

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

Appeal No. 142/2019/SIC-I

Mr. Joaquim C.F. Gracias
House no.776, near Church,
Loutulim, Salcete - Goa.

....Appellant

V/s

1) The Public Information Officer,
The Administrator of Comunidade ,
Comunidade of South Zone,
Margao Goa.

2. The Escrivao,
Comunidade of Louotolim,
Through the Administrator,
Comunidade of South Zone ,
Margao, Goa.

.....Respondents

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

Filed on: 17/5/2019
Decided on: 23/7/2020

ORDER

1. The second appeal came to be filed by the Appellant Shri. Joaquim C.F. Gracias on 17/05/2019 against the Respondent No.1 Public Information Officer of the office of Administrator of Comunidade, South Zone at Margao, Goa and against Respondent no. 2 Escrivao of comunidade of Loutolim under sub section (3) of section 19 of RTI Act 2005.
2. The brief facts leading to the second appeal are that the Appellant vide his application dated 16/11/2018 had sought for the information on 10 points as listed therein mainly pertaining to Comunidade of Loutolim.
3. The said information was sought by the Appellant in exercise of his right u/s 6(1) of RTI Act, 2005.

4. Vide said application, the Appellant had sought for following information:
1. Certified copy of the application received from Shri Ramanath Mandir, Loutolim along with the copies of the documents relied upon along with the said application.
 2. Certified copy of the application received from Capela De Nossa Senhora dos Milagres e de Santiago, Loutolim along with the copies of the documents relied upon along with the said application.
 3. Certified copy of the application received from Antonette Pinheiro for an access along with the copies of the documents relied upon along with the said application.
 4. Certified copy of the application received from Maria Evonne Baptista for an access through the survey No. 122/1 belonging to the Comunidade of Loutolim along with the copies of the documents relied upon along with the said application.
 5. Certified copy of the entire process File claimed to be granted on aforamento basis by the Comunidade of Loutolim to Mr. Figueiredo and as listed in the notice of the Extra Ordinary General Body Meeting notified in the official Gazette Series III No.12 dated 21 June, 2018 at item No. 5 of the said agenda claimed to be corresponding to survey No. 258/1 and 269/2 of Loutolim Village.
 6. Certified copy of the process file claimed to be granted on Aforamento basis by the Comunidade of Loutolim to and as listed in the notice of the Extra Ordinary General Body Meeting notified in the official Gazette

Series III No. 12 dated 21 June, 2018 at item No. 6 of the agenda claimed to be pertaining to survey No. 326/0 of Loutolim Village.

7. Certified copies of the minutes of the meetings of the Managing Committee of Comunidade of Loutolim held during the period 1/1/2017 till date.
 8. Certified copies of the extract of the Cash Book of Comunidade of Loutolim showing month wise income and expenditure for the years 2016-17,2017-18 and 1/4/2018 till date.
 9. Certified copies of the court cases presently in the various courts in the State of Goa being court cases filed by the Comunidade of Loutolim or filed against the Comunidade of Loutolim giving details of the Courts and the case numbers.
 10. Certified copies of the bills of Advocates for their appearances, drafting, etc in cases for and against the Comunidade of Lotoulim and payments made for the court cases from the period 1/1/2016 till date.
5. It is the contention of the Appellant that his above application filed in terms of sub section (1) of section 6 was not responded by the respondent no 1 PIO within stipulated time of 30 days and as such deeming the same as rejection, he filed 1st appeal on 9/01/2019 to Respondent no 2 Additional Collector II, South Zone, at Margao, Goa being First Appellate Authority.
6. It is the contention of the Appellant that the First Appellate authority vide order dated 26/02/2019 allowed his appeal and directed the Respondent no 1 PIO to obtain the information from the Escrivao of Loutolim comunidade and to furnish the information to the Appellant within 15 days ,free of cost .

7. It is the contention of the Appellant that after the order of First Appellate Authority, he vide his letter dated 26/02/2019 once again requested to furnish him information within 15 days as directed by the First Appellate Authority.
8. It is the contention of the Appellant that inspite of the said order, the said information was not furnished to him by the PIO and hence he had to approach this commission in his 2nd appeal as contemplated u/s 19(3) of RTI Act thereby seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation.
9. The matter was taken up on board and was listed for hearing . In pursuant to the notices issued by this commission to both the parties ,the Appellant appeared in person alongwith Advocate Tomy Carvelho. Respondent PIO Shri Vishal Kundaikar was present alongwith Shri Vivek Dessai (UDC). Respondent No.2 Escrivao Shri Keshav Naik appeared in person alongwith his representative Shri. Franky Monteiro .
10. Respondent NO. 1 PIO filed his reply on 12/2/2020 alongwith enclosures. Reply was also filed by representative of Respondent no.2 on 21/8/2019 to which counter replies were filed by the Appellant on 25/9/2019, on 22/11/2019 and on 23/12/2019 vehemently objecting for filing replies by the representative Shri Franky Monteiro on behalf of Respondent no. 2 Escrivao in the present proceedings. The copies of the above replies were furnished to the Appellant and to Respondent No. 1 PIO.
11. The part information pertaining to point no. 1 to 6 was furnished by Respondent no. 1 PIO to the Appellant during the present proceedings vide covering letter bearing No. ACSZ/120/RTI/2019-20/343 dated 18/12/2019 on 23/12/2019. On verification of the same Appellant submitted that he has no grievance with the information furnished to him at point No. 1 to 6. The PIO also

undertook to make attempt to furnish the remaining information at point No. 7 to 10 after obtaining the same from the comunidade of Lotolim. He relied upon copies of memorandum dated 28/11/2018, 13/3/2019, 31/1/2020, 22/6/2020, 25/6/2020 and 3/7/2020 issued by the Administrator of Comunidade , South Zone at Margao to Respondent No. 2 directing him to submit the information.

12. Written submission were filed by the Respondent no. 2 Shri Keshav Naik on 12/2/2020. Respondent No. 1 PIO also filed additional reply on 23/7/2020 alongwith enclosures
13. The Appellant contended that the said information was required by him in order to produce it before an authority and also before the court of Law. It was further contended that the documents sought by him are public documents and are very much available in the office of Respondent No.1 and the Respondents have refused to provide him even after more than two months have passed. It was further contended that the both the Respondents are not serious in complying the provisions of RTI Act. It was further contended that the PIO does not respond under section 7 of RTI Act and also does not bother to comply with the order of First Appellate Authority and in most of the cases the records speaks for itself that the PIO is habituated in adopting such tactics. It was further contended that lots of hardship caused to him pursuing his RTI Application.
14. It is the contention of the Appellant that as per the Article 123 and 125 code of Comunidade , the Administrator is empowered to issue order to the Respondent No. 2 Escrivao who is the subordinate authority. It was further submitted that the other provision of Code of Comunidade also requires the fees of books to be maintained by the Administrator and the said is deemed to be a public documents for a purpose in terms of civil code .

15. It was further contended that he will be prejudiced and loss will be caused to be him if the information/documents are not provided to him as the same are required to produced to court of Law. It was further contended that the Respondents is deliberately suppressing the information/documents sought by him.
16. Vide application dated 30/6/2020 it was stated that the proceedings are delayed beyond reasonable time and is very purpose is being defeated. It was further contended that the Respondent No. 1 PIO is not initiating necessary action against Respondent No. 2 and merely has issued memos.
17. On the other hand the Respondent no. 1 PIO contended that as the information at point No. 7,8,9.and 10 is not available in their office, they vide their various memorandum directed Respondent no 2 Escrivao to provide the information sought within a period of 5 days to which a reply was submitted by the Respondent No. 2 Escrivao on 5/12/2018 thereby enclosing the copy of resolution of managing Committee of Loutolim Comunidade dated 30/11/2018 under item No. 8 stating that the information sought by the Appellant is not applicable to the code of Comunidade . It was further contended that the said fact is intimated to the Appellant by the Respondent PIO No. 1 vide letter dated 11/12/2018 .
18. It was further contended that after the order of the First Appellate Authority the Respondent no. 2 Escrivao was again directed to furnish the information/document sought by the Appellant within a period of 2 day vide memorandum dated 13/3/2019, and again the Esrivao of Comunidade Shri Keshav Naik was directed vide memorandum dated 31/1/2020 to provide the information at point No. 7 to 10 within a period of 2 days and in response to which the Respondent No. 2 submit a letter dated 10/2/2020 enclosing the copy of the resolution of the

