

GOA STATE INFORMATION COMMISSION

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Appeal No. 152/2020

Shri. Nilesh Raghuvir Dabholkar,
r/o. H.No. 275/2 (New), Dabholwada,
Chapora, Anjuna, Bardez- Goa, 403509.

.....Appellant

V/S

1. PIO/ Mamlatdar of Bardez and
Administrator of Devalayas,
Government Building,
Mapusa Goa. 403507.

2. The Dy. Collector & SDM of Bardez/FAA,
Government Building,
Mapusa-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 28/09/2020

Decided on: 24/06/2022

FACTS IN BRIEF

1. The Appellant, Shri. Nilesh Raghuvir Dabholkar, r/o. H. No. 275/2 (New), Dabholwada, Chapora, Anjuna, Bardez, Goa by his application dated 21/02/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) of Mamlatdar cum Administrator of Devalayas of Bardez, Mapusa-Goa:-

“Please supply me the following information in respect of Shree. Sidheshwar Devasthan situated at Chapora-Anjuna, Bardez-Goa and registered before Mamlatdar of Bardez Bearing Registration No. 99

Details of the information sought:

- 1) Kindly furnished the certified copies of the Audited accounts along with accounts Report done by Administrative Devalayas as per Article 70 Sub section

13 of Devasthan Regulation of Goa, Daman & Diu from 1990 till date of Shree Siddeshwar Devasthan.

2) Kindly provide in detail all the expenditure sanctioned by the Administrator of Devalayas year-wise of Shree Siddeshwar Devasthan from 1990 till date as per Article 70 Sub section 13 of Devasthan Regulation of Goa, Daman & Diu.

3) Kindly provide certified copies of all the summons issued year-wise by the Administrator of Devalayas to the managing committee members of Shree. Siddeshwar Devasthan for the Unsanctioned Expenditure and for negligence in collection of Income from 1990 till date as per Article 70 Sub section 13 of Devasthan Regulation of Goa, Daman & Diu ”

2. Since the said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant preferred first appeal before the Deputy Collector of Bardez under section 19(1) of the Act on 20/07/2020 being the First Appellate Authority (FAA).
3. The FAA by its order dated 10/09/2020 partly allowed the first appeal and directed the PIO to furnish correct information with respect to point No. 1 and 2 within 15 days.
4. Since the PIO failed to comply with the order of FAA, the Appellant preferred this second appeal before the Commission under section 19(3) of the Act with the prayer to direct the PIO to furnish the complete information.
5. Notice was issued to the parties, pursuant to which the PIO, Yogita B. Velip appeared and filed her reply on 20/08/2021. FAA duly served opted not to appear in the matter.

6. I have perused the pleadings, reply, scrutinised the documents on record and considered the written and oral arguments of the rival parties.
7. Learned counsel, Adv. V.V. Matonkar appearing on behalf of Appellant argued that the PIO has furnished the information to the Appellant during the course of hearing before the FAA on 10/09/2020 and that is too incomplete and misleading.

He further argued that the PIO provided him the audited report prepared by Shri. Laxman U. Halarnkar, Chartered Accountant (CA) and Shri. Chetan Prabhudesai, C.R. Prabhudesai & Company, Chartered Accountant (CA), however he sought the Audited account prepared by the Administrator of Devalayas as per Article 70(13) of Devasthan Regulation of Goa, Daman & Diu.

Further according to him, PIO is the custodian of records of the Devasthan under the Devasthan Regulation Act and being the Administrator of Devasthan of Bardez, he is duty bound to carry out the audit and keep the records with his custody. According to him, the PIO has evaded his duty which was entrusted with and prayed to issue direction to the PIO to produce the audit records carried out by Administrator of Devalayas.

8. Since the Appellant has referred and cited the provision of Devasthan Regulations, it is necessary to deal with provisions of Article 70 of the Devasthan Regulation which reads as under:-

Article 70- *It shall be incumbent on the Administrator of Talukas (concelho) as Administrator of the bodies of members (mazanias):*

1) To watch over the execution of this Regulation and of the bye-laws, and over the strict discharge of the duties that belong to their subordinates."

From the bare reading of above provision it is revealed that the said powers are granted only for the purpose of watching the execution of the regulations which regulates constitution of Committee viz a viz bye-laws, management etc. Therefore the said provisions are not applicable here in the present case as contemplated by Adv. Matonkar.

9. However on careful analysis, particularly with reference to the Article 257 and 258 of the Devasthan Regulation, which reads as under, it is clear that taking the assistance of a qualified Chartered Accountant is a legitimate procedure laid down to conduct annual audit of the Devasthan Committee under Devasthan Regulation:-

"Article 257 —The Management of bodies of members (Mazantias) of every Devasthan whose annual income exceeds rupees five thousand shall get the annual accounts audited by a qualified Chartered Accountant to be appointed for the purpose by majority decision of the Managing Committee of the Devasthan:

Provided XXXX XXXX

Article 258 — The Accounts of the management shall be prepared by calendar years."

10. It is a matter of fact that, the then PIO, furnished the copy of Auditor's Report as far as information to point No. 1 is concerned. It is also the consistent stand of the PIO that available information was furnished to the Appellant and as far as information on point No. 2 and 3 is concerned, it is not available in the records of the public authority. Considering the above, the Commission is of the view that the PIO provided the information to the Appellant as it exist and available with the public authority.

11. There is one more aspect which also requires to be considered that, the PIO is not the primary holder of the information. In the present case, the information sought for from the PIO is in respect of affairs of the Managing Committee of Shree Siddeshwar Devasthan, Chapora, Bardez-Goa which is not the public authority as mandated under section 2(f) of the Act.
12. In sum and substance, the PIO has furnished all the available information to the Appellant free of cost. The PIO can only facilitate in providing information to the Appellant in case the same is available with the public authority. The PIO further cannot justify or provide the reason or merit or worthiness of the information furnished. Same is clearly outside the purview of PIO under the Act.

The High Court of Andhra Pradesh in the case of **Divakar S. Natarajan v/s State Information Commissioner (W.P. No. 20182/2008)** has held that:-

"16..... The Act has comprehensively defined the word 'information'. It takes in it's fold large variety of source of information, including documents, emails, opinions, press release, models and data materials etc. The common feature of various categories mentioned in the definition is that they exist in one form or the other and the PIO has only to furnish the same, by way of copy or description. In contrast the reasons or basis as to why a particular state of affairs exists or does not exist cannot be treated as a source or item of information."

13. The grievances of the Appellant is that the PIO has failed to furnish the reply and information within stipulated time. Under section 7(1) of the Act, the PIO is required to dispose the request of the seeker within 30 days. Admittedly, in the present case, the

PIO has furnished the available information to the Appellant during the course of hearing of the first appeal proceeding i.e on 10/09/2020. However the delay, being a marginal one, a lenient approach is adopted.

14. On the direction of the Commission under rule 5 of the Goa State Information Commission (Appeal procedure) Rules, 2006, the PIO, Ms. Yogita Velip appeared and categorically submitted through Affidavit that, after going through the records of the public authority the purported information is not available. Since the information sought is not maintained or available with the public authority it cannot be furnished.

15. In view of above, since the available information has been furnished to the Appellant, free of cost, I find that the appeal is devoid of any merit. In the result, the relief as prayed for by the Appellant cannot be granted. The appeal is disposed accordingly with the following:-

ORDER

- The appeal stands dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

SD/-

(Vishwas R. Satarkar)

State Chief Information Commissioner