

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.264/2018/CIC

Mr. Nazareth Baretto,
Agriculturist,
R/o H. No.126, Borda,
Margao, Salcete –Goa

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Appellant

V/s

- 1) The Public Information Officer,
The Administrator of Comunidades,
South Zone,
Margao –Goa.
- 2) The Escrivao,
Comunidade of Davorlim,
Through the Administrator,
Comunidade of South Zone,
Margao –Goa 403601

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Respondents.

Date: 23/09/2019

O R D E R

- 1) In the course of hearing of the above appeal, the then PIO Shri Naresh G. Desai, As directed by this commission, filed an affidavit contending that whatever the resolutions as sought by appellant have been furnished and that there are no further resolutions available in the office records.
- 2) The appellant who was present at the hearing submitted that though his requirements under Right to Information Act 2005 (Act) is clarified, he is insisting on prayer for penalty on the PIO.
- 3) Considering the said facts I find that no interference of the commission is required in respect of the information as sought. However this shall not effect the right of the appellant challenging the actions of the Comunidade/Escrivao etc before competent forum.

Sd/-

...2/-

4) On perusal of the records it is seen that on receipt of the application u/s 6(1) of the act the PIO vide his memorandum dated 03/11/2017 sought assistance of the Escrivao for furnishing the information to appellant. On the bases of a reply dated 14/11/2017 the PIO has expressed is inability to furnish the information.

On perusal of said letter dated 14/11/2017 it is seen that the Comunidade has arrogantly denied furnishing the information by referring to article 28(3) of the code of Comunidades (herein after referred to as code). The PIO blindly and without application of mind has forwarded the said letter to appellant. In doing so the PIO has failed to consider that u/s 7(1) of the act he was required to decide the appellant's application u/s 6(1) of the act and not to act as a forwarding agent.

5) It is brought to the notice of the PIO that the act supersedes other act. Hence he ought to have noted that the provisions of article 28(3) of code has no effect over the application. Even otherwise under article 88(b) as amended vide notification dated 17/01/1998 makes it mandatory for the Escrivao to make available the land dealings and to it keep open for at least 10 years and also to send copies of such dealing and important matters to the administrator, which is the public authority herein.

In the above situation it was mandatory for the escrivao to send the records to the administrator who is also the PIO. The PIO failed to assert his right to seek such records before him and instead fell pray to the dictate of the Comunidade by conceding to the refusal of information.

Sd/-

...3/-

6) It is also noted from the said letter dated 14/11/2017 that the information was refused with a contention that Comunidade is a private body not amenable to the act. The PIO appears to have accepted the same without considering its rights under the act. Assuming for while that it is a private body, the PIO would have been well within his powers to seek the information u/s 2(f) of the act which reads.

“2(f) “information” means 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 for”(emphasis supplied).

Under article 125(1) of code the administrator is empowered to get enforcement of the provisions of code, contracts entered as also all resolution etc. In exercise of his such rights it was necessary that the PIO should have obtained the information rather than submitting to the dictates of the Comunidade.

Considering the entire scenario it is found that the PIO has adopted a casual approach to the issue as a silent spectator.

7) This commission also deprecate the tone and tenure of the escrivao from whom the assistance was sought. It is seen that inspite of exercising his duties under article 88 of the code, he has succumbed to the orders of Comunidade, which appears collusive. The Escrivao as a deemed PIO,

Sd/-

...4/-

when any assistance is sought from him, has a priority to assist the PIO in dispensing the information. Post of Escrivao as created under article 84(2) of the code is not for maintaining secrecy but to bring out transparency in functioning. The entire conduct of the escrivao as a deemed PIO appears suspicious and apparently to circumvent the provision of act and assist in illegality.

- 8) Considering the above circumstances this commission takes a serious note of the lapses and omission of the PIO and the deemed PIO. Such omissions are in fact dereliction in their respective duties.

However for the purpose of this appeal a lenient view is taken. Any such lapse, if noticed at any time hereafter, shall be viewed seriously and the same shall be reported to higher authorities recommending disciplinary proceedings under their service conditions.

With above observations and caution the present proceeding is disposed. Order be communicated.

The PIO Administrator of Communiade. South Zone Margao shall serve copies of this order to the concerned officers acting as PIO and Escrivao during the period 30/10/2017 to 30/11/2017.

Proceedings closed.

Sd/-
(Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji -Goa