

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

Appeal No.198/2019/SIC-I

Shri Stanley J. Rocque,
S-4,S-5, Estaves Apartments,
Bhuttm Bhat, Mercedes , Tiswadi-Goa.

....Appellant

V/s

1. First appellate authority,
Block Development officer,
Junta House, Panajim, Tiswadi-Goa. ,

2. Public Information Officer,
Village Panchayat Secretary,
Vilage Panchayat Mercedes, Tiswadi-Goa.

.....Respondents

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

Filed on:21/06/2019
Decided on:10/12/2019

ORDER

1. By this appeal, the appellant assails the order, dated 26/3/2019, passed by the respondent No.1 first appellate authority in first appeal No. 41/2018-19, filed by the appellant herein.

2. The facts in brief as put forth by the appellant are as under;

(a) The Appellant vide his application dated 19/1/2019 had sought from the Respondent No.2 Public Information Officer (PIO), of the office of Village Panchayat Mercedes-Goa certified copies of information at part A and B as listed therein in the said application in respect of flat No. S-4 of Estaves Apartment, more particularly pertaining to transfer of House Tax for the said flat from previous owner Mr. K. Srivastava alias Srivastava Rao Krishna to Mrs Sales Aurita E.Remelinda De Oliveria, Resident of House no. 61, Gauche Bhat, Mercedes-Goa .

(b) The said information was sought by the appellant in exercise of his right u/s 6(1) of RTI Act, 2005.

- (c) It is the contention of the appellant that his above application filed in terms of sub section (1) of section (6) was responded by the respondent no 1 PIO on 10/2/2019 wherein it was informed to him that the information at point no. a,b,c,d of part A was not available and the information at point no. e was furnished to him. It is his contention the information at part B is not provided to him in the said reply.
- (d) It is the contention of the appellant that he being not satisfied with a said reply , filed 1st Appeal on 1/3/2019 to Respondent no.1 the Block Development Officer , Panajim-Goa being first Appellate Authority interms of section 19(1) of Right To Information Act, 2005.
- (e) It is contention of the appellant that part B information was traced based on the details of the names and addresses and the same is furnished before the respondent No. 1 on first date of hearing (19/3/2019)
- (f) It is the contention of the appellant that the Respondent no.1 First Appellate Authority passed an order dated 26/3/2019 dismissing his appeal by upholding the say of the Public Information Officer (PIO) and hence he being aggrieved by the action of both the Respondents is forced to approach this commission in his 2nd appeal on 21/6/2019 as contemplated u/s 19(3) of Right To Information Act,2005.

3. In this background the appellant has approached this commission with a contention that no information at point No. a,b,c and d of part A is still not provided and thereby seeking relief of directions to PIO to furnish him the required information at the earliest, for invoking penal provisions against both the Respondents and for implementation of section 4 of RTI Act .

4. Notices were issued to both the parties, in pursuant to which Appellant was present in person. Respondent No.1 First Appellate Authority was represented by Umesh Shetgaonkar Respondent No. 2 PIO Shri Oriville Vales was present .
5. Affidavit in reply filed by Respondent NO. 2 PIO alongwith the enclosures more particularly the information pertaining to flat no. S-4 on 21/10/2019. No reply came to be filed by respondent No. 1 first appellate authority. Copy of the affidavit in reply of respondent No. 2 PIO was furnished to the appellant .
6. Counter Reply also filed by appellant on 25/11/2019, the copies of same were furnished to the respondent.
7. It is the contention of the appellant that the information cannot be denied on the bases of number identification when correct name and addresses identification is provided. It was further contended that the respondent PIO has made false submission that the information have been furnished with respect of point a,b,c, and on 10/2/2019 but in the reply it was furnished as "Not available" which is totally contradicting the submission made on the affidavit cum reply of Respondent 2 PIO. It was further submitted that the denial of information on the basis of non availability is unacceptable as the same amount to withholding the information with malafide intention. It was further contended that he had sought the information of public documents maintained by the Village Panchayat office as according to him no proper procedure has been followed by the Village Panchayat office for transferring the House Tax and as such he required the said information for initiating legal proceedings before appropriate forum.
8. It was further submitted that allowing the Respondents ,the right to refuse information coupled with facetiously replies goes again the spirit of the Act. It was further submitted that appropriate directions are required to be issued against the Respondent No. 2 PIO for non maintenance of vital information.

