

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

Appeal No. 307/2018/SIC-I

Mr Roshan Mathias,
House No.280, Bamon waddo,
Candolim, Bardez Goa.

....Appellant

V/s

1) State Public Information Officer, (PIO)
Secretary Village Panchayat Candolim,
Candolim, Bardez Goa.

2) First Appellate Authority,
Block Development Officer II,
Mapusa Goa.

.....Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner.

Filed on: 24/12/2018

Decided on: 03/05/2019

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Roshan Mataias herein by his application dated 6/6/2018 filed under section 6(1) of Right to Information Act, 2005 sought certain information from the Respondent No. 1 Public Information Officer (PIO), office of Village Panchayat of Candolim Bardez Goa as listed there in at serial No. 1,2,3.
2. It is the contention of the appellant that he received reply on 5/7/2018 calling upon him to pay a amount of Rupees 30,000/- as fees towards the information at point No.1 and 2 and with respect to information at point no.3 he was request to inspect the construction licence register for the year 2016-17 to 2018-19 on 7/7/2018 .
3. It is the contention of the appellant that he by his letter dated 7/7/2018 requested PIO to give the breakup of Rupees 30,000/- which he was ask to pay in advance.

4. It is the contention of the appellant that Respondent No. 1 PIO without giving breakup of Rs. 30,000/- asked him to inspect the records vide letter dated 30/7/2018.
5. It is the contention of the appellant that he did not receive any information nor inspection was given to him as such deeming such as rejection, he filed first appeal before the Respondent No. 2 Block Development on 1/8/2018 being first appellate authority interms of section 19(1) of RTI Act, 2005. And the Respondent no. 2 first appellate authority vide order dated 25/9/2018 allowed is appeal and directed the respondent PIO to issue information to the appellant free of cost within a period of 10 days from the receipt of the order.
6. It is the contention of the appellant that inspite of the said order, the said information was not furnished as such being aggrieved by the action of Respondent no.1 PIO, he had no other alternative then to approached this commission in his 2nd appeal as contemplated u/s 19(3) of RTI Act.
7. In this background the appellant has approached this commission on 24/12/2018 thereby seeking relief of directions to PIO to furnish the information, as also seeking penalty as against PIO and also compensation.
8. Notices were issued to both the parties. Appellant appeared in person. Respondent No.1 PIO Lourenco Ribeiro appeared only once on 12/3/2019 and on other dates of hearing he was represented by Advocate Parishit Sawant. Respondent no. 2 first appellate authority represented by Shri Umesh Shetgaonkar.
9. Application was filed on 14/2/2019 along with the enclosures on behalf of Respondent PIO by his Lawyer informing this commission that review has been filed by PIO pertaining to order dated 25/9/2018 passed by the first appellate authority and

the same is pending with the first appellate authority and to keep the present second appeal in abeyance .

10. Respondent no.2 first appellate authority filed his reply on 2/4/2019 along with the enclosures.The copies of the same was furnished to the appellant .
11. No say came to be filed on behalf of Respondent PIO despite of giving him ample opportunities to the appeal proceedings as such the commission presumes and holds that the respondent PIO has no say to be offered and the averments made by the appellant herein are not disputed by him.
12. Arguments were advanced by the appellant.
13. It is the case of the appellant that the information tactfully is not given in order to protect illegalities committed by the Panchayat and not furnishing the information violates the provisions of mandate of RTI Act. He further submitted that he had sought the information in the larger public interest in order to expose illegalities committed by the Panchayat and as such he has been made to run from pillar to post in pursuing his RTI application and lots of hardship has been caused to him besides losing his valuable time.
14. During the hearing before this commission on 03/05/2019 appellant submitted that he is not pressing for information at point No. 3 and he is only interested in the information at point No.1 and 2. Accordingly he endorsed his say on the memo of appeal.
15. The respondent no. 2 first appellate authority vide his reply dated 26/3/2019 which was inwards with the registry of this commission vide entry No. 562 dated 27/3/2019 placed on record letter dated 26/3/2019 addressed to Respondent no. 1 PIO informing him that there is no provision for Review hence the same cannot be considered.

16. I have perused the records available in the file and also considered the submission of the complainant .
17. The apex Court in S.P. Gupta V/s Union of India, AIR 1982 SC 149 has observed in tents of RTI Act.

*"No democratic Government can Survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government, that an open Society is the new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of the open Government is the direct emanation from the right to know which seems to be implicit in the right of freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regards to the **functioning of the Government must be the rule, and secrecy an exception**, justified only where the strictest requirement of public interest so demands".*

18. The Supreme Court in State of U.P. V/s Raj Narayan (1975) 4 Supreme Court Cases 248 observed :-

"The people of this country have a right to know every public act, everything that s done in a public way, by their public functionaries. They entitled to know the particulars of every public transaction in all its bearings. The Right to know which is derived from the concepts of freedom to speech, though not absolute, is a factor which can, at any rate, have no repercussion on the public security. To cover with a veil of secrecy their common routine, denial is not in the interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of partied and

political or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

19. The Hon'ble high Court of Alahabad while deciding the writ number 45252 of 2005, Praveen Varma V/s Hon'ble High Court of jurisdiction reported in 2008 (1) RTI 137 has discussed ambit and scope of section 3, 4, and 6 and has held that:-

"the disclosure of information in regards to the functioning of Government must be rules and secrecy of as an exception."

20. Keeping in view the objective that act seeks to achieve, this commission will have no hesitation in holding that the spirit of the act enjoins disclosure of information as a general rule and the exemption there from as an exception.

21. The first appellate authority made observation that PIO failed to file reply before the first appellate authority in first appeal and the first appeal was allowed by the appellate authority vide order dated 25/9/2018. Vide said order dated 25/9/2018 the first appellate authority had directed Respondent PIO to furnish the information to the appellant, free of cost within a period of 10 days from the receipt of the order. From the undisputed and un rebutted facts it could be safely gathered that till date of final disposal of first appeal no information was furnished to the appellant by PIO nor the order dated 25/9/2018 of the first appellate authority was complied by Respondent no. 1 PIO. From the conduct of PIO it can be clearly inferred that he has no respect to abide the order passed by his senior officers. Till date no information came to be furnished to the appellant.

22. In the present case the information sought by the appellant at point no. 1 and 2 are the public documents. It also does not

qualified to be exempted under section (8) of the RTI Act. The appellant has established the information required by him in a larger public interest. As such taking into consideration the facts of the present case and the purpose for which the information is sought this commission is of the opinion that the appellant is entitled for the information.

23. The facts of the present case doesn't warrant the levy of penalty on the PIO as the records shows that the application was responded within stipulated time of 30 days. The inspection was also offered by the PIO and the same was carried out by the appellant herein during the proceedings before the first appellate authority. There was no denial from the side of PIO in furnishing the information and inspection. The non-compliance of the order of first appellate authority within stipulated time does not appears to be intentional as the records shows that the review was filed by the PIO with the first appealed authority. Hence I am declined to grant a relief sought by the appellant at point No.(ii)
24. The onus is on the person claiming the compensation to show what was the detriment and loss suffered by him. In the present case the appellant has not produced on record any cogent and convincing evidence about the detriment and loss suffered by him hence the relief sought by the appellant at prayer-(iii) cannot be granted.
25. Before parting, it need to mention that as per the section 7(3) (a) of RTI Act the PIO is required to give details of fees representing the cost of providing the information as determined by him, to gather with the calculation arrived at the amount in accordance with fees prescribed under sub-section 1 of section 7 of RTI Act. In the present case, it appears from the records that the calculation made to arrive at the amount of fees have not been provided to the appellant by the PIO despite of appellants request

The first appellate authority in its order has also held that the fees details provided by the PIO did not fulfil the criteria required under section 7(3) (a) and rule 3(2)(a) of the Goa Right to Information (regulation of fees and cost). The respondent PIO henceforth is directed to strictly comply with the provisions of RTI Act in true spirit.

26. In the above given circumstances the following order is passed.

Order

i) Appeal Partly allowed.

ii) The Respondent No. PIO is hereby directed to furnish information at point no. 1 and 2 sought by the appellant vide his application dated 6/6/2018, free of cost, within 20 days from the receipt of the order by him.

iii) Other prayer rejected.

With the above direction Appeal stands disposed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

(Ms.Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa