

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

Appeal No.267/2018/SIC-I

Shri Sebastain Cardoso,
H.No.131/D,
Bazarwaddo, Cansaulim
V/s

....Appellant

1) The Public Information Officer,
Office of the Administrator of
Comunidades, South,
Margao Goa .

2) The Escrivao,
Comunidade of Cansaulim,
Mormugao, Goa.

3) First Appellate Authority,
Office of the Additional Collector-I, South,
Mathany Saldanha Admn Complex,
Margao Goa .

.....Respondents

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

Filed on: 05/11/2018

Decided on: 15/01/2019

ORDER

1. The brief facts which arises in the present appeal are that the Appellant Shri Sebastain Cardoso vide his application dated 13/3/2018 had sought for the address of the cultivator-Maria Santana Pinto e Costa of field under the name-Predio Tolloy in survey No. 15/4 falling in Comunidade in the village of Cansaulim Mormugao Goa. The said information was sought from the Respondent no.1 PIO of the office of Administrator of Comunidade, South at Margao-Goa in exercise of appellant right under sub-section(1) of section 6 of Right To Information Act, 2005.
2. It is the contention of the appellant that he received a reply from Respondents no. 1 PIO herein on 26/7/2018 interms of section 7(1) of RTI Act there by informing appellant that the information sought

by him is not available in their office records as such his application was forwarded to Respondents no. 2 Escrivao of Comunidade of Cansaulim, vide their office memorandum No. ACSZ/120/RTI/2017-2018/870 dated 16/3/2018 for obtaining required information and in the said connection the Respondents no. 2 Escrivao Cansaulim Comunidade had submitted a letter dated 9/7/2018 which was received by their office vide entry NO. 1036 dated 10/7/2018. A copy of the said letter dated 9/7/2018 was enclosed by the PIO to his reply .

3. It is the contention of the appellant that he was not satisfied and convinced with the reply of respondent No. 2 Escrivao of Cansaulim Comunidade given vide his letter dated 9/7/2018 i.e *Survey records are not available in the Archives of Comunidade*
4. It is the contention of the appellant that being aggrieved by the action of respondent No. 1 PIO and Respondent no. 2 Escrivao of Comunidade, he preferred first appeal on 9/8/2018 before the Respondent no. 3 herein interms of section 19(1) of the Right To Information Act, 2005.
5. It is the contention of the appellant that the Respondent No. 3 First appellate authority by an order dated 4/9/2018 disposed his first appeal with a direction to Respondent No. 2 Escrivao of Cansaulim Comunidade to furnish the information as sought by appellant within 7 days from the date of the order free of cost to the appellant .
6. It is the contention of the appellant that despite of the order of the Respondent NO. 3 the Respondent no. 1 and 2 did not furnished him the required information despite of he visiting their office and meeting them personally .
7. In this back ground the appellant has approached this commission with a prayer for directions to Respondent No. 1 PIO for furnishing information and for invoking penal provisions.

8. In pursuant of notice of this commission appellant appeared in person. Respondent No. 1 PIO was represented by Shri Vivek Desai and Respondent No. 2 Escrivao Shri Keshav Naik appeared Respondent no.3 first appellate authority opted to remain absent.
9. Affidavit in Reply was filed by respondent No. 1 PIO and by Respondent No. 2 on 15/1/2019 respectively. The copy of the same was furnished to the appellant.
10. Arguments were advanced by both the parties.
11. It is the contention of the appellant that respondent no. 2 deliberately refused and avoided to furnish him the information as sought by him vide his application dated 13/3/2018 as he knew that he would be caught telling falsehoods. It is his further contention that Respondent no. 2 Escricao is guilty of dereliction of duties as had not kept records and was furnishing information based on the information is in his mind which is contrary to the Right to information act.
12. It is the contention of the Respondent PIO that since the information sought by the appellant was not available with the office of Administrative of Comunidade, an memorandum NO. ACSZ/120/RTI/2017-18/870 dated 16/3/2018 was issued to Respondent no. 2 Escricao of the Comunidade of Cansaulim directing him to provide the information sought by the appellant within a period of 5 days and the respondent no. 2 filed his reply to his memorandum on 9/7/2018 stating that information sought by the appellant is not available in the Archieves of Comunidade of Cansaulim which inturn was communicated to the appellant by office letter No. ACSZ/120/RTI/2018-19/323 dated 26/7/2018 and the copies of both the letters were relied upon by Respondent No. 1 PIO in support of his above contention. It was further contended that since the reply filed by the Escricao was already furnished to the appellant , he did not sought any reply again from Respondent no. 2 Escricao in compliance to the order dated 4/9/2018 passed by Respondent no. 3 .

13. The Respondent no. 2 Escrivao vide his affidavit in reply admitted of having received the memorandum dated 16/3/2018 of Administrator of Comunidade and his reply dated 9/7/2018 to the said memorandum. He further submitted that during the present proceedings also he again went through all the records of Comunidade of Cansaulim, and checked whether the address of the cultivator of the said field was available and on verification of records it was found that the same was not found recorded in their records. He further submitted that appellant if so desires may come and inspect the records of Comunidade.
14. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
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 .** 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. "

16. 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 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".

17. The PIO is duty bound to furnish the information as available and as exist in the office records. In the present case the Respondent nO. 1 PIO and Respondent no. 2 Escrivao has clearly stated and affirmed on oath that the information sought by the appellant does not exist on the records available in the office.

18. By subscribing to the ratios laid down by Hon'ble Apex court and since the Respondent No.1 PIO and respondent No. 2 Escrivao of Comunidade of Cansaulim have catagorily submitted that the **address of the cultivator –Maria Santana E Costa** does not exist in their office documents as such no any directions can be issued to the Respondents for furnishing the non existing information. Hence the relief sought at prayer-I by the appellant cannot be granted. However since the Respondent no. 2 Escrivao has volunteered to give the inspection of all the registers/records of Comunidade of Cansaulim for verification to the appellant, I feel ends of justice will meet if the appellant is permitted to carry out the inspection of the records of the comunidade.

19. It is seen from the records that moment the application received by the Respondent no. 1 PIO the same was forwarded to Respondent no. 2 on 16/3/2018 for furnishing him the information. There is delay on the part of Respondent no. 2 Escrivao in replying the same which is contrary to

the intent of RTI Act. The Respondent no.2 Escrivao ought to have promptly replied the same. For the fault of Respondent no. 2 in delay in replying and providing information, the Respondent no. 1 cannot be solely held responsible for not responding/ not furnishing information within stipulated time of 30 days .

20. The Respondent No. 1 & Respondent no. 2 must introspect that non furnishing of the correct information within stipulated time lands citizen/ information seeker before first appellate authority and also before this commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible.
21. In the above given circumstances, in the interest of justice following order is passed.

Order

1. The Respondent no. 2 Escrivao of Cansaulim Comunidade is hereby directed to permit the appellant to carry out the inspection of the records of the Commundiade of Cansaulim pertaining to the information sought by him vide his application dated 13/3/2018 if appellant so desires. The appellant is also hereby directed to approach the Respondent no. 2 Escrivao within a month from the date of the receipt of order for the purpose of carrying out the inspection of the records of the Comunidade of Cansaulim.
 2. Respondent No. 1 PIO and Respondent no. 2 Escrivao is hereby directed to be vigilant henceforth while dealing with RTI matter and to strictly comply with the provisions of RTI Act.
22. With the above given direction appeal 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