

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in

Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 10/2021/SIC

Shri. Querobino P. Gomes,
H. No. 324, Praca de Rachol,
Salcete-Goa

..... Appellant

v/s

1. First Appellate Authority (FAA),
Deputy Collector and SDO,
Margao-Goa
2. The Public Information Officer (PIO),
Office of Mamlatdar of Salcete,
Margao-Goa

....Respondents

Filed on : 15/01/2021

Decided on : 13/01/2022

Relevant dates emerging from appeal:

RTI application filed on	: 05/10/2020
PIO replied on	: 27/11/2020
First appeal filed on	: 09/11/2020
FAA order passed on	: 04/12/2020
Second appeal received on	: 15/01/2021

ORDER

1. The second appeal filed by the appellant under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act') against Respondent No. 1 First Appellate Authority (FAA) and Respondent No. 2 Public Information Officer (PIO) came before the Commission on 15/01/2021. The appeal has been filed with prayers such as direction be issued to the PIO to follow proper procedures and furnish the information to the appellant.
2. The brief facts of this appeal, as contended by the appellant are that the appellant vide application dated 05/10/2020 sought information

on 4 points from the PIO and that he received no reply from PIO within the stipulated period, hence filed appeal dated 09/11/2020 before the FAA. The appellant received a reply from PIO after filing first appeal but no information was furnished. The FAA vide order dated 04/12/2020 directed PIO to provide inspection of the records within 15 days and furnish the documents sought by the appellant. However, relevant documents were not made available for inspection. Being aggrieved, the appellant filed second appeal.

3. The concerned parties were notified and the matter was taken up for hearing. The appellant appeared in person and the PIO, Mamlatdar of Salcete Taluka was represented by the Head Clerk of his office. The PIO filed reply on 06/05/2021, the FAA filed reply dated 18/10/2021. Appellant's submissions dated 08/07/2021, 11/08/2021 and 18/10/2021 were received by the Commission.
4. The PIO stated in his reply that he received the application on 05/10/2020, and the same was replied on 27/11/2020. The appellant was provided inspection of the records as per the order of FAA. The appellant inspected the relevant files on 16/12/2020 and again filed appeal before the Commission. The appellant has acknowledged that the information he sought is not available in the file. Also, the Tenant Associations are not designated as public authorities and Mamlatdar acts on the administrative tutelage with limited supervisory power. Accordingly, whatever information is available in his office is provided and applicants are allowed to inspect the respective files.
5. The First Appellate Authority, vide reply dated 18/10/2021 stated that the authority heard both the sides and decided the matter by directing the PIO to facilitate inspection to the appellant as sought by him. The information is not denied and the efforts are made to provide the information.

6. The contention of the appellant is that as per the Goa, Daman and Diu Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975 it is mandatory to sign an agreement in Form III - a Lease Agreement between the Chairman of the respective Managing Committee and the Mamlatdar (PIO in this matter). Also, as per Rule 6 sub Rule 10, the Treasurer shall be responsible to maintain all the accounts of the association showing receipts and expenditure and to get the accounts audited annually by auditor appointed by the Managing Committee with the approval of the Mamlatdar. That in view of these provisions, the PIO is required to maintain the information sought by the appellant and is authorised to obtain the same from Tenant Association. However in this case the PIO avoided his responsibility by saying the information is not available.

7. Upon careful perusal of the records and submissions it is noted that the appellant has sought information pertaining to Tenant Association of Voddi Khazan Raia. Though the appellant has asked some information under point No. 1 and 3 in question format, as stated by the PIO in his reply, the same is not qualified as information as per section 2(f) and section 2(j). However, the appellant under point no. 3 has also sought the certified copies of the audit reports of the current year and last five years. Also under point No. 2, he has sought copies of the lease agreement for 2018-2019 and 2019-20. The PIO is required to furnish this information as it is qualified as information under section 2(f) of the Act and not exempted under section 8, nor rejected under section 9 of the Act.

8. PIO's contention about having limited supervisory powers over the affairs of Tenant Association cannot be accepted, since the PIO/Mamlatdar is in control of the administrative matters of the Tenant Associations. Rule 6, sub Rule 11 of the Goa, Daman and Diu

Agricultural Tenancy (Discharge of joint Responsibility of Tenants)
Rules, 1975 states:-

The Mamlatdar concerned shall have power to call from from the managing Committee any records, statements, registers, accounts or reports which he may think necessary.

Also, Rule 10 of the Goa, Daman and Diu Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975 reads:-

10. Powers of the Mamlatdar: The Mamlatdar shall have full power to take necessary action on the matters which have not been specifically provided in these rules in connection with discharge of joint responsibility by the tenants.

9. Thus it is aptly clear from the above-mentioned provisions that the PIO / Mamlatdar is in full control of the affaires of the Tenant Association, he is required to maintain the information sought by the appellant, and he is empowered to get the information from the Association if the Association has not filed the same voluntarily.

10. The Hon'ble High Court of Delhi in Writ Petition (C) 3660/2012 of CM 7664/2012 (Stay), in the case of Union of India v/s. Vishwas Bhamburkar, has held in para 7 :

"This can hardly be disputed that if certain information is available with public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily the information which is at some point of time or the other was available in the records of

the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old record. Therefore whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing in his inability to provide the desired information”.

The Hon'ble Court further held –

"Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility of the loss of the record and take appropriate departmental action against the officers/official responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act”.

11. The ratio laid down in the above-mentioned judgment puts the burden of furnishing the information on the PIO. In the light of above

discussion and after considering the facts of this case, the appeal is disposed with the following order:-

(a) The PIO is directed to furnish the information sought by the appellant under point no. 2 and 3 of his application dated 05/10/2020, within 20 days from the day of receipt of this order, free of cost.

(b) The PIO is directed to adhere to the provisions of the Act and respond strictly within the stipulated period of 30 days.

12. Proceeding stands closed.

Pronounced in the open court.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

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