

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

Appeal No.37/2019/SIC-I

Santana Piedade Afonso.
H No. 263, Comba Central,
P.O. Cuncolim, Salcete Goa.

....Appellant

V/s

1. Shri Joao B. Fernandes,
The Public Information Officer,
Office of Mamlatdar of Salcete Taluka.
1st floor, Mathany Saldana, Administrative
Complex, Margao-Salcete Goa.

2. Shri Uday Naik,
Dy. Collector & SDO, First Appellate Authority,
1st Floor, Mathany Saldanha Administrative
Complex, Margao- Salcete Goa.

.....Respondents

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

Filed on: 18/2/2019
Decided on: 13/5/2019

ORDER

1. The second appeal came to be filed by the appellant Shri Santana Piedade Afonso on 18/02/2019 against the Respondent No.1 Public Information Office of Mamlatdar of Salcete Taluka at Margao and against Respondent No. 2 FAA under sub section (3) of section 19 of RTI Act 2005.
2. The brief facts leading to the second appeal are that the appellant Shri Santan Pidade Afonso vide his application dated 08/08/2018 had sought for the following information;
 - a) Extract /computer generated copy of form IX of mutation of landed property under survey No. 471/80 in the name of Francisco Pinto of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.

- b) Extract/ computer generated copy of form IX of mutation of landed property under survey No. 471/81 in the name of Caitan Piedade Fernandes of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
- c) Extract/computer generated copy of form IX of mutation of landed property under survey No. 471/79 in the name of Ruzario Pinto, Cruz Pinto and Caitan J. M Pinto of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
- d) Extract/ computer generated copy of form IX of mutation of landed property under survey no. 471/89 in the name of Lazario Fernandes and WRD, Gogol Margao of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
- e) Extract/ computer generated copy of form IX of mutation of landed property under survey no. 471/94 in the name of Francis Pinto and WRD, Gogol Margao of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
3. The said information was sought from the Respondent No. 1 PIO of the office of Mamlatdar of Salcete Taluka at Margao – Goa in exercise of appellants right u/s 6(1) of Right To Information Act, 2005.
4. It is contention of the appellant that he received reply to his above application from the Respondent No. 1 PIO on 04/09/2018 interalia informing him that as per Talati report dated 31/08/2018, the information required by him is not available as the form IX registered is submitted to the office of Vigilance Department, Panaji.
5. It is the contention of the appellant that he made several visits to the office of the PIO requesting him to provide the information sought and if the form IX registered is submitted to the office of

Vigilance Department, Panaji Goa then to transfer the said application dated 08/08/2018 u/s 6(3) of the RTI Act to the Vigilance Department.

6. It is the contention of the appellant that Respondent No. 1 did not transfer his application to the PIO of Vigilance Department in terms of section 6(3) of the RTI Act and as such deeming the same as rejection, and being aggrieved by the action of Respondent PIO, he filed first appeal to Respondent No. 2 FAA on 31/10/2018 u/s 19(1) of right to information Act.
7. It is the contention of the appellant that notices were issued by the Respondent No. 2 FAA which duly served on both the parties however Respondent PIO opted to remain absent during the hearings before the FAA.
8. It is the contention of the appellant that the Respondent No. 2 FAA vide order dated 13/12/2018 allowed his appeal and directed the Respondent no. 1 PIO to issue the information to the appellant, free of cost as sought by him vide application dated 08/08/2018 within 15 days from the date of the order.
9. It is the contention of the appellant that inspite of the said order of FAA, the said information was not furnished to him by Respondent no. 1 PIO as such being aggrieved by the said action of PIO, the appellant has approached this commission in his second appeal as contemplated u/s 19(3) of Right to Information act.
10. In the second appeal the appellant had sought for direction as against respondent No. 1 PIO for furnishing required information as sought by him vide application dated 08/08/2018 and for invoking penal provisions.
11. Matter was taken upon board and listed for hearing in pursuant to notice of this commission, Appellant appeared in person. Respondent

PIO Shri Prataprao Gaonkar was present along with APIO Smt. Sharad Naik. Respondent No. 2 was represented by Shri Abhishek Naik.

12. Reply was filed by Respondent No. 1 PIO on 28/03/2019 along with enclosures and by respondent No. 2 on 26/03/2019. Additional reply and also affidavit was filed by PIO on 13/05/2019. The copies of the replies filed by Respondents along with the documents was furnished to appellant.
13. Vide reply dated 28/03/2019, the Respondent PIO contended that form IX registered is submitted to the office of Vigilance department, Panaji. He further contended that their office searched the office records in respect of Survey numbers 471/80, 471/81, 471/79, 471/89 and 471/94 of Village Cuncolim of Salcete Taluka and it is found that names are recorded in above survey Numbers at the time of promulgation of survey records and only name of Government of Goa works Division XII, water Resources Department, Gogal, Margao-Goa is records as co-occupant of above surveys. It was further contended that since the records in form IX are not available in the office of PIO, the application was forwarded/transferred to the inspector of Survey and Land Records Margao vide Letter dated 19/03/2018 interms of section 6(3) of RTI Act, 2005 and in support of this above contention he relied upon forwarding letter dated 19/03/2019 interms of section 6(3) of RTI Act addressed to the Inspector of survey and Land Records.
14. The appellant filed application/counter reply on 10/04/2019 and submitted that he has received the reply from the PIO of inspector of Survey and Land records, records of rights (South), Margao-Goa there by informing him that for IX of survey numbers 471/80, 81, 79, 89 and 94 of Cuncolim village of Salcete taluka is not maintained by their office and the same are maintained by respective Talathi of

Salcete taluka and in support of his contention he rely upon letter dated 28/03/2019 addressed to him by the PIO of inspector of Survey and Land records, records of rights (South), Margao-Goa.

15. The Respondent PIO during the proceedings submitted that he intends to call for records from the Vigilance Department for verification and undertook to provide the information if available to the appellant.
16. Accordingly on subsequent date of hearing filed reply and affidavit both dated 13/05/2019 and contended that on his request to Director of vigilance, the Vigilance officer IV, of Vigilance Department had submitted 3 (form IX) registers as required by their office in order to provide the information sought by the appellant and after verifying the records of the registers, it is noticed that the copies of form IX of survey numbers 471/80, 471/81, 471/79, 471/89 & 471/94 of village Cuncolim are not available in the said registers. It was further contended that these forms of above survey numbers of village Cuncolim were not prepared on the basis of form IX but were as per form I & XIV prepared by inspector of survey and land records, Margao at the time of promulgation. It was further contended that the extract/computer generated copy of form IX of the mutation of landed properties under survey number 471/80, 471/81, 471/79, 471/89 & 471/94 of village Cuncolim of the mutation register book held by the Talathi and sought by the appellant under RTI Act are not available. The Respondent PIO volunteered to give Suo Moto inspection of the above registers to the appellant.
17. In the nutshell it is the case of respondent PIO that the information/documents sought by the appellant, since not available on the record of public authority the same could not be furnished to the appellant. The same fact has been also affirmed by the Respondent PIO by way of affidavit

18. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
19. 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 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 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. A public authority is also not required to furnish information which required drawing of inferences and/or making of 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. ”

20. 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 an passed an order”.

21. 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.**
22. In the present case the PIO has clearly stated and submitted that information sought by the appellant is not available in the records of their office. Hence no any direction can be issued to Respondent PIO to provide the information.
23. Since the appellant at point (b) have sought for Suo Moto inspection of above file / records and as the PIO has agreed to permit the appellant for Suo Moto inspection of the above registers, the appellant may visit the office of the respondent PIO within 8 days for the purpose of carrying out inspection and the Respondent no. 1 PIO is hereby directed to make arrangements and to keep all documents/registers ready for inspection so that no inconvenience is caused to the appellant.
24. With above directions the appal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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

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

Sd/-

(Ms.Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-