

**GOA STATE INFORMATION COMMISSION**  
**‘Kamat Towers’ Seventh Floor, Patto, Panaji – Goa**

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

**Appeal No.90/SCIC/2017**

Shri Ganapati S. Desai,  
HHF-45, 72-HIG Complex,  
Nr Goa Housing Board officer,  
Alto-Porvorim, Bardez –Goa. .... Appellant  
Pin 403521.

V/s

- 1) Shri Ramesh S. Raikar,  
State Public Information Officer,  
Goa Housing Board,  
Alto Porvorim-Goa.  
Pin 403521.
- 2) Shri T. S. Sawant,  
First Appellate Authority,  
Managing Director, Goa Housing Board,  
Alto Betim, Bardez-Goa. .... Respondent

Filed on :27/6/2017

Disposed on:16/3/2018

**1) FACTS IN BRIEF:**

a) The appellant herein by his application, dated 31/8/2016 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 eight points therein.

b) The said application was responded on 7/11/2016 by calling upon the appellant to collect the information. The purported information was thereafter furnished on 10/11/2016. However 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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c) The FAA by order, dated 13/2/2017, dismissed the said appeal.

d) The appellant being aggrieved by the 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 on 31/10/2017 filed a reply to the appeal. By the said reply the PIO has challenged the maintainability of the appeal as also raised several other grounds for dismissal of the same. It is also contended by PIO that the appeal is filed malafide as the prayers at nos. 2 and 3 are sought for the first time in this appeal without seeking the same in First Appeal and hence the same cannot be granted.

Regarding the facts it is submitted by the PIO that the application was addressed to one Peter Telis personally as the PIO and that the PIO herein was appointed as the PIO who responded the same on 7/11/2016 and the information was furnished on 10/11/2016. The PIO has also narrated the sequence of the events before FAA which are nor relevant for this appeal.

It is according to PIO that the appellant has failed to file fresh application as directed by FAA as the initial application was lacking clarity but has filed the present appeal.

f) In the course of hearing before this commission the appellant admitted that the information as sought by him at points (2),(3),(4),(6) &(7) is furnished and that the information at points (1),(5) and (8) is not yet furnished. In the circumstances the points that arise for the determination of this commission are:

- i) Whether the PIO has furnished the information at said points (1), (5) and (8) of the appellants application, dated 30/8/2016?
- ii) Whether the Commission can grant the prayers at paras 2 and 3 of the appeal memo?

**2) FINDINGS:**

**a)** The information as sought by the appellant at point (1) of his application, dated 30/8/2016 is ***details of the scheme of housing accommodation from which the sale of flats/tenements appears in the notice dated 19/8/2016 published in the news paper.*** The said information is furnished in form of annexure A, which is the copy of the notice as published in the news paper. It appears that the appellant has a contention that any sale of the tenements of The Goa Housing Board (Board for short) are to be preceded by a scheme floated by the board and with that view he wants the information relating to such scheme so framed by the board before issuing the offer of sale by said notice.

Pursuant to the direction issued by the commission the PIO has filed the affidavit. In the said affidavit it is clarified by the PIO that no scheme had been floated in respect of sale/auction of flats and that the flats were auctioned only based on the public notice.

Even if the procedure adopted by board is assumed to be illegal or improper or violative of any rules or regulations under other law, considering the scope of the act, the information as sought, is not existing for being dispensed.

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**b)** At point 5 of the application the appellant has sought **copy of the notice and provisional cost for each type of the flats/tenements**. According to PIO such calculation sheet was already furnished. The said advertisement is on record and shows the cost of each flat/tenement. In addition to the said advertisement the PIO alongwith the affidavit has also filed the calculation sheet and the resolution of the board and approval of the Government. It is also affirmed by the PIO that the board had not prepared any provisional cost and that the advertisement were issued by fixing the cost of the flats which was final cost itself. I find that thus the information as sought was though furnished earlier is clarified that no documents as sought were generated.

**c)** At point no.8 the appellant had sought the **details of the various cost added, the method followed in computing the added value and copy of approval sought from the Government**.

In the course of hearing the appellant admitted that the said details pertaining to other tenements was furnished but he was not furnished with the copy of the details regarding Porvorim flats. This point appears to be related to earlier point no.5. The appellant has sought for the provisional calculation if the final cost was increased. The PIO has clarified that the price shown itself was the final price and no provisional price was worked out. In other words the information as sought was not generated.

**d)** Considering the contention of appellant it appears that he has an objection to the procedure adopted by the board in sale of the tenements. This may be ground to challenge the

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procedure before appropriate forum. But considering the extent of the act, non existing information cannot be ordered to be furnished nor could be ordered to be created. On this aspect the judgment passed by the Hon'ble Apex court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay** (Civil Appeal no.6454 of 2011) is relevant, wherein 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 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.”*

**d)** In the above circumstances, I find that the information which is alleged to be not furnished cannot be ordered to be furnished due to its non existence. The relief to that extent cannot be granted. Consequently I find no deliberate or intentional suppression of the information for invoking my rights under section 20(1) and or 20(2) of the act. However this finding of mine shall not effect the rights of the appellant to challenge any procedure adopted by the board before appropriate forum if he is so advised.

**e)** Coming to the second point of determination as framed at 1(f)(ii) above, it is to be noted that the prayers at paras (2) and (3) of the prayer clause can be considered only in the second appeal u/s 19(3) of the act. No such powers are granted to the FAA to grant such powers u/s 19(2) of the act. In view of the same I am unable to uphold the contention of PIO that having not sought the reliefs at paras (2) and (3) of appeal before FAA, the appellant cannot seek the same now. Needless to say the such reliefs are to be considered on merits of each case.

**f)** The appellant has also prayed for a relief for directing the PIO to comply with section (4) of the act. I find the grievance of the appellants to be genuine. Had the board complied with the said requirement of the act, its valuable time and also that of

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the citizens would have been saved. Compliance of section 4 of the act would have also helped in proper utilization of the public resources. I thus find great force in the said concern of the appellant.

**g)** In the backdrop of the above I dispose the present appeal with the following:

**O R D E R**

The appeal is partly allowed. The respondent Authority i.e. The Goa Housing Board is hereby directed to strictly comply with its obligations under section 4, in its entirety in true spirit and intent of the Right to Information Act 2005, within the time stipulated therein. Rest of the prayers are not granted. However the right of the appellant to seek further information on the same subject, if any, are kept open.

Notify the parties.

Proceedings closed.

Pronounced in the open hearing.

Sd/-

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