

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Complaint No.07/2019/CIC

Shri Sadanand Narvekar,
R/o H No.7/25, Sautavaddo,
Calangute, Bardez-Goa 403516 **.....Complainant**

V/s

- 1) The Public Information Officer,
Block Development Officer-I,
2nd floor, Govt. Office Complex
Bardez, Mapusa Goa 403507.
- 2) The First Appellate Authority,
The Dy. Director of Panchayats (N),
3rd floor, Junta House, Directorate of Panchayats,
Panaji –Goa 403001 **..... Opponent**

Filed On: 29/01/2019

Decided On: 15/07/2019

O R D E R

- 1) Facts in brief as arise in this complaint are that the complainant by his application, dated 03/10/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act) sought information from respondent no.1 on five points as contained therein. The said application was decided by PIO on 30/10/2018.
- 2) Being not satisfied with the information as supplied, the PIO filed first appeal to First Appellate Authority (FAA) which was dismissed by order dated 06/12/2018.
- 3) The complainant has filed this complaint as according to him the PIO has avoided to furnish correct information. According to complainant the opponent are hiding the information sought at points 2, 3, 4, and 5 and hence this complaint u/s

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18(1) of the Act. The complainant has also sought for an inquiry u/s 18(2) of the act.

- 4) On notifying the parties the PIO filed his reply. According to PIO he has furnished clearly the name of the official dealing with the complaint dated 16/06/2017 filed by the complainant in response to point 1. As regards daily progress made on the complaint dated 16/06/2017, he has furnished copy of memorandum issued to concerned official in respect of complaint dated 6/06/2017 (inward no.5736) and the reply furnished by the concerned official in response to the said memorandum. As regards information regarding receipt of said complaint dated 16/06/2017 under inward no.5736 by the concerned dealing official showing therein the date of receipt is also furnished to the complainant. The date of dispatch of the memorandum dated 03/07/2017 is also furnished to the complainant. According to him it is for complainant to calculate the period between the date of inward, date of receipt of complaint by the concern dealing and date of dispatch of memorandum to the concerned official as this information is not readily existing in the collated and calculated form as desired by the complainant.

According to PIO as regards information sought at point no.3 is not readily available in collated form consisting and hence the complainant was requested to inspect the inward registers of this office and indicate the information desired by the complainant from the said registers so as to furnish the copy of information as is existing in this office records. The complainant did not avail the inspection and preferred the first appeal before First Appellate Authority.

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As regards information sought at point no.4 the same has been already furnished to the complainant as received from the office of the Village Panchayat Calangute. The information sought at point no.5 is not existing in the records of this office and therefore the question of furnishing the information which is not existing does not arise.

The PIO has further stated that whatever information as was existing is furnished. PIO has relied upon some guidelines issued by DOPT, however I am not inclined to refer to the same as such guidelines from any public authority cannot replace the Law. Such guidelines have no legal sanctity and cannot supersede the Law.

The PIO has also relied upon the order passes by this commission in Appeal No.165/2018/SIC-I, contending that in respect of same subject matter i.e. complainant's complaint dated 16/06/2017 information was already sought by complainant and that the second appeal thereon was dismissed. However said order has no relevancy to the present complaint as the application filed by complainant u/s 6(1) in this proceedings and the said appeal no.165/2018/SIC-I are distinct and separate. Moreover this is a complaint dealing with the bonafides of PIO in furnishing information.

- 5) The parties also filed written arguments. Vide his written arguments the appellant submitted that by his application complainant wants to know the status of his complaint whether the same is disposed or pending in his office. It is further according to him that information at point (3) is existing in the office of public authority inspite of which he

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is asked to inspect the inward registry and indicate the same for being furnished. According to appellant the opponent no.1 is duty bound to inspect and furnish information. According to appellant the information at point (2) though furnished is misleading and that at point (5) is refused as not existing. The appellant has raised doubts that if desired the PIO can hide/refuse the information as not existing. According to him PIO is hiding information at points 2, 3, 4 and 5.

On the other hand it is the contention of PIO, that the information as sought and as available is already furnished. The PIO has reproduced his contentions raised in his reply and hence I find it redundant to reproduce it herein once again.

- 6) Perused the records and considered the rival contentions. The present proceedings is a complaint and hence I refrain from issuing any orders directing the PIO to furnish information. Such a relief can be granted only in a second appeal as is held by the Hon'ble Supreme Court in the case of Chief Information Commissioner and another v/s State of Manipur and another Civil Appelas Nos.10787-10788 of 2011. This being the position the point which is required to be determined is:

“Whether the PIO has furnished a misleading and unclear information to point (2) and (4) and has not furnished information at point (3) and (5) inspite of existence of the same.”

- 7) At point (1) of his application the appellant has sought the name and designation of official which is furnished by PIO by reply dated 30/10/2018.

Information to **point (2) and (4)** is offered on payment of the fees. The complainant is not clear in his pleadings,

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whether he has paid the fees and collected such information. The complainant has also not produced on record the copy of such information so furnished to points (2) and (4) after payment of the fees. There is a bare statement that information to points (2) and (4) is incorrect or misleading and unclear. There is no justification before this commission to hold as to why/how the same is misleading or unclear. In the absence of any justification. I am unable to concede to the said averments that the information is misleading or unclear. This view is fortified on the bases of the order passed by Hon'ble Court of Punjab & Haryana in the case of *Gurcharan Singh V/s State Information Commission, Punjab 7 others (WP(C) No.10806 of 2011)*

Coming to **point (3)** of the application, the complainant has sought the list of all complaints duly compiled in the format as offered by complainant. The information sought is spread for over one year i.e. from 16/06/2017 to 03/10/2018. Looking at the nature of the information, I find nothing objectionable on the part of PIO in seeking the assistance of complainant to compile the same as he requires, after inspection of the records. No doubt in ordinary course section 7(9) of the act requires the information to be furnished in the form in which it is asked. However the PIO is also granted a discretion to act otherwise in case it divert the resources. While dealing with said requirement at point (3) there is no refusal by PIO but only an assistance is sought from complainant.

Regarding **point (5)** it is refused as not existing. Considering the nature of information sought, the same will

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exist if it is generated only if any action is initiated. If no action is initiated the same cannot exist. It is nowhere the case of complainant that action was in fact initiated against concerned persons. It cannot be therefore held that the information at all exist. The response of PIO to the said point thus appears probable and cannot be held malafide denial to invoke my rights u/s 20(1) and /or 20(2) of the act.

- 8) Before parting with this matter I find it necessary to make the PIO aware that any circulars /orders/memorandum from any authority cannot override the provisions of law. Thus the circular of DOPT as relied upon by the PIO, cannot be followed and only the provisions of the Right to Information Act 2005 shall be binding. All actions of PIO and the FAA shall be therefore governed by the provisions of the act.
- 9) Considering the above facts and the findings, I find sufficient reasons to withdraw the notice. In the circumstances the show cause notice, dated 01/02/2019, issued by the commission to the PIO in the above matter stands withdrawn.

Proceedings closed.

Order to be communicated to parties.

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(Prashant S. P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji -Goa