

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website:www.gsic.goa.gov.in

Appeal No. 07/2022/SCIC

Om D'Costa,
BG-2, Vajra Apartments,
Near Hanuman Temple,
Goulemhat, Chimbhel-Goa.

.....Appellant

V/S

1. The Public Information Officer, M.E-II,
Smt. Navita B. Mahatme, Assistant Accounts Officer,
Directorate of Mines and Geology,
Ground Floor of Institute of Menezes Braganza,
Panaji-Goa 403001.

2. The Public Information Officer, M.E-II,
Shri. Brian Pinto, Statistical Officer,
Directorate of Mines and Geology,
Ground Floor of Institute of Menezes Braganza,
Panaji-Goa 403001.

3. The First Appellate Authority,
Shri. Manuel Barreto,
Dy. Director of Mines and Geology-I,
Directorate of Mines and Geology,
Ground Floor of Institute of Menezes Braganza,
Panaji-Goa 403001.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 03/01/2022

Decided on: 15/09/2022

FACTS IN BRIEF

1. The Appellant, Om D'Costa r/o. BG-2, Vajra Apartments, Near Hanuman Temple, Goulemhat, Chimbhel-Goa, by his application dated 21/08/2020, filed under sec 6(1) of Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO) of Directorate of Mines and Geology at Panaji-Goa.
2. The said application was responded by the PIO on 15/09/2020 in the following manner:-

"With reference to above cited subject, the information

sought by you with respect to Sr. No. 1,2 & 3 i.e the details of lease wise payment towards royalty, DMF North & South, Dead Rent, Surface Rent, application fees, amount recovered and any other amount is compiled.

You are therefore requested to make necessary payment (as RTI fees) amounting to Rs. 138/- to collect the required information.”

3. Upon receipt of intimation, the Appellant collected the information on 14/10/2020 by effecting the requisite payment of Rs. 138/- to the office of the public authority.
4. Being aggrieved and dissatisfied by the PIO's non-provision of information in electronic format, the Appellant preferred a first appeal before the Deputy Director of Mines and Geology-I, Panaji-Goa on 04/11/2020 under section 19(1) of the Act being the First Appellate Authority (FAA).
5. The FAA disposed the first appeal directing the PIOs to provide fresh information pointwise.
6. Being aggrieved by the order of the FAA dated 14/12/2020, the Appellant preferred this second appeal before the Commission under section 19(3) of the Act with the prayer to direct the PIO to provide the information in **electronic format** and seeking other reliefs.
7. Notices were issued to the parties, pursuant to which the PIO, Smt. Navita Mahatme appeared and filed her reply on 25/03/2022, also other PIO, Respondent No. 2, Mr. Brian Pinto appeared and filed his reply alongwith bunch of documents on 25/03/2022. The FAA, Mr. Manuel Barreto appeared and filed his reply on 16/02/2022.

8. According to the Appellant, through his RTI application dated 21/08/2020 he specifically requested the PIO of Directorate of Mines and Geology to provide the information as "soft copies in an electronic format". However the PIO supplied him the information in printed/ hard copy format. By this second appeal, Appellant prays that the PIO be directed to provide the information in electronic format as sought by him.
9. On the other hand, the PIO submitted that the Directorate of Mines and Geology is not maintaining the record in electronic format. However, he furnished all the existing and available information to the Appellant on 14/10/2020 by collecting the fees in a printed format i.e in the form of hard copies.
10. Perused the pleadings, replies, rejoinder, scrutinised the documents on record and considered the oral arguments and judgements relied upon by the rival parties.
11. Considering the contention of the rival parties, short point for determination is:-

"Whether there is deficiency of service on the part of the PIO, if so, whether the Appellant is entitled for disclosure of information in electronic format."

12. While deciding the above issue it is relevant to deal with section 2(f) of the Act, which reads as under:-

"2. Definitions. *In this Act, unless the context otherwise requires,*

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models,

data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

13. Similarly Section 7(9) of the Act reads as under:-

"7. Disposal of request.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resource of the public authority or would be detrimental to the safety or preservation of the record in question."

On bare reading of the above provision, it is clear that, this section provides that the information has to be given in that mode or form in which the information has been sought. However, the sought information can be given in an alternative mode or form where it will disproportionately divert the resources of the public authority. This provision does not allow the PIO to withhold the disclosure of information, it merely makes provisions for the disclosure of information in a format other than that requested by the Appellant and therefore, this clause of the Act is a directory clause and not mandatory.

14. It is admitted fact that, the Appellant has received the information on 14/10/2020 in hard copy format, however the grievance of the Appellant that inspite of information available and existing in electronic format, same is withheld by the PIO and therefore the PIO has failed to discharge the onus of section 19(5) of the Act.

