

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

Appeal No.55/2019/SIC-I

Ashok Anant Patre,
R/o H.No.294/2 Sodiem Siolem,
Bardez Goa.

....Appellant

V/s

1)The Public Information Officer,
Village Panahayat Secretary,
Siolim Sodiem,
Bardez- Goa.

.....Respondents

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 05/03/2019
Decided on: 09/04/2019

ORDER

1. By this appeal the Appellant assails the order dated 25/2/2019, passed by the First Appellate Authority (FAA), in first appeal No. BDO-I-BAR/RTI/02 of 2019, filed by the Appellant herein.
2. The brief facts which arises in the present appeal are that the Appellant Shri Ashok Patre vide his application dated 15/11/2018 had sought for information pertaining to house bearing house No. 294, house No. 294/1, 295, 296,297 situated at Sodiem, Siolim, Bardez Goa and also sought for assessment books of above house numbers. The said information was sought from the Respondent PIO of the office of Village Panchayat of Siolim Sodiem, Bardez- Goa in exercise of appellant's right under sub-section (1) of section 6 of Right To Information Act, 2005.
3. It is the contention of the appellant that he received a reply from Respondents PIO herein on 13/12/2018 interms of section 7(1) of RTI Act interalia informing him that "*information may be treated as Nil*".
4. It is the contention of the appellant that he was not satisfied with the reply of PIO, hence he preferred first appeal on 8/1/2019

before the Bock Development officer-I, Bardez Mapusa Goa being the first appellate authority interms of section 19(1) of the Right To Information Act, 2005.

5. It is the contention of the appellant that the First appellate authority by an order dated 25/2/2019 disposed his first appeal by upholding the say of PIO and coming to the findings that the Advocate for the appellant has inspected the records available in the office of PIO and ascertained that no information as sought by him by the RTI application dated 15/11/2018 is existing in the records of the Village Panchayat .
6. Being aggrieved by the order dated 25/2/2019 passed by First appellate authority and reasoning given by First appellate authority, the Appellant approached this Commission on 5/3/2019 on the ground that information still not provided by the Respondent PIO.
7. In this back ground the appellant has approached this commission with a prayer for directions to Respondent PIO for furnishing correct and complete information as sought by him, vide his application dated 15/11/2018 and for invoking penal provisions as against respondent PIO.
8. The matter was taken upon board and listed for hearing. In pursuant of notice of this commission, appellant was present in person. Respondent PIO Smt. Navanya Goltekar appeared and filed reply on 3/4/2019. The copy of the same was furnished to the appellant.
9. It is the contention of the appellant that in pursuant to the direction of the first appellate authority, his lawyer visited the office of Village Panchayat and carried out the inspection of the documents however it is his grievance/allegations that all the books were not placed before his lawyer for inspection and only

inspection of few books were permitted to his lawyer. It was contended that respondent PIO is trying to hide the information despite the same is available in their office records.

10. Vide reply PIO disputed the averments and the submission made by the appellant. It is the contention of the Respondent that appellant while taking the inspection of form VII and VIII on 23//2/2019 or thereafter or any point of time including after the disposal of the 1st appeal neither raised any grievance of not providing any books or documents for inspection by PIO nor made any allegation against PIO for misleading the Advocate for appellant. It was further contended that it is clear from the records/Roznama dated 25/2/2019 that Advocate for appellant himself had made submission of having carried out the inspection and having ascertained that no information as sought by appellant is existing. It was further contended that the appellant is harassing her by making false allegation against her for not providing information when in fact he is aware that no such information is available in her office.
11. In her reply dated 13/12/2018 given interms of section 7 of RTI Act, it is informed that the information may be treated as "NIL" and since during the proceedings the Respondent PIO submitted that information is not available /existing in the records of Village Panchayat , this commission directed PIO to file affidavit clarifying what she mean by nil information/not existing/not available. Accordingly affidavit came to be filed by PIO on 9/4/2019 along with enclosures.
12. Vide affidavit dated 9/4/2019 the PIO stated that she after going to the records available in the office of Village Panchayat Siolim-Sodiem, i.e form No. 7and Forma no 8, she found that there is no house numbering bearing No. 294/2,294,294/1, 295,296 and 297 in Village Panchayat Siolim –Sodiem and hence

the information sought by the appellant could not be furnished. It was further stated that the records are available with respect to House bearing no. 294/4 belonging to Madhukar Goltekar, House No. 295/4 belonging to Krishna Mandrekar , House no. 296/4 belonging to Surya V. Goltekar, House no. 296/4A belonging to Ekanath V. Goltekar and House no. 297/4 belonging to Yashwant D. Gadekar and in support of her above contention she relied upon the Xerox copy of form 7 that is assessment register and form 8.

13. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
14. In the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in case of in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35;

“At this juncture, it is necessary to clear some misconception about the RTI Act. **The RTI Act provides access to all information that is available and existing.** This is clear from the combined reading of section 3 and the definition of “information “and “right to information “under clause (f) and (j) of section 2 of the Act. **If the 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 records 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 non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which required drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice to an applicant. "

15. Yet in another decision , the Apex court in case of Peoples Union for Civil Liberties V/s Union of India, AIR Supreme Court 1442 has held

"under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which an passed an order".

16. Hence according to above judgment of the Apex court, the PIO is duty bound to furnish the information **as available and as exist in the office records**. PIO has clearly stated and affirmed that the information is not available in their office records. The same stand was also taken by the Respondent PIO in the reply given interms of section 7(1) of RTI Act. So also before the first appellate authority.

17. The Delhi High Court in L.P.A. No.14/2008, Manohar Singh V/s N.T.P.C. has held;

"The stand taken by PIO through out for which a reference is made to earlier communication issued to the appellant by PIO. It will be clear that even on that day also specific stand was taken that there is no specific documentation made available on the basis of

which reply was sent and hence the directions to furnish the records if the same is not in existence cannot be given.”

18. In the above given circumstances and as discussed above since the information is not in existence/not available in the records of the Village Panchayat of Sodiem Siolim the same cannot be ordered to be furnished and hence the reliefs sought by the appellant at No. 2 cannot be granted.
19. The records shows that the application of the appellant was responded well within stipulated time as contemplated u/s 7 of RTI Act, 2005. The first appellate authority has also held the information is not available in their office records. The said fact is also affirmed by the Respondent No. 1 PIO by affidavit dated 9/4/2019. As such I do not find any illegality or irregularity in the reply given in the terms of section 7(1) of RTI Act. Hence the facts of the present case doesn't warrant levy of penalty on respondent PIO.

Appeal disposed accordingly. Proceedings stands closed.

Notify the parties.

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.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa