

GOA STATE INFORMATION COMMISSION

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Appeal No.166/2020/

Yvette Pereira e Souza,
798/1, Pereira Vaddo,
Siolim, Bardez Goa. 403517.

.....Appellant

V/S

1)Then PIO at the V.P. Siolim
From 26-12-2013 to 25-06-2015) V.P. Secretary, Siolim-Marna,
Shri Bhiva S. Thakur,
Who is presently posted at BDO office,
Government Complex, Tisk,
Ponda – Goa 403401.

2) Public Information Officer,
V.P.Secretary,
V.P. Siolim – Marna, 403517.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 08/10/2020

Decided on: 29/07/2021

FACTS IN BRIEF

1. The Appellant herein by her application dated 11/02/2015 filed under sec 6(1) of the Right to Information Act 2005 (Act for short) sought following information:

“kindly let me know / or let me have the copy of which documents were produced for granting house number 1084/B to Bindiya V. Govekar.

I am attaching a copy of house tax receipt for your reference.”

2. The said application was replied by the PIO on 07/03/2015, stating that the house tax was assessed in the year 2009-10 and

documents produced for granting house No. 1084/B are not traceable, as most of the records are destroyed by white ants.

The Appellant by an another application dated 09/03/2015 informed the PIO to recheck or give her opportunity to re-verify the records.

The PIO by letter dated 02/04/2015 replied to the Appellant that document such as sale deed and the court order pertaining to Mrs. Goretti Barros to Shreya S. Jivaji and Mrs. Bindiya Govekar are not available in the office of PIO, V.P. Siolim Marna.

3. The Appellant claims that she filed a first appeal in the office of Block Development Officer at Bardez on 10/02/2020. FAA registered the said first appeal as appeal No. BDO-BAR/RTI/10/2020 and after hearing the parties allowed the first appeal on 03/09/2020 with the observation that reply filed by the PIO is not satisfactory and directed the PIO to search the records pertaining to the application dated 11/02/2015 and hand over the complete information to the Appellant within 25 days. The Appellant was also allowed to inspect the record of the Panchayat.
4. Not satisfied with the inspection of documents, Appellant preferred this second appeal under sec 19(3) of the RTI Act, with the prayer to recommend disciplinary action against Respondent for causing harassment and mental torture to the Appellant.
5. Notices were issued to the parties, pursuant to which they appeared. The then PIO, Bhiva S. Thakur appeared through his advocate and filed his reply dated 09/02/2021 and present PIO, V.P. Secretary of Siolim Marna appeared and filed his reply on 12/02/2021.

The Appellant also filed his affidavit in reply dated 29/04/2021 countering the reply filed by Respondent No. 1 and 2.

6. I have perused the appeal memo, appeal memo filed before the FAA, Order of FAA, reply of Respondents, scrutinised the documents and considered the submissions of the rival parties. Mr. Derick E.F. D'Souza argued on behalf of Appellant, learned Counsel Adv. S.G. Kalagutkar argued on behalf of Respondents
7. It is the contention of the Appellant that there is a dispute between Appellant and Bindiya V. Govekar and her husband Digambar Agarwadekar in respect of property surveyed under survey No. 177/6 and at the relevant time said Digambar Agarwadekar and his wife Bindiya Govekar was the Panch of that Panchayat and then PIO, Secretary of V.P. Siolim-Marna committed fraud by concealing information to his application under RTI.
8. It is further contention of the Appellant that, when he carried out the inspection of the documents on 19/09/2020 he did not find any entry in the name of Bindiya Govekar or Digambar Agarwadekar in the Register of construction licence issued for the year 2009-2010 and even in Demand Collection Register of the House Tax from the year 2009-2015. The entry in the said register is found to be incorrect and fake.
9. On the other hand, Advocate for the Respondent No. 1, submits that he has already furnished the information which is available in the records of V.P. Siolim-Marna by reply dated 07/03/2015. He further argued that, Order of FAA is bad in law and entertained and decided by FAA disregarding the law of limitations.

He argued that, if Appellant is aggrieved by the reply of PIO, he has right to file first appeal with FAA within stipulated time of 30 days as provided by the Act, since Appellant did not exercise his right to file appeal, it is presumed that, Appellant was satisfied with the information provided to him by PIO and therefore the information provided by the PIO of V.P. Siolim-Marna has attain finality for want of challenge.

He further submits that, Appellant ignored to prefer an appeal as provided under RTI , and opted to file complaint before Directorate of Vigilance to seek the relief and now after the lapse of four and half year he wanted to try his luck in this court.

He further argued that, on the same issue there are three different prayers sought by Appellant i.e. before PIO, FAA and this Commission which is inconsistent and illogical. He further submits that appeal is bad in law as misjoinder of parties, according to him Respondent No. 1, Shri. Bhiva S. Thakur, then PIO cannot be added as a party in this second appeal as he was never added as a party in the first appeal before FAA, therefore the allegations against Respondent No. 1 in this appeal is uncalled for and infructuas in the eyes of law and appeal deserves dismissal.

10. I have perused the application under RTI Act dated 11/02/2015. The application was replied by the PIO on 07/03/2015, within the stipulated period of 30 days.

If the Appellant is not satisfied with the reply of the PIO, she had the legal remedy provided under the Act to file the first appeal under sec 19(1) of the Act.

Sec 19(1) of the Act reads as under:

"(1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

Now the procedure to be adopted in dealing the appeal is provided in sec 19(10) of the Act, and which reads as under:

"19(10) The Central Information Commission or State Public Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed."

The prescribed procedure is provided under sec 27 of the Act

"Sec 27(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may

provide for all or any of the following matters, namely:___

(a) xx xxx

(b) xx xxx

(c) xx xxx

(d) xx xxx

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and"

11. The appropriate Government by Notification No. DI/INF/RTI/BILL/2005/6474 dated 15/02/2006, framed the Goa State Information Commission (Appeal Procedure) Rules, 2006. Rule No. 3 of the said Rules reads as under:

"3.Contents of appeal.___ *An appeal to the Commission shall contain the following information, namely:___*

(i) name and address of the appellant;

(ii) name and address of the State Public information Officer against whose decision the appeal is preferred;

(iii) particulars of the order including number, if any, against which the appeal is preferred;

(iv) brief facts leading to the appeal;

(v) if the appeal is preferred against deemed

refusal, the particulars of the application, including number and date as also the name and address of the State Public information Officer to whom the application was made;

(vi) prayer or relief sought;

(vii) grounds for the prayer or relief;

(viii) verification by the appellant; and

(ix) any other information which the commission may deem necessary for deciding the appeal.”

Hence a detailed statutory mechanism has been provided under the Act to a citizen who is aggrieved by refusal to receive the information.

12. Besides the fault in case title, FAA failed to consider that there is no reference of any nature in the appeal before him, of the application made to the PIO by the Appellant. And if at all, the application made by Mrs. Yvette Pereira e Souza is to be taken as the cause of action then it has been 4 years and 11 months from the date of original application.

This is inferred from the fact that FAA in his Roznama has sought authority letter from Mrs. Yvette Pereira e Souza.

13. As per the documents placed on records by the Appellant, it is noticed, that the appeal filed before FAA bearing case No. BDO-I-BAR/RTI/10/2020 under sec 19(1) of the Act is registered in the name of Mr. Derick E.F.M. D'Souza, who is not the original applicant before the PIO. The appeal under sec 19(1) is mandatorily to be filed by the aggrieved party and that is the applicant before the PIO. The approach of the FAA, BDO, Mapusa is very casual towards dealing with the appeal. He has

acted in haste that too against the provision of RTI Act. Being a Senior Officer, he should have acted deligently and therefore the first appeal should not have been entertained by FAA. The Order of FAA dated 03/09/2020 is bad in law.

14. Thus, FAA while deciding the present appeal did not apply his judicial mind and admitted, registered and passed the order mechanically thus grossly violating the provisions of the Act.

15. In the case in hand, it appears that instead of preferring an appeal as provided by law, the Appellant choose to file a complaint against the PIO with the Vigilance Department and after failing to receive expected result from Vigilance Department, has started the process again under the mechanism provided under the Act, however seeking the remedy under the Act, Appellant needs to follow the prescribed procedure.

16. This view is fortified by, Hon'ble Supreme Court in **Chief Information Commissioner & Anr v/s State of Manipur & Anr (C.A.No.-10788 OF 2011)** at para no. 35 has observed as:

"35. The procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the

*appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in **Taylor v. Taylor** [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in **Nazir Ahmad v. Emperor** [AIR 1936 PC 253(1)] and also by this Court in **Deep Chand v. State of Rajasthan** - [AIR 1961 SC 1527, (para 9)] and also in **State of U.P. v. Singhara Singh** reported in AIR 1964 SC 358 (para 8)."*

Again in para no. 43 of the said Judgement Court observed that :

"43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information."

In this case, Appellant did not exercise his right to file the appeal within stipulated time but opted to chose and try his luck before some other forum i.e. Directorate of Vigilance to seek the justice.

17. This Commission understand the pain that may have caused to the Appellant who is a senior citizen and running from Pillars to Poles to seek justice for alleged encroachment and illegal construction in the property.

However considering the scope and extend of Act, we would like to remind the Appellant that, RTI Act is not grievance redressal forum. He is at liberty to file the petition before appropriate legal forum.

18. In view of above discussion and considering the precedent and position of law, appeal is disposed with following

ORDER

- The Order passed by FAA dated 03/09/2020 is set aside.
- The Appeal is dismissed
- Proceeding closed
- Pronounced in open court
- Order to be communicated to parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner