

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No. 34/SCIC/2012

Shri J. T. Shetye,
C/o Mapusa Jana Jagruti Samiti,
Khorlim, Mapusa – Goa.

..... Appellant

v/s

1. The State Public Information Officer
Public Information Officer,
Administrator of Comunidade (Mapusa),
O/o Administrator of Comunidade
North Goa, Mapusa-Goa.

2.Registrar/Attorney (Deemed PIO)
Comunidade of Mapusa,
Near the Church, Mapusa Goa.

.....Respondents

3. First Appellate Authority
Additional Collector- II,
Collectorate building,
North Goa District, Panaji-Goa.

Relevant emerging dates:

Date of Hearing : 04-02-2020

Date of Decision : 10-02-2020

ORDER

1. **Brief facts** of the case are that the Appellant vide an RTI application dated 17/10/2011 sought certain information u/s 6(1) of the RTI act 2005 from the Respondent PIO, the Administrator, Office of the Administrator of Comunidade North Zone, Mapusa Goa.
2. The information pertains at 09 points and the Appellant *inter alia* is seeking to provide the names of the lessees of Kiosks/Gada holders in the property belonging to the Comunidade of Mapusa bearing Chalta No.3 of P/T/ Sheet No.96 of City Survey Mapusa situated near St. Xavier's College, Altinho, Mapusa for business purposes and who has constructed these kiosks/gadas in your property and whether any construction license were obtained from Mapusa Municipal Council for constructing these several Kiosks/gada in your property? if yes then to provide the.....

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.....certified copies of construction license Mapusa Municipal Council and other competent authorities and Whether the Comunidade of Mapusa has issue any no objection certificates for putting up business in these Kiosks/gada to the lease holders of these Kiosks/gadas? If yes, to provide the certified copies of NOC's issued to all the lessees of these Kiosks/Gadas and to inform the criteria and terms and conditions of allotment of these Kiosks/gadas constructed in the land belonging to Mapusa Comunidade and to provide the certified copies of applications received by Mapusa Comunidade for allotment of these Kiosks/Gadas and certified copies of resolution passed by the Mapusa Comunidade for allotment of these Kiosks/gadas and how many Kiosks/Gadas are vacant in this above referred sketch plan showing Kiosks/Gadas numbering from A to x (7) and to provide the certified copy of lease agreement executed between Shri Santosh R. Karpe, R/o Moti Mahal, H.No.167/9, Housing Board Colony, Altinho, Mapusa, Goa and Comunidade of Mapusa in respect of an area of 3x3=9 sq.mts allotted to him in the year 2004 and whether the lease holder Shri.Santosh R. Karpe has surrendered his Kiosk/Gada back to Mapusa ? If not then to provide the certified copies of all Comunidade of Mapusa from the period Jan.2006 till date and other such related information as contained in the RTI application therein.

3. It is seen that the APIO vide letter No.ACNZ/RTIA/114/11-12/252 dated 25/10/2011 sent to the Registrar/Attorney, Comunidade of Mapusa sought assistance under section 5(4) of the RTI Act and directed the said Attorney of Comunidade Mapusa to submit the said information within 7 days for onward submission to the applicant.
4. It is the case of the Appellant that he did not receive any information from the PIO within the stipulated period and as such the Appellant preferred a First Appeal on 06/12/2011 and that the hearing was held before the First Appellate Authority on 02/01/2012 and 09/01/2012 and although the Appellant.....

..... was present, neither the PIO nor his representative were present at the hearing after which the First Appellate Authority (FAA) passed an Order directing the PIO to provide the information sought by the Appellant in the RTI application within 20 days, free of cost.

5. It is further the case of the Appellant that pursuant to the order of the FAA, he has not received information from the PIO, Administrator of Comunidade nor from the Registrar /Attorney of Mapusa Comunidade and as such he has filed a Second Appeal under Section 19(3) before this Commission registered on 13/02/2012 and has prayed to direct the Respondent PIO to furnish information and for penalty and other such reliefs.
6. **HEARING:** This matter has come up for hearing before the Commission on numerous previous occasions and thus taken up for final disposal. During the hearing the Appellant Shri. J.T. Shetye is absent. The Respondent APIO, Shri. Bharat Naik Gaonkar, Acting Secretary is present on behalf of Administrator of Comunidade, North Zone Mapusa. The Respondent No.2, Attorney of Comunidade of Mapusa is represented by Adv. Shruti Narvekar holding for Valmiki Menezes. The FAA is absent.
7. **SUBMISSIONS:** The APIO submits that after the receipt of the RTI application by the O/o the PIO, Administrator of Comunidade, North Zone the same was sent to the Registrar/Attorney of Comunidade of Mapusa vide letter dated 25/10/2011 by then APIO Shri.Anand S. Naik and assistance was sought under section 5(4) of the RTI Act, however, the said Comunidade of Mapusa has not furnished any information and have taken a stand and that they are not "public authorities" and hence thte PIO could not furnish the information.
8. Adv. Shruti Narvekar for Respondent No.2 submits that Writ Petition No.1004 of 2017 was filed in the High Court of Bombay at Goa pertaining from same issue of Comunidade of Mapusa....

..... and that the High Court Interim Order passed on 19/01/2018 has stated as follows: "that pending final disposal of this petition Hon'ble High Court be pleased to stay the operation of the Judgment dated 04/07/2017 of the State Information Commiss".

9. Adv. Shruti Narvekar further submits that Comunidade of Mapusa is a private body and has not been declared as the public authority and as such they are not bound to furnish information under the RTI Act to the PIO, Administrator of Comunidade, North Zone.
10. **FINDINGS:** The Commission after hearing the submission of the respective parties and perusing the material on record finds, that there is a reply filed by the Respondent No.1 PIO, Administrator of Comunidade (North), Zone Mapusa dated 18/07/2016, wherein there it has been stated that Comunidades are old organizations which are not public authorities and as such RTI Act is not applicable to them. The said reply also states that Comunidade are taking a stand and they are not public authorities and as such they are not coming under the RTI Act though under Article 5 of Code of Comunidade they are under administrative tutelage of the State.
11. There is a reply dated 10/04/2014 also filed by Adv for the Respondent No.2. The Commission also finds that the appellant in the RTI application has in many points sought information by asking questions by using the words **who** has constructed these kiosks/gadas **whether** Comunidade of Mapusa has issued, **how** many Kiosks/gadas are vacant and which the PIO is not bound to answer as per the ratio laid down in the case of Dr. Celsa Pinto, Ex-Officio Joint ... vs The Goa State Information ... on 3 April, 2008-Equivalent citations: 2008 (110) Bom L R 1238.
12. **DECISION:** The Commission accordingly comes to the conclusion that the PIO has made an attempt to collect information from the respective Comunidade of Mapusa by sending a letter No.ACNZ/RTIA/114/11-12/252 dated 25/10/2011 but has been unsuccessful mainly.....

..... due to the fact that the respective Comunidade is unwilling to furnish information due to the stand taken by them that they are not public authorities and thus the PIO cannot be faulted.

6. As a matter of fact Comunidade bodies have not been declared as Public Authorities by the appropriate government and as such they are reluctant to part with information to the PIO, Administrator of Comunidade and this Commission has come across numerous such cases where the Comunidades do not furnish information to the PIO, Administrator of Comunidades even after a Memorandum is served on the Attorney/ Registrar/ escrivao thus rendering the PIO helpless.
7. It is pertinent to note that the matter regarding Comunidades had also reached the High Court and the Bombay High Court at Goa in Writ Petition no 1004 of 2017 Comunidade of Mapusa V/s PIO Administrator of Comunidade, in its interim order dated 19/01/2018 had stayed the Judgment of the Goa State information Commission dated 04/07/2017 while also staying the Order of the First Appellate Authority (FAA), Addl Collector-II directing the PIO to furnish information. The High Court in its Order dated 12/06/2018 observed that the information sought is of private nature and therefore ordered that pending the hearing of the petition, the Petitioner (Comunidade) need not supply information as sought for by the Respondent No 2 (PIO, Administrator of Comunidade)
6. **DECISION:** In view of the above discussion, the Commission comes to the conclusion that the PIO had made an attempt to obtain information from the respective Comunidade of Mapusa and which itself is sufficient proof of the bonafide that there is no malafide intention on the part of the PIO not to furnish information. The PIO has not been successful only because the respective Comunidade of Mapusa has not furnished the information due to its claim that Comunidade bodies are not public authorities and the PIO has no jurisdiction to call for private information.

7. Also in view of the order of the Hon'ble High Court in Writ Petition no 1004 of 2017, the Commission is also unable to issue directions either to the PIO, Administrator of Comunidade or to the Registrar / Attorney Comunidade of Mapusa to comply with the order passed by the Additional Collector-II, First Appellate Authority and furnish the information.
8. **Nothing therefore survives in the appeal case which accordingly stands disposed.** Consequently the reliefs sought by the appellant in terms of prayer 2) and 3) stand rejected.

With these observations all proceedings in the appeal case stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner