

GOA STATE INFORMATION COMMISSION

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Appeal No. 218/2020

Shri. Arun A.S. Talaulikar,
H.No. K-314,
Kadamba Co-op Housing Society,
Alto-Chimbel, Tiswadi-Goa.

.....Appellant

V/S

1. First Appellate Authority,
The Block Development Officer,
Junta House, Panaji Goa.

2. The Public Information Officer,
The Secretary,
Village Panchayat Chimbel,
Tiswadi-Goa.

3. Shri. Madhu Y. Shet,
R/o. H.No. 779, Durbhat,
Ponda-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 22/12/2020

Decided on: 10/02/2022

FACTS IN BRIEF

1. The Appellant, Shri. Arun A.S. Talaulikar, r/o H.No. K-314, Kadamba Co-operative Housing Society, Alto Chimbel, Tiswadi-Goa, filed this appeal being the third party under sec 19(3) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') challenging the order of First Appellate Authority (FAA), the Block Development Officer of Tiswadi, Panaji Goa dated 09/11/2020, with the prayer to quash and set-aside order of FAA.
2. According to Appellant, Respondent No. 3, Shri. Madhu Y. Shet, r/o H.No. 779, Durbhat, Ponda-Goa vide his application dated 06/06/2020, filed under sec 6(1) of the Act, sought the following information of the Appellant from the Respondent No. 2, the Public Information officer (PIO):-

“Kindly issue me the certified copies of all the documents of construction license of Shri. Mahesh Juwarkar, plot No. 19 and Shri. Arun Talaulikar, plot No. 120, Survey No. 40/1-A at Chimbhel (Kadamba Plateau) alongwith the correspondence made by the parties to the Panchayat office and vice versa.”

3. Further according to the Appellant, the PIO by letter dated 04/08/2020 replied to the said RTI application, informing the Respondent No. 3 to collect the information and accordingly same was collected by the Respondent No. 3 on 08/09/2020.
4. Aggrieved with the reply of PIO, the Appellant preferred first appeal before Block Development Officer, Tiswadi at Panaji Goa being First Appellate Authority under sec 19(1) of the Act.
5. The FAA by judgement and order dated 09/11/2020 dismissed the said appeal. Not satisfied with the order of FAA, Appellant landed before the Commission in this second appeal under sec 19(3) of the Act.
6. Notice was issued to the parties, pursuant to which Shri. Ramanand Naik, representative of Respondent No. 1 appeared and filed reply on 06/07/2021. Respondent No. 2 and 3 appeared in person, however opted not to file any reply in the matter.
7. Perused the pleadings, reply and scrutinised the documents on record and heard the submissions of the Appellant and considered the judgements relied upon by the parties.
8. According to the Appellant, the information sought by the Respondent No. 3 is third party information and it is related to the construction licence and other documents of his house situated at plot No. 120, Kadamba Plateau, within the jurisdiction of Chimbhel

Village Panchayat bearing survey No. 40/1 of Chimbhel, Tiswadi-Goa.

Further according to him, the PIO failed to follow the procedure laid down under section 11 of the Act and provided the information without giving any notice of opportunity of being heard.

Further according to him, the FAA has misinterpreted the section 19(1) of the Act and dismissed first appeal being not maintainable, therefore said order of FAA is bad in law and liable to be quashed and set-aside. To substantiate his arguments, he relied upon the judgement passed by the Hon'ble High Court of Madras in case of R. Subbiah v/s the State of Madras, judgement of Hon'ble Gujarat High Court in case of Reliance Industries Ltd. v/s Gujarat State Information (AIR 2007 Guj. 203) and argued that direction be issued to Respondent No. 3 not to make use of provided information henceforth for any purpose whatsoever.

9. The FAA i.e Respondent No.1 through his reply has contended that, no notice under sec 11(1) of the Act was required to be issued to the Appellant as the information sought was not personal/private information. He further contended that information sought was regarding construction licence issued by the Village Panchayat and other authorities which is in public domain and maintained as per law and procedure by the Panchayat. Further according to FAA, the Appellant had filed first appeal under sec 19(1) of the Act, and therefore he dismissed the said appeal being not maintainable.

10. Therefore the issue that arise for consideration before this Commission are:-

"(i). Whether information sought is personal information and hence exempted from disclosure under section 8 of the Act?"

(ii). Whether PIO has violated the procedure by non complying section 11 of the Act?

(iii). Whether the order of FAA is bad in law?"

11. Sec 8(1)(J) of the Act reads as under:-

"8. Exemption from disclosure of information.-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,___

(J) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

From the above reading it is evident that the exemption is attracted under two circumstances, first where the information is personal in nature and has no relationship to a public activity or interest, second where disclosing of information would cause unwarranted invasion of the privacy of the individual.

12. Upon perusal of the RTI application dated 06/06/2020 filed by Respondent No. 3, which is produced herein above in para No. 2, it is revealed that the information sought is in respect of all the documents of construction licence of the Appellant.

Considering the nature of information sought i.e the copy of construction licence and other documents submitted by the party to get licence from the public authority, who is the absolute authority to grant licence. Thus, though the said documents like plan, NOC, occupancy certificate etc are related to third party, the approval was granted by the public authority in exercise of its public functions. Hence the said construction licence is a public document and certainly not confidential information. Various public authorities in performing their functions routinely ask for documents and or personal information from citizens. They obtain information from citizens in relationship to a public activity and this cannot be called as an intrusion on privacy. It is not in dispute that information sought in respect of construction of the house involves an activity having external implications. Any deviation from the planning rules or building bye laws would affect public rights, safety or convenience.

A bare perusal of the proviso clause would reveal a very liberal intent of the Act which sets out that information which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Certainly, the construction licence generated by the Village Panchayat office and related documents are not covered under above clause. By its very constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to the State Legislature by any public authority.

13. The Hon'ble Supreme Court in case of **Central Public Information Officer, S.C. v/s Subhash Chandra Agarwal (C.A.No. 10045/2010)** has held in para No. 59 as under:-

"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological

status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.”

In the present case the information sought is a copy of construction licence and other documents which is certainly not a personal information, therefore issue No. 1 is answered as 'negative'.

14. While deciding the issue no. 2, it is relevant to deal with sec 11 of the Act which reads as under:-

*"11. **Third party information.**____ (1) Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such*

third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

This section deals with disclosure of information in relation to third party. If the PIO intends to disclose any information which is related to third party, the PIO is under obligation to give written notice to such third party within five days from the receipt of request for information.

It may be appropriate here to refer to the definition of the term "third party" in section 2(n) of the Act which reads as under:-

"2(n)- "third party" means a person other than the citizen making a request for information and includes a public authority."

Section 11 prescribes the procedure to be followed when a PIO is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the State Information Commissioner relating to

information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided.

A plain reading of section 11 of the Act indicates that, the occasion to issue a notice by the PIO to the third party shall arise only after the PIO intends to disclose the information which relates to third party. Merely because the information sought is of a person other than the applicant does not by itself attracts the procedure as contemplated under sec 11 of the Act, unless such information has been treated as confidential by the person/third party concerned. It is explicit in section 11 that issue of notice to the third party concerned will arise only when the PIO intends to disclose the third party information.

It is inferred and suggested that, if PIO makes his opinion that the said information is not exempted from disclosure under section 8 or 9 of the Act, question of issuing notice does not arise. The question of revisiting such opinion will arise only when the third party upon being noticed makes his representation against the proposed disclosure and in such an **eventually** the PIO shall issue the notice under sec 11 of the Act.

15. The grievance of the Appellant that the Respondent No. 2, PIO of V.P. Chimbhel did not issue notice to the Appellant and without giving an opportunity of being heard, he furnished information to the Respondent No. 3 which is against the provision of sec 11 of the Act.

In the instant case, admittedly no notice was given by PIO, however in the first appeal, the FAA entertained the appeal and gave full opportunity of hearing and in its order the FAA observed as under:-

“In the present case, the information sought was construction licence issued by the Village Panchayat

and other concerned authorities which is a public information maintained as per the law and procedure by the Panchayat.”

Construction licence is a document generated by the public authority as per the statutory provision of Panchayat Raj Act, therefore certainly it is a public record. Here in this case, the construction licence was issued to the citizen i.e the Appellant herein.

Since the document is generated in the office of public authority and the same is in public domain and to the extent the requirement of giving notice would not arise. This view is fortified by Hon’ble High Court of Madras in case of **Ms. V.V. Mineral v/s The Director of Geology & Mining (W.P. No. 5427/2007)** has held that:-

"12. In the present case, when the third respondent as an Information Officer, ordering notice to the petitioner and taking their objection and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issue may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interest of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps."

In an another identical judgement the Hon’ble High Court of Allahabad in the case of **Surendra Singh s/o Shanker Singh**

v/s State of U.P. (2009 AIR (All.) 106) has observed as under:-

"6. Section 11 of the Act relates to third party information. Third party has been defined under section 2(n) to mean a person other than the citizen making a request for information and includes a public authority. It is only when the third party treats the information required to be disclosed as confidential that the authority is required to give written notice to such third party of the request. In case such information is not held as confidential no written notice is required to be given....."

Considering the above ratio laid down by the Hon'ble High Court and the relevant provision of law, the issue No. 2 is also answered as 'negative'.

16. While deciding the issue No. 3, it is relevant to deal with section 19 of the Act which reads as under:-

"19. Appeal.__ (1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is

satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) XXXX XXXX.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

A perusal of the above would make it clear that, section 19(1) of the Act provides for an appeal by any person aggrieved by a decision of the PIO for not furnishing information within 30 days from the expiry of such period.

Sub-Section (2) of sec 19 provides an appeal by the third party, the limitation for filing the appeal is also 30 days and section 19(4) deals with procedure relating to information of a third party.

In the present case it is admitted that the first appeal filed by the Appellant under sec 19(1) of the Act and the same is decided by the FAA by order dated 09/11/2020.

17. On going through the operative part of the order passed by FAA dated 09/11/2020 which reads as under:-

ORDER

The Appeal u/s 19(1) will lie only if the Appellant is aggrieved for failure to provide information or provide incomplete information from the concern Public Information Officer. Therefore the above appeal will not come under sec 19(1) of the Right to Information Act, 2005."

The FAA treated, entertained and decided the said appeal under that section only and concluded that, under sec 19(1) of the Act, said appeal was not maintainable. The Appellant ought to have filed the appeal before FAA under sec 19(2) of the act i.e third party appeal. Therefore I find no fault in the said order.

However in the second part of the order of the FAA, it held that, Appellant has not sought any leave of the FAA while filing the first appeal. This was held as wrong by the Commission. I am of the opinion that in view of clear provision of section 19(2) of the Act, no leave of FAA is required to file first appeal by the third party.

18. It is the matter of fact that, the PIO issued the information to Respondent No. 3 on 08/09/2020 as the same is in public domain for last more than one year. Besides that the first appeal filed by the third party is entertained and decided by FAA by giving full opportunity to the third party. Therefore issue No. 3 is also answered as 'negative'.

Considering the provision under section 19(4) of the Act, which is produced at para No. 10 hereinabove, fair opportunity was granted to the Appellant (third party) by the FAA and also by this Commission before the appeal is finally decided.

19. I have perused the citations relied upon by the Appellant, the judgement of Madras High Court in R. Subbiah v/s the State of Madras, same is related to Copyright Act, 1957 and cannot be of any help to the case of Appellant. The Appellant first time in his arguments raised the issue that information provided may likely to be misused and prayed that direction be issued to Respondent No. 3 not to use the provided information for any purpose whatsoever and relied upon the judgement of Hon'ble High Court of Gujarat in Reliance Industries Ltd. v/s Gujarat State Information (AIR 2007 Guj. 2003). The fact and circumstances of the said case are different and distinguishable.

20. Besides, this Commission cannot grant said relief as he did not seek such prayer in the present appeal as well as before FAA. The Appellant also failed to establish as what prejudice and hardship would be caused to him if said information is disclosed. Present appeal is devoid of any merit, therefore, I am unable to grant the relief prayed by the Appellant (third party) and dispose the appeal with following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner