

GOA STATE INFORMATION COMMISSION

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

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Appeal No.245/2021/SCIC

Mr. Damodar V. Prabhu,
703, G R Sreenivas Ph 1,
Near Manipal County,
Singasandra, Bengaluru. 506114.

.....Appellant

V/S

1. Mr. Antony Mathew,
Superintendent Survey of Works,
Public Works Department,
First Appellate Authority,
Altinho, Panaji-Goa.

2. Shr. Dileep M. Dhavalikar,
Executive Engineer, PWD III (PHE),
Public Information Officer,
St. Inez, Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 29/09/2021

Decided on: 21/06/2022

FACTS IN BRIEF

1. The Appellant, Mr. Damodar V. Prabhu, r/o 703, G R Sreenivas-Ph-1, Near Manipal County, Singasandra, Bengaluru, by his application through Registered Post dated 09/08/2016 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from Respondent No. 2 the Public Information Officer (PIO), Executive Engineer, Public Works Department-III (PHE), St. Inez, Panaji-Goa.
2. The said application was responded by the PIO on 02/09/2016 in the following manner:-

Sr.No.	Details of Information sought under Right to Information Act, 2005.	Reply
1. i)	Total area of survey No. 353 sub division 2 is 22300 sqmts.	No comments, as the survey plan and area statements are not

		available in this office.
ii)	Out of above 1.i) how much land/area/square meters acquired from the said survey No. 353/2 for laying down pipe line of water supply	6 meters width is acquired for laying down pipeline of water supply from Curti to Zuari.
iii)	The rate of compensation and the amount of compensation drawn/paid to land owner for the acquisition of land by the Government.	The rates are Rs. 3 per sq. mts. and Rs. 5 per sq.mts. in village Borim.
iv)	Whether entry in revenue record From No. 1/14 of village Borim has been made and the name PWD is entered therein.	No
v)	A Xerox copy of survey mad of land acquired from survey No. 353 sub division 2 Borim village of Ponda if possible	The details are not available in this office records.

3. Dissatisfied with the reply of the PIO, the Appellant preferred first appeal before Respondent No. 1, Superintending Surveyor of Works (SSW), Altinho, Panaji-Goa, being the First Appellate Authority (FAA).
4. The FAA by its order dated 19/10/2018 partly allowed the first appeal and directed the PIO to initiate the proceeding for demarcation of the property acquired by the Department and inform the Appellant after obtaining all the documents.
5. Since the PIO failed and neglected to comply the order of FAA, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.
6. Notice was issued to the parties, pursuant to which, representative of FAA, Shri. Dilip Khaute appeared and placed on record the reply of FAA on 09/12/2021. Adv. A.P. Mandrekar appeared on behalf of PIO and filed reply of the PIO on 28/01/2022.
7. According to the Appellant, through his RTI application he sought information with regards to detail of the land acquired by the Government from the property surveyed under survey No. 353/2 of

Borim Village of Ponda taluka for the project of water supply pipe line as more particularly produced in para No. 2 hereinabove. However, the PIO deliberately failed and neglected to furnish the information, inspite of the order of FAA dated 19/10/2018.

8. Opposing the contention of Appellant, the present PIO submitted that, upon receipt of RTI application the then PIO obtained the requisite information from the APIO, the Assistant Engineer, S.D.IV, Works Division-III (PHE-North), Daag, Ponda-Goa and based upon the same he furnished information to the Appellant vide letter No. 2/40/16-17/WDE-III/PHE/PWD/ADM/891 dated 02/09/2016.
9. According to FAA, he recently designated as the FAA by the public authority, however he stick to the stand taken by his predecessor and prayed that matter be decided as per the merit.
10. Perused the pleadings, replies, scrutinised the documents on record and judgement relied upon by the parties.
11. In spite of a valid service of notice, the Appellant did not appear for hearing, therefore I dispose the appeal on the basis of submissions made by the PIO and on the basis of documents available on records.
12. Adv. A.P. Mandrekar, learned counsel appearing for the PIO, argued that the present appeal is not maintainable as the same is time barred and also barred by principles of Re-judicata and to substantiate his claim produced on record the copy of order passed by this Commission on 09/08/2016 in the case No. 57/SCIC/2016. He also argued that the order passed by the FAA, Respondent No. 1 is perverse, ultra virus and beyond the scope of RTI and needs to be quashed and set-aside.

Further according to him inspite the fact that FAA erred by passing an order directing the PIO to initiate the proceeding of

demarcation of acquired property, under good faith the PIO time and again requested the Directorate of Settlement and Land Records, Panaji Goa to carry out the demarcation of the said property and to support his claim he produced on record the correspondence made by him with Directorate of Settlement and Land Records dated 05/09/2018, 14/12/2018, 11/03/2019, 12/04/2019, 10/06/2021 and 18/10/2021.

Further according to him all the available information provided to the Appellant and no further information is available in the records of the PIO. However only to harass the public authority, the Appellant is filing multiple RTI application on the same subject matter and then appeals.

13. On going through the records and submissions made by advocate appearing for the PIO, the primary issue that arises for consideration is whether this second appeal is maintainable. Therefore it is relevant to refer section 19(3) of the Act, which reads as under :-

"19. Appeal. (3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

From the above provision it reveals that second appeal against the order of FAA lies with the concerned Information Commission within 90 days from the date of receipt of the order. However the Commission may admit the appeal after expiry of the period of 90 days if it satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

In the present case, it is a matter of fact that second appeal is filed on 29/09/2021 i.e almost after 2 years and 8 months and that too without showing sufficient cause for delay in filing the second appeal. Therefore I am of the opinion that appeal is not maintainable.

14. Before parting with the matter, the Commission feels that the FAA while deciding the first appeal did not apply his judicious mind. The operative part of the said order dated 19/10/2018 reads as under:-

"It is directed to Respondent to initiate the proceeding for demarcation of the property acquired by the Department and inform the Appellant after obtaining all the documents."

On mere reading of the above, it appears that, there is much substance in the contention of Adv. A.P. Mandrekar. Deciding the appeal under RTI Act is a quasi-judicial function. The designation of FAA under section 5 of the Act is a pure creation of statute with its power and functions more particularly described in section 19 of the Act. Such powers consist of providing existing information held in any form and in case non-compliance to initiate disciplinary action on PIO. No powers are granted to the FAA to deal with any grievance beyond the Act. Therefore the order of the FAA directing the PIO to initiate proceeding for demarcation of the property acquired by Department is ultra virus, in excess to the powers provided by the Act and therefore null and void in the eyes of law.

While considering the 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. 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. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority."

Considering the above legal ratio, I do not find any illegality in the reply filed by the PIO to the RTI application. The PIO has to dispense the existing information and cannot create information and to furnish to the Appellant.

15. In sum and substance the present appeal suffers from serious legal infirmities therefore not maintainable. I therefore dispose off 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