

GOA STATE INFORMATION COMMISSION

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Appeal No.03/2021/SCIC

Shri. Rolyno Fernandes,
H.No. 125, Opp. Classic Hospital,
Malbhat, Margao-Goa.

.....Appellant

V/S

1. The Public Information Officer,
Administrator of Comunidades of South Zone,
Margao-Goa.

2. Shri. Amaro Afonso,
The Escrivao/Clerk/Registrar,
(Deemed PIO),
Comunidade of Aquem,
Margao, Salcete-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 12/01/2021

Decided on: 03/06/2022

FACTS IN BRIEF

1. The Appellant, Mr. Rolyno Fernandes, r/o. H. No. 125, Opp. Classic Hospital, Malbhat, Margao Goa, by his application dated 04/02/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) Administrator of Comunidades, South Zone, Margao-Goa:-

"I would like to seek information with respect to the property bearing Chalata No 33-A P T Sheet no- 250 regarding the following particulars:

- 1) Copy of the documents, including deeds, if any, with respect to the above chalata no.*
- 2) Name of the allottee, if any, with respect to the above chalata no.*

- 3) *Copy of the NOC given by the comunidade for conversion of any part or whole of the property of the aforementioned chalanta number or with respect to the conversion of the construction carried out in the same.*
- 4) *Copy of the approved plans of any construction in the aforementioned chalanta number.*
- 5) *In the events there are no permissions or approved plans with regards to the construction in the chalanta number 33-A, then the action taken by the comunidade to remove such encroachment/illegal constructions.*
- 6) *The copy of the resolution and the legal provision under which a comunidade land or construction was allowed to be put to commercial use.*
- 7) *The action taken, if any, by the comunidade for illegal use of the comunidade land for commercial purpose.*
- 8) *Copies of the receipts of the lease rent paid by the lessees for the past 15 years."*

2. The said application was not responded by the PIO within stipulated time, therefore the Appellant preferred first appeal before the Administrator of Comunidade, South Zone, Margao Goa.
3. Since the Administrator of Comunidade failed and neglected to hear and decide the first appeal within prescribed period, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.
4. Parties were notified, pursuant to which non appeared for Respondent No.1 PIO, Adv. S.J.F. Correia appeared on behalf of Respondent No.2 and filed his reply on 14/12/2021.

5. I have perused the pleadings, reply, scrutinised the documents on record and considered the oral submissions of the parties.
6. Record reveals that, on receipt of the application, the PIO vide letter No. ACSZ/120/RTI/2019-20/475 dated 17/03/2020 forwarded it to the Respondent No.2, Shri. Amaro Afonso, being the Escrivao/ Clerk/ Registrar (Deemed PIO) of the Comunidade of Aquem directing him to furnish the information within 5 days from the receipt of the letter.
7. Adv. S.J.F. Correia appearing on behalf of Respondent No. 2 submitted that he has been improperly joined as a party to the appeal as he has not been designated as PIO or APIO by the public authority.

He further submitted that, the RTI application forwarded by the PIO was received by his office on 20/03/2020, the following day i.e 21/03/2020 was a Saturday (weekly holiday) and due to the 'Janta Curfew' declared by Central Government on 22/03/2020 he could not respond the RTI application within stipulated time.

He further argued that he was not arraigned as a party before the First Appellate Authority and dragging him into this second appeal proceeding is uncalled for and unjustifiable.

He also submits that, the lands of the Comunidade are surveyed under lote number and lease of the lands are organised in to files that are allotted a specific number known as 'Tombo'. The information sought by the Appellant with respect to the property bearing chalta No. 33-A, P.T Sheet No. 250 and other details which are not maintained in that form therefore the same is available in the records of the Comunidade of Aquem.

8. Upon the clarification from the Respondent No. 2, he submitted that the property of Comunidade are identified on the basis of

lote number and they maintained the records by Tombasao Book also known as Tombo (Register of properties). Since the Respondent No. 2 has categorically submitted that they are not maintaining the records in form of chalta number or P.T. Sheet number and considering it requires a technical expert to identify the property, I find force in the argument of Adv. Correia.

Apart from that, this fact is not disputed by the Appellant by filing his rejoinder or at the next available opportunity.

9. On going through the application filed under section 6(1) of the Act, which is reproduced hereinabove at para No. 1, the Appellant has sought the information of the property bearing chalta No. 33-A, P.T. Sheet No. 250. On the other hand, the public authority is maintaining its record in the form of Tombo (Register of Properties). In order to get the information from the public authority, the Appellant has to specify the information as required under section 6(1) of the Act. Where the request for information is clear, specific and unambiguous, it would be possible for the public authority to identify the material on record with respect to the subject. However when the request of the information is unspecific and vague, it is impractical to furnish the information. The PIO or APIO can only facilitate in providing information to the Appellant if information is maintained and available with the public authority in material form. He is not expected to derive and compile the information and then provide it to the Appellant. If the information is not available or not maintained in the official records, it cannot be furnished to the Appellant.

10. Section 2(j) of the Act gives the extend of right to the seeker as under:

"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;”

On reading of this provision reveals that a seeker can exercise his right in the form and manner as specified in sec 2(j) of the Act. The Act confers on all citizens a right to access information and this right has been defined under sec 2(j) of the Act. An analysis of this section would make it clear that the right relates to information that is held by or under the control of any public authority.

11. The extent and scope of the information and the nature in which it is to be dispensed is elaborately discussed and laid down by the Hon'ble Supreme Court in the 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.”

12. Another grievance of the Appellant is that, the public authority has failed to dispose the first appeal by passing a speaking order. On meticulous reading of the appeal memo of first appeal filed by the Appellant it is noticed that same is filed before the Administrator of Comunidade of South Zone at Margao. The Administrator of Comunidade of South Zone is the designated PIO, therefore he does not have jurisdiction to try and entertain the first appeal. In the present case the designated First Appellate Authority is the Additional Collector-I, Collectorate of South, Margao, Goa.
13. The another grievance of the Appellant that the PIO did not responded to his RTI application within stipulated period and being so he prayed for imposition of penalty. The delay in filing the response is reasonably explained by the APIO. Moreover considering the Pandemic situation and in view of the judgement of Hon'ble Supreme Court dated 08/03/2021 in the case **Suo Motu Writ Petition No. 3/2020**, the delay in proceeding at all level are condoned.

14. In the light of above discussion, I find no malafide intention of the PIO or APIO in denying the information. I therefore find no grounds to impose the penalty under section 20 of the Act on the PIO, as prayed by the Appellant. Appeal is devoid of any merit and hence I dispose the present appeal with following:-

ORDER

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

SD/-

(Vishwas R. Satarkar)
State Chief Information Commissioner