15. It is the consistent stand of the PIO that, purported information has been provided to the Appellant as per availability

of records. The reply of the PIO was challenged by the Appellant before the FAA. The FAA also reiterated the said stand in its order dated 14/12/2020. More particularly in the operative para of the said order reads as under:-

"In view of the above discussion, I find that the information which is sought by the Appellant is maintained by the Department in physical form and therefore, if PIO submits it in the form of printout signed by the PIO, that would be sufficient compliance of the RTI Act, 2005.

(2) As regards furnishing of the information in the form in which it is requested by the Appellant, the PIO should furnish the information in the format in which it is maintained as per the Act and Rules and office procedure applicable. The PIO should not create or prepare the information in the form in which the Appellant desires as it diverts the public resources.

Therefore, in view of the above discussion and after going through the information furnished by both the PIOs, I find that the information is not very clear and each point wise as mentioned in the RTI application. Therefore, I pass the following Order:-

Order

The RTI First Appeal is hereby allowed. Both the Respondent PIOs are hereby directed to furnish the information afresh to the Appellant free of cost within 10 days from the date of this Order."

16. While considering the extent and scope of information that could be dispensed under the Act, 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)** at para 35 has observed:

"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."

17. Applying the above observation of the Hon'ble Apex Court under the Act, the PIO is expected to furnish the information as it exists. The Appellant expected that the PIO should collect and convert it into electronic format and then supply to him. Such expectation appears to be fine, however, the information is not held in the electronic format and hence not available for dissemination with the PIO as on today. PIO is not expected nor can be called upon to collect or collate the information as is sought by the seeker.

18. In dealing with the identical issue wherein the specific case of the PIO that no data is maintained by the public authority in the manner as sought for by the applicant, the High Court of Delhi in the case **The Registrar Supreme Court of India v/s Commodora Lokesh K. Batra & Ors. (LPA 24/2015)** has held that:-

*"13. It is clear from the law laid down in **CBSE v. Aditya Bandopadhyay & Ors.** (supra) that an applicant under the Act has access to only such information that is available and existing with the public authority subject to the exemptions in Section 8. Section 19(8)(a) of the Act no doubt, empowers the CIC or SIC to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act including by providing access to information if so requested in a particular form. However, the word 'form' used in Section 19(8)(a)(i) again refers to the definitions of "information" and "right to information" under Section 2(f) and Section 2(j)(iv) apart from sub-section (9) of Section 7 which provides that an information shall ordinarily be provided in the form in which it is sought. This aspect has also been considered in **CBSE v. Aditya Bandopadhyay & Ors.** (supra) and it was made clear in Para 64.1:*

"64.1. Sub-clause (i) of Section 19(8)(a) empowers a Commission to require the public authority to provide access to information if so requested in a particular "form" (that is, either as a document, microfilm, compact disc, pen drive, etc). This is to secure compliance with Section 7(9) of the Act."

14. XXX XXX XXX

15. *On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. 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 a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant."*

19. The Central Information Commission in case of **B.H. Veerasha v/s Deputy General Manager, P&D Wing, Canara Bank, Bangalore (CIC/MA/A/2006/0002)** has held that:-

*"The information is to be provided in the form in which it exists with the public authority and that without disproportionately diverting the resources of the information provider. The information sought by the Appellant is available in great detail in the Annual Reports which have been given to the Appellant. **If it is not available in electronic form, it does not have to be created for the Appellant.** There is thus, no question of denial of information to him.*

The CPIO of the Bank has thus complied within the requirement of the RTI Act in providing the information within the stipulated time. The appeal therefore dismissed."

20. In the present case, the PIO has furnished the purported information to the Appellant and expressed his/her inability to provide the same in electronic format due to lack of resources.

21. The High Court of Andhra Pradesh in **Divakar S. Natarajan v/s State of Information Commissioner A.P. (AIR 2009 (NOC) 1362 (AP))** has held that:-

"26. The Act is an effective device, which if utilised judiciously and properly, would help the citizen to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act, to be more practical and realistic."

22. In the background of above precedents and the facts and circumstances discussed hereinabove, I find that there is no denial of information by the PIO. The Appellant filed the RTI application on 21/08/2020 same is replied by the PIO on 15/09/2020 therefore the PIO acted within the stipulated period and subsequently furnished the purported information to the Appellant. Therefore, the Commission does not find any fault in the conduct of the PIO's in the present matter. In the above circumstances, I am

unable to consider the relief as sought by the Appellant. I find no merit in the appeal and therefore I dispose the appeal with the following:-

ORDER

- The appeal is dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner