

# **GOA STATE INFORMATION COMMISSION**

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

## **Complaint No.14/SCIC/2017**

Mr. Herman Harding,  
Plot No.B-7, H.No.A/23, B/23,  
Navelcar Hill City,  
Baiguinim Old -Goa. .... Complainant

V/s

- 1) The Public Information Officer,  
Village Panchayat Se Old Goa,  
Opp. to Church, Old Goa.
- 2) The First Appellate Authority,  
Block Development Officer,  
Junta House 3<sup>rd</sup> lift,  
Panaji -Goa. .... Opponent.

**Filed on: 25/05/2017.**

## **Appeal No.141/SCIC/2017**

Mr. Herman Harding,  
R/o H. NO. A/23, B/23,Plot No.B-7,  
Opp. PWD Water Tank,  
Navelcar Hill City,  
Baiguinim Old -Goa. 403402. .... Appellant

V/s

- 1) The Public Information Officer,  
The Secretary,  
Village Panchayat Se Old Goa,  
Old Goa. 403402
- 2) The First Appellate Authority,  
Block Development Officer,  
6<sup>th</sup> Floor, 3<sup>rd</sup> lift,Junta House,  
Panaji -Goa. .... Respondents.

Filed on 11/09/2017

Both Decided on: 11/07/2019

## **O R D E R**

As both the above proceedings arise out of a common

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application, dated 20/01/2017 filed U/S 6(1) of The Right to Information Act 2005 (Act for short), and as both the above proceedings involve a common point, both the above proceedings are disposed by this common order.

1) The facts in brief as are put forth herein are that:

a) The appellant/complainant's application u/s 6(1), dated 20/01/2017 arises in the back ground of the fact that on 29/11/2016, a complaint was made to

i) The Police Inspector, Old Goa.

ii) The Sarpanch Se Old Goa, Goa.

iii)The Director and Dy. Director of Panchayats, Junta House, Panaji –Goa.

iv) The Town and Country Planning, Panaji –Goa.

For unauthorized/illegal construction/encroachment in the open space No 1 situation at survey No.26/2A at Navelcar Hill City, Opp PWD water tank, Baiguinim, Old Goa shown in the plan duly approved by both the Town and Country Planning and the Sarpanch, V P Se Old Goa vide No.TIS/731/BAI/ 20000-TCP/395 dated 13/06/2000 and the Final NOC by V. P. SE Old GOA bearing No.VP/SOG/310/15/ 2000-01 dated 12/07/2000.

b) On 26/12/2016 a representation was made to the Sarpanch for demolition of the said structure in the open space NO.1 meant for park/garden and on the 10.0 M W public road and 6.0M W internal road meant for public utility with a copy to the Director of Panchayats, Secretary (Panchayats) Secretariat for intervention.

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c) On 12/12/2016, the Dy Director of Panchayats issued a Memorandum to the BDO for verification of the said allegation and for appropriate action with compliance report.

d) In reply to letter dated 26/12/2016, the Sarpanch vide his letter dated 06/01/2017 received on 20/01/2017 informed that the work in the open space is undertaken by obtaining all the due approvals from the concerned authorities.

e) Based on the said reply of the Sarpanch dated 06/01/2017 the appellant/complainant sought information under RTI Act 2005 for the certified copies of all the relevant approvals/permissions from the concerned authorities for construction in the said open space No.1.

2) According to appellant/complaint as the PIO failed to furnish the information, the appellant/complainant filed appeal to First Appellate Authority (FAA), and it is the contention of appellant/complainant that during the said hearing certain writing, which were unread initially by them but later was found as the reply to the application u/s 6(1) without any relevant documents.

3) It is the contention of the appellant/complainant that the PIO failed to provide relevant documents required under Panchayat Raj Act for construction and have violated the said Act. It is further according to appellant/complainant that the PIO has failed to publish the facts while formulating important decisions effecting environment and peace of mind

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of residents attached to open space and also has failed to provide decision to effected persons.

4) With the above pleadings the appellant/complainant has prayed :

a) That the relevant documents as sought/required from the concerned department for the existing illegal construction in an open space No.1 meant for garden/park and also for the work to be carried out by the Panchayats in the said open space No.1 be called for from the concerned Government authorities;

b) That the concerned Government Department be ordered to demolish the unauthorized structure, since neither the Panchayats nor the concerned Government Department has ever granted any permission to any person to erect the boundary wall nor is any permission granted or obtained to build a structure near the pipal tree in the said open space No 1 under survey No.26/2A;

c) That the information so provided by the SPIO, Se Old Goa, thereby deliberately answering to all the points sought under the RTI Act, 2005 as “not available” is a total violation of the Panchayati Raj Act, 1994. Hence, the information sought, and

d) Therefore, this complaint be admitted on merit with the instruction to order demolition of the existing concrete structure in an open space No 1 under survey No.26/2A and to maintain the said open space at its original without any concrete or tiled structure or pavers or tiles which is meant for public park/garden as required under the Environment protection Act.

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5) Notices of the above proceedings were issued to respondents. The PIO filed his affidavit in reply on 30/10/2017. Vide his said affidavit it is his contention that following the application, dated 26/12/2016 and 20/01/2017, the documents available were furnished. The PIO has further averred as to in what context the appellant/complainant's earlier application dated 26/12/2016 was replied. The PIO also contends that the information is not delayed nor denied.

6) The parties filed written arguments. On perusal of the said arguments it is seen that by, relying on several High Court and Hon'ble Supreme Court, the contents of which are reproduced therein, the appellant/complainant have tried to emphasize the role of statutory bodies constituted under various statutes in creating, use and maintenance of the open space in public interest. In their arguments the appellant/complainant has also highlighted the role of Panchayat and the powers and duties of Sarpanch and Dy. Sarpanch by referring to section (64) of the Panchayat Raj Act.

Considering the said submissions of the appellant/complainant it is seen that they have a grievance against the authorities and officers of the Panchayat for not performing their duties with specific reference to land development, sub divisions, maintenance of open space's and construction of structures in such areas.

7) On considering the relief sought by the appellant/complainants, as reproduced at para (4) above, it can be seen that the appellant/complainant wants this

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Commission to call the records from the concerned government Department pertaining to alleged illegal construction in open space, for ordering demolition of construction, and also issue instructions for demolishing of structures.

8) While seeking the above reliefs, it appears that the appellants/complainant has lost sight of the provisions under The Right to Information Act 2005. This Commission is Constituted under the said act with powers there under more particularly u/s 18, 19 and 20. Such powers consist of providing existing information held in any form and in case of non compliance of said mandate without reasonable cause then to penalize the PIO. No powers are granted to the Commission to deal with any grievance beyond the said Act.

9) By the present proceedings the appellant /complainant requires this Commissions to grant the reliefs as prayed which includes calling for documents, records from concerned authorities, ordering for demolition of alleged unauthorized structures, to hold that non existence of information as violation of Panchayat Raj Act. In other words the appellant/complainant wants this Commission to inquire and investigate into the illegality of constructions and grant reliefs against the violator in view of inaction on the part of public Authorities like Panchayat. Such reliefs are beyond the powers of this Commission. I am supported by the ratio laid down Hon'ble High court of Allahabad in the case of *Subhash Chandra Vishwakarma V/S Chief Information Commissioner U.P. State Information & Ors. in case No. Misc. Bench No. 69 of 2016*. In the said case the Hon'ble High Court has observed:

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“8.....The information to be furnished under Right to Information Act may broadly fall under two categories. i.e. action and inaction.

(1) Actions of the State Government culminating into an information are to be understood in the light of definition provided under Section 2(f) which reads as under:-

f) “Information” mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The aforesaid provision defining information makes it clear that inaction on a non statutory representation filed by any person does not fall within the strict sense of definition of information. On a close scrutiny of the provisions of definition clause, it is further seen that inaction on the part of the authorities cannot be construed to be an information unless and until there is a statutory obligation on the part of the competent authority to take a decision on the representation or complaint filed by an aggrieved person and even

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*if such an inaction is noticed, the representation remains at the stage of investigation and the protection of section 8(f) comes into play.*

*we have no hesitation to record that inaction on non-statutory applications/complaints filed by any person where the State Authorities are not obliged to take a decision would not fall within the definition of information giving rise to a cause under section-6 of the Act. If all such inactions are construed to be cognizable under the Right to Information Act, the misuse of the Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse of the process of law. Once it held that the application filed by the petitioner did not fall within the scope of information under the Right to Information Act, the impugned order passed by respondent No.1 on 24/11/2015 does not call for any interference and the writ petition being devoid of merit deserves to be dismissed.*

*We may also put on record that in various cases it is noticed that cognizance of proceedings under Section 18 of the Act is taken without discharging the obligation to examine the maintainability of appeals and complaints. Once the Information Officers either fail to discharge their duties or*

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*there is some other grievance which is amenable to the remedy of first appeal, the provisions of Section 18 of the Act have to be scrupulously applied so that the purpose of Section 19 of the Act is not frustrated but is rather strengthened to serve better. Needless to say that exceptions carved out under Section-8 of RTI Act, 2005 remain protected under the Official Secrets Act, 1923 or any other law for the time being in force.”*

10) Considering the above position, I hold that the Commission has no jurisdiction to grant the reliefs as prayed in both the above proceeding. Consequently if any action as prayed herein is granted it would result in abuse of process of law. Hence the present proceedings are not maintainable. The same are therefore required to be dismissed, which I hereby do.

However it is made clear that this order shall not preclude/prevent the appellant/complainant to seek specific information as it exist with the Village Panchayat and, if required, by seeking inspection of records from it, under the act.

Parties to be notified.

Proceeding closed.

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**(Shri. P. S.P. Tendolkar)**  
Chief Information Commissioner  
Goa State Information Commission  
Panaji –Goa