

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

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No: 64/2019/SIC-II

Regina Norton,
House No. 26-A-7,
Naikawaddo,
Calangute, Bardez- Goa. 403 516

..... Appellant

v/s

Public Information Officer,
The Administrator of Comunidades,
North Goa Zone,
Mapusa - Goa. 403 507

..... Respondents

Relevant emerging dates:

Date of Hearing : 16-12-2019

Date of Decision : 14-01-2020

ORDER

1. **Brief facts** of the case are that the Appellant vide an RTI application dated 05/11/2018 addressed to the PIO, The Administrator of Comunidade of North Zone, Administration office of the Comunidade of Bardez, Mapusa Goa sought information at points from a) to h) u/s 6 (1) of the RTI Act, 2005.
2. The Appellant *inter alia* is seeking certified copy of the minutes of the General Body meeting held at 11.00 a.m on Sunday 29th October 2018, certified copy of minutes of the last General Body/Ordinary/Extraordinary meetings held during the tenure of the present managing Committee of the Calangute Comunidade, certified copy of Agenda of the meeting published in the Government official Gazette, the newspaper publication and any other substitute form of the publication affixed to the door of the administration office and of the temples of any religion or at other public place of the area of the Comunidade of Calagute on the meeting held on 29th October, 2018 and other such related information as contained in the RTI Application therein.

3. It is seen that as there was no reply of the PIO, the Appellant filed a first Appeal dated 14/12/2018 and the First Appellate Authority(FAA) vide an Order dated 25/02/2019 directed the Respondent PIO to furnish the information in possession of the Respondent to the Appellant free of cost within 15 days.
4. Being aggrieved that despite the Order of the First Appellate Authority (FAA) the PIO has not furnished any reply nor any information, the Appellant thereafter has approached the Commission by way of Second Appeal registered on 12/03/2019 and has prayed to direct the respondent PIO to comply with the directions of the FAA, for compensation, penalty and for other such reliefs.
5. **HEARING:** This matter has come up before the Commission on six previous occasion and thus taken up for final disposal. During the hearing the Appellant is represented by Mr. Antonio Jose De Souza who is holder of the power of attorney for the Appellant. The Respondent PIO is represented by Shri. Arjun Mandrekar, LDC with the Public Authority. The FAA is absent.
6. **SUBMISSIONS:** Shri. Antonio Jose De Souza submits that the Appellant has sought information from the PIO, Administrator of Comunidade of North Zone at points from a) to h) including copy of minutes of the last General Body/Ordinary/ Extraordinary meetings held during the tenure of the present managing Committee of the Calangute Comunidade and other such information and which the PIO ought to have collected from the respective comunidade and furnished, but the PIO has not furnished the same and also the PIO has not complied with the order of the First appellate Authority in furnishing information.
7. It is also submitted that the present PIO should have filed a reply instead of the former PIO Shri Gaurish J Shankwalkar who was relieved from his duty on 04/03/2019 and the averments made regarding his communication to the escrivao have not been brought to the notice of the APPELLANT.

8. It is also submitted that this Commission has held that the Comunidade is a public authority and as such covered under the RTI act 2005 and that although the GSIC order has been appealed and the matter is sub-judice before the High Court, however the High Court has made it clear that the pronouncement of law by the GSIC is not stayed.
6. **FINDINGS:** The Commission has heard the representative for the Appellant Shri. Antonio Jose De Souza and perusing the material on record. There is a reply dated 12/11/2019 filed by the former PIO Shri Gaurish J Shankhwalkar which states that after receiving the RTI application the same was forwarded to the escrivao, Comunidade of Calangute vide letter dated 14/11/2018 to furnish information however despite repeated reminders the Comunidade has not furnished the same. In the said reply the former PIO has also stated that pursuant to the order of the First Appellate Authority also the Escrivao was again directed to issue the information vide another letter dated 15/11/2018 and yet the information was not furnished.
7. The Commission accordingly finds that the PIO has indeed made every attempt to collect information from the respective Comunidade of Calangute but has been unsuccessful mainly due to the fact that the respective Comunidade is unwilling to furnish information and thus the PIO cannot be faulted.
8. The Commission also finds that 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. 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 escrivao thus rendering the PIO helpless.
9. 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....

.....Communidade 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. Also the hon'ble 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 (Communidade) 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 has made repeated attempts to obtain information from the respective Comunidade of Calangute and which is sufficient proof of the bonafide that there is no malafide intention on the part of the PIO not to furnish information. As a matter of fact the PIO has not been successful only because the respective Comunidade of Calangute is unwilling to furnish the information due to its claim that Comunidade bodies are not public authorities and the PIO has no jurisdiction to call for private information. Thus the PIO is not at fault.
7. Further 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 Escrivao, Comunidade of Calangute to comply with the order passed by the Additional Collector-II, First Appellate Authority and furnish the information. **Nothing therefore survives in the appeal case which accordingly stands disposed.** Consequently the reliefs sought by the appellant in terms of prayer from a) to d) stand rejected.
8. Shri. Antonio Jose De Souza in his oral arguments has stated that the appellant is also a shareholder of the Comunidade of Calangute, if it is so, then the appellant is at liberty, if so advised, to seek the information from the Administrator of Comunidades under 88(d) of the Code of Comunidade.

9. The Commission in the numerous Comunidade RTI cases has observed that most Comunidades are functioning in a secret manner without any transparency and accountability. These bodies cannot be allowed to be looted and plundered under the garb of they being a gaunkari or private entities. Even Components of the comunidade namely gaunkars and shareholders are kept in dark about the Managing Committee decisions regarding allotments of plots, open spaces, serventia and permissions granted by the respective Comunidades.
10. The Government has full control over Comunidade bodies which are regulated through the Code of Comunidade that is amended from time to time by the State legislature. The Administrator of Comunidade exercises rights under article 88(d) of the code. Article 118 of the code, as amended by Goa Act no.3 of 1998, dated 17/1/1998, prescribes the appointment of the administrator. Duties of the Escrivao / clerk of Comunidade under the Code, as amended by Goa Act no.3 of 1998, and dated 17/1/1998 are contained at article 88. Thus it is clear that Comunidade body falls under the purview of 'public authority' as per Section 2(h) of RTI Act.
11. In the circumstances, the Commission for the efficient functioning of the RTI act and in the interest of maintaining transparency and accountability recommends that the government take immediate steps to issue a notification so as to declare 'Comunidades' as 'Public Authority'. The Administrator of Comunidade can be appointed as the First Appellate Authority (FAA) (*instead of the Addl Collector*) and the PIO can be the Escrivao/ Clerk of the respective Comunidade.

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

Registrar is directed to send a copy of this order to the Chief Secretary, Revenue secretary and Collector North & Collector South for onward action.

