

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

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Appeal No. 39/2020/SIC-I

Shri Nazareth Baretto,  
Agriculturist ,Indian National,  
Resident of H.No. 126, Borda,  
Margao, Salcete-Goa.

....Appellant

V/s

1) The Public Information Officer (PIO),  
Administrator of Comunidades,  
South Zone, Margao, Salcete-Goa.

.....Respondent

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

Filed on: 05/02/2020

Decided on:21/07/2020

**ORDER**

1. The Appellant, Shri Nazareth Baretto has filed the present Appeal on 5/2/2020 praying that the Information as requested by the him in his application dated 26/8/2019 be furnished to him correctly and for invoking penal provisions and compensation.
2. Brief facts of the present proceedings as putforth by Appellant are as under :-

(a) In exercise of right under section 6(1)of Right to Information Act ,2005 the Appellant filed an application on 26/08/2019 seeking certain information from the Respondent public information officer of the office of Administrator of Comunidade, South Zone, Salcete-Goa on 9 points as stated therein in the said application.

(b) Vide said application dated 26/08/2019, the Appellant had sought for following information:-

- i. Copy of the approval given by your office to the resolution passed by the Managing Committee of Comunidade of Aquem for change of venue to hold

election (other than the office of Comunidade, Aquem) of the Managing Committee of Comunidade of Aquem for the triennium years 2019-2021.

ii. Copy of the approval given by your office to the resolution passed by the Comunidade of Aquem for the purpose of holding elections of the Managing Committee of Comunidade of Aquem for triennium years 2019-21, at Comunidade Hall, Margao.

iii. Copy of the notification published in official gazette, Government of Goa that the venue to hold elections of the Managing Committee of Comunidade of Aquem for triennium years 2019-21, which elections were held on 16<sup>th</sup> December 2018, will be held at Comunidade Hall, at Old Market, Margao Goa.

iv. Entire list of the shareholders of the Comunidade of Aquem.

v. Copy of the approval given by your office to the resolution dated 25/07/2001 passed by the Managing Committee of the Comunidade of Aquem for change/shifting of the office of Comunidade of Aquem to the Comunidade Hall, Old Market, at Margao –Goa.

vi. Copy of the approval given by your office to the resolution dated 20/07/2003 passed by the Managing Committee of the Comunidade of Aquem for change/shifting of the office of Comunidade of Aquem to the Comunidade Hall, Old Market, at Margao –Goa.

vii. Copy of the approval given by your office to the resolution dated 28/04/2010 passed by the Managing

Committee of the Comunidade of Aquem for change/shifting of the office of Comunidade of Aquem to the Comunidade Hall, Old Market, at Margao –Goa.

viii. Copy of the reply /any document/written arguments filed by your office in Comunidade Election Petition No. 1/2019.

ix. Copy of the approval to the resolution passed by the Managing Committee of the Comunidade of Aquem to appoint Shri Eric Corriea to represent the Comunidade of Aquem (Respondent No.2),in Comunidade Election Petition No. 1/2019.

C. 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 Public Information Officer (PIO)within stipulated time of 30 days as contemplated u/s 7(1) of RTI Act neither the information was provided to him till this date despite of his visits on many occasion and as such deeming the same as rejection, he filed 1<sup>st</sup> appeal with office of Collector, Collectorate Building at Margao-Goa on 18/10/2019 being First Appellate Authority in terms of section 19(1) of RTI Act which was registered as case No. 45/RTI-Appeals /Est/AC-I/2019.

d) It is the contention of the Appellant that the notices of the Said first Appeal were given to the both the parties However the Respondent PIO failed to remain present before First Appellate Authority, during the hearing despite of due service of notice to him .

e) It is the contention of the Appellant that the First Appellate Authority allowed his appeal by order dated 29/11/2019

directed the Respondent PIO to issue information free of cost to the Appellant.

f) It is the contention of the Appellant that even after the lapse of more than 2 months from passing of the order, the Respondent PIO failed to provide him the information as directed by order dated 29/11/2019.

3. In this above background the Appellant being aggrieved by action of PIO, has approached this commission in this second appeal u/s 19(3) of the Act with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for invoking penal provisions as against Respondent PIO so also sought compensation for the detriment suffered by him at the hands of Respondents.
4. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties. Appellant was present in person along with advocate Shri Umesh Mangueshkar. Respondent PIO was represented by Shri Vivek Desai. The matter was then fixed on 27/03/2020 for furnishing information and for filing reply by Respondent PIO. However in view of lockdown due to Covid-19 the matter could not be heard on the above date. Hence after lifting the lockdown fresh notices of the hearing were issued to the parties and the matter was fixed for furnishing information and filing reply.
5. In pursuant to the notices Appellant appeared in person along with advocate Shri Umesh Mangueshkar. Respondent PIO was represented by Shri Vivek Desai.
6. During the hearing on 14/07/2020 the representative of Respondent PIO Shri Vivek Desai placed on record forwarding letter addressed to Appellant bearing No,. ACSZ/120/RTI/2020 - 2021/48 dated 3/7/2020 by Shri Vishal Kundaikar, Administrator

of Comunidade, South Zone, Margao and PIO thereby furnishing the information and the documents. The Advocate for the Appellant also acknowledge on the memo of Appeal of having received the information from Respondent. However since the information at point no. 1,2,3,8 and 9 have been informed as “ *not available in the office records*”, the Respondent PIO was directed by this commission to file affidavit affirming the above fact. Despite of said directions of this Commission, no any affidavit came to be submitted by the Respondent PIO.

7. Appellant submitted that he has to travel from Margao to Panajim in order to attend the hearing and the Respondents are not interested in the present proceedings . He further submitted that he is satisfied with the information however he vehemently pressed for penal provisions and accordingly endorsed his say on the memo of Appeal.
8. On perusal of the records of the present proceedings it appears that Respondent is not seriously interested in contesting the present proceedings and hence the arguments of the Appellant were heard.
9. It is the contention of the Appellant that the Administrator of the Comunidade/PIO falls within the purview of the RTI Act, 2005 and that he can call for the records from the Comunidade and He is duty to furnish the information asked for under the RTI Act. It was further contended that the PIO deliberately has not provided him the information, which amounts to contempt of the provisions of the RTI Act. And he vehemently pressed for invoking penal provisions against the Respondent.
10. I have scrutinized the record available in the file so also considered the submissions made by the both the parties .
11. 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. ”

12. 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”.

13. 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.”

14. Hence according to above judgment of the Hon’ble Apex court, and Hon’ble other High Courts the PIO is duty bound to furnish the information **as available and as exist in the office records.**

15. In the present case since the Respondent PIO has clearly stated and submitted that information at serial No. 1,2,3,8 and 9 sought by the Appellant vide application dated 26/8/2019 are 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 said information which is not available and existing in a records of a public authority.

16. The RTI came to existence to provide fast relief as such time limit is to provide the information within the period of 30 days to dispose the first appeal maximum within 45 days and to transfer the application interms of section 6(3) within 5 days.

17. On perusal of the records, it is seen that the application dated 26/8/2019 was filed and received by the Office of Respondent PIO

on 26/8/2019 itself. Under section 7(1) of the Act, the PIO is required to respond the same within 30 days from the said date. The Respondent PIO has not placed on record any documentary evidence of having adhered to section (7)of RTI Act, 2005.

18. The records shows that the first appeal was filed by the Appellant on 18/10/2019 and the order was passed by the First Appellate Authority on 29/11/2019. The First Appellate Authority vide his order directed Respondent to furnish the required information . It is not a case of PIO that the order of First Appellate Authority was challenged by him or has complied the order of the First Appellate Authority. The PIO has also not placed on record any correspondence made by him to the Appellant in pursuant to the said order. No reasons whatsoever were intimated to First Appellate Authority nor to the Appellant herein why he would not comply the said order in time. The Respondent PIO have not produced any documentary evidence on record of having complied the order of First Appellate Authority.
19. Thus from the records and undisputed facts, it could be gathered that the Respondent PIO have failed to respond the said application filed by the Appellant u/s 6(1) of RTI Act and also did not complied the order of First Appellate Authority .
20. The information was sought on 26/8/2019 and the information has been furnished to the appellant on 14/7/2020 . There is a delay in furnishing the information.
21. From the conduct of the PIO it can be clearly inferred that the PIO has no concern to his obligation under the RTI Act or has no respect to obey the order passed by the senior officer. Such a conduct of PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-vis the intend of the Act.
22. 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.

23. From the above gesture of PIO, I find that the entire conduct of PIO is not in consonance with the Act as he repeatedly failed to provide information. Respondent PIO have not acted with conformity with the provision of RTI Act , hence such an act on the part of the Respondent herein is condemnable.
24. In the facts and circumstances of the above case and in view of the discussion above, I find the ends of justice will meet with following direction. I therefore dispose the present Appeal with order as under:-

#### Order

Appeal partly allowed .

- a. Since the available information have now been provided to the Appellant as per the satisfaction of the Appellant , I find that no intervention of this Commission is required for the purpose of furnishing the information and thus prayer(a) becomes infructuas.
- b. Issue notice to Respondent PIO to Show cause as to why no action as contemplated u/s 20 (1) and/or 20(2) of the RTI Act 2005 should not be initiated against him /her for contravention of section 7(1),for not complying the order of First Appellate Authority and for delay in furnishing the information.
- c. In case the PIO at the relevant time, to whom the present notice is issued , is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter along with full name and present address of the then PIO.

- d. Respondent, PIO is hereby directed to remain present before this commission on 13/8/2020 at 10.30 am along with written submission showing cause why penalty should not be imposed on him.
- e. Appeal proceedings disposed and closed accordingly. The registry of this commission is directed to open separate penalty proceedings.
- f. Rest prayers are rejected.

With the above directions, the 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