

GOA STATE INFORMATION COMMISSION

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Appeal No. 27/2022/SCIC

Shri. Sushant P. Nagvenkar,
H.No. C-312, Fondvem,
Ribandar-Goa.

.....Appellant

V/S

1. The Public Information officer,
Office of the Greater Panaji Planning Authority,
Mala, Panaji-Goa.

2. The First Appellate Authority,
Office of the Greater Panaji Planning Authority,
Mala, Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 20/01/2022

Decided on: 04/10/2022

FACTS IN BRIEF

1. The Appellant, Shri. Sushant P. Nagvenkar, r/o. H.No. C-312, Fondvem, Ribandar-Goa by his application dated 30/09/2021 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Greater Panaji Planning Authority at Panaji-Goa.
2. The said application was responded by the PIO on 01/11/2021 in the following manner:-

"With reference to the above this is to inform you that the information sought by you cannot be furnished as this Authority is not maintaining file with survey numbers, Chalta Numbers or name of the persons.

Therefore you are requested to provide specific reference numbers of the file of this Authority so as to enable us to give required information."

3. Not satisfied with the reply of the PIO, the Appellant preferred first appeal on 15/11/2021, before the Member Secretary, Greater Panaji Planning Authority at Panaji being the First Appellate Authority (FAA).
4. Since the FAA failed and neglected to hear and dispose the first appeal within stipulated period, the Appellant landed before the Commission with this second appeal under sec 19(3) of the Act.
5. Notice was issued to the parties, pursuant to which the Adv. G. Mendes appeared on behalf of the PIO and the FAA and placed on record the reply of the PIO and FAA on 16/03/2022. The Appellant objected for the appearance of the single advocate on behalf of the PIO and the FAA.
6. During the course of hearing on 19/04/2022, Adv. G. Mendes appeared and submitted that, she wanted to withdraw the wakalatanama on behalf of the FAA. Meanwhile by an application dated 15/07/2022, filed through entry registry, the Appellant raised preliminary objection for appearance of advocate in the matter.
7. Ms. Samiksha Vaigankar, learned advocate appearing for the PIO filed her reply on 20/07/2022 and submitted that objecting the PIO to represent through advocate is nothing but abuse of the process of the court and pointed out that under RTI Act there is no such provisions which bars the advocates from representing any party to meet the ends of justice. And to support her case she placed on record the copy of Order in **Appeal No. 62/SCIC/2016 dated 06/06/2017** and copy of the order of **State Information Commission, Punjab dated 07/01/2016**.
8. Considering the contention of the rival parties, it may be relevant to go through Section 30 of the Advocates Act 1961, which reads as under:-

"30. Right of advocates to practise-

Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends:

- i. In all Courts including the Supreme Court;*
- ii. Before any tribunal or person legally authorised to take evidence and*
- iii. Before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."*

9. The Goa State Information Commission (Appeal procedure) Rules 2006, Rule 7(2) reads as under:-

"7. Personal presence of the appellant or complainant.

*(2) The appellant or the complainant, as the case may be, may, at his discretion, at the time of hearing of the appeal or complaint by the Commission, be present in person **or through his duly authorised representative** or may opt not to be present."*

From the bare reading it is clear that, the Appellant or Complainant can engage the services of any authorised representative including the advocate. Hence if in a fight between two or more than two 'unequals' if right to appear through advocate is granted only to the Appellant to plead and defend him in the dispute then it will result in abuse of process of law and will consequently frustrate the administration of justice.

10. A useful reference needs to be made to the Hon'ble Supreme Court decision in **Namit Sharma v/s Union of India (W.P. No. 210/2012)** in para No. 74, 75 and 84 where it is observed as under:-

"74..... The authority and the Tribunal constituted under the provisions of the Act 2005 are certainly quasi-judicial authority / tribunal performing judicial functions.

75..... The Legislature, in its wisdom has provided for two appeals. Higher the adjudicatory forum, greater is the requirement of adherence to the rule of judiciousness, fairness and to act in accordance with the procedure prescribed and in absence of any such prescribed procedure, to act in consonance with the principles of natural justice.

*84. The Information Commission has the power to deal with the appeals from the First Appellate Authority and, thus, it has to examine whether the order of the appellate authority and even the Public Information Officer is in consonance with the provisions of the Act of 2005 and limitations imposed by the Constitution. In this background, no Court can have any hesitation in holding that the **Information Commission is akin to a Tribunal** having the trappings of a Civil Court and is performing quasi-judicial functions."*

From the above observations of the Apex Court, it is clear that, the Information Commission is akin to a Tribunal. Therefore under Section 30 of the Advocates Act, 1961, the Advocate is entitled to appear before the Commission. If the restriction is imposed upon the PIO and disallowed to appear through his

advocate then certainly, it will amount to denying his legal rights to defend his case which is against the rule of equality thus violating the principles of natural justice. The adjudicatory process essentially has to be in consonance with the principle of natural justice. Therefore, the Commission is bound to protect the purity of judicial process.

11. On going through the order relied upon by Adv. S. Vaigankar dated 06/06/2017 passed by this Commission in the case **Sushant Nagvenkar v/s Shri. Durgesh Naik and Ors. (Appeal No. 62/SCIC/2016)** it has been observed as under:-

"g) The appellant has also objected for the appointment of the advocate by the respondent Authority. He also filed copies of the correspondence entered with other department. In this context it is to be noted that the issue of appointment of an advocate by the public Authority is within the domain of such authority and the Government. The Commission has no role to play in such appointment and cannot interfere in such action of the Government."

Considering the facts and circumstances hereinabove, I am of the opinion that either of the parties could be represented by the services of an advocate in the appeal petition to meet the ends of justice. Therefore, the preliminary objection raised by the Appellant dated 15/07/2022 is hereby dismissed.

12. During the course of final arguments on 16/09/2022, Adv. S. Vaigankar appeared and placed on record the memo and Notification bearing No. 36/1/443/2022/2098 dated 24/08/2022 and Official Gazette, Government of Goa Series II No. 21 dated 25/08/2022 and submitted that Government of Goa has re-constituted, disband and dissolved the Greater Panaji Planning

and Development Authority (GPPDA) and amalgamated and said public authority to be called the North Goa Planning and Development Authority from 24/08/2022.

13. From the above it is clear that, the Greater Panaji Planning and Development Authority no more in existence, therefore any further exercise in the case is infructuous as GPPDA is no more a "public authority" under Section 2(h) of the Act. Consequently the parties to this appeal are not custodian of the information at this moment, In view of above the appeal is dismissed being redundant.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner