

# GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

**Appeal No. 87/2018/CIC**

Shri Deu Hiru Naik,  
IndianNational, aged,  
62 years, married, H.no.9,  
Matyem, Sancoale,  
P.O. Cortalim, Goa.403710

**....Appellant**

V/s

- 1) The Deputy Director of Panchayats,  
South Goa ,Margao- Goa 403601.
- 2) The Block Development ,  
Mormugao Block, Vasco da Gama,  
Goa 403802.
- 3) The Secretary,  
Village Panchayat of Sancoale,  
P. O. Cortalim Goa 403710.
- 4) Shri Devanand Bاندodkar,  
Major in age, married,  
Residing in Survey No.200/3  
of Sancoale Village,  
Matvem, Sancoale,  
P. O. Cortalim-Goa 403710.

**.....Respondents**

**Filed on: 12/04/2018**

**Date: 31/10/2018**

## **O R D E R**

1) The appellant herein has filed the above proceedings purportedly as an appeal u/s 19(3) of The Right to Information Act 2005 (Act for short).

2) The contentions raised by appellant in the memo are that the appellant having noticed that the respondent no.4 was constructing an illegal toilet, without keeping proper set back, the appellant reported the matter through several

...2/-

complaints to the Sarpanch/Secretary, the Inspector of Police, Vasco da Gama, the Mamlatdar of Mormugao Taluka, the Primary Health Centre, Cortalim and by complaints addressed to the respondents no.1 and 2, on 24/04/2015.

That the Sarpanch of the respondent no. 3 issued stop notice dated 28/05/2015 and by its stop notice, directed the respondent no.4 to stop the said activity with immediate effect and appear in the V. P. Office to submit the valid documents & approvals possessed by him in support of his claim, from the receipt of the notice. Although a period of 3 years and 8 months, has passed, the respondent no. 3 has not taken any steps against the illegal toilet constructed by the respondent no.4.

That by an application under RTI Act 2005 dated 29/10/2015 with reference no. 15/2/(65) DDPN/Mormug/Sancoale/15, the appellant informed the Director of Panchayats, Panaji that the V. P. Secretary of Sancoale Village had not taken any action on construction of the illegal toilet, inspite of the fact that the appellant had contacted the office of the respondent no.3 and requested the Director of Panchayats, to direct the respondent no. 3 to take immediate action in the matter.

That due to non issuance of the information, by the PIO of the respondent no.2, the appellant filed an appeal no. DDPS/RTIA/2/2016 with the respondent no.1. As the respondent no.2 claimed that he had furnished the report by his letter dated 25/02/2016.

...3/-

3) With above plea the appellant has approached this Commission, with a prayer to direct the respondents nos.1,2 and 3 to ensure that they personally ensure that the illegal toilet constructed by the respondent No.4, without leaving setbacks between the property in possession and that of the application, is demolished, with the least possible delay and to report of compliance of the order is sent to Commission, within the time limit as may be decided by the Hon'ble Commission.

4) Considered the pleadings of the appellant. Section 2(f) of the act defines information as under:

*“2(f) “information” means any , material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”*

From the above definition it can be gathered that what the act envisages is the information which is tangible in nature or which is existing with the public authority.

5) By upholding the above view Hon'ble Supreme Court in the case of Central Board of Secondary Education V/s Aditya Bandopadhyay 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*

*...4/-*

*‘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.”*

6) In the present case as per the contention of appellant the respondent authorities have not taken action on his complaint regarding illegal construction undertaken by respondent no 4. By this appeal appellant prays for a direction to respondents nos. 1 to 3 to ensure that the alleged illegal construction is demolished. Such a relief may be available under any other law but the commission has no jurisdiction to deal with such representation as no tangible information is sought. What is sought are orders, which are beyond the competence of this Commission.

I am fortified in the above view based on the ratio laid down by Hon’ble High Court of Allahabad in the case of ***Subhash Chandra Vishwakarma V/S Chief Information***

**Commissioner U.P. State Information & Ors. in case No. Misc. Bench No. 69 of 2016.** While dealing with facts therein which are almost identical hereto the Court has observed:

*"Soon after filing the application for fresh investigation, the petitioner chose to file an application under Section 6 of the Right to Information Act (hereinafter referred to as the Act) on 28/01/2015 praying for information to the effect as to what action was taken by the respondent No.2 on his representation made on 23/01/2015. Failure on the part of Information Officer to furnish the information within the statutory period is said to have given rise to first appeal filed on 05/02/2015 and the said appeal not yielding any result became the cause of filing second appeal before the commission on 16/03/2015."*

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*In the instant case, it is an undisputed fact that a criminal case was registered against the petitioner's brother wherein after completion of investigation a charge-sheet has been submitted before the competent court on 07/01/2015. The petitioner appears to have filed an application under Section 173(8) of the Code of Criminal Procedure praying therein for fresh investigation. Section 172(8) of the Criminal Code of Procedure, for ready reference, is also extracted below:--*

*"8. Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the Police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to a report forwarded under sub-section (2)."*

*From a plain reading of the above provision,-----*

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The information to be furnished under Right to Information Act many broadly fall under two categories. i.e. action and inaction.*

*(1) Actions of the State Government culminating into an information are to be understood in the light of definition provided under Section 2(f) which reads as under:-*

*f) "Information mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

*The aforesaid provision defining information makes it clear that inaction on a non statutory representation filed by any person does not fall within the strict sense of definition of information. On a close scrutiny of the provisions of definition clause, it is further seen that inaction on the part of the authorities cannot be construed to be an information unless and until there is a statutory obligation on the part of the competent authority to take a decision on the representation or complaint filed by an aggrieved person and even if such an inaction is noticed, the representation remains at the stage of investigation and the protection of section 8(f) comes into play.”*

*In the instant case,-----*

*"we have no hesitation to record that inaction on non-statutory applications/complaints filed by any person where the State Authorities are not obliged to take a decision would not fall within the definition of information giving rise to a cause under section-6 of the Act. If all such inactions are construed to be cognizable under the Right to Information Act, the misuse of the Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse of the process of law. Once it held that the application filed by the petitioner did not fall within the scope of information under the Right to Information Act, the impugned order passed by respondent No.1 on 24/11/2015 does not call for any*

*interference and the writ petition being devoid of merit deserves to be dismissed.*

*We may also put on record that in various cases it is noticed that cognizance of proceedings under Section 18 of the Act is taken without discharging the obligation to examine the maintainability of appeals and complaints. Once the Information Officers either fail to discharge their duties or there is some other grievance which is amenable to the remedy of first appeal, the provisions of Section 18 of the Act have to be scrupulously applied so that the purpose of Section 19 of the Act is not frustrated but is rather strengthened to serve better. Needless to say that exceptions carved out under Section-8 of RTI Act, 2005 remain protected under the Official Secrets Act, 1923 or any other law for the time being in force."*

7) In the backdrop of the above facts and circumstances the relief as prayed her in, being beyond the competence and jurisdiction of the commission, the same cannot be granted.

In view of the above the appeal stands dismissed.

Parties to be notified.

Proceedings closed.

Pronounced in open proceeding.

Sd/-

**(Shri. P. S.P. Tendolkar)**

Chief Information Commissioner  
Goa State Information Commission  
Panaji –Goa



