

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

CORAM: Shri Juino De Souza : State Information Commissioner

Appeal No: 107/2019/SIC-II

M/s. Paradise Village Beach Resort,
A unit of M/s Marina Resort Pvt. Ltd.,
A duly incorporated Private Ltd., Company,
Having Office at H.No. not known,
Tivai Vaddo, Calangute,
Bardez-Goa. represented herein by its
Authorized signatory, Mr. Dilwyn Nazareth,
Aged 59 years, Indian National,
Service H.No.292,
Borvon Vaddo, Nachinola ,
Bardez-Goa.

..... Appellant

v/s

1. Shri Ramnath G. Shirodkar,
Son of Major of age, married,
Business, Indian National,
r/o H.No.1303, Kumar Waddo,
Anjuna, Bardez-Goa.
2. The SPIO, Executive Engineer,
Electricity Department ,
Division - VI, Mapusa -Goa.

.... Respondents

Relevant emerging dates:

Date of Hearing : 27-06-2019
Date of Decision : 27-06-2019

O R D E R

1. **BRIEF FACTS** of the case are that the Appellant has filed a Second Appeal before the Commission registered on 26/04/2019 being aggrieved with the order of the First Appellate Authority (FAA) wherein the FAA vide an order dated 10/04/2019 had directed the PIO to furnish the information as sought by the original RTI applicant.
2. It is the case of the Appellant that the PIO had issued a notice under section 11 to the Appellant as 'third party' dated 11/02/2019 and accordingly the Appellant being the interested 'third party' had objected vide letter dated 18/02/2019 to disclosing the information and the PIO therefore by letter dated 28/02/2019 had refused to disclose the information to the RTI Applicant i.e Respondent No 1.

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3. It is further the case of the Appellant that Respondent No.1 (RTI applicant) had subsequently filed a First Appeal against the decision of the PIO and that the First Appellate Authority (FAA) without hearing the Appellant (third party) and Respondent No 2, PIO passed an ex-parte order on 10/04/2019 directing the PIO to furnish the information. The Appellant is aggrieved with the said Order and hence has filed the Second Appeal praying for a stay and to set aside the Order of the FAA and for other such reliefs.
4. **HEARING:** During the hearing the Appellant M/s. Paradise Village Beach Resort unit of Marina Resort Pvt. Ltd is represented by Adv. Sachin S. Desai. Also present on behalf of the Appellant are Shri. Dilwyn Nazareth, Shri. Rishi Dandona (MD) and Mrs. Mona Dandona (Chairperson). The Respondent No. 1, Ramnath Shirodkar (RTI applicant) is present in person. Respondent No.2, PIO, Shri. Pradeep Narvekar, Executive Engineer, Div VI is also present in person along with Shri. Denis Rodrigues, Asst. Engineer with the public authority.
5. **SUBMISSIONS:** Adv. Sachin S. Desai for the Appellant submits that when the PIO had issued notice u/s 11 to the third party asking for their say and the Appellant had objected to disclosing the information and due to which the PIO had refused to disclose information and which led to the Respondent No 1 (RTI applicant) filing the First appeal, the FAA could not have passed an ex-parte order without hearing the Appellant.
6. Adv. Sachin S. Desai further submits that as per 19(4) of the RTI Act 2005, the First Appellate Authority (FAA) ought to have issued notices and given reasonable opportunity to the Appellant to be heard in the matter and which procedure was not followed and therefore the impugned order is perverse and has been passed without due process of law and thus deserves to be stayed / set aside. Adv. Sachin S. Desai requests the Commission to remand the matter back to FAA so that the interested third party is heard as is required under the law.

7. The Respondent No.1, original RTI applicant submits that pursuant to the order passed by the First Appellate Authority (FAA), he has received information at all points as per the RTI Application which has been furnished to him by the PIO and as such he has nothing to say in the matter. The Respondent No.1, files a reply which is taken on record, one copy is also served on the appellant.
8. The Respondent No.2, PIO submits that he has complied with the directions issued by the FAA vide Order his dated 10/04/2019 and has furnished all the required information in tabulation form as was sought by the RTI Applicant vide letter dated 02/05/2019. The PIO furnishes a copy of the said information documents along with his reply which is taken on record. One copy is served on the Appellant.
9. At this juncture the Advocate for the Appellant expresses surprise and argues by stating that the procedure has been stifled at the level of the FAA and the Commission should pass strictures.
10. **FINDINGS:** The Commission after hearing the submissions of respective parties and perusing the material on record including the Order of FAA, indeed finds that the FAA has passed an ex-parte order without hearing the Appellant (third party) and the Respondent PIO.
11. It was the bounden duty of First Appeal Authority on receiving copy of the First Appeal memo to have issued notices to all the respective parties and afforded a reasonable opportunity to the Appellant to explain his case. The appellant being the interested third party should have been heard in the matter more so as the PIO had invoked section 11 of the RTI Act asking for the say of the Appellant who had objected furnishing the information and on the basis of the objections received, the PIO had refused the supply of information to the RTI applicant. Also the 'third party' factor was raised in the First Appeal memo by the Respondent No.1

12. The FAA being a quasi judicial body should have applied section 19(4) of the RTI act 2005 and after hearing the respective parties should applied his mind and come to a conclusion whether the information sought in the RTI application falls within the ambit of third party information and whether such disclosure can cause invasion of privacy and hence cannot be provided or whether the information falls under the purview of public documents and thus can be furnished .
13. The Commission notes with serious concern that such a serious lapse on part of the FAA cannot be taken lightly more so as the FAA is a senior officer of the rank of Superintending Engineer II(N), PANAJI in the Electricity department.

The FAA is hereby called upon by this commission to explain the reason for his failure to discharge his duties which he is legally bound. The FAA is directed to remain present personally before the commission with his reply on 27th August 2019, at 11.30am.

14. **DECISION:** As the information is already furnished to the RTI applicant by the PIO, nothing further survives in the Appeal case. Consequently the relief sought by Adv. Sachin S. Desai for remanding the matter back to the FAA beomes infructuous and stands rejected. With these observations the appeal case stands disposed.

All proceedings in Appeal case stands closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner