

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner**

Appeal No. 66/2018/SIC-I

Shri Suresh A. Bhonsle,
Behind Vithoba Temple,
Mala, Panaji-GoaAppellant

V/s

1. Dy. Commissioner/
Public Information Officer (PIO),
Corporation of the City of Panaji,
Panaji-goa
2. Commissioner and
First Appellate Authority (FAA),
Corporation of the City of Panaji,
Panaji-GoaRespondents.

Filed on: 22/03/2018

Decided on: 18/06/2018

ORDER

1. Brief facts arises herein are that, Vide application dated 10/08/2017 the information seeker Shri Suresh Bhonsle who shall be herein referred to as appellant had sought for information on 2 points from the Respondent No.1 Public Information Officer (PIO) of Corporation of City of Panaji as stated therein the said application in respect of House bearing No.C/4/142(PMC) located at Mala in ward No. 27 . The said application was filed under section 6(1) of the Right to Information Act, 2005.
2. According to the appellant he received the letter dated 22/8/2017 from Respondent No.1 Public Information Officer interalia informing him that no such house tax number on record.
3. According to the appellant , he being aggrieved by such response of Respondent No. 1 PIO, he filed one more

application on 26/9/17 u/s 6 (1) of RTI Act, 2005 with the Respondent No.1 herein thereby seeking additional information with respect to same subject matter and pertaining to Chief Officer Shri Ramesh Khorjuvenkar .

4. According to the appellant, his said application was responded by Respondent PIO on 13/10/2017 , thereby providing him information at point No.2(a)
5. According to the appellant since information at point No.1 (A) and (B) was not furnished to him as sought by him vide application 26/9/17 , he made letter to PIO bringing to his notice said fact
6. According to the Appellant he received a notice dated 27/10/17 issued by Respondent No. 2 First Appellate Authority (FAA) herein even before he filed his first appeal thereby directing him to appear before him on 08/11/2017 and in pursuant to the same he appeared and filed his reply to the said notice.
7. According to the appellant, he then preferred first appeal on 6/11/2017 before the Respondent No.2 Commissioner of the City of Panaji being First Appellate Authority (FAA) in terms of section 19(1) of RTI Act, 2005.
8. According to the appellant Respondent No. 2 FAA during the hearing on 20/11/2017 directed the PIO to trace the file /records of the building under consideration and then to furnish the information in respect of point No. 1 (B) to the appellant within two weeks .
9. According to the appellant in pursuant to the directions of respondent No. 2 FAA , he received letter dated 7/12/2017 of the PIO and also a copy of letter dated 18/09/2000 issued by Accounts Taxation Officer, informing him records pertaining to the house bearing No. 4/142 are not available in their records.
10. According to the appellant the Respondent No.2 FAA then vide order dated 13/12/2017 disposed the said first appeal by

upholding the say of PIO that his application is answered as per the records.

11. According to the Appellant as he did not received information, and being aggrieved by the action of both the respondents, he was forced to approach this Commission on 22/03/2018 by way of second appeal in terms of section 19(3) of the RTI Act, 2005 there by seeking directions as against Respondent No. 1 PIO to furnished him the requisite information.
12. Parties were notified. In pursuant to which appellant was present in person. Respondent No. 1 PIO Shri Pradeep Mirajkar was present Respondent No. 2 First Appellate Authority (FAA) was represented by Shri Dinesh Maralkar .
13. Respondent PIO filed his affidavit in reply on 30/4/18 and also filed additional reply on 8/05/2018 to the rejoinder filed by the appellant on 30/04/18. The copy of both the affidavit in reply were furnished to the appellant.
14. Vide both the affidavit in reply, the PIO have contended that concerned staff /official checked the tax records and demand register of said ward and there is no entry of such house tax number on record. It was further contended that appellant has wrongly interpreted the wordings of letter dated 18/09/2000.
15. Written synopsis/submissions were filed by the appellant on 24/05/2018 contending that the house No. C4/142 was given by PMC/CCP somewhere in the year 1991 and the aluminium token bearing No. C4/142 was fixed by Officers of PMC to the said house in year 1991. It is further contention that similar aluminium token was fixed to other house in the same ward bearing No. 4/27 and the same are on record of CCP and CCP has issued house tax notice to those parties and not him. The appellant have also contended that the records pertaining to said token no. 4/142 is destroyed by the said Authority with the help of other Officers of PMC/CCP and on that ground he prayed to penalise the said authority. However he has not

produced any sufficient convincing evidence on record substantiating his above statement.

It was further contended that then PIO Shri Sudhir Kerkar without looking the records of said house on Register book /Index book of house has replied to him that "no house tax number on record."

It was further contended that PIO Shri Shashank Tripathi did not file reply before FAA thereby showing disrespect to FAA, so also FAA did not insist for same as such it is further contention that completely unfair practice adopted by both respondent is in gross violation of RTI Act.

It is further contention that appointment of Shri Sudhir Kerkar and that of Shashank Tripathi and Pradeep Mirajkar in very short period is done only to fool him and_ this Commission.

He further contended that Public Authority concerned herein have not displayed sign board of PIO and FAA in the office premises of CCP, thereby causing gross violation of RTI Act.

16. Argument were advanced by both the parties. The copy of the written arguments was furnished to both Respondents.
17. I have scrutinised the records available in the file and also considered submissions of the both the parties.
18. The PIO Shri Sudhir Kerkar vide reply dated 22/08/2017, subsequent PIO Shri Shashant Tripathi and present PIO Shri Pradeep Morajkar vide affidavit in reply dated 30/04/2018 and 8/05/2018 have categorily stated that no such house tax number is found on record. In other words it is the case of all three PIOs that said information is not available on their record.
19. Considering the extent of the act, non existing of information cannot be ordered to be furnished nor could be ordered to be created. On this expect the judgement is passed by the Hon'ble Apex Court in the case of

- a) In civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

*"At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of "information "and "right to information "under clause (f) and (j) of section 2 of the Act. **If the 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, to collect or collate such non available information and then furnish it to an applicant".*

and

- (b) Peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held:-

"under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order".

20. In the above given circumstances I find that the information which is alleged to be not furnished cannot be ordered to be furnished due to its non existence.

21. The Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in**

2008(110)Bombay L.R.1238 at relevant para "7" has held:-

"The Commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to uphold the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available."

22. By subscribing to the ratio laid down in above case of Celsa Pinto, (Supra) since the appellant herein has contended that the records pertaining to said token no. 4/142 is destroyed by the said public authority, the onus was on him to prove the said fact. As no documentary evidence placed on record by the appellant, it is not appropriate on the part of the Commission draw and to arrive at any such conclusion and to order inquiry. Consequently, I find no deliberate or intentional suppression of information for invoking my right u/s 20(1) and 20 (2) of the Right to Information Act 2005.
23. Be that as it may, appellant during argument prayed for inspection of records, and Respondent No. 1 PIO graciously agreed to give him inspection of demand Register, Tax records and also of the computerized records. This Commission is also of opinion that in the interest of justice, the same needs to provided to the appellant. With regards to other grievances as alleged by appellant in written argument the same cannot be considered and dealt by this Commission for want of jurisdiction. Appellant if so desire may approach appropriate forum with the same.

24. The appellant has also raised grievance that the authority concerned herein have not displayed any sign board of Public Information Officer (PIO) and First Appellate Authority (FAA) on the wall of the Office premises on the said PMC/CCP till date. The PIO undertook to bring said fact to the notice of Public Authority concerned herein and also undertook to display the board within a week.
25. In the backdrop of above, I dispose the present appeal with following:-

Order

- a) Appeal is partly allowed.
- b) The PIO is hereby directed to give inspection of demand register, tax records and computerised records pertaining to the information sought by the appellant within 15 days from the date of receipt of order. The right of the appellant to seek further information on the same subject matter is kept open.
- c) The Public Authority concerned herein i.e. Corporation of City of Panjim is hereby directed to strictly comply with the obligation u/s (4) of the RTI Act, 2005 and to display the board of Public Information Officer and First Appellate Authority in their office premises.
- d) Rest of the prayers are not granted.

With the above directions, Appeal stands disposed. Proceeding stands closed.

Notify the parties

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Proceeding stands close.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

Kk/-