

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

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Appeal No.158/2020/

Shri Vishwanath B. Solienkar,
S1, Artic Apartments,
Behind Don Bosco Engineering College,
Fatorda, Margao-Goa.
403602

.....Appellant

V/S

1.Public Information Officer
Office of Village Panchayat Raia,
Salcete Goa.

2.First Appellate Authority
Office of Block Development Officer,
Mathany Saldhana Complex,
Margao-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 01/10/2020
Decided on: 06/08/2021

FACTS IN BRIEF

1. The Appellant herein by his application dated 04/01/2020 under sec 6(1) of the Right to Information Act, 2005 (Act for short) addressed to Respondent No. 1, Public Information Officer (PIO) of Village Panchayat Raia, Salcete Goa , sought the following information:

“(a) Kindly provide information including certified copies of all license, conversion sanads, survey plan, approved sub division plans/permissions based on which construction license were issued by the Raia village panchayat to structure/houses, in property bearing survey no-245/1 including sub division no-1-A,1-B,1-C,1-D of survey no 245/1 situated in Raia village.”

2. The said application was not replied by the PIO within stipulated time and deeming the same as refusal, Appellant filed first appeal to Respondent No. 2, Block Development Officer, Margao being the First Appellate Authority (FAA). According to appellant, during the first appeal, the PIO filed reply stating that, the application is incomplete and lacks necessary details. However the FAA by order, dated 17/03/2020 directed PIO to furnish the information by searching the records, free of cost within the period of 15 days from the date of passing the order.
3. Since PIO failed to comply with the order of FAA and denied the information, Appellant preferred this second appeal before this Commission under sec 19(3) of the Act.
4. Notices were issued to the parties, pursuant to which Appellant appeared. The PIO through registry's entry filed one letter dated 28/01/2021. By said letter the PIO submits that he took the charge of V.P. Raia on 24/12/2020 and prayed time to file detail reply in the matter.

The FAA also filed his reply through registry's entry dated 18/03/2021. There is no further reply from the PIO.

5. It is contention of the PIO that vide his letter No. VP/R/RTI-2019-20/2431 he conveyed to the Appellant to approach the office of Panchayat and verify the records.
6. According to Appellant, in order to facilitate to trace the information, he submitted one letter to the PIO on 22/01/2020 and also furnished more details like I & XIV form of the property bearing survey no. 245/1 including division 1-A, 1-B,1-C and 1-D of Raia village containing the name of occupant, with respect to which information has been sought.

It is his further contention that he does not have knowledge of name of person and license number as said information is not in public domain.

According to Appellant, similar defence was taken by PIO before FAA, however rejecting the said contention of PIO, the FAA passed the order directing the PIO to furnish the information by searching the record, within 15 days from passing of the order. However PIO only with malafide intention, wilfully concealing the information.

7. I have perused the records, pleadings and written arguments filed by the Appellant.
8. The order of FAA dated 17/03/2020, directs the PIO to furnish the information by searching the records within 15 days, free of cost.

Without complying that order, PIO filed the casual reply before this Commission on 28/01/2021 stating that "*Panchayat not keeping the records by survey number. Hence it was difficult to trace information according to survey number. Panchayat keep house assessment record by name with house number*". This reply is inappropriate and against the spirit of RTI Act.

9. This is very plain reply of the PIO, without showing the elaborating any efforts taken by the PIO after the application or pursuant to the order of the FAA. The PIO failed to submit that the information is only available in house assessment record maintained by the Village Panchayat. The PIO also failed to produce the copy of the assessment record to indicate what he is submitted is true. Therefore the Commission finds it difficult to accept the contention.

Right to Information is a beneficial piece of legislation and same is enacted to provide access of information under the control of public authority. Sec 4(3) of the Act reads as under:

*"4(3)- **Obligations of public authorities.**- (1) Every public authority shall----- for the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public."*

10. Under the Act, furnishing of the information is a rule unless exempted under sec 8 or 9 of the Act, designated PIO under the Act is a information provider and not seeker of the information. Sec 5(3) of Act reads as under:

"5(3) – Designation of Public Information Officers.— Every Central Public Information Officer or State Public Information Officer , as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information."

Here in this case, reply filed by the PIO cannot be accepted, since burden to prove that information is not available is on the PIO. The PIO has failed to give any reason as what efforts he has taken to search the documents. Nothing has been done except filing this evasive reply thus avoiding the obligation and responsibility.

The Commission does not find any ground to substantiate that the information is not available. In Goa, conversion sanad, construction license, Sub-Division-Plan, permission etc are identified by their survey number and there is no alternative to identify said documents without referring to survey number, therefore claim of the PIO cannot be justified.

The PIO also failed to convince the Commission, that the construction licences records are only available on the house

assessment records and there is no other construction licences register which contain survey number or any such record which is maintained for keeping the records of construction licences other than what is maintained by the PIO.

We believe in the order of FAA, being the next higher authority in the hierarchy has passed the order directing the PIO to furnish information, reasonably convinced of the fact that such information exist in the village Panchayat records.

The PIO also not disclosed as what initiative was taken to search the file and any further action if any. In absence of any proof that the information is in fact not available it is to be held that the same exist and is dispensable.

11. The Respondent PIO has not rebutted the contention of the Appellant by filing the reply.
12. Fair opportunities have been granted to the PIO, but inspite of valid service of notice he failed to remain present for hearing on 19/03/2021, 21/04/2021, 15/07/2021, 02/08/2021 and 06/08/2021. The PIO also failed to file his reply in the matter.
13. The approach of the PIO is very casual and irresponsible. Considering the conduct of PIO, I am unable to hold that the information cannot be furnished to the Appellant. I find force in the submission of Appellant that the information is concealed on a false plea. The PIO herein also has shown lack of concern to the process of this Commission. Considering the above fact and circumstances, I find that the PIO has deliberately withheld the information from being dispensed to the Appellant. PIO failed to show that he has acted deligently and reasonably in discharging his duties. The Commission cannot allow such attitude and therefore finds fit it necessary to invoke Power under sec 20(1) and /or sec 20(2) of the Act.

14. However before imposing penalty and recommending for disciplinary action, I find it appropriate to seek explanation from the PIO as to why penalty and other action should not be initiated on him for non-compliance of order of FAA and not furnishing the information to the Appellant.
15. In the above circumstances, I dispose the present appeal with the following :

O R D E R

1. The appeal is allowed.
2. The PIO, Secretary of Village Panchayat Raia ordered to furnish to the Appellant the information as sought by his application dated 04/01/2020, free of cost within 15 days from the receipt of this order.
3. The PIO, Secretary of Village Panchayat Raia, Salcete Goa is further directed to show cause as to why action contemplated under sec 20(1) and/or sec 20(2) of the Right to Information Act, 2005 should not be initiated against him.

The reply to the show cause notice to filed on 20/09/2021 at 10:30 am.

Proceedings closed.

Pronounced in the open court.

Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner