

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

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Appeal No. 168/2020

Socorro Fernandes,
H.No. 75/A, Malbhat,
Margao-Goa. 403601.

.....Appellant

V/S

1. The Public Information Officer/ Additional Director,
Department of Urban Development (Municipal Administration),
Dempo Towers, 1st Floor, Patto,
Panaji-Goa. 403001.

2. The Director/ The First Appellate Authority,
Department of Urban Development (Municipal Administration),
Dempo Towers, 1st Floor, Patto,
Panaji-Goa. 403001.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 15/10/2020

Decided on: 30/11/2021

ORDER

1. The Appellant, Socorro Fernandes, H.No. 75/A, Malbhat, Margao, Salcete, Goa by his application dated 19/02/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from Public Information Officer (PIO), the Director of Municipal Administration, Collectorate Building, Panaji Goa:-

"Kindly supply to me the following information under Right to Information Act, 2005.

Complaint filed by me against an illegal construction of a house in the City of Margao, the Chief Officer has passed an order keeping the matter in abeyance till the other case of demarcation pending before the Collector, South, Goa is disposed of. The appeal filed against the order of C.O., the "Administrative Tribunal has dismissed the appeal and has passed the following order: "*The remedy of appeal provided*

under sub section (13) of Section 184 is against an order passed by the Chief Officer under sub section (8) of Section 184 of the Municipalities Act, 1968. This remedy of appeal has not been provided against any other orders passed by the Chief Officer by resorting to the powers under other sub sections of Section 184 or other sections of Chapter XII, including Section 184A of the Act. The present appeal is therefore, not maintainable.”

Please inform me under which section or other sections of Chapter XII, including Section 184A of the Municipalities Act, the remedy is available, when the Chief Officer dismisses the complaint on the above said grounds?”

2. The said application was replied on 31/07/2020 in following manner:-

“With reference to your above referred R.T.I. application dated 19/02/2020 duly received by this office on 23/06/2020, it is to inform you that you may refer the relevant provisions under chapter XII of the Goa Municipalities Act, 1968 for seeking the necessary remedy as applicable and prescribed therein.

In this matter this office has informed you vide letter dated 23/06/2020, henceforth application on same subject will be not entertained by this office.”

3. Not satisfied with the reply of the PIO, Appellant filed first appeal before the Director of Urban Development, Panaji Goa being the First Appellate Authority (FAA).
4. The FAA by its order dated 25/09/2020 upheld the reply of the PIO thereby dismissed the first appeal.

5. Being aggrieved with the order of FAA, Appellant landed before the Commission in this second appeal under section 19(3) of the Act.
6. Notices were issued to the parties, pursuant to which the then PIO, Shri. Anant V. Redkar through entry registry filed his reply on 02/08/2021, which was addressed to the Deputy Director, Department of Urban Development, Patto, Panaji Goa. FAA duly served opted not to appear before the Commission and filed his reply.
7. I have perused the pleadings, reply, written arguments of Appellant, scrutinised the records and considered the arguments of Appellant through his learned counsel, Adv. Rajesh Patel.
8. According to Adv. R. Patel, if a complaint for illegal construction of structure is dismissed by the Chief Officer, where or which authority the aggrieved person should approach, is the information Appellant was seeking under RTI application. However the PIO has given a vague reply without giving specific reply. He further argued that there is no provision in the Municipalities Act as to where the remedy could be obtained.

Further according to him, PIO knowingly has given incorrect and misleading reply.

9. The then PIO, through his reply contended that, Appellant is a practising advocate and had filed Municipal Appeal No. 2018/UN-REG/1 (Shri. Socorro Fernandes v/s Shri. Babaji V. Redkar) which has been dismissed by Hon'ble Municipal Tribunal vide order dated 28/01/2018.

Instead of challenging the said order, the Appellant, by filing RTI application demands explanation, opinion and justification in respect of a decision made by Municipal Tribunal, therefore PIO

and public authority is not obliged to give explanation and queries pertaining to the existing Act.

10. Let us now deal with the prayer of the Appellant vis-a-vis the provisions stipulated in the Act. The terms "information" and "right to information" have been defined in sec 2(f) and 2(j) of the RTI Act and reads as under:-

"2(f). "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

2(j). "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to__

(i) inspection of work, documents, records;

(ii) taking notes extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

11. Information as defined in sec 2(f) means details or material available with the public authority. An analysis of sec 2(j) would

make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or information cannot be accessed by it under sec 2(f), the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination.

12. While considering the extend and scope of information that could be dispensed under the Act, the Hon'ble Supreme Court in case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay (Civil Appeal no.6454 of 2011)** as under:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing

of inferences and/or making assumptions. It is also not required to provide "advice" or "opinion" to an applicant, nor required to obtain and furnish any "opinion" or "advice" to an applicant. The reference to "opinion" or "advice" in the definition of "information" in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

13. The prayer clause of the appeal memo, the Appellant at prayer (d) sought the relief as under:-

"d. Alternatively, if there is no provision for appeal in the Municipalities Act, the PIO be directed to move the Government, through the Director of Municipal Administration to amend the Municipalities Act."

It can be seen that Appellant wants this Commission to direct the PIO to take steps to amend the Municipalities Act. This Commission is neither a forum for redressal of grievance nor a forum that can order to amend the procedure or rules or Act, and there are other forum where the Appellant can have his grievance redressed.

This Commission is constituted under Right to Information Act, 2005 with powers more particularly described under sec 18, 19 and 20 of the Act. No powers are granted to the Commission to deal with such prayers.

14. Under the Act, the authority has a basic function to be performed either to give the information or to deny to furnish the

information. Additional prayers like directing the public authority to move proposal to do certain things cannot be considered here.

In another judgement by Hon'ble High Court of Gujarat in case of **Gokalbhai Nanabhai Patel v/s Chief Information Commissioner & Ors (AIR 2008 Guj.2)** has held that:-

"Whenever additional prayers are made, than to get information, it may not be granted by the authority, without following due procedure of law. To pass an order of demolition is completely out of jurisdiction of Chief Information Commissioner. Moreover whether there is encroachment or not is a civil dispute. It cannot be decided by Chief Information Commissioner.

The impugned order is passed without any power, jurisdiction and authority vested in Chief Information Commissioner under RTI Act. The order of removal of encroachment passed by Chief Information Commissioner is absolutely illegal and dehors of provision of RTI Act."

If the Appellant feels that any official is not performing his duty in proper manner or doing something that is contrary to law, he can approach the concerned competent authority on the basis of information furnished to him. This view is fortified by Hon'ble High Court of Allahabad in case of **Subhash Chandra Vishwakarma v/s Chief Information Commission U.P & Ors in case No. Misc. Bench No. 69/2016.**

15. Considering the above facts, I hold that Commission has no jurisdiction to grant the relief prayed by the Appellant. Hence appeal is dismissed.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner