

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

Appeal No. 50/2018/SIC-I

Kum. Piedade F. D'Souza,
HNo. 1193,
Anna Vaddo , Ximer,
Candolim Goa .

....Appellant

V/s

1) The Public Information Officer,
Office of the Village Panchayat,
Candolim, Bardez Goa.

2) First Appellate Authority,
Block Development Officer,
Mapusa Goa .

.....Respondents

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

Filed on: 23/2/2018
Decided on: 3/5/2018

ORDER

1. The brief facts leading to present appeal are that the appellant Kum. Piedade D'souza herein by her application dated 20/6/2017 filed under section 6(1) of Right to Information Act, 2005 sought certain information on 11 points from the Respondent No. 1 Public Information Officer (PIO), office of the Village Panchayat of candolim, ,Bardez-Goa, as stated therein in the said application.
2. It is contention of the Appellant that the said application was not responded by Respondent PIO as such she preferred 1st appeal bearing NO.BDO/BAR/RTI/67/2016 before the Block development officer, Mapusa-Goa being First appellate Authority (FAA) .
3. It is the contention of the appellant that ,subsequent to the receiving notice from FAA , she received reply of the PIO dated 22/8/17 on 7/9/17 .

4. It is the contention of the appellant that she withdrew her appeal bearing No. BDO/BAR/RTI/67/2016 and as she was not satisfied with the information furnished to her vide the reply dated 22/8/17 , she again filed fresh Appeal to the Respondent No.2 on 3/10/17.
5. The respondent no. 2 First appellate authority by an order, dated 12/1/2018, allowed the said appeal and directed PIO to furnish the information at points 5,8,9 and 11 as sought by the appellant vide her application dated 20/6/2017 within 7 days, free of cost ,from the date of receipt of the order.
6. It is contention of the Appellant that the Respondent No. 1 PIO did not comply the order of the First Appellate authority and did not furnish her information as such being aggrieved by the action of PIO , she is forced to approach this Commission by way of second appeal
7. In this back ground the present appeal came to be filed before this commission on 23/2/18 under section 19(3) of the RTI Act 2005 , there by seeking direction to PIO for furnishing her the said information and for invoking penal provisions .
8. Notice were issued to both the parties. In pursuant to which appellant was represented by Adv. Ketki Pednekar. Respondent No. 1 PIO was represented by Advocate S.P.Dessai .
9. Reply filed by PIO on 12/4/18 and since the appellant was not satisfied with the said reply , an addition reply was also filed by the PIO on 26/4/18 thereby providing point wise information .
10. Arguments were advanced by both the parties .
11. It is the contention of the Advocate for the appellant that information on points No.5,8,9 and 11 have not been fully given as according to her the queries raised in the above points have not been answered by the PIO. She further contended that there was delay in furnishing her information as the same was not furnished within 30 days time . She further

contended that the Order of the FAA was also not complied by the PIO and on the said ground she pressed for invoking penal section as against the PIO .

12. Advocate for the respondent submitted that whatever information available on their records have been provided to the appellant .
13. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
14. On scrutinizing the records it is seen that information at point No. 5 and 9 have been provided by the PIO vide his additional reply dated 26/4/2018. At point NO. 8 and 11 the appellant is seeking the reasons for not taking an decision on the said issue.
15. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of 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 ."**

16. Yet in another decision 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 8 has held**

" The definition of information cannot include within its fold answers to the question why which would be same thing as

asking a reason for a Justification for a particular thing, The Public information authorities cannot be expected to communicate to the citizens the reasons why a certain thing was done or not done in the sense of justification because the citizen makes a requisition about information justifications are matters within the domain of adjudicating authorities and cannot properly be classified as information”.

17. The Apex court in case of 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”.
18. Based on the ratio laid down by the above courts, I hold that the Information at point no. 8 and 11 does not come within the purview of definition of “information” as such the same cannot be ordered to be furnished.
19. Since the permissible information have been furnished to the appellant I find that no intervention of this commission is required thereto in respect of prayer I sought by the appellant in the memo of appeal.
20. With respect to prayer II , prima facie it is seen from the records that the application u/s 6(1) of the RTI Act filed before PIO, on 20/6/2017. The respondent No. 1 PIO did not bother to reply the same leave aside furnishing the information. The reply of the PIO dated 22/8/2017 is not given within the 30 days time as contemplated u/s 7(1) of the RTI Act. There is a delay responding/furnishing the information .
21. It is seen from the records that the order was passed on 12/1/2018 by Respondent No. 2 first appellate authority and till hearing of this present appeal the same was not complied. There was directions from first appellate authority to furnish the information within 7 days from the

receipt of the order. The compliance of the order only done belatedly during the present proceedings.

22. From the conduct of PIO it can be clearly inferred that the PIO has no concern to his obligation under RTI Act. It is also clear that PIO has no respect to obey the orders passed by his senior officers .
23. Once the order passed by the first appellate authority who is the senior in rank then PIO , there is no option with the PIO and he has to comply the order unless it is challenged with the appropriate forum.
24. The right of the information Act 2005 has been enacted with objective of promoting transparency and accountability in working of Government. It empowers citizen to keep necessary vigil on the instrument of the Governance and makes the Government more accountable to the govern. The Act is a big step towards making the citizen informed about the activities of the Government .
25. From the provision of the RTI Act it indicates that entire responsibility in providing information sought rest on PIO and non compliance of mandate makes PIO liable for penalty action. The conduct of PIO herein appears to be suspicious and adamant vis-à-vis the intend of act in bringing transparency in the affairs.
26. Considering the conduct of then PIO and indifferent approach to the entire issue I find substance in the contention of the appellant that the PIO purposely and malafidely refused access to the information.
27. In the above given circumstances I dispose this appeal with following order;

ORDER

1. Appeal is partly allowed.
2. Since the information is provided I find no intervention of this Commission is required thereto .
3. Issue showcause notice to PIO as to why no action as contemplated u/s 20(1) of the RTI Act 2005, should not be

initiated against him, for not responding the application within 30 days of time as contemplated u/s 7(1) of RTI Act , and for not complying the order passed by the Respondent no. 2 First appellate authority and delaying the information.

4. In case the PIO at the relevant time , to whom the present notice is issued is transferred , the present PIO shall serve this notice alongwith the order to him and produce the acknowledgment before this commission or before the next date fixed in the matter alongwith the full name and present address of the then PIO.
5. The Registry of this Commission is directed to open new penalty proceedings.

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.

Pronounced in the open court.

Sd/-

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

Ak/-