

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

Appeal No. 40/2020/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:25/06/2020

ORDER

1. The Appellant, Shri Nazareth Baretto has filed the present appeal on 5/2/2020 praying that the Information as requested by the Appellant in his application dated 26/8/2019 be furnished to him correctly and for invoking penal provisions and compensation.
1. 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 Administrator of Comunidade, South Zone, Salcete-Goa on 3 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 share certificate register book of all the 25 persons/ shareholders who voted for the election of Managing Committee of Comunidade of Aquem for

triennium years 2019-21, which elections were held on 16/12/2019 at Comunidade hall, at Margao.

ii) Copy of the verification of the voters done by the Talathi and Escrivao for the election of Managing Committee of Comunidade of Aquem for triennium years 2019-21, which elections were held on 16/12/2019 at Comunidade hall, at Margao.

iii) Copy of the notice /publication duly approved by your office for holding the election of Managing Committee of Comunidade of Aquem for triennium years 2019-21 at Comunidade hall, at Margao on 16/12/2019.

- 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 1st 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
- 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 and 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.
2. In this above background the Appellant being aggrieved by action of PIO, has approached this commission on 05/02/2020 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.
 3. 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 Mangkeshkar. Respondent PIO was represented by Shri Vivek Desai. The matter than was than 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.
 4. In pursuant to the notices Appellant appeared in person. Respondent PIO opted to remain absent despite of due service of notice. Since no reply came to be filed, I presume and hold that the Respondent PIO has no say to be offered and the averments made by the Appellant are not disputed by them. Hence the arguments of the Appellant were heard.
 - 5) 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.

- 6) I have scrutinise the records available in file, and also consider the submissions made by Appellant .
- 7) The Hon'ble Apex Court in the matter ,State of U.P. V/S Raj Narayan ; (1975) 4 Supreme Court Cases 248 observed

"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They entitled to know the particulars of every public transaction in all its bearings. The Right to know which is derived from the concepts of freedom to speech, though not absolute, is a factor which can, at any rate, have no repercussion on the public security. To cover with a veil of secrecy their common routine, denial is not in the interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of partied and political or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

- 8) In an land mark case " Reserve Bank Of India" and others V/s Jayantilal N. Mistry and others;(Civil)Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of transfer petition (Civil) No. 707 of 2012) has held at para 75 ;

"The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of

information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy".

- 9) Yet in another decision the Hon'ble Apex Court S.P.Gupta V/S Union of India, AIR 1982 SC 149 has observed:-

*"No democratic Government can Survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government, that an open Society is the new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of the open Government is the direct emanation from the right to know which seems to be implicit in the right of freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regards to the **functioning of the Government must be the rule, and secrecy an exception,** justified only where the strictest requirement of public interest so demands".*

- 10) By subscribing to the above ratios laid down by the Hon'ble Apex Courts in the above matters and considering the intends of the RTI Act and the nature of Information sought, I am of the opinion that the Appellant is entitled to receive the said information .
- 11) 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.

- 12) 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.
- 13) 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.
- 14) 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 .
- 15) The information was sought on 26/8/2019 and till date no information has been furnished to the appellant. There is a delay in furnishing the information.
- 16) 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.

- 17) 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.
- 18) 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 and the same is still not provided. 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 .
- 19) Before parting it need to mention that section 4 of the Act casts an obligation on all public authorities to maintain records duly computerised and connect through network. Said provision also requires public authorities to publish certain information in the prescribed format and update the same periodically. If such and exercise is undertaken by the Respondent authority herein, then such disseminated information would be beyond the purview of the Act. It is noted that inspite of the said obligation on the Respondent authority and direction of this commission from time to time, the Respondent authority has failed to comply with said requirement, thereby compelling not only Appellant but citizens at large to have the information in physical form by filing applications.
- 20) The Hon'ble High Court of Bombay at Goa Bench in PLI writ petition No. 42 of 2019; Roshan Mathias V/s Village Panchayat of Candolim had directed the public authority i.e the Village Panchayat Candolim to comply its obligation interms of section 4(1)(b) of the RTI Act as expeditiously as possible within a period of 6 months.

- 21) The observation made by the Hon'ble High Court and the ratios laid down in the case of Roshan Mathias (Supra) are also applicable to the public authority concerned herein.
- 22) In the facts and circumstances of the above case and in view of the discussion above, I find that ends of justice will meet with following directions. I therefore dispose the present Appeal with order as under ;

ORDER

- a) Appeal allowed.
- b) The Respondent PIO is hereby directed to provide the information as sought by the Appellant vide his application dated 26/8/2019, free of cost within 20 days from the receipt of this order.
- c) In exercise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Collector of South Goa at Margao shall issue instruction to Respondent PIO to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.
- d) The Public Authority concerned herein i.e the Administrator of Comunidade, South Goa at Margao-Goa is hereby directed to comply with section 4 of Right To Information Act, 2005 within 6 months in case the same is not complied.
- e) 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.
- f) 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.

- g) Respondent, PIO is hereby directed to remain present before this commission on 14/7/2020 at 11.30 am along with written submission showing cause why penalty should not be imposed on him.
- h) Appeal proceedings disposed and closed accordingly. The registry of this commission is directed to open separate penalty proceedings.
- i) Copy of this order shall be sent to Collector of South Goa at Margao for information and necessary action.

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