

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No.131/2018/CIC

Shri Devidas G. Sukthankar,
Hno. 156, Godgowada, Near. Borim Circle,
Borim, Ponda-Goa.

....Appellant

V/s

- 1) Public Information Officer,
Administrator of Comunidade,
Mapusa Bardez-Goa.
403507.
- 2) Asst. Public Information Officer,
Comunidade of Colvale,
Through its Attorney with its office,
At Colvale, Bardez-Goa.

....Respondents

Filed On: 25/05/2018

Disposed On: 16/04/2019

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 29/12/2017 filed u/s 6(1) of the Right to Information Act 2005 (Act for short) sought certain information from the respondent no.1, PIO in the form of inspection of books of Tombo B-II of comunidade of colvale.
- b) The said application was replied on 09/01/2018 by PIO directing the clerk of comunidade of colvale to furnish the information sought within 3 days. However according to appellant inspite of said direction the information as sought was not furnished and hence the appellant filed first appeal to the First Appellate Authority (FAA).
- c) The FAA by order, dated 04/04/2020, allowed the said appeal and directed PIO to furnish the information. In spite of said order the information as was sought is not furnished and hence the appellant has landed before this commission in this second appeal u/s 19(3) of the act.

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d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 24/10/2018 filed reply to the appeal. Vide his said reply it is contented by PIO that he has issued a memo to the clerk of concerned comunidade to furnish inspection of documents sought. He has further stated that before this commission on 16/04/2018 the appellant has agreed for inspection and accordingly was given on 16/07/2018. According to him the Escrivao has issued inspection of Tombo B-II of the years 1888 to 1939, 1906 to 1956 and 1956 to 1996.

The appellant filed his say on the inspection 16/11/2018. According to him he has applied for inspection of Tombo B-II as the concerned aforaments was granted somewhere in 1875 and that no single book of 1875 was given. He has further denied that he was given inspection of books B-II from 1888 to 1939. He has further stated that in subsequent inspection on 07/08/2018 appellant was given inspection of Tomb B-II of 1956 to 1996 and that he wanted that of years 1801 to 1928. He has further submitted that the books of period prior to 1906 were not provided. According to him he requires inspection of books of years 1801 to 1928.

e) In the course of subsequent hearings, it was agreed between the parties that the information could be tracked on the bases of Tombacao plan held by appellant and a fresh inspection was fixed. After inspection it was clarified by clerk that books of the years 1906 to 1996 are only available and no books prior thereto are available. He was therefore directed to file affidavit. Accordingly the clerk Shri Ramesh Tulaskar filed affidavit on 05/04/2019

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Sd/-

affirming that the appellant has inspected book of the year 1898, 1906 and 1956 and that there are no books available for the period prior to 1898.

2) FINDINGS

- a) On perusal of records and considering the requirements of appellant it is seen that vide application, dated 29/12/2017, the appellant wanted to inspect books of Tombo in respect of aforamento allotted to his ancestors somewhere in 1875. It is for this purpose he requires inspection of records prior to 1875. After several rounds of inspection it is found by parties that the records only of the years 1888 to 1939, 1956 to 1996. The books of earlier period could not be inspected. The clerk of comunidade Shri Tulaskar has affirmed on oath that there are no books of Tombo B-II prior to 1898. I find no reason to discard or disbelieve the said affidavit.
- b) Hon'ble Supreme Court in the case of *Central Board of Secondary Education V/s Aditya Bandopadhyay* (Appeal No.6454 of 2011) has observed as under:

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a 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 record 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 no available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions.” (emphasis supplied)

- c) Considering the above ratio and as according to the Escrivao, who has become th3e deemed PIO u/s 5(5) of the act, the said books for the period prior to 1888 are not available this commission cannot to issue any directions to the PIO to furnish a non existing information or to create any such information. Needless to say that in case at any time the statement in said affidavit are found false, the person swearing it would be liable for action for perjury.
- d) In the above circumstances I find that any orders if passed would be redundant. Considering the facts and circumstances I find no grounds to invoke rights u/s 20(1) and /or 20(2) as the non furnishing of the information cannot be held as deliberate or malafide.

In view of the above the appeal is disposed with following.

O R D E R

Appeal is dismissed. However this order shall not effect the right of appellant to seek the same information if the records are traced at any time later. Order be notified.

Proceedings closed.

Pronounced in open hearing.

Sd/-

(Shri. P. S.P. Tendolkar)

Chief Information Commissioner
Goa State Information Commission
Panaji –Goa