9. On the contrary it is the contention of the Respondent No. 2 PIO that he vide his reply dated 10/2/2019 has furnished the information sought by the appellant in his application dated 19/1/2019 in respect to the flat No. S-4 of Estaves Apartments as not available since said flat S-4 stands registered for House tax purpose in the name of Sebastiao A. Esteves and in support of his contention he relied upon copies of house tax receipt paid in respect of flat No. S-4, Estaves Apartment from 2010 onwards till 2018-19.
10. He further contended that the office records reveals that information sought by the appellant pertains to flat No. S-5 of Estaves Apartment and are available in office records and it is open for the appellant to seek the same information by filing the fresh application and or that same can be furnished on the directions of this commission.
11. I have considered the submission made on behalf of both the parties and also scrutinized records available in the file
12. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has 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 records 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”.

13. Yet in another decision, 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, 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 has passed an order”.

14. Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records.**

15. On perusal of the extract of demand and assessment /ledger book at page 25/C relied and enclosed by the Respondent to his affidavit in reply, it is seen that at serial No. 13 flat F1S-5 stand transferred under resolution No.VI (i) on 15/10/2011 in the name of Seles A.E.De Oliveria and the name of Shri K. Srivastava is recorded in the bracket. Hence I find some substance in the contention of the respondent PIO that information sought by the appellant herein pertains to flat No.F1 S-5 and not S-4 of Estaves Apartment at Mercedes.

16. The Hon’ble High Court of Delhi at New Delhi in Writ Petition(c) bearing No.7453/2011 has held at para 5;-
“ if the information of the nature sought by the respondent is easily available with the intelligence

Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to information Act.”

17. By subscribing to the ratios laid down by the Hon'ble above Courts, since the information is in existence and available in the records of the office of the Public Authority concerned herein, and considering the purpose and reason for which the same has been sought, I find it appropriate that in the interest of justice and also in the larger public interest, the appellant is entitled for the same.
18. It is seen that the application of the appellant was responded by the respondent PIO within the stipulated time of 30 days. The respondent No. 1 first appellate authority who is also senior officer of Respondent PIO has also upheld the say of the PIO. The submissions of the respondent PIO are also supported by the documentary evidence. Hence in my opinion the facts of the present case doesn't warrant levy of the penalty or fine on the Respondent PIO.
19. The public authority has to give or disclose most of the information suo moto. The information has to be periodically updated by various means of communication including internet so that public should have minimum resort to the use of this for obtaining information. The obligation mentioned under the section have to be mandatory performed by the public authority suo moto. This observation of mine are based on the ratio laid down by the Hon'ble High Court of Kerala in a writ petition(c)No.9988 of 2007 Canara Bank V/s Central Information Commission and others. The PIO is silent on the compliance of section 4 of RTI Act 2005.
20. In the facts and circumstances of the present case the following order is passed:-

Order

Appeal Partly allowed

1. The PIO is hereby directed to furnish the information sought by the appellant at point a,b,c, and d of part A of his application dated 19/1/2019 pertaining to flat No. F1S-5 of Estaves Apartment at Mercedes in connection of transfer of house tax from previous owner Mr.K. Srivastava alias Srivastava Rao Krishna to Seles A.E.De Oliveria, within 15 days, free of cost from receipt of this order.

The above directions are passed in the facts and circumstances of the present case only and shall not be construed as precedent.

2. The public authority concerned herein i.e .the Village Panchayat of Mercedes, Tiswadi- Goa is hereby directed to comply with section 4 of the RTI Act, 2005 without any further delay.

3. Rest prayers are rejected.

With the above directions the proceedings 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.

Pronounced in the open court.

Sd/-

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

