

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

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Appeal No.297/2019/SIC-I

Shri Santana Piedade Afonso,  
H.No. 263,Comba Central,  
P.O. Cuncolim, Salcete Gao.

...Appellant

V/s

1. Shri Vinay Dessai,  
The Public Information Officer,  
Municipal Engineer-II,  
Office of the Cuncolim Municipal Council,  
Cuncolim, Salcete Goa.

2. Shri Pritidas Gaonkar  
Office of the Cuncolim Municipal Council,  
Cuncolim Salcete-Goa.

.....Respondents

3. Ms. Veronica Fernandes e Mascarenhas,  
Salemaddem, Cuncolim, Salcete-Goa.

.....Intervener No. 1

4. Mr.Luis Eusebio Saldhana,  
R/o H.No. E-53,Dandora,  
Cuncolim, Salcete Goa.

.....Intervener

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

Filed on: 30/09/2019

Decided on:23/6/2020

**ORDER**

1. The brief facts leading to the second appeal as put forth by the Appellant Shri Santana Piedade Afonso are as under:-

a) That the Appellant, in exercise of his right under sub-section(1) of section 6 of RTI Act, 2005, vide his application, dated 26/7/2019 addressed to the Respondent No.1 Public Information officer (PIO) of the Office of Cuncolim Municipal Council,Cuncolim, Salcete-Goa requested to furnish certain information as stated therein in the said application pertaining to the complaints filed by Mrs Juliana Fernandes D'Souza dated 11/5/2019 and by Mrs Josefina

Fernandes & others dated 15/5/2019 against construction of structure by Shri Lyndon R. Saldana in survey No. 647/3 of Village Cuncolim, Salcete-Goa and also pertaining to complaint dated 7/7/2018 filed by Appellant against construction of Smt. Veronica fernandes E. Mascheranhas in survey No. 366/9 of Village Cuncolim , Salcete-Goa .

- b. 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 Respondent No. 1 PIO within stipulated time of 30 days and failed to provide him the information in the prescribed time framed, as such he filed first appeal before the Chief Officer of Cuncolim Municipal Council, Salcete- Goa on 3/9/2019 interms of section 19(1) of RTI Act, 2005 being First Appellate Authority and after hearing both the parties First Appellate Authority disposed his appeal vide order dated 24/9/2019 without giving any relief .
  - c. It is contention of the Appellant that till date the Respondent has failed to provide him the information which is contrary to the provisions of the Right to Information Act, 2005.
2. In the above background the Appellant being aggrieved by action of both the Respondents has approached this Commission on 30/9/2019 in this second appeal u/s 19(3) of the Right To Information Act 2005 on the grounds raised in the memo of appeal with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish him the information, for invoking penal provision and imposing fine on the Respondents.
3. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties, pursuant to which Appellant was present in person. Respondent No.1 PIO Shri Vinay Desai was present . Respondent no.2 First Appellate Authority was represented by Shri Vikas N. Wargaonkar.

4. Reply filed by the Respondent No. 1 PIO on 22/10/2019 and also by Respondent no. 2 First Appellate Authority on 22/10/2019 vehemently resisting the Appeal. The copy of both the reply were furnished to the Appellant herein.
5. Intervention application was also filed by Mrs Veronica Fernandes on 22/10/2019 and by Shri Luis Saldana on 26/11/2019 . The copy of the same was furnished to the Appellant and the Respondent PIO. The Appellant also filed reply to the intervention application on 11/12/2019 thereby praying to dismiss the intervention application. Arguments on the said intervention application were heard and this Commission by the order dated 24/01/2020 allowed the said intervention application.
6. The reply to the appeal proceeding were filed by both the above named interveners on 04/03/2020.
7. Arguments were advanced by the Appellant and Respondent no 1 PIO and by Advocate Elsa Fernandes on behalf of intervener Luis Saldhana. Brief written submissions were also filed by the Appellant on 16/03/2020.
8. It is the contention of the Appellant that he and one Smt. Inacia Rebello had filed complaints against the illegal construction of structures by Shri. Lyndon Saldana in survey no 647/3 of village Cuncloim and by Mrs veronica Fernendes E Mascarenhas and family in survey no. 366/9 of court receiver property/ open space reserved to keep Palkhi of Shri. Shantadurga Devi for Suntereo for Panzorconni villagers and he had mentioned said facts in his RTI application dated 26/07/2019. It was further submitted that he had sought the said information in larger public interest as he wanted to file legal suit before the Hon'ble court of Law against illegal construction carried by the above named interveners. It was further submitted that denying him access to documents maintained by the office of Cuncolim municipality raises a

question and malafide intention of the PIO. It was further contented that even after filing the second appeal before this commission the PIO is trying to confuse the matter by involving the individual parties to interveners in the second appeal so as to deny/delay the information sought by the Appellant. It was further contented that both the intervener has no locus standee in the matter as the information sought by him is purely administrative information maintained by the office of the municipality. It was further submitted that it was duty of the PIO to write to the intervener under section 11(1) requesting for their say in reference to his RTI application. It was further submitted that the contention of the Respondent PIO that his RTI application was responded on 16/8/2019 does not appear to be a gospel truth as the Respondent PIO has not relied and placed on record the said letter alongwith his reply.

9. On the other hand the Respondent No. 1 PIO submitted that this is first only second Appeal in RTI Act against him as a PIO in his entire Government service since inception of RTI Act whiles working in various Municipalities across Goa. It was further submitted that the RTI Application was responded vide letter dated 16/8/2019 vide outward No. 1344 and the dispatch section of the council had sent the said letter with the office peon to the address of the Appellant and since the Appellants was not found at the address subsequently the dispatch section of the council had sent the said letter alongwith the certified copies by post . It was further submitted that the same was again presented to the Appellant during first appeal conducted before the Respondent No. 2 First Appellate Authority which the Appellant refused to accept thereby causing undue hardship and loss of precious time of busy public officer . It was further submitted that the Appellant is filing such type application only to harass the public authority. It was further contended that if he was interested in the information to initiate legal suit then he could

accepted the information when it was presented to him by Respondent No. 2 First Appellate Authority . It was further submitted that he had acted in totally legal and just manner and the allegation made by the Appellant are illegal ,false ,baseless only to misguide this commission . It was further submitted that he is ready and willing to certify the said information again and submit to the Appellant if permitted /directed by this Hon'ble Commission .

10. The Respondent no. 2 First Appellate Authority vide his reply dated 22/10/2019 submitted that during the hearing on 24/9/2019 ,the Respondent PIO produced the copy of the reply dated 16/8/2019 furnished in RTI application dated 26/7/2019 bearing out ward No. 1344 and since Appellant claimed that he had not received the same, it was informed to the Appellant to collect the same in front of him which Appellant refused to accept it. It was further submitted that the Appellant was expected to accept the reply furnished by PIO and to place any grievances before him to examine and to issue necessary directions, instead Appellant acted very rudely and disrespectful during hearing. It was further submitted that the grounds raised in a appeal are false, baseless , frivolous and contrary to the facts.
11. The Intervener Mrs . Veronica Fernandes vide her reply dated 4/3/2020 submitted that the Appellant has no right to make false allegations in the application under RTI as it can have gross consequences and disturb and communal harmony in the area. It was further submitted that the Public Authority ought to have taken suo moto cognizance of the same and abstained from replying to such vague and improper application and ought to have taken necessary legal action against the Appellant for trying to disturb for peace and harmony in the residential of area. It was further submitted that Respondent No. 2 First Appellate Authority ought to have given opportunity to her to put forth her version/say as information sought is related to her

and the same could not have been given without hearing her. It was further submitted that information sought by the Appellant is her personal information and moreover the Respondent have already furnished information to the Appellant which ought to have not given without hearing her as a same can be misused. It was further submitted that the appeal should be dismissed as the Appellant has come with uncleaned hand before this commission .

12. The Advocate for the intervener of Shri Luis Saldana on the other hand submitted that the application filed by the Appellant is faulty as a querist cannot made statement in application that it is an illegal construction and cannot demand creation of information while seeking the information. It was further submitted that the Appellant had sought information with regards to his personal property and he is not the owner of this property as long as his parent being still alive. It was further submitted that the Appellant has no locus standee to file a civil suit before the Hon'ble court as he neither a complainant nor the owner or co-owner. It was further submitted that the Appellant has not shown any credibility of issuance of authorization or power of attorney by a so called complainant whom he referred in his application to secure the information on their behalf .
13. I have scrutinised the records available in the file and also considered the submission made on behalf of both the parties.
14. On perusing the application of the Appellant it is seen that the Appellant has sought for the information from the public domain such as copy of the stop notice issued by chief officer to shri Lyndon R. Saldana in pursuant to the complaint dated 11/5/2019 and 15/5/2019 and the course of action taken by the Chief Officer and the other information pertaining to same subject matter so also had sought for more or less similar information pertaining to the complaint dated 7/7/2019 filed by him and Smt Inacia alias

Cruzina against Smt. Veronica Fernandes E Mascheranhes and her Family. The Advocate for the interveners though claimed that the information pertains to private documents did not specify what was the private document and could not establish the said fact by way of any documentary evidence .

15. It is the contention of the Respondent PIO that the said information was provided by him to the Appellant vide letter dated 16/8/2019 and the same stand was also taken by him before the Respondent no. 2 First Appellate Authority. The intervener namely Veronica Fernandes also admitted of having furnished the said information by the Respondent to the Appellant.
16. Nevertheless, since the Appellant claimed that he had not received the said information, the Respondent considering the spirit of the RTI Act showed his willingness to certify the said information against and to submit it to the Appellant if permitted /directed by this commission.
17. Since the letter dated 16/8/2019 furnishing the information was not submitted alongwith the reply before this commission by the Respondent PIO , the commission directed to place the said letter on record . Accordingly by memo dated 16/3/2020 the Xerox copy of the same was placed by the Respondent PIO . The copy of the same was furnished to the Appellant and to the interveners and the Appellant acknowledged same on the memo of appeal thereby raising certain objection.
18. The Respondent PIO undertook to furnish the Appellant the certified copy of the transgression report and copy of his reply dated 16/8/2019 duly certified by Chief Officer of Cuncolim Municipality. The Appellant also undertook to produce before PIO the copy of the complaint dated 7/7/2019 for ready reference of PIO and the PIO then agreed to provide the said information pertaining to the said complaint and then the matter was fixed

on 27/3/2020 for compliance report. However due to lockdown due to Covid-19 the matter could not be taken up for hearing. After lifting the lockdown fresh notices were issued to parties. Pursuant to which Appellant was present in person, Respondent PIO Shri Vinay Desai was present Respondent No. 2 opted to remain absent. Advocate Elsa Fernandes appeared on behalf of Intervener Luis Saldana. Intervener Veronica Fernandes was present in person.

19. Memo filed by PIO on 23/06/2020 furnishing the certified copy of his reply dated 16/8/2019 and also a certified copy of transgression report. The memo filed by the PIO alongwith the certified copy of documents are furnished to the Appellant. Appellant also filed memo thereby annexing the copy of the complaint dated 7/7/2019 addressed to Chief officer and others, letter dated 17/7/2019 addressed to Chief officer by Deputy Collector South Goa alongwith copy of form I and XIV and judgment passed in Regular civil suit No. 749/2000/C by the Civil Judge, Senior division at Margao. Copy of the same is furnished to the Respondent PIO. PIO submits that he will verify the records of Cuncolim Municipality pertaining to the queries/information sought by the Appellant at point NO. b(1) b(2) and at point (c) and (d) of his RTI application dated 25/7/2019 and undertakes to furnish information on above points based on the records available in office
20. The records shows that the application was responded by the Respondent PIO well within stipulated time of 30 days there by providing the information. The Respondent PIO even during the first appeal showed his willingness to furnish the said information to the Appellant. Further the bonafides have been shown by the Respondent PIO by offering and providing the information once again to the Appellant. It is seen from records the first appeal was filed on 3/9/2019 which was disposed on 24/9/2019 well within stipulated time of 30 days by Respondent No. 2 First



Appellate Authority . There is no evidence produced on record by the Appellant attributing malafides on the part of Respondents. On the contrary the delay if any, appears to have been caused on account of Appellant himself . The facts and circumstances of the present case does not warrant levy of penalty on the Respondent. Hence the relief sought by the Appellant at (d) to (f) cannot be granted.

21. In the above given circumstances I find the ends of justice will meet with order as under;

Order

- i) The Respondent PIO is hereby directed to furnish the information as sought by the Appellant at point No. b(i), b(ii) and at point (c) and at point (d) of his RTI Application dated 25/7/2019 within 20 days, free of cost from the receipt of this order.
- ii) Rest prayers are rejected.

The appeal disposed accordingly . Proceedings stands closed. Pronounced in the open court. Notify the parties.

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