

GOA STATE INFORMATION COMMISSION

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Appeal No. 211/2021/SCIC

Shri. Shamsundar V. Kerkar,
H.No. 1152, Bag-wada,
Morjim, Pernem-Goa. 403512.

.....Appellant

V/S

1. Shanti M. Poke,
The Public Information Officer,
Office of Deputy Collector & SDO,
Pernem-Goa.

2. Ravishekar Nipanikar,
Deputy Collector & SDO,
First Appellate Authority,
Pernem Sub Division,
Pernem-Goa. 403512.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 30/08/2021

Decided on: 07/04/2022

FACTS IN BRIEF

1. The Appellant, Shri. Shamsundar V. Kerkar, r/o. H.No. 1152, Bag-wada, Morjim, Pernem-Goa by his application dated 28/06/2021 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), Deputy Collector & SDM, Pernem, Goa:-

"With reference to order of your office with No. DCP/UNAUTHO-REGIJL/MOR/150/2016/119 dated 21/04/2021 issued to Shri. Kashinath Raghuvir Kerkar, r/o Bagwada-Morjim, Pernem, Goa (copy is enclosed), I would like to request information in respect of the following point:-

- 1) *The entire file including inspection report of Taluka Level Technical Team headed by Mamlatdar of Pernem Taluka.*

The above information may be furnished to me under the provisions of the Right to Information Act, 2005. The necessary charge/fees towards the same shall be paid by me."

2. The said application was responded by the PIO on 13/07/2021 in the following manner:-

"With reference to your application dated 28/06/2021 filed under Right to Information Act, 2005, this is to inform you that Mr. Kashinath Raghuvir Kerkar, r/o Bagwada, Morjim, Pernem-Goa, has filed his objection (copy enclosed) to your application wherein you had requested to provide entire file/documents in the case No. DCP/UNAUTHO-REGIIL/MOR/150/2016/1196.

In view of above objection filed by Mr. Kashinath Raghuvir Kerkar which states that there is no longer public interest but such information is needed to fulfil personal interest, the application filed under Right to Information stands dismissed."

3. Aggrieved with the said reply, Appellant filed first appeal under section 19(1) of the Act before the Deputy Collector & SDO, Pernem Goa being the First Appellate Authority (FAA).
4. According to the Appellant since the FAA also failed and neglected to dispose the matter within stipulated period, he landed before the Commission in this second appeal under section 19(3) of the Act, with the prayer to direct the Respondents to provide the information free of cost and to impose penalty and recommend for disciplinary action against both the Respondents for denying the information.
5. Parties were notified, accordingly the representative of PIO/FAA, Shri. Aditya Kamat appeared and placed on record the reply of PIO

and FAA on 07/01/2022. The PIO also placed on record additional reply on 28/01/2022.

6. According to the PIO, Appellant sought information with regards to certified copies of documents of the entire file No. DCP/UNAUTHO-REGIJJL/MOR/150/2016, which pertains to regularisation of unauthorised construction of Shri. Kashinath Raghuvir Kerkar and considering the information sought is of third party information, she issued notice under section 11 of the Act to the concerned party to obtain his say. Further according to her, since the third party, Mr. Kashinath R. Kerkar objected to disclose the information, the application of Appellant was dismissed.
7. On the other hand, the Appellant, Shri. Shamsundar Kerkar argued that information sought is not confidential or personal information therefore information is not coming within the preview of section 11 of the Act and the PIO unnecessarily stretched the provisions of section 11 and issued the notice to the third party. Therefore the action of PIO is unwarranted and has resulted in denying the information.
8. The FAA through his reply contended that, the first appeal filed before him was dismissed for default for non-appearance of the Appellant.
9. I have perused the pleadings, reply, additional reply and considered the arguments of the parties.
10. On perusal of the RTI application of the Appellant, it is observed that he is seeking the copy of order passed by Deputy Collector in case No. DCP/UNAUTHO-REGIJJL/MOR/150/2016/1196 which is a information generated by the public authority under Goa Regularisation of Unauthorised Construction Act, 2016 which provides for regularisation of unauthorised construction in the State of Goa.

11. Under section 2(f) of the Act, the information is defined as under:-

*"2(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;"*

On plain reading, it reveals that the **order** passed by the public authority is considered as a information and therefore it cannot be treated as either personal or confidential information. Apart from this section 11 of the Act does not give third party an unrestricted veto to refuse disclosing information. In fact section 11 is a procedural section and not an exemption section. Therefore I find force in the arguments of the Appellant that PIO has erred in issuing notice to the third party under section 11 of the Act.

12. However during the course of hearing dated 28/01/2022, the PIO has shown her willingness to provide the information and sought time to take steps to recall the records as the records and proceedings in case bearing No. DCP/UNAUTHO-REGIJL/MOR/150/2016 is presently held with Deputy Collector of Bicholim. The Commission accordingly directed the PIO to furnish the information on next date of hearing and matter was posted for compliance.
13. On the next date of hearing i.e on 31/03/2022, Smt. Shanti Poke , the present PIO and Dy. Collector of Pernem appeared and placed on record the bunch of documents to the Appellant and

submitted that she has produced the copy of entire file in case No. DCP/UNAUTHO-REGIJL/MOR/150/2016.

14. On going through the records it manifest that PIO has taken efforts to recall the records from the office of Deputy Collector of Bicholim and on receipt of the records on 29/03/2022 provided the copy of entire file before the Commission as directed.
15. The Commission find that the information sought for has been provided free of cost to the Appellant, which is in the records of the proceeding, as the Appellant did not appear for subsequent hearings on 31/03/2022, 06/04/2022 and 07/04/2022. Leave is granted to the Appellant to collect the copy of said information.
16. Before parting with the matter, it is observed that the approach of the FAA is very casual and trivial. The Act provides that the FAA should decide the matter within stipulated period of 30 days and in rare case this period can be extended to 45 days after recording the reason. In the instant case the FAA did not decide the matter within 30 days or not even in 45 days, and the height of it, he even failed to produce on record the copy of the said order for the reason best known to him.

Secondly he contended that he has dismissed the matter for default. Under the provisions of Act, and Rules framed thereunder, the presence of Appellant for the hearing is not mandatory. The FAA is duty bound to pass the reasoned order on the basis of material on record. The Act does not permit him to dismiss the matter for default. Both the above lapse on the part of FAA is unfair, unjust and against the spirit and intent of Act. The Commission expect that FAA shall be diligent henceforth in dealing with the first appeal with more caution.

17. The Commission is of the opinion that delay caused in furnishing the information is due to lack of proper appreciation of the provisions of section 11 of the Act. However I do not find any malafide or deliberate intention to deny the information. The High Court of Punjab and Harayana at Chandigarh in the case **Rajbala v/s State of Haryana & Ors. (2008 (1) RTI 295)** has held that:-

"Once the Commission has accepted that there was no malafide intention and the delay was caused only on account of lack of proper appreciation of the provisions of the Act, then it must be construed to be a reasonable cause within the meaning of second proviso of section 20(1) of the Act."

Considering the above, I find no ground to impose the penalty or to recommend disciplinary action against the PIO as prayed by the Appellant, therefore I hereby dispose the appeal with the liberty to the Appellant to collect the copy of information produced by the PIO within 30 days from the receipt of this order.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner