

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

Appeal No. : 352/2019/SIC-I/

Smt. Lourdin D'Costa,
R/o. 102, Gauravaddo,
Calangute, Bardez-Goa 403516

.....Appellant

v/s

1. The Public Information Officer (PIO),
Secretary of Calangute Village Panchayat,
Calangute, Bardez-Goa-403516,

2. The First Appellate Authority (FAA),
Block Development Officer,
Mapusa, Bardez-Goa , 403507

.....Respondents

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

Filed on: 18/12/2019
Decided on: 17/02/2020

ORDER

1. The brief facts leading to the second appeal as put forth by the appellant Smt. Lourdin D'Costa are that she vide her application dated 19/9/2019 had sought for the following information:-

a) Inspection report carried out by Sarpanch of plot 109/19 of Calangute vide letter ref. No. VP/CAL/F-20,19-20/2196 Dt. 13/09/2019 dated 10/09/2019.

b) Report submitted to BBO vide their Memorandum No.3-EOVP-II/BDO/2019-20/3681 dated 01/07/2019.

c) Certified copy of construction licence issued by village panchayat of Calangute of Survey No. 109/19 of Calangute.

d) Certified copy of Sanad issued by the Collector, North Goa District Panaji of survey No. 109/19 of Calangute.

e) Certified copy of the Development Plan approved by Member Secretary/NGPDA, Panaji Goa of survey No.109/19 of Calangute.

2. The said information was sought from the Respondent No. 1 Public Information Officer (PIO) of the Office of Village Panchayat Calangute, Bardez–Goa in exercise of appellants right u/s 6(1) of Right To Information Act, 2005.
3. It is contention of the appellant that her said application was not responded by Respondent No.1 PIO within stipulated time of 30 days as contemplated under subsection (1) of section 7 but the respondent PIO kept verbally informing her that there is no such information as sought is available with the office of the village Panchayat Calangute to allow the construction completed in her undivided property by denying her easmentary rights. As no information was furnished to her as such deeming the same as rejection, and being aggrieved by the action of Respondent PIO, she filed first appeal on 21/10/2019 to the Block Development officer-I at Mapusa, Bardez-Goa being First Appellate Authority (FAA) u/s 19(1) of right to information Act.
4. It is the contention of the appellant that she received reply dated 2/12/2019 on 6/12/2019 by registered post to her above application from the Respondent No. PIO interalia informing her that as per the records maintained by their office, the information required by her is not available in a panchayat records.
5. It is the contention of the appellant that the Respondent No. 2 first appellate authority despite of issuing notices and despite of she submitting reply to the respondent no.2 relying upon certain documents and the photographs laying foundation stones and subsequent construction of residential commercial building,the Respondent no.2 FAA failed to dispose her first appeal within 45 days as contemplated u/s 19(6) of the RTI Act,2005
6. It is the contention of the appellant that she being aggrieved by the said action of both the above named Respondents, has been forced to approached this commission, on 18/12/2019 .

7. In this background the present proceeding came to be filed by the appellant herein on the grounds raised in the memo of present proceeding with a contention that the respondent No. 1 PIO has totally/deliberately neglected to provide the information sought as per her RTI application dated 19/9/2019 and seeking directions to Respondent No.1 to provide her the information sought by her as per her RTI application dated 19/9/2019 and for invoking penal provisions against both the Respondents for not furnishing information .
8. In pursuant to notice of this commission, Appellant appeared in person. Respondent No. 1 PIO Shri Raghuvir Bhagkar appeared along with Advocate Kapil Kerkar. Respondent No. 2 FAA opted to remain absent.
9. Affidavit filed by Respondent PIO Shri Raghuvir Bhagkar on 13/2/2020. The copy of the same was furnished to the appellant herein. No reply came to be filed by Respondent No. 2 FAA
10. Rejoinder was also filed by the appellant on 31/1/2020 for production of additional documents. The copies of the documents were enclosed to the above applications. The copies of the rejoinder and enclosure were furnished to the Advocate for respondent PIO.
11. Arguments were advanced by both the parties.
12. It was contended by the appellant that she had filed a complaint before Sarpanch of Calangute Village on 14/5/2019 on blockage of access by allowing illegal construction in her undivided property bearing survey No. 109/19 of calangute . She further submitted that as no action was taken on her legal construction in her undivided property by concerned authorities she on legal advice by way of abundant question filed documents to seek justice from this forum and in support of her contention she relied upon complaint dated 14/5/2019 addressed to Sarpanch, the two photographs, and form I & XIV of survey No. 109 sub division 19 of village Calangute.

13. It was further contended that the respondent No. 1 PIO is nexus with a developers and as such the refusal of the respondent No. 1 PIO not to entertain the request for information sought by her has greatly prejudice her rights provided under the RTI Act, 2005 and has constituted a gross and blatant violation of RTI Act, 2005.
14. The Respondent No.1 PIO Shri Raghuvir Bhagkar vide his affidavit submitted that he vide his letter dated 2/12/2019 had informed appellant the information sought by the appellant are not available in their Panchayat records.
15. 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 PIO by way of Affidavit
16. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
17. 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. "

18. 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".

19. 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."

20. 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.**

21. 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.”

22. In the present case since the respondent NO.1 PIO 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.
23. This commission is not empowered and has no jurisdiction to deal with the grievances as raised by the appellant about no action taken on illegal construction in her undivided property by the concerned authority . The appellant may redress such a grievances with a competent forum if so desires .
24. Before parting the Commission hereby observes that both the Respondents have not acted in conformity with the provisions of the RTI Act and there is a contravention of provision of sub-section (1) of section 7 of RTI Act,2005 by Respondent PIO so also Respondent No. 2 First appellate Authority has not disposed 1st appeal within stipulated time as contemplated under the RTI Act. However as there is nothing on record showing that such lapses on the part of both Respondents are persistent, the commission takes a lenient view in the present proceedings and Respondents herein are here by admonished and is directed to be vigilant hence forth while dealing with RTI matters. Any such lapses if found on the part of such officers who acts as a barrier in smooth implementation of the Act, will be viewed seriously and shall be dealt sternly henceforth.
25. With the above directions ,the appeal proceedings stands closed.

Pronounced in the open court. 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.

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