

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

Appeal No. : 308/2019/SIC-I/

Shri Santana Piedade Afonso, H. No. 263, Comba Central,
P.O. Cuncolim, Salcete-Goa, 403703..... Appellant
v/s

1. Shri. Sudesh K. Naik Bhairali,
Public Information Officer, Inspector of Survey and Land Records,
Office of the Inspector of Survey & Land Records,
Records of Rights (South),
2nd floor, Mathany Saldhana,
Administrative Complex, Margao, Salcete-Goa
2. Smt. Domiana Nazareth,
Superintendent of Survey and Land Records (South),
First Appellate Authority,
Office of the Superintendent of Survey and Land Records (South),
2nd floor, Mathany Saldhana, Administrative Complex,
Margao-Goa Respondents

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

Filed on: 21/10/2019
Decided on: 29/01/2020

ORDER

1. The brief facts leading to the second appeal as put forth by the appellant Shri Santan Piedade Afonso are that he vide his application dated 08/08/2018 had sought for the following information;
 - a) Extract /computer generated copy of form IX of mutation of landed property under survey No. 471/80 in the name of Francisco Pinto of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
 - b) Extract/ computer generated copy of form IX of mutation of landed property under survey No. 471/81 in the name of Caitan Piedade Fernandes of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.

- c) Extract/computer generated copy of form IX of mutation of landed property under survey No. 471/79 in the name of Ruzario Pinto, Cruz Pinto and Caitan J. M Pinto of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
- d) Extract/ computer generated copy of form IX of mutation of landed property under survey no. 471/89 in the name of Lazario Fernandes and WRD, Gogol Margao of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
- e) Extract/ computer generated copy of form IX of mutation of landed property under survey no. 471/94 in the name of Francis Pinto and WRD, Gogol Margao of the Village Cuncolim of the Mutation Register book held by the Talathi, as per the attached Mutation forms.
2. The said information was sought from the Respondent No. 1 Public Information Officer (PIO) of the Office of Mamlatdar of Salcete Taluka at Margao–Goa in exercise of appellants right u/s 6(1) of Right To Information Act, 2005.
 3. It is contention of the appellant that he received reply to his above application from the PIO of the office of Mamlatdar of Salcete Taluka at Margao on 04/09/2018 interalia informing him that as per Talathi report dated 31/08/2018, the information required by him is not available as the form IX register is submitted to the office of Vigilance Department, Panaji and hence the information cannot be furnished .
 4. It is the contention of the appellant that he made several visits to the office of the PIO of office of Mamlatdar of Salcete Taluka requesting him to provide the information sought and if the form IX register is submitted to the office of Vigilance Department, Panaji-

Goa, then to transfer the said application dated 08/08/2018 u/s 6(3) of the RTI Act to the Vigilance Department.

5. It is the contention of the appellant that PIO of office of Mamlatdar of Salcete Taluka did not transfer his application to the PIO of Vigilance Department in terms of section 6(3) of the RTI Act and as such deeming the same as rejection, and being aggrieved by the action of Respondent PIO, he filed first appeal to Deputy collector and Sub-Division officer Margao-Goa being First Appellate Authority (FAA) on 31/10/2018 u/s 19(1) of right to information Act.
6. It is the contention of the appellant that notices were issued by the said first appellate authority/which duly served on both the parties however Respondent PIO opted to remain absent during the hearings before the FAA.
7. It is the contention of the appellant that the first appellate authority/Dy. Collector and Sub-Division Officer, Margao-Goa vide order dated 13/11/2018 allowed his appeal and directed PIO of office of Mamlatdar of Salcete Taluka to issue the information to the appellant, free of cost as sought by him vide application dated 08/08/2018 within 15 days from the date of the order.
8. It is the contention of the appellant that inspite of the said order of FAA, the said information was not furnished to him by PIO of office of Mamlatdar of Salcete Taluka as such being aggrieved by the said action of said PIO, he approached this commission in his second appeal on 18/2/2019 as contemplated u/s 19(3) of Right to Information act and during the hearing before this commission PIO of office of Mamlatdar of Salcete Taluka vide his reply and affidavit dated 13/5/2019 submitted that the form IX of survey No. 471/80,81,79,89 and 471/94 of the village Cuncolim are not available in the register held by the Talathi of village Cuncolim neither with the office of Mamlatdar of Salcete Taluka, and after verifying the records it was noticed that the form IX was

prepared by the DSLR/ISLR during the promulgation of the land in the year 1972 to 75 thereof.

9. It is the contention of the appellant that PIO of office of Mamlatdar of Salcete Taluka transferred his RTI application dated 8/8/2018 to the Respondent No.1 herein i.e PIO of the inspector of Survey and land records at Margao-Goa vide letter dated 19/3/2019 interms of section 6(3) with a request to furnish the information sought at point No. 1 to 5 directly to the Appellant.
10. It is the contention of the appellant the respondent No.1 PIO responded his above application on 28/3/2019 interms of section 7(1) of RTI Act thereby informing him that form IX of survey NOs 471/80,81,79,89 and 94 of Cuncolim Village of Salcete Taluka sought by him is not maintained by their office but are maintained by the respective Talathi of Salcete Taluka and as such his request cannot be complied by their office.
11. It is the contention of the appellant that he being aggrieved by such an response from Respondent No. 1 PIO herein, filed first appeal before the office of Directorate of Settlement of Land Records at Panajim Goa on 28/6/2019 u/s 19(1) of RTI Act 2005 which was forwarded to respondent no. 2 , first appellate authority of office of ISLR, Margao-Goa for further necessary action at their end.
12. It is the contention of the appellant that he received a note dated 26/7/2019 from Smt. Domiana Nazareth, the Superintendent of Survey and Land Records Margao-Goa requesting him to approach their office for clarification since the appeal memo (original) is not received by their office and his grievance does appear against the PIO of their office.
13. It is the contention of the appellant that he being aggrieved with no decision of the Respondent No. 2 first appellate authority of DSLR/ISLR, Margao-Goa and as no information has been received by him,

he is forced to approach this commission by way of second appeal interms of section 19(3) of RTI Act.

14. In this background the present appeal came to be filed by the appellant herein on the grounds raised in the memo of appeal with a contention that the respondent No. 1 PIO has totally/deliberately neglected to provide the information sought as per his RTI application dated 8/8/2018 .
15. In the present appeal the appellant has sought for directions to Respondent No. 1 to provide him the information sought by him as per his RTI application dated 8/8/2018 as per item No. a) (i) 1,2,3,4,and 5 and also suo moto inspection of the files/records. The appellant has also sought for invoking penal provisions against the respondent NO. 1 PIO for not furnishing information and against respondent No. 2 for refusing and not hearing first appeal dated 28/8/2019 .
16. In pursuant to notice of this commission, Appellant appeared in person. Respondent No. 1 PIO Shri Sudesh K.Naik Bhairaly and PIo Shri Savio Silvera was present. Respondent No. 2 FAA Mrs Domiana Nazerath appeared.
17. Affidavit filed by Respondent PIO Shri Sudesh K. Naik Bhairaly on 10/12/2019 and by Shri Savio Silvera on 17/1/2020 and reply by Respondent No. 2 FAA on 10/12/2019. The copies of the affidavit and the replies filed by Respondents were furnished to appellant.
18. The appellant also written submission on 23/3/2019 the copies of the same was furnished to the respondents.
19. It was contended by the appellant that the creation of form IX and form I & XIV were done by DSLR at the time of promulgation of lands (1972-1975) as per the Portuguese index in the state of Goa soon after establishment of DSLR and as such the refusal of the respondent No. 1 PIO not to entertain the request for information sought by him has greatly prejudice his rights provided

under the RTI Act, 2005 and has constituted a gross and blatant violation of RTI Act, 2005.

20. It was further contended that the Respondent No.2 FAA is sheltering the Respondent No.1 PIO thereby simply making allegation that original first appeal is not provided and condonation of delay application is not filed. It was further contended that the respondent no. 2 has gravely ignored to hear the first appeal filed by him and by refusing to grant a fair judgment as per law, constitute a gross and blatant violation of RTI Act, 2005.
21. Both the PIOs vide their affidavit have submitted that the information sought by the appellant i.e the form IX of survey NOs 471/80,81,79,89 and 94 of Cuncolim Village of Salcete Taluka as are not maintained by their office and as such are not available in their office records. It was also further submitted by PIO Shri. Savio Silveira that on the directions of this Commission, he has checked whether the form IX is available in the Head Office or not and upon inquiring, it is found that the said information is also not available in the Head Office, Panajim.
22. In the nutshell it is the case of Respondent PIO that the information/documents sought by the appellant, since not available on the record of public authority, the same could not be furnished to the appellant. The same fact has been also affirmed by the Respondent PIOs by way of affidavit
23. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
24. In the contest of the nature of information that can be sought from PIO, the Hon'ble Supreme Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has 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. "

25. 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 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".

26. Yet in another decision reported in AIR 2012 Pat 60; letters appeal no 1270 of 2009 in civil writ jurisdiction case 11913/2009;

Shekarchandra Verma vs State Information Commissioner Bihar has held

“in our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant.”

27. 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**

28. The Delhi High Court in LPA No. 14/2008 Manohar Sing 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.”

29. In the present case both the PIOs has clearly stated and submitted that information sought by the appellant is not available in the records of their office. Hence by subscribing to the ratios laid down by above courts , no any direction can be issued to Respondent PIO to provide the information which is not available and existing in a records of a public authority.

30. It is seen from records that the RTI application of the appellant dated 8/8/2018 was transfered to respondent No. 1 by the PIO of the office of Mamlatdar of Salcete Taluka at Margao vide letter dated 19/3/2019 which has promptly replied by Respondent no. 1 PIO within 30 days on 28/3/2019. There is nothing on records

placed by the appellant attributing malafides on the part of the Respondent No. 1 PIO. Hence in my opinion the facts and circumstances of the present case does not warrant levy of penalty on Respondent PIO.

31. As per section 19(1) of RTI Act, any person aggrieved by the decision of PIO may within 30 days from the expiry of such period or from the receipt of such decision prefer and appeal to such officer who is senior in rank to the PIO as the case may be, in each public authority.
32. On perusing the records, it is seen that the RTI application of the appellant was responded by respondent no. 1 PIO on 28/3/2019, in view of the time limit laid down in section 19(1), the appellant was required to file the first appeal by 28/4/2019. However the same has been filed on 28/6/2019 after the limitation period was over. Hence the stands taken by the respondent no. 2 vide their reply dated 10/12/2019 appears to be genuine.
33. In view of above discussion considering the facts and circumstances of present case, I do not find merits in the present proceedings hence liable to be dismissed which I hereby do.
34. Appeal proceedings stands closed.

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