

GOA STATE INFORMATION COMMISSION

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

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Appeal No.189/2021/SCIC

John Fernandes,
LT 30/32, Vijaynagar Apts,
Marol Maroshi Road,
Andheri (E), Mumbai 400059.

.....Appellant

V/S

1. Smt. Yogita B. Velip,
Awal Karkun / Public Information Officer,
Office of the Mamlatdar of Bardez-Mapusa,
Goa Govt. Complex Bldg., Morod,
Mapusa-Goa. 403507.

2. The Dy. Collector & SDO,
First Appellate Authority,
1st Floor, Govt. Complex Bldg., Morod,
Mapusa-Goa. 403507.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 02/07/2021

Decided on: 27/06/2022

FACTS IN BRIEF

1. The Appellant, John Fernandes, r/o. LT 30/32, Vijaynagar Apts Marol Maroshi Road, Andheri (E), Mumbai, by his application dated 10/02/2021 filed through speed post 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) of the Office of Mamlatdar of Bardez, Mapusa-Goa:-

“Particular of the information required:

I. Subject matter of information”

COMPUTERISED FORM NO. I & XIV

II. Description of the information required:

KINDLY FURNISH ME COMPUTERISED I & XIV FORM
IN THE NAME OF MY MOTHER IN LAW LIBERATA

D'SOUZA (COPY OF MANUAL I & XIV FORM HAVING
MUTAION NO. 2034 ATTACHED."

2. The said application was responded by the PIO in following manner:-

"With reference to your application dated 15/02/2021, on the above cited subject, this is to inform you that no entry has been effected in Survey No. 222/3 of Colvale Village as per your submission made in your application regards to "Liberata D'Souza'.

In this connection you are requested to visit this office to carry out further procedure."

3. Dissatisfied with the reply of the PIO, the Appellant preferred first appeal under section 19(1) of the Act, before the Deputy Collector and Sub-Divisional Officer, 1st Floor, Government Complex Building, Morod, Mapusa- Goa considering it as First Appellate Authority (FAA).
4. Since the Deputy Collector & SDO, Mapusa, failed and neglected to hear and decide the first appeal within stipulated period, the Appellant filed this second appeal before the Commission under section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and to impose the penalty on Respondents under section 20(1) of the Act.
5. Notice was issued to the parties, pursuant to which the PIO, Ms. Yogita Velip, Awal Karkun of Mamlatdar of Bardez appeared and filed her reply alongwith copy of computerised I & XIV form of survey no. 222/3 of Colvale Village of Bardez taluka. The Respondent No. 2 duly served opted not to remain present for the hearing.

6. The main grievance of the Appellant is that the Respondents provided him incorrect information and till date he did not receive the computerised I & XIV form having mutation No. 2034 in the name of his mother-in-law, Mrs. Liberato D'Souza.
7. Denying the claim made by the Appellant, the PIO through her reply contended that she has furnished the computerised copy of I & XIV form bearing survey no. 222/3 of Colvale village of Bardez taluka, which is available in the records of public authority. However no entry has been found with regards to the name of "Liberato D'Souza" in the said survey records as claimed by the Appellant.
8. Perused the pleadings, reply, scrutinised the documents on record and heard the submissions of the rival parties.
9. Brief fact of the case that, there exist a property known as 'Raint' in the village Colvale, Bardez-Goa bearing survey No. 222/3 of Colvale village. Smt. Maria August Fernandes who is the mother of the Appellant was the owner of the said property and her name is rightly recorded in the occupant column of the survey records. By virtue of will dated 10/06/1987, said property has been given to her daughter Mrs. Liberata D'Souza. Accordingly he filed application for mutation in the year 1991. The inquiry was conducted in mutation application and accordingly changes has been carried out in I & XIV form of survey No. 222/3 thus name of "Maria August Fernandes" is bracketed vide mutation case No. 609 and the name of Liberata D'Souza is written in a pencil vide mutation case No. 2034 and the remark column order has been passed by the then Certifying Officer. However due to the inaction of the competent authority and also since the matter is more than 20 years old and being manual entry have been stopped from the year 2012 no entry has been effected in survey No. 222/3 of Colvale village.

10. According to the Appellant, since the Certifying Officer passed the remark column order against Sr. No. 2034 with regards to survey No. 222/3, the entry has been affected and name of Mrs. Liberata D'Souza have been included officially/ legally in the I & XIV form and therefore by RTI application dated 10/02/2021 he sought the copy of computerised copy of I & XIV form having the name of Mrs. Liberata D'Souza.
11. The main grievance of the Appellant is that she has not provided the copy of computerised I & XIV form in the name of Mrs. Liberata D'Souza till date and therefore prayed that, direction be issued to the PIO to furnish him the computerised form I & XIV in the name of Mrs. Liberata D'Souza, Mutation No. 2034, Survey No. 222/3.
12. Records reveals that the PIO by her reply to RTI application dated 01/03/2021 informed the Appellant that no entry has been effected in survey No. 222/3 of Colvale village with regards to the name of Liberata D'Souza
13. It is a matter of fact that mere pencil entry carried out by the certifying officer in mutation process have not attained finality. However by the present proceeding the Appellant requires this Commission to direct the PIO to carry out the rectification and correction of revenue records by examining the documents on record. In other words the Appellant wants this Commission to investigate in to alleged irregularity and inaction in carrying the mutation entry by Revenue authority and then to grant relief to him. Seeking correction of revenue records is certainly not permissible, therefore such reliefs are beyond the powers of this Commission.
14. The Commission has to function within the provisions of the Right to Information Act, 2005. The Commission is constituted

under the said Act with powers, more particularly under section 18, 19 and 20 of the Act. Such powers consist of providing existing information held in any form and in case non-compliance of the said mandate without any reasonable cause, then to penalise the PIO. No powers are granted to the Commission to deal with the grievance beyond the said Act. Additional prayers like directing the public authority to correct the anomaly in mutation process cannot be granted by the authority under the Act.

15. The High Court of Gujarat in case of **State of Gujarat & Anrs v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj.12)** has held that:-

"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act."

In another judgement by the High Court of Allahabad in case of **Subhash Chandra Vishwakarma v/s Chief Information Commissioner, U.P. State Information & Ors. (LNINDORD 2016 ALL 1)** has held that:-

"We have no hesitation to record that inaction on non-statutory applications/ complaints filed by any person

where the State Authorities are not obliged to take a decision would not fall within the definition of 'information' giving rise to a cause under section 6 of the RTI Act. If all such inaction are construed to be cognizable under the RTI Act, the misuse of RTI Act would become rampant and the provisions of RTI Act in that view of the matter would result in to an abuse of the process of law."

16. While considering the extend and scope of information that could be disposed under the Act, the Hon'ble Supreme court in the case of: **Central Board of Secondary Education & another v/s Aditya Bandopadhyaya (Civil Appeal no. 6456 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. Another grievance of the Appellant is that, the public authority has failed to dispose the first appeal within stipulated time. On meticulous reading of the appeal memo of first appeal filed by the Appellant it is noticed that the same is filed before the Deputy Collector of Bardez at Mapusa, here in the present case the Deputy Collector of Bardez is not designated FAA under the Act, therefore he does not have jurisdiction to try and entertain the first appeal. In order to seek the relief in the first appeal proceeding he ought to have been exercise his right before the Mamlatdar of Bardez who is competent authority to hear and decide the matter.

18. In the present case, the PIO replied the RTI application on 01/03/2021 i.e within the stipulated period. Since the information is not maintained as sought by the Appellant i.e under the specific name quoted by the Appellant, the PIO replied accordingly. Considering the nature of request, I find that the PIO replied appropriately. She has also provided the latest computerised copy of I & XIV form bearing survey No. 222/3 of Colvale village of Bardez taluka which was available in the records of the public authority.

19. In the light of above discussion and legal precedent, I find no default of the PIO with regards to impose the penalty under section 20 of the Act, as prayed by the Appellant. Appeal is devoid of any merit and hence I dispose with the following:-

ORDER

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

SD/-

(Vishwas R. Satarkar)

State Chief Information Commissioner