

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No.44/2019/CIC

Shri Sebastian Cardoso,
RedRoom Apartments, 2nd floor,
H. NO. 429, Hotel Silver Sands,
Colva, Salcete Goa.

.....Appellant

V/s

1. Public Information Officer,
Town & Country Planning,
Osia Complex, 4th floor,
Margao – Goa.
2. First Appellate Authority,
Senior Town Planner,
Town & Country Planning,
Osia Complex, 4th floor,
Margao – Goa.

....Respondents

Filed On: 20/02/2019

Disposed On: 26/08/2019

1) FACTS

- a) The facts as pleaded by the appellant are that he filed an application dated 14 Nov. 2017 under Right to information Act 2005 (act for short) with the Public Information Officer, (PIO) Town and Country Planning Dept at Margao –Goa.
- b) That the PIO replied to the said application vide his letter No.TPM/RTI/Colva/57017/4762 dated 30/11/17.
- c) As the reply of the P.I.O was not satisfactory and as no information was furnished, the Appellant filed First Appeal

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dated 27/12/2017 before the First Appellate Authority (FAA)/Senior Town Planner at Margao –Goa.

- d) According to appellant the FAA on 06/02/2018 heard both the parties and the submissions of respondent No.1 to the said Appeal were unsatisfactory and directed the PIO to verify the records in Headquarters and inform and if found that the said files bearing No.DJ/2705 had indeed been transferred to GCZMA the said information may be furnished to the Appellant and the application should be transferred to the PIO of GCZMA. If said file has not been transferred, the PIO should make one more effort to retrieve the said file if existing in the records of South Goa District Office, if found, the information may be supplied to the Appellant free of cost.
- e) According to appellant there was no information furnished by the PIO to the appellant as per directions of the FAA and hence the appellant decided to file another RTI application dated 08/08/2018 with PIO of Town & Country Planning department at Panaji Goa. According to appellant reason for filing RTI application is because the FAA in his Order states that Hotel Silver Sand at Colva falls within the CRZ area i.e. 500mts from HTL. It is further according to appellant as per the information/records, all the files pertaining to the coastal area were initially held by the Town & Country Planning Dept., Head Quarters, Panaji.
- f) The PIO transferred the application u/s 6(3) of the RTI Act to the T.C.P. office at Margao. Being aggrieved with this decision to transfer his application to Margao office

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knowing very well that all construction files pertaining to hotels on coastal belts were transferred to head quarters at Panaji for which there is record with the headquarter office that files of Margao office has been received and acknowledged.

- g) According to appellant, as it was clear that he will not be furnished any information by PIO's of both TCP offices at Margao and Panaji he decided to file an RTI application dated 23/08/2018 with the PIO of Goa coastal zone management authority at Porvorim.
- h) The PIO of Goa coastal zone management authority at Porvorim vide letter dated 25/09/2018 stated that the information requested for is not available in said office.
- i) It is in the background of above facts that the appellant has filed the present appeal on the grounds that the impugned order is perverse and contrary to Law and does not deal with the grievances that the appellant had against the order passed by the public Information Officer and that FAA failed to see and confirm that the public Information Officer had furnished the information sought for by the appellant.

It is also the contention of appellant that FAA failed to decide the application dated 27 Dec. 2017 and now without deciding the same, proceeded to dispose of the Appeal and that it failed to see that the Respondent No.1 had to reply to the application.

The appellant has also raised the grounds that FAA failed to see that the Respondent No.1 is guilty of dereliction of duty as he has not kept records/destroyed

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records and was furnished information based on information in his mind which is contrary to the Act.

- j) Notices were issued to parties. The copy of the notice was also sent to appellant by email at the id. furnished by him. In spite of service of notice appellant failed to appear.
- k) The PIO South Goa District Office filed his reply on 15/04/2019. As the contention of PIO inter alia was that the details of the records were not available, in exercise of the powers granted to this commission under rule 5(VI) of the GSIC Appeal Procedure Rule 2006, an affidavit was sought from PIO in support of his said contention. Accordingly PIO Shri Ritesh Shirodkar filed his affidavit on 06/08/2019. Vide said affidavit it is averred by PIO that the information sought by appellant by his application dated 14/11/2017, which is the copy of construction licence dated 02/02/1978 is not available in the office records and hence information cannot be furnished. The PIO has made averments regarding the stages of the said application upto the present appeal.

2) FINDINGS:-

- a) Perused the records and considered the pleadings. The Hon'ble Supreme Court of India in case of

Central Board of Secondary Education V/s Aditya Bandopadhyay relevant portion reads:

“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

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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."

Thus the scope of the seeker in obtaining information is restricted to the information as is existing. In the present case the PIO is catagoric in his averment that the said records are not available. As the records are pertaining to the year 1978 which is more than forty years old, I find that the non availability is probable.

No doubt that the Commission could have ordered for an inquiry for missing information if was created and subsequently not traceable. However considering the present case, as the information is over 40 years old I find that such an exercise would be futile.

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- b) Though the appellant has referred to subsequent application under the act as dated 08/08/2018, I find no grounds to consider the same as no first appeal is filed by appellant in respect of the same. It would also lead to misjoinder of causes of action.
- c) It need to be mentioned that in the present appeal the appellant has sought to involve two application u/s 6(1) of the act dated 14/11/2018 and 08/08/2018 and in view of transfer of one of them u/s 6(3), it involves three different Authorities. If one consider the first application dated 14/11/2017, the date of disposal of first appeal as 06/02/2018 thus the present second appeal u/s 19(3) is barred by limitation. In the absence of any prayer for seeking condonation of delay the same is non maintainable. Thus the present proceeding is also totally misconceived and untenable.
- d) Considering the facts above and pleadings of the parties in any case the present appeal cannot be entertained otherwise. The same is therefore disposed with following:

O R D E R

The appeal is dismissed. Order be communicated to parties.

Proceedings closed.

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