

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 60/2021/SIC

Mr. Raoji K. Harmalkar,
R/o. H. No. 1150,
Tivim, Volvonem,
Bardez Goa
403502.

..... Appellant

v/s

1) The Public Information Officer,
Secretary, Village Panchayat Tivim,
Tivim, Bardez – Goa 403502.

2) The First Appellate Authority,
Block Development Officer – 1,
Bardez, Mapusa Goa.

..... Respondents

Filed on : 15/03/2021

Decided on : 28/01/2022

Relevant dates emerging from appeal:

RTI application filed on	: 21/10/2020
Transfer of application	: 26/10/2020
PIO replied on	: 16/11/2020
First appeal filed on	: 19/11/2020
FAA order passed on	: 15/12/2020
Second appeal received on	: 15/03/2021

ORDER

1) The second appeal filed under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the Act) against respondent no. 1, Public Information Officer (PIO) and respondent no. 2, First Appellate Authority (FAA) came before the Commission on 15/03/2021. The appellant prayed for directions to the PIO to furnish the information and penal action under section 20 against the PIO.

- 2) The brief facts of this appeal are that:-
- a) The appellant vide application dated 21/10/2021 sought following information from the PIO, B.D.O, Mapusa – House tax registration documents submitted by Kashinath R. Harmalkar for H. No. 1150, survey no. 31/26, Thivim Volvonem, Bardez Goa.
 - b) The B.D.O Mapusa vide letter dated 26/10/2020 transferred the application to Secretary, Village Panchayat Thivim (PIO) under section 6(3) of the Act. The PIO vide letter dated 16/11/2020 informed appellant that the information is not available in his office. Thereafter, the appellant preferred appeal dated 19/11/2020 before FAA. The FAA vide order dated 15/12/2020 directed PIO to provide the inspection to the appellant within 15 days. Aggrieved with the order of the FAA, appellant filed second appeal before the Commission.
- 3) The appeal was registered on 15/03/2021 and the concerned parties were notified. Pursuant to the notice, appellant appeared in person and subsequently filed submissions on 17/08/2021, 07/09/2021, 25/10/2021 and 29/11/2021. The FAA is represented by his colleague under authority letter and filed a reply dated 17/08/2021. PIO, though initially did not attend the hearing, later was represented by Adv. Kanchan Ekoskar and filed affidavit in reply on 21/12/2021.
- 4) The appellant stated that he has asked the information regarding his ancestral house, hence he must get the relevant document from the PIO. Further, the appellant claimed that he visited PIOs office on various occasion to inspect the records as directed by the FAA, However the PIO did not allow him the inspection. On one occasion he was stopped on the main entrance by Shri Sachin K. Harmalkar, staff of the Panchayat, citing the reason of Covid -19

pandemic. The office of PIO is required to maintain the information sought by the appellant, and the Panchayat Raj Act also mandates the Panchayat Secretary to maintain this information. The appellant also stated that he visited Thivim Panchayat office on 11/11/2021 as per the directions of the Commission to inspect the records, however original House Tax Registration file was not shown to him.

- 5) The FAA vide reply dated 17/08/2021 stated that after hearing both the parties he passed detail order dated 15/12/2020 directing the PIO to provide the inspection of the records within 15 days, if the appellant is not satisfied with the information furnished by the PIO pertaining to the house in question.
- 6) The PIO vide affidavit in reply filed on 21/12/2021 stated that the information sought by the appellant i.e. house tax registration documents submitted by Kashinath R. Harmalkar for H. No. 1150 under survey nos. 31/26 in Tivim Volvonem, Bardez Goa is very old. The PIO could not trace the said documents even after careful perusal of the records. As per the records of the Panchayat which are available in the office of the PIO, House No. 1150 is registered in the name of Kashinath Harmalkar from the year 1976, and on perusal of records of 1976, no documents are available in the records of the Panchayat. Goa Panchayat Raj Act was enacted in 1994 and the rules were framed thereafter. Under the said Act there is a procedure for house registration and transfer of house tax.
- 7) Upon careful perusal of the records of this case, the Commission finds that the information sought by the appellant is more than four decades old and the PIO has stated on affidavit that the same is not available in his office. The Commission on 25/10/2021 directed the PIO to facilitate inspection of the records, and on this

direction, PIO provided the inspection on 11/11/2021 to the appellant, yet he could not identify the relevant documents. It is therefore clear that the PIO's office is not in possession of house tax registration documents sought by the appellant. The PIO's contention is that during earlier times documents such as title deed, sale deed etc. were not essentially insisted for registration of any house. After a thorough search by PIO, and inspection of documents by the appellant, the documents could not be traced and found. The Affidavit of the respondent PIO stating the same is also on record. It is therefore, the Commission finds substance in the statement of PIO that the said information is not available in his office.

- 8) Hon'ble High Court of Delhi in LPA 24/2015 & CM No. 965/2015, in the Registrar, Supreme Court V/s Commodore Lokesh K. Batra & Others has held :-

"As already noticed above, 'Right to Information' under section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which direction can be issued to the public authority to collate the information in the manner in which it is sought by the appellant."

- 9) Hon'ble Supreme Court in a decision reported in AIR 2012 Pat 60; letters appeal no. 1270 of 2009 in Civil Writ Jurisdiction Case 11913/2009; Shekarchandra Verma v/s. State Information Commission, Bihar has held :-

" In our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an enquiry and collect, collate information and then make it available to applicant."

10) In view of the facts of the case, the Commission concludes that the information sought by the appellant does not exist in the records of the PIO and hence subscribing to the ratio laid down by the Hon'ble High of Delhi and the Apex Court the Commission is of the opinion that the PIO cannot be directed to furnish information which is not available. Accordingly, the appeal is dismissed and the proceeding stands closed.

Pronounced in the open court.

Notify the parties.

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

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