

# GOA STATE INFORMATION COMMISSION

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

## **Appeal No. 46/2021**

Swapnesh B. Sherlekar,  
House No. 284, Shirodwadi,  
Mulgao, Bicholim Goa  
v/s

1. Public Information Officer,  
Dy. Collector (Revenue),  
Collectorate North, Panaji-Goa
  2. The First Appellate Authority,  
Additional Collector-I, Collectorate,  
North Goa, Panaji-Goa
- ....Respondents

Filed on :23/02/2021

Decided on : 26/08/2021

### **Relevant dates emerging from appeal:**

RTI application filed on	: 14/09/2020
PIO replied on	: 05/10/2020
First appeal filed on	: 26/10/2020
FAA order passed on	: 08/12/2020
Second appeal received on	: 23/02/2021

## **ORDER**

1. The Second Appeal filed under section 19(3) of the Right to Information Act, 2005 (RTI Act) by Shri. Swapnesh Sherlekar, R/o. Mulgao Bicholim Goa against Respondent No. 1 Public Information Officer (PIO), Deputy Collector (Revenue), Panaji-Goa and Respondent No. 2 the First Appellate Authority (FAA), Additional Collector –I, Collectorate Panaji-Goa, came before this Commission on 23/02/2021.
2. The brief facts leading to the Second Appeal, as contended by the Appellant are that:-

a) The Appellant vide application dated 14/09/2020 sought following information from the PIO:-

“With regards to the Sanad dated 13/10/2015, reference No. RB/CNV/BICH/AC-I/082015 issued to Mr. Altaf Salauddin Shaikh for conversion of land bearing survey No. 159/43 of Mulgao Village, of Bicholim Taluka (Copy of the order enclosed as annexure –I), request you to please furnish certified copy of the entire file related to the said conversion Sanad, including file notings.”

b) The PIO replied to the Appellant vide letter dated 5/10/2020 intimating him to collect the information from PIO’s office after depositing Rs. 5408.

c) Being aggrieved by the decision of the PIO the Appellant filed first Appeal under section 19(1) of the RTI Act, before the FAA. The FAA after hearing both the parties dismissed the appeal vide order dated 8/12/2020, upholding PIO’s decision.

d) Considering the action of the Respondents as in violation of the RTI Act, the Appellant preferred Second Appeal dated 23/02/2021 with following prayers:-

- (i) Appropriate order be issued to the PIO for furnishing the information as requested, free of cost.
- (ii) A disciplinary action and/or training to the Respondent in accordance with section 20(2) of the Act.
- (iii) Impose penalty on the Respondents for acting against the spirit of the Act.
- (iv) Grant suitable compensation to the Appellant.
- (v) For such other and further relief that this Commission deems fit.

3. After notifying the concerned parties the Commission scheduled the matter for hearing on 7/07/2021. The Appellant Shri. Swapnesh Sherlekar was represented by Shri. Pravinsingh Shedgaonkar. The PIO and FAA were absent initially. Subsequently, Ms. Anusha Gaonkar, APIO appeared on behalf of the PIO, under authority letter.

4. The Appellant in his arguments opposed the decision of the PIO of charging Rs. 52 per copy. The Appellant stated that though the Goa Land Revenue Inspection, Search and Supply of Copies of Land

Records) ( Amendments ) Rules, 2018 were notified in the Gazette it is not mentioned that the fees are to apply to RTI application too. The RTI application is processed under RTI Act, and not under Goa Land Revenue code. The Appellant also relied upon the order of Hon'ble Supreme Court in writ Petition (c) No. 194 of 2012 with Nos. 238 of 2014, 40, 205 of 2016, Transfer Cases (c ) Nos. 129 of 2013, 32 of 2014 and SLP (c) No. 30659 of 2017, decided on 20 March 2018.

5. On the other hand the PIO filed reply dated 28/07/2021. Contentions of the PIO in the said reply are as follows:-

a) That the application has been replied vide letter dated 5/10/2020 requesting to collect the desired information after paying Rs. 5408/- (104 pages x Rs. 52/- per page).

b) That the PIO has replied within the ambit of Rule 4 of the Goa Right to Information (Regulation of Fee and Cost) (Second Amendment) Rules, 2008 and the Notification No. 26/13/2016-RD dated 16/03/2018 issued by the Under Secretary (Revenue-I), Government of Goa, Revenue Department, Porvorim-Goa.

c) That since the records of documents sought by the Appellant are under the Goa Land Revenue Code, the fee structure is calculated as per Rule 4 of the Goa Right to Information (Regulation of Fees and Cost) (Second Amendment) Rules, 2008 and Notification No. 26/13/2016/RD dated 16/03/2018 .

6. Rule 4 of the Goa Right to Information (Regulation of Fee and Cost) (Second Amendment ) Rules, 2008, reads as below:-

" 4. Fees under other rules:- Notwithstanding anything contained in these rules, in case any higher fee then specified above is laid down by any, Rules framed under any other law for time being in force for inspection, search of documents/records etc. or supply of certified copies or certified extract thereof such higher fee as specified under the relevant Rules shall be charged for such inspection, search or supply of certified copies or certified extracts thereof, as the case may be."

These Rules have been framed under the delegated power under section 27 of the RTI Act; which empowers the State Government to make rules for the Public Authority under its control. The said rule has come into force on 4<sup>th</sup> February, 2008."

Bare reading of the rules, reveals that if there is a provision for a higher fee for inspection, and supply of copies, specified under the relevant rules, the same will be charged.

The Rules framed under Goa Land Revenue Code, 1968 (Act of 1969) and subsequently amended Goa Land Revenue (Inspection, Search and Supply of copies of Land Records) (Amendment) Rules, 2018, allow a higher fee for such purpose.

Since the Rules framed under the Right to Information Act, 2005, allow prescribing higher fees under such specific Rules, under different Legislations higher fees are within the ambit of the Rules itself.

7. In a similar matter the High Court of Bombay at Goa in writ petition No. 283/2015 (Vishal Gajanan Naik V/s the State of Goa ) has stated :-

*"A perusal of the provisions of Section 27 of the RTI Act makes it clear that the Appropriate Government has powers to frame Rules for specific purposes, including costs for supplying copies of the documents, as well as the fees required to be charged for supplying such information. In exercise of such powers, Rule 4 has been introduced by the Notification dated 4<sup>th</sup> February, 2008. As such, the contention of the petitioner that the Rules have been framed without any authority under the RTI Act, cannot be accepted. "*

8. In yet another matter in the Hon'ble Supreme Court, Civil Appeal Nos. 1966-1967 of 2020 arising out of SLP (C) No. 5840 of 2015, in the case of Chief Information Commissioner V/s High Court of Gujarat and another, has stated:

*" In the absence of inherent inconsistency between the provisions of the RTI Act and other law, overriding effect of the RTI Act would not apply"*

9. It is observed that the, the High Court of Bombay at Goa and the Supreme Court have upheld rules framed and notified by the concerned authorities and have stated that these rules do not get overridden by the provisions of the RTI Act, 2005, in case of inconsistencies.

10. In the background of above discussion the Commission is of the opinion that the said Appeal needs to be disposed with the following:-

- a) The Order of the First Appellate Authority dated 8/12/2020 is upheld.
- b) The Appeal is dismissed.
- c) The Appellant may collect the desired information from the Public Information Officer after paying the requisite charges.

Proceedings stand 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/-

**(Sanjay N. Dhavalikar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa