

**GOA STATE INFORMATION COMMISSION**

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**Appeal No. 255/2021/SCIC**

Shri. Zeller C. De Souza,  
O-S-4 and S-9, "B" Block,  
Maria Luiza Plaza, Comba,  
Margao-Goa 403601.

.....Appellant

V/S

1. Shri. Vidhur H. Fadte,  
Secretary of the Village Panchayat of Cansaulim-  
Arossim-Cuelim and State Public Information Officer,  
Office of the Village Panchayat of Cansaulim-  
Arossim-Cuelim premises,  
Cansaulim, Mormugao-Goa.

2. The First Appellate Authority,  
Block Development Officer, Mormugao,  
2<sup>nd</sup> Floor, Our Lady of Guia Building,  
Vasco-da-Gama, Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 12/10/2021**

**Decided on: 05/12/2022**

**FACTS IN BRIEF**

1. The Appellant, Shri. Zeller C. De Souza having office at O-S-4 and S-9, 'B' Block, Maria Luiza Plaza, Comba, Margao-Goa by his application dated 08/04/2021 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Secretary of Village Panchayat Cansaulim-Arossim-Cuelim, Mormugao-Goa:-

*1. Information of all professional bills/bills submitted by the undersigned to the aforementioned Panchayat. The information should consist of the following details:-*

- a) *Date of the bill*
- b) *Particulars*

- c) *Amount and Total Amount.*
2. *Total Number of Professional Bills/Bills submitted by the undersigned to the aforementioned Panchayat.*
3. *Details of the professional bills/bills paid by the above Panchayat till date. Details should consist of the following:-*
- a) *Date of the Bill*
  - b) *Particulars*
  - c) *Amount/Total Amount*
  - d) *Cheque Nos Date of Cheque and the Name of the Bank by which the professional bills/bills have been paid.*
4. *Details of the professional bills/bills unpaid by the above Panchayat till date. Details should consist of the following:-*
- a) *Date of the Bill*
  - b) *Particulars*
  - c) *Amount/Total Amount*
  - d) *Reasons for non payment.*

*The Applicant is an Indian National and undertakes to pay the amount in terms of law payable.*

2. The said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant preferred first appeal on 04/06/2021 before the Block Development Officer at Mormugao, Goa, being the First Appellate Authority (FAA).
3. According to the Appellant, during the pendency of the first appeal, the PIO furnished him partial information on 10/06/2021 free of cost. Further according to the Appellant, the information which was furnished to him by the PIO was incomplete, therefore by communication dated 17/06/2021 he reminded the PIO that information at point No. 4(d) of the application was not furnished.

4. The FAA by its judgement order dated 14/07/2021 partly allowed the first appeal and directed the PIO to furnish the information at point No. 1(a-c), 3(a-d), 4(a-c) with details as sought by the Appellant within 10 days.
5. Being aggrieved and dissatisfied with the order of the FAA, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act, with the prayer to quash and set-aside the order of the FAA dated 14/07/2021.
6. Notices were issued to the parties, pursuant to which the PIO Shri. Vidhur Fadte appeared and filed his reply on 09/12/2021, representative of the FAA, Shri. Supresh Mayekar appeared and placed on record the reply of the FAA on 23/02/2022.
7. Since none of the parties are appearing for the hearings since long, the Commission finds no reason to further prolong the proceeding and hence proceeds to dispose the appeal on merits.
8. Perused the contents of appeal memo, replies, order of the FAA and scrutinised the documents on record.
9. It is admitted fact that, the information with regards to point No. 1(a-c), 3(a-d) and 4(a-c) has been received. Therefore the controversy in this appeal remains with regards to information at point No. 4(d) of his RTI application which reads as under:-

*"4. Details of the professional bills/bills unpaid by the above Panchayat till date. Details should consist of the following:-*

- a) XX XXX XX
- b) XX XXX XX
- c) XX XXX XX

*d) Reason for non payment."*

10. From the record it manifests that, Appellant was retainer advocate of Village Panchayat Cansaulim – Arossim - Cuelim, Mormugao-Goa and was representing the Panchayat Office in various courts as an advocate and since upon submitting his bills, the village Panchayat did not settle his professional fees and in order to know the reason for non-settling his fees, the Appellant filed present RTI application dated 08/04/2021.
11. On going through the reply dated 25/06/2021 filed by the PIO before the FAA and the reply dated 09/12/2021 filed by the PIO in this second appeal, it is the consistent stand of the PIO that he has provided all the available information to the Appellant free of cost. However, he could not furnish the information at point No. 4(d) as the same is not at all in existence and available in the records of the public authority due to non-generation.
12. An important question that arises in the case is as to whether what the Appellant is asking can be treated as an 'information' within the meaning of Section 2(f) of the Act. The term 'information' as defined by Section 2(f) include "any material in any form including records, documents, memos, e-mails, opinions, advice, press release, 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.

In order to understand the essence of the Act, it is important to read Section 2(f) alongwith Section 2(i) and 2(j) which reads as under:-

2. **Definitions.** – *In this Act, unless the context otherwise requires, --*

(i) "records" includes\_\_\_\_\_

*(a) any document, manuscript and file;*

*(b) any microfilm, microfiche and facsimile copy of a document;*

*(c) any reproduction of image or images embodied in such microfilm (whether or not); and*

*(d) any other material produced by a computer or any other device;*

*(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\_\_ "*

From the above, it is clear that, the Act confers on a citizen only access to such information that is held by or under the control of a public authority.

Section 2(f), on the other hand, defines 'information' as something which is available in the material form. 'Information' therefore can be something that is available in a material form and is retrievable from the official records. It cannot be something that is not a part of the record. An opinion or an advice which is not recorded cannot therefore be treated as information within the meaning of 2(f) of the Act. The role of the PIO under the Act is of 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 also cannot either justify a decision taken or provide reason for such decision. That is clearly outside the purview of the PIO under the Act.

13. On going through the impugned order of the FAA dated 14/07/2021, the FAA opined that:-

*"Further, as regards to Point No. 4(d) of the application seeking Reasons for non payment cannot be considered as information as per Section 2(f) of the RTI Act 2005 and hence Public Information Officer is not bound to furnish the same unless and until it is available in the records of the Village Panchayat in the form of information. Therefore the same is not within the purview of RTI Act 2005."*

14. The extent and scope of the information and the nature in which it is to be dispensed is elaborately discussed and laid down by the Apex Court in the case of: **Central Board of Secondary Education & another V/s Aditya Bandopadhyay (Civil Appeal no.6454 of 2011)** as under:

*"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 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. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the [RTI Act](#)."*

15. The Appellant miserably failed to establish that the information was generated by the public authority. As the information is not at all in existence due to non-generation, nothing can be ordered to be furnished to the Appellant.
16. In the light of above, I do not find any error in the judgement passed by the FAA dated 14/07/2021 and hence I am not inclined to interfere in the said order of the FAA. In view of above I disposed the present appeal with following:-

### **ORDER**

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

Sd/-

**(Vishwas R. Satarkar)**  
State Chief Information Commissioner