managing committee of Loutolim dated 9/2/2020 and also Escrivea submitted letter dated 26/6/2020 submitting the copy of Resolution of the Lotoulim Comunidade dated 26/6/2020 at item No. 4 wherein the managing committee rejected the application under RTI Act on the ground that Comunidade is private institution and does not come under the provision of RTI Act, and also resolved directing Escrivao not to provide any documents to third party from the Comunidade of Lotoulim under RTI Act. It was further contended that the Escrivao also submitted application dated 7/7/2020 along with copy of the resolution of managing committee dated 7/7/2020 under item No. 1 wherein again it was resolved not to provide documents from the office of Comunidade of Lotoulim to the third party. It was further contended that the Escrivao of Comunidade of Lotoulim has not submitted the information at point no 7 to 10 sought by above memos and hence he is unable to provide the same. The Respondent No. 1 supported his above contention with documentary evidence.

19. Respondent No. 2 Escrivao submitted that on receipt of the fresh memorandum dated 31/1/2020 from Respondent no. 1, The Administrator of Comunidade South, Margao with a direction to furnish the information to the Appellant, he placed the same before the Managing Committee of Comunidade of Lotolim who adopted resolution reiterating its earlier decision refusing to provide information sought by the Appellant. It was further contended that the memorandum dated 22/7/2008 issued by the Administrator of Comunidade South Goa is still effective and not overruled by any Higher Authority wherein the directions were given to Escrivao not to issue any certificates without permission of Management Committee and in support of his case he relied upon said memorandum dated 22/7/2008.
20. The Respondent also relied upon order dated 12/6/2018 passed by the Hon'ble Bombay High Court at Goa in writ petition No.

1004 /2017 and submitted that Hon'ble Bombay High Court has observed " *the information sought is of private nature*".

21. I had scrutinise the records available in the file and also considered the submission of all the parties .
22. In the nutshell it is the case of the Respondent No. 1 PIO that he had supplied the information at point no. 1 to 6 to the Appellant vide letter dated 18/12/2019 and the remaining information since not available with him could not be furnished despite of his several efforts to secure the same from Respondent No. 2 Escrivao.
23. In the nutshell it is also the case of Respondent No.2 Escrivao the records of the Comunidade office are private records pertaining to Loutolim Comunidade which is an autonomous institution and cannot be provided under the RTI Act, as the Comunidade Loutolim does not come within the purview of RTI Act.
24. At the outset , since the Hon'ble High Court of Bombay at Goa in writ petition No. 422/2012 and in writ petition No. 1004/2017 is seized with the issue whether the Comunidade is a public authority or not, as such I find it appropriate not to deal with issue whether the Comunidade is private authority or not and be guided by the orders that shall be passed in the said writ petitions.
25. Article 116 and article 117 of the code of Comunidade states that for each taluka of Goa, Salcete and Bardez there shall be independent office of Administrator of Comunidade and the Administrator Office of the Comunidade are considered for all purposes as public offices.

Further as per the circular issued by the Department of Information and Publicity the Administrator of Comunidades, South Zone, Margao at serial No. 97 have

been declared as Public Authority and Administrator has been designated as PIO.

26. The article 133 of the code of Comunidade states "every year all the Comunidade books, closed files and useful paper which are 10 year old shall be send to general archives which shall be in the Charge of Administration".

Article 134:- states that "the books shall be preserved in close shelf properly separated Comunidade wise or least in separate shells for each Comunidade. Each book or bundle of papers shall have label indicating the nature of books and the papers and the year to which they concerned" .

Article 135:- states that "the Secretary of the Administration is the conservator of general archives and as such, it shall be his responsibility to receive all books and papers referred to in article 454, paragraph 2, by issuing necessary receipt to the Clerks of Comunidade on one of the duplicates of the inventory referred to in article 137, para 2 and it shall be responsible for their preservation, by fulfilling all the duties imposed by this code to the Clerks of Comunidade as regards the archives of each Comunidade".

Article 136:- states that "the Administrator shall order the binding of the books and have copied the texts that are party effaced, ordering the checking of the copies by two experts and they shall certify at the end of the copies, that they are true copies of the originals, authenticating them and preserving the originals along with the copies in the general archive".

In Article 137 § 1 :- states that "As and when the books ,files and papers, referred to in the sole paragraph of article 133 are sent to the general archive, a record should be made in the inventory of each Comunidades mentioning the note by which they were sent".

In Article 137 § 2:- states that "In the first fortnight of April, in each year the President of the Managing Committee, the Attorney and the Clerk of Comunidades, forming a Commission, should sort out the books, closed files and papers which under the terms in sole paragraph of article 133, should be sent to the general archives and the Clerk shall send them to the Administrative Office before the 30th of same month accompanied by an inventory, in duplicate, signed by all the members of committee.

§ 3. The failure to comply with what is contained in preceding paragraph, the President of the Committee, the Clerk and the Attorney of the Comunidade shall be liable to pay each one a fine of Rs. 300 \$ by Order of the Administrator.

27. As per article 454 § 2 also " the finished books and papers more than year old shall be collected in the archives of the administration office under the sole paragraph of article 133."
28. Hence on bare reading of article 133 to article 140 read with article 454, it is clear that duties lays down of maintenance of records, its preservation etc of Comunidade are by Administrator and Secretary in its general archives.
29. In other words under the rules laid down under code of Comunidade 1961, the Administrator of Comunidade as well as individual Comunidade independently responsible for the maintenance of records.
30. This commission in appeal No. 59/2017 Shri Pradeep Monoa Naik Desai V/s PIO Administrator of Comunidade South Zone, vide order dated 6/8/2018 had recommended the public authority concerned herein i.e office of Administrator of comunidade , South Zone Margao should strictly comply with the provision at laid down in article 133 to 140 of Code of Comunidade . It

appears that till date no such exercise have been carried out by the public authority concerned herein.

31. Public authority must introspect that non furnishing of the correct or incomplete information lands the citizen before First Appellate Authority and also before this commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible.
32. Since it is specific case of Respondent PIO that the records sought by the Appellant at point No. 7 to 10 are not available and despite of several efforts they are unable to secure the same from Respondent No. 2 Escrivao , considering the above position I. am unable to pass any further direction to furnish information at point no. 7 to 10 as it would be redundant now.
33. The peculiar facts and circumstances of this case does not warrant levy of penalty and disciplinary action as provided under section 20 of the RTI Act 2005 against Respondent No. 1 PIO, as it is seen that the Respondent PIO on receipt of the RTI application, have promptly sought assistance of Respondent no. 2 interms of 5(5) of RTI Act 2005 and also have responded vide letter dated 11/12/2018 within stipulated period of 30 days. So also time and again issued memorandum to Respondent NO. 2 to furnished the information and also furnished the available information at point no. 1 to 6 to the Appellant .Hence I am not inclined to grant relief (b). Needless to say that the Administrator of Comunidade can invoke his powers under article 125 and 88(d)and para (3)of amendment of article 88(3) .
34. However till date since the general archives are not maintained by the Public Authority concerned herein i.e. Office of Administrator of Comunidade South Zone at Margao, by invoking the powers granted to this Commission u/s 25(5) read with 19 (8)(IV), I hereby once again recommend public authority concerned herein i.e. Office of Administrator of Comunidade, South Zone at

Margao Goa to strictly comply to the provisions as laid down in article 133 to 140 of code of Comunidade.

35. Before parting it need to mention that section 4 of the Act casts an obligation on all public authorities to maintain records duly computerised and connect through network. Said provision also requires public authorities to publish certain information in the prescribed format and update the same periodically. If such and exercise is undertaken by the Respondent authority herein, then such disseminated information would be beyond the purview of the Act. It is noted that inspite of the said obligation on the Respondent authority and direction of this commission from time to time, the Respondent authority has failed to comply with said requirement, thereby compelling not only Appellant but citizens at large to have the information in physical form by filing applications.
36. The public Authority concerned herein i.e the office of the Administrator of Comunidade Margao is hereby directed to comply its obligation interms of section 4(1) (b) of RTI Act as expeditiously as possibly within a period of 6 months.

With the above directions, appeal 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

