguous and required clarification, affidavit was sought from the PIO to clarify the fact which was filed on 12/1/2018. Arguments of the parties were heard and matter was posted for orders on 1/3/2018.

i) On 1/3/2018, before the order was pronounced, as a response to the affidavit, the appellant filed his reply interalia contending that one Smt. Inacio Maria had moved application for mutation in survey no.494/27 and that it was recorded as no.163 of 1995.It is further according to him that a similar application was forwarded by Jose

Menino Francisco Xavier Mascarenhas on 20/3/94 for mutation which was numbered as 163/94. It is according to appellant that PIO has not produced copy of form I & XIV to justify the claim per his affidavit. Hence according to appellant mutation process no.163 was recorded in survey no.409/16/and 409/17.

2) FINDINGS

a) I have perused the records, more particularly the application u/s 6 (1) of the act. By said application the appellant has sought for inspection of mutation filed No. 163. The said application also clarifies that said mutation proceedings is pertaining to survey No.494/32 of Village Curtorim, Salcette. For the purpose of clarification the appellant has attached to the said application copy of form I & XIV of survey no.494/32. Said form I & XIV shows the name of one Barreto Mariano Vicente Barreto as occupant. In Mutation Column it refers to mutation no.163.

From the above it is clear that the information as required by the appellant was in respect of purported mutation no.163, which pertained to survey No.494/32. As per the said form I & XIV the entries therein were affected by virtue of Mutation No.163 and name of said Barreto was entered.

b) Considering the contention of PIO vide his reply, dated 10/5/2017, it is his case that though the file of mutation No.163 is available the same does not pertain to survey No.494/32 but same relates to survey Nos. 409/16 and 409/17. It is his further contention that there is no file existing with mutation No.163 of survey Nos. 494/32 nor any entry is made in respect of said survey.

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From the above there appears an ambiguity in the application of appellant either in respect of survey number or mutation number or that the said entry as sought for by appellant is fraudulent. Hence the PIO cannot be expected to comply with the request as is made.

c) It is the contention of appellant at para (3) and (4) of the appeal memo that respondent furnished the information on 23/01/2017 but the same pertains to survey No.409/16 and 409/17. I have perused said information as furnished by PIO, which is at page 7 to 16 of the appeal. The said information relates to mutation no.163/94 sought by one Jose Menino Francisco Xavier Mascarenhas in respect of survey Nos. 409/16 and 409/17 of village Curtorim. According to him there is no mutation file bearing no.163 showing mutation in respect of survey no.494/32, which is sought by appellant.

d) The PIO vide his affidavit in reply filed before this Commission has avered that upon several representations and complaints an inquiry was conducted and report, dated 13/06/2014 was submitted to collector for necessary direction. PIO has also filed copy of such report on record. As per the statement in said report the inquiry officer has stated that as per the verification of Talathi no mutation file in respect of Survey no.494/32 is available nor there is entry in respect of mutation of Survey No.494/32.

e) From the above records and the Enquiry as conducted by inquiry officer I find force in the contention of PIO that no file NO.163 in respect of survey NO.494/32 exist. Consequently non furnishing of information cannot be held as deliberate or intentional.

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f) 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

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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."

g) Coming to the contention of the appellant that in view of non submission of the form I & XIV of survey nos.409/16 and 409/17, it should be held that mutation process no.163 was recorded in survey nos.409/16 & 409/17, I find no force therein. Form I & XIV of survey nos.409/16 and 409/17 are in fact on record. Said forms shows that the mutation pertaining thereto is bearing number 113 and not 163.The said records are not in dispute by PIO. The appellant by relating to several other mutation proceedings wants this commission to investigate into the veracity and authenticity of the mutation proceedings. Hon'ble High Court of Delhi in ***LPA No.785/2012 HANSI RAWAT & ANR. V/S PUNJAB NATIONAL BANK & ORS.*** while holding that the proceedings under the RTI Act do not entail detailed adjudication of contentions that information has not been provided and/or the information provided is incorrect has observed :

"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.

The counsel for that 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.

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.”

h) In the aforesaid circumstances, I find no grounds to grant the relief as prayed for. However, opportunity can be granted to appellant to inspect the records of Mutation file No.163 as it exist and seek the copies thereof if required.

In the backdrop of above facts I dispose the appeal with the following:

O R D E R

The appeal is dismissed. However the appellant shall be at liberty to inspect the file in respect of Mutation No.163 in respect of the survey numbers as to which it relates to. Notify the parties.

Proceedings closed.

Pronounced in the open proceedings.

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