

GOA STATE INFORMATION COMMISSION

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Appeal No. 251/2021/SCIC

Remedios Peter D'Souza,
402, Divine Paradise,
Cross Road No. 2. I.C. Colony,
Borivili (West), Mumbai 400103.

-----Appellant

v/s

1. Smt. Ezilda D'Souza,
Deputy Superintendent of Police, Legal &
Vigilance / State Public Information Officer,
Office of the Deputy Superintendent of Police, Legal & Vigilance,
Panaji-Goa 403001.

2. Shri. Bousset F. DE. A. M. Silva,
Superintendent of Police, Legal & Vigilance / First Appellate Authority,
Office of the Deputy Superintendent of Police,
Legal & Vigilance,
Panaji-Goa 403001.

---Respondents

Shri Vishwas Satarkar - State Chief Information Commissioner

Filed on:- 08/10/2021

Decided on: 23/06/2022

FACTS IN BRIEF

1. The Appellant, Mr. Remedios Peter D'Souza, r/o. 402, Divine Paradise, Cross Road No. 2. I.C. Colony, Borivili (West), Mumbai 400103 by his application dated 16/04/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as Act) sought certain information from the Public Information Officer (PIO), the Director General Police, Goa, Police Head quarters, Near Azad Maidan, Panaji-Goa.
2. The said application was transferred under section 6(3) of the Act to another PIO, The Dy. Superintendent of Police, Legal and Vigilance, Panaji-Goa.
3. The PIO, upon receiving the information from the APIO, PI, Smt. Anushka A. Pai Bir, responded on 24/05/2021 to the Appellant in the following manner:-

Sr. No.	Point	Reply
01	Furnish "File Notings" of My Email Dated 31.10.2020 Copy attached	Enclosed as per Annexure "A"
02	Please let me know the Action Taken on my email dated 31.10.2020.	Forwarded to the Superintendent of Police, North, Porvorim vide No. PHQ/PET-CELL/MAP-99/20/1577/2020 dated 05.11.2020.
03	File Inspection as per Section 4 of RTI Act 2005 will be done later	Date of Inspection may be informed 08 days in advance
04	Furnish the Name, Designation, Officer email address, Contact no. (Working condition) of the Public Information Officer who responds to my RTI application	Name : Smt. Ezilda D'Souza Designation : Dy.SP, L&V Office email address: complaint@goapolice.gov.in Contact No: 8411972066
05	Furnish Action Taken Report	The Superintendent of Police, North was requested to give suitable reply to your goodself

4. Dissatisfied with the reply of the PIO the Appellant preferred first appeal under section 19 (1) of the Act before the Superintendent of Police, Legal and Vigilance at Panaji-Goa being the First Appellate Authority (FAA).
5. The FAA by its order dated 27/07/2021, allowed the first appeal and directed the PIO to furnish the information free of cost to the Appellant within the period of 15 days.
6. According to the Appellant, since the PIO failed and neglected to comply with the order of the FAA, he landed before the Commission by this second appeal under section 19 (3) of the Act, with the prayer to direct the PIO to furnish the information free of cost, to impose the penalty, to recommend the disciplinary action against

the Respondents and to award compensation to him for loss and detriment suffered.

7. Notice was issued to the parties, pursuant to which the PIO, Ms. Ezilda D'Souza, Deputy Superintendent of Police, Legal and Vigilance, Panaji-Goa appeared and filed her reply on 07/03/2022, representative of the FAA Ms. Snehal Sangodkar appeared and placed on record the reply of the FAA on 07/03/2022.
8. The grievance of the Appellant, that through e-mail dated 31/10/2020 he lodged the complaint to the Director General of Police Shri. Mukesh Kumar Meena, Panaji-Goa against Mr. Shailesh Suresh Sangodkar, the sole proprietor of M/s Diamond Real Estate for cheating and insisted to register the non-bailable offence and to elaborate his claim forwarded the PDF file to the office of DGP. Since the Director General of Police did not reply to his complaint he filed the present RTI application to know the outcome of his complaint.

Further according to him consequent upon his complaint, no action taken report has been made available to him and therefore stressed upon to issue direction to the PIO to furnish the Action Taken Report.

He also contended that, the PIO deliberately furnished him incomplete and misleading information and also not complied with the order of FAA.

9. On the other hand, the PIO submitted that vide letter No. Dy. SP/L&V/RTI-34/21/106/2021 dated 24/05/2021 all the available information has been provided to the Appellant.

She further contended that, upon the receipt of the order of the FAA dated 27/07/2021 she complied with the order promptly and furnished the report of the Superintendent of Police North vide

No. SP/North/Pet-Cell/502/2021 dated 14/04/2021 through e-mail and by speed post dated 03/08/2021.

10. The FAA, Mr. Bossuet Silva submitted that he passed reasoned order on 27/07/2021 by hearing the both parties according to him during the course of hearing of the first appeal, the Appellant disputed that he did not receive the copy of the report from the office of Superintendent of Police at North, considering the same, he directed the PIO to furnish the copy of reply received from the SP (North), free of cost to the Appellant within 15 days through e-mail and by speed post and accordingly disposed the first appeal.
11. Perused the pleadings, replies, rejoinder, scrutinised the documents on record and heard the oral submissions of the rival parties.
12. It is a matter of fact that upon receipt of the complaint from the Appellant the Superintendent of Police, North District, Porvorim, conducted necessary inquiry into the matter and submitted report to the office of FAA i.e. the Superintendent of Police, Legal and Vigilance Cell at Panaji-Goa vide letter No. SP/North/Pet-Cell/502/2021 dated 14/04/2021. It is not disputed that, the Appellant has not received the copy of Enquiry Report dated 14/04/2021. However the main grievance of the Appellant is no action is taken by the public authority against his complaint and the PIO with malafide intention furnished incomplete and misguided information and inaction of the PIO is furnishing the information with regards to the Action taken Report.
13. The operative part of Enquiry Report conducted by Superintendent of Police, North dated 14/04/2021 reads as under:

"During the enquiry PSI Ashish Parob had called both the parties at Mapusa Police Station for enquiry and during which opponent Mr. Shailesh Suresh Sangodkar stated that the first

project i.e. Dr. Tars Royal Heritage Project at Dhuler Mapusa was discontinued due to some reason and the petitioner has been suitably refunded all the amount after entering into Cancellation of agreement of Sale deed dated 25th December 2004 and same was signed by both the parties.

During the course of enquiry into the second petition, the opponent informed that the petitioner and his wife had given a Power of Attorney dated 02.03.2017, notarized before Notary Public Kalam Khan at Mumbai to develop the said property bearing Sy. No. 13/3 of village Paliem Bardez Goa and the opponent has no any role to play in the second project. The opponent Mr. Shailesh Suresh Sangodkar has also stated that later petitioner has revoked the said Power of Attorney. The opponent Mr. Shailesh Suresh Sangodkar had denied all the allegations levelled against him by the petitioner in both his petitions.

On going through the contents of the said petitions and documents furnished by the petitioner and opponent, no any cognizable offence is made out and the matter is found to be purely in Civil in nature."

From the bare reading of the above, it is clear that the enquiry into the complaint is over and complete with the findings that no cognizable offence is made out as the dispute found to be purely civil in nature.

14. Further on perusal of letter No. SP/North/Pet-cell/599/2021 dated 26/05/2021 addressed to the Appellant by Mr. Utkrisht Prasoon, IPS, Superintendent of Police, North Porvorim, Goa it is categorically mentioned that:

"Refer your email petitions dated 31.10.2020 and petition dated 18/02/2021 received from "The Director" Directorate of

*Public Grievances, Udyog Bhavan, Panaji-Goa, with caption
1) Village Paliem-Bardez Taluka Surney No. 13/3 &
2) Proposed Row House & Fourth Floor BLDG –Mr. Vinayak
Tar.*

*In this connection it is submitted by SDPO Mapusa that no
any cognizable offence is made out and the matter is found
to be purely Civil in nature.*

This is for favour of information please.”

15. It has been consistent stand of the PIO that available information has been furnished to the Appellant, however the Appellant alleged that information furnished by the PIO is incorrect and misleading. In order to clear the doubt of the Appellant, with the consent of both the parties the Commission directed the PIO to provide inspection of respective files. Accordingly during the course of hearing on 10/12/2021 the Appellant inspected the file bearing No. MAP-99/2020 and No. MAP-08/2021 in the open proceeding before the Commission and the available information has been indicated and thereafter provided to the Appellant by the PIO.
16. At this stage, it would be relevant to refer to section 2 (f) and 2 (j) of the Act, which reads as under:-

*“**Section 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 **materials 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;*

Section 2(j)** – "right to information" means the right to information accessible under this Act which is **held by or

under the control of any public authority and includes the right to_

(i) inspection of work, documents, records;

(ii) taking notes extracts or certified copies of documents

or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device”.

A careful reading of this provision of law, it suggest that PIO is required to supply such material in any form as held by the public authority and it does not require the PIO to deduce some conclusion from the material and furnish the conclusion so deduced to the Appellant.

The High Court of Patna in case of **Shekhar Chandra Verma v/s State Information Commission (L.P.A. 1270/2009)** has held that:-

"10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the Appellant”.

17. Moreover, the PIO is not expected to respond the queries made in different form, he can only facilitate in providing information which is available with his records in material form and is retrievable from the official records. Similarly the PIO cannot either confirm or deny some perception of the Appellant, which he has about a

particular set of information. The role of PIO is information provider and he cannot be treated as a creator of the information. If a matter has been decided he can communicate the decision. He cannot be held responsible for the merit or accuracy of the information provided to information seeker or to furnish the reasoning of the decision taken by the competent authority.

The High Court of Andhra Pradesh in the case of **Divakar S. Natarajan v/s State Information Commissioner (W.P. No. 20182/2008)** has held that:-

"16. Before undertaking further discussion as to the legality or otherwise of the order passed by the respondents, the distinction between 'information' on the one hand and the 'reason' for existence or non-existence of a particular state of affairs on the other hand, needs to be noticed. The Act has comprehensively defined the word 'information'. It takes in its fold large variety of sources of information, including documents, emails, opinions, press release, models and data materials etc. The common feature of various categories mentioned in the definition is that they exist in one form or the other and the PIO has only to furnish the same, by way of copy or description. In contrast the reasons or basis as to why a particular state of affairs exists or does not exist cannot be treated as a sources or item of information."

In another identical judgement the High Court of Bombay in the case **Dr. Celsa Pinto v/s Goa State Information Commission (LNIND 2008 GOA S1)** has observed as under:-

".....The Public Information Authorities cannot expect to communicate to the citizen the reason why certain

things was done or not done in the sense of a justification, because the citizen makes a requisition about information. Justification are matter within the domain of adjudicating authorities and cannot properly be classified as information."

18. In the present case, the public authority after receiving the Enquiry Report dated 14/04/2021 provided the copy to the Appellant, said report indicate that no action was taken by the public authority being no cognizable offence is made out as the dispute is of Civil in nature, therefore no Action Taken Report is available in the records of public authority.

The PIO further cannot justify or provide the reason for decision taken by the Superintendent of Police, North as it is clearly outside the purview of the PIO under the Act. This can be matter for agitation before the concerned authority and not under this forum. If the Appellant feels that any official is not performing his duty in proper manner or doing something that is contrary to law, he can approach the concerned competent authority on the basis of information furnished to him.

19. 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 form 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.”

20. Under section 7 (1) of the Act, the PIO is required to dispose the request of the applicant within 30 days. In the instant case the PIO has replied to the RTI application on 24/05/2021 i.e. within stipulated time. The PIO also complied the order of the FAA promptly and provided the information to the Appellant free of cost. I, therefore find no ground to impose penalty on the PIO or to award the compensation to the Appellant as prayed by the Appellant.

21. In the light of above legal position and considering the facts and circumstance as discussed above, I find no merit in the appeal and therefore same is disposed off with the following:

ORDER

- The appeal stands dismissed.
- Proceedings closed.
- Pronounced in open proceedings.
- Notify the parties.

SD/-

(Vishwas R. Satarkar)

State Chief Information Commissioner