

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

Appeal No. 89/2020/SIC-I

Shri Suryakant Kambli,
H.No. 720 Nr. Gomantak Printing press,
St.Inez, Panaji-Goa.

....Appellant

V/s

- 1) The Public Information Officer (PIO),
Corporation of City of Panaji,
Panaji-Goa.
- 2) The First Appellate Authority,
The Commissioner of CCP ,
Corporation of City of Panaji,
Panaji-Goa.

.....Respondents

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

Filed on:20/4/2020
Decided on:12/08/2020

ORDER

1. By this appeal, the Appellant assails the order, dated 20/2/2020 passed by the Respondent No.2 First Appellate Authority in first appeal bearing No. RTI/Appeal/01/2020, filed by the Appellant herein.
2. The brief facts leading to the present appeal are as under:-
 - (a) In exercise of right under section 6(1) of RTI Act, 2005, the Appellant Shri Suryakant Kambli filed application on 7/11/2019 seeking certain information from the Respondent No.1 Public Information Officer (PIO) of the Corporation of the City of Panajim, Panajim-Goa on 6 points as listed therein in the said application in respect to the property bearing Chalta No. 330 and 331 of P.T.S. No. 77 of the city survey of Panajim which is located near Government Printing press at St.Inez, Panajim-Goa.

(b) Vide said application the Appellant had sought the following information.

- i. Whether any permission/construction license was issued by your Municipality after the coming into force of the Goa, Daman & Diu Municipalities Act in respect to any construction in the property bearing Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City Survey of Panaji? If so please furnish a copy of the same along with the approved plan.
- ii. Whether any permission/construction license was sought from your Municipality by Shri Ankush Rajaram Naik or any of his heirs for the carrying of construction in the property Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City of Panaji? If so please furnish copy/copies of the same, along with the result thereon and your Office notings in this connection.
- iii. Whether any complaint/s had been received by your Municipality in respect to the construction being commenced/carried out in the property bearing Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City of Panaji? If so please furnish details/copies thereof and please also inform as to what action was taken by the Municipality in this connection.
- iv. From your records, please check and inform whether any House Number/s is/are issued by your Municipality for any construction in the property bearing Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City of Panaji? If so, please inform the name/s in which the House tax has been issued and please also inform since when this House Tax has been issued.
- v. Kindly inform whether in your records there exists the approved plan, the construction license and the

Occupancy Certificate for the structure existing in the property bearing Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City of Panaji? If so, please furnish copies thereof.

vi. Kindly check your records and inform whether the any NOC was sought for from your Corporation in the matter of obtaining Electricity connection for any structure in the property bearing Chalta no. 330 and/or 331 of P. T. S. No. 77 of the City of Panaji? If available, please furnish a copy of the application as also the reply given by the Municipality.

(c) It is the contention of the Appellant that his above application filed in terms of sub section(1)of section 6 was responded by the Respondent No. 1 Public Information Officer (PIO) on 2/12/2019 where in his request was rejected and no information was furnished to him on the ground that the file could not be traced based on the given information and he was requested to furnish the details such as the construction license number and the date/occupancy certificate number date, correct house number so as to issue correct information desired by him, as such he being aggrieved by such an response of Respondent PIO filed First Appeal before the Commissioner of CCP at panajim on 30/12/2019 being First Appellate Authority in terms of section 19(1) RTI Act 2005.

e) It is the contention of the Appellant that after hearing both the parties, the Respondent No.2 First Appellate Authority dismissed the said appeal by an order dated 20/2/2020 by upholding the say of PIO and without granting him any reliefs. By this order the Respondent No. 2 First Appellate Authority adviced Appellant to furnish proper details and apply a fresh and as such he being aggrieved by the action of both the

Respondents is forced to approach this commission in his 2nd Appeal.

3. In this background the Appellant has approached this Commission on 20/3/2020 in this Second Appeal as contemplated u/s 19(3) of RTI Act with the grounds raised in the memo of Appeal and with the contention that the information is still not provided and seeking order from this Commission to direct the PIO to provide the complete information to him in the manner in which it was sought for and also for invoking penal provision against Respondent PIO for non furnishing the information sought for and against the First Appellate Authority for casual approach.
4. Vide memo of Appeal the Appellant contended that the Respondent No. 2 the First Appellate Authority erred in taking a hyper technical approach and has taken the request of the Appellant under the RTI Act casually as the Respondent no. 2 failed to appreciate that the Appellant if himself was aware from the details he would not have approached this authority. It was further contended that the Respondent no. 2 First Appellate Authority failed to appreciate that there would be also information as regards to the grant of any construction license issued by Corporation and the details could have been checked name wise. It was further contended that Respondent no. 2 First Appellate Authority had failed to appreciate that there would also be records available as regards the issue of house tax and house number and index had to be maintained as regards the issue of house tax and such records could very well to be checked. It was further contended that he had sought the information as regards the issue of NOC for electricity water etc., hence it was for the PIO to ascertain whether any records /index were maintained or whether the corporation had no records at all. It was further contended that Respondent no. 2 First Appellate Authority has not at all applied his mind and has erred to issue advice to the Appellant to file application in fresh .

5. It was further contended that both the Respondent had deliberately and intentionally not furnished the information sought for and have sought Shriek the responsibility cast on them under the RTI Act and hence appropriate action is required to be taken as against both the Respondent.
6. The Matter was taken up on board and was listed for hearing after intimating both the parties. In pursuant to the notice of this Commission, Appellant was represented by Advocate R. Kantak duly assisted by Advocate Sanjay Gaonkar and Advocate M. Velgikar. Respondent PIO Mrs. Rupa Gaonkar was present. Respondent No.2 First Appellate Authority was represented only two occasion by Shri Dinesh Maralkar. .
7. The Respondent PIO in the course hearing before his commission sought time to verify the records once against and to trace the information. The reply in affidavit was filed by the Respondent PIO on 7/8/2020 thereby submitting that no such records are available. The copy of the same was furnished to the Advocate for the Appellant.
8. The Respondent PIO vide reply in affidavit submitted that during the hearing on 20/7/2020, before this Commission it was mutually agreed by the both parties to check the records of the corporation of the year 1997 to 2005 whether any permission granted to Shri Ankush Rajaram Naik and in pursuant to the same the officials from the technical section check the records from the corporation and it was submitted that there is no such records is available .
9. The Advocate for the Appellant submitted that since PIO submitted that no such records is available as such in order to verify the said fact he likes to do inspection of the records . The Respondent No. 1 PIO also agreed to give him the inspection and accordingly the said was carried out by the

Advocate for Appellant on 7/8/2020 at 3.00 pm and after conducting the inspection the Advocate for Appellant placed on record application on 12/8/2020 thereby informing this commission that he had visited the office of Corporation and inspected the Licences /Registers from the period 1997 till 2005 and has confirmed that no such permission in the name of Shri Ankush Rajaram Naik or his heirs was issued by the corporations. The Advocate for Appellant prayed to pass appropriate order.

10. I have scrutinized the records available in the file and considered the submissions made by both the parties.
11. In the contest of the nature of information that can be sought from PIO, Hon'ble Delhi High Court in LPA 24/2015 & CM No.965/2015 The Registrar Supreme Court V/S Comondore Lokesh K. Batra & others January 2016. LPA has held

"As already noticed above, "right to Information" under section 2(j) means only the right to information which is held by any public authority . We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the appellant ".

And in

12. 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."

13. 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 which is also confirmed by the Advocate for the Appellant by conducting the inspection of the records of the corporation . 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.

14. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005, the Hon'ble High court of Bombay , Goa Bench at Panaji in writ petition No.205/2007 ; Shri A. A .Parulekar v/s Goa State information commission has observed:

“The order of penalty for failure is akin to action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate “.

15. It is seen from the records that the Application was filed on 7/11/2019 which was duly replied on 2/12/2019 by then PIO within stipulated time of 30 days. On perusing the said reply one could gather that she has made efforts to locate the information and also shown her willingness to furnish the information if the additional details like construction license No. and dates etc are submitted to her. There was no clear denial of information. The First Appellate Authority also concurred with the view of PIO that the additional details are required. Only lapse found by this commission that the information at point no. 2 could have been given at initial stage as the name of the person namely Shri Ankush Rajaram Naik was referred and had sought information pertaining to permission construction license issued in his name.

16. There is no convincing evidence brought on record by the Appellant attributing malafides on the part of PIO. Hence by subscribing to the ratio laid down in A.A. Parulekar case(Supra), I am, of the opinion this is not an fit case warranting levy of penalty on Respondent PIO.
17. The Appellant has also sought for invoking penal provisions against the Respondent no.2 First Appellate Authority. As per the provisions of the RTI Act, only the PIO can be penalized u/s 20 of the RTI Act. I do not find any provisions under the Act conferring powers to commission to impose penalty or initiating disciplinary proceedings against the First Appellate Authority. Hence the relief as sought by the Appellant in the present proceedings against Respondent No.2 First Appellate Authority cannot be granted.
18. In the above given circumstances and in view of the discussion above I, am of the opinion that the levy of the penalty is not warranted in the facts and circumstances of the present case hence the relief sought at(b) is not granted.

The Appeal proceedings disposed and closed Accordingly.

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

