

GOA STATE INFORMATION COMMISSION

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Appeal No. 326/2019/CIC

Judith Almeida,
257/1, 3rd Ward, Bagdem,
Colva- Salcete Goa. 403708.

.....Appellant

V/S

1. The Public Information Officer,
Office of Goa Coastal Zone Management Authority,
1st Floor, Pandit D.D.U. Bhavan,
Porvorim-Goa. 403521

2. First Appellate Authority,
Office of Goa Coastal Zone Management Authority,
1st Floor, Pandit D.D.U. Bhavan,
Porvorim-Goa. 403521.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 06/11/2019

Decided on: 27/01/2022

FACTS IN BRIEF

1. The Appellant, Ms. Judith Almeida, 257/1, 3rd Ward, Bagdem, Colva- Salcete Goa, by her application dated 26/08/2019 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought the information on three points from the Public Information Officer (PIO), Office of Goa Coastal Zone Management Authority, Porvorim-Goa.
2. Since the said application was not responded by the PIO within stipulated period, deeming the same as refusal, Appellant filed first appeal before the Member Secretary, Office of Goa Coastal Zone Management Authority (GCZMA), Porvorim-Goa being the First Appellate Authority (FAA).
3. Since the FAA also failed to decide the first appeal, the Appellant landed before the Commission under sec 19(3) of the Act as a second appeal.

4. Notice was issued to the parties, pursuant to which, the APIO, Shri. Bhaskar Shinde appeared and filed reply on behalf of PIO on 07/02/2020. Adv. V. Gracias appeared and filed reply on behalf of FAA on 07/02/2020.
5. As the matter is pending since long for non-appearance of parties, I dispose this appeal on the basis of available pleadings and documents on record.
6. I have perused the pleadings, reply of the PIO, reply of the FAA, rejoinder, additional reply of the PIO and written submissions.
7. On perusal of RTI application, the Appellant sought the following information from the PIO:-

“1. Kindly provide certified information on suggestions, notices for correction of records, notes, circulars and recommendations of Goa Coastal Zone Management Authority to the Town and Country Planning Board/Chief Town Planner in respect of areas demarcated as Settlement within 200m of High Tide line in Regional Plan 2021 of Goa.

2. Kindly provide certified information on matters, cases, action taken by GCZMA against vast areas marked as Settlement zones in the Regional Plan of Colva village within 200m of HTL.

3. Kindly provide certified information if areas marked as Settlement within 200m of High Tide Line in Colva village is permissible as the Environment Protection Act 1986.”

8. According to PIO through his reply, he contended that, due to unavoidable circumstances on account of death of mother of APIO, the information sought could not be furnished in time and this fact

was conveyed to the Appellant and she was assured that information will be provided free of cost. In spite of the same, the Appellant preferred first appeal on 30/09/2019.

9. PIO has further contended that, upon receiving the RTI application, by letter No. GCZMA/RTI/20-21/326 dated 02/09/2020, he sought details from the Chief Town Planner in respect of Regional plan 2021. The office of Chief Town Planner, Town and Country Planning Department vide letter dated 21/09/2020 has forwarded the information in the form of compact disc (CD). According to PIO all the relevant information pertaining to information at point No. 1 of the RTI was supplied through that CD. According to PIO, soft copy of map showing 200 mts and 500 mts CRZ line has been provided, it contains plans depicting structures of various villages and CRZ lines prepared by RSI. Hyderabad.

Further according to PIO, the available information was offered to the Appellant on 16/10/2019 under reference No. GCZMA/RTI/19-20/1605 and actual information was collected by the Appellant on 20/11/2019.

Further according to PIO, the office of TCP also confirmed that there are no other documents available in records with regards to notes, circulars and recommendations etc in respect of area demarcated as settlement zone.

10. With regards to information at point No. 2, the PIO replied that there is no such information available in the records of the public authority.
11. As far as information on point No. 3, the PIO replied that information sought is in the form of opinion on permissibility and hence cannot be furnished and to substantiate it further he replied that the authority is governed by CRZ Notification 2011 and

relevant Coastal Zone Management Plan for its implementation. The CRZ Notification 2011 only deals Zoning of land in CRZ areas and classification of various zones and permissibility of activities/construction is clearly mentioned therein. The classification of land as 'settlement' or otherwise is not covered under CRZ Notification 2011 and not dealt by public authority (GCZMA).

12. Upon perusal of rejoinder cum clarification of the Appellant dated 17/08/2020, she admitted of receiving information on 20/11/2019. However she alleged that the said information is incomplete, incorrect and misleading. The burden to show that information furnished is incorrect, incomplete lies on Appellant. Mere general statement is not enough. In fact the additional reply submitted by the PIO it is noticed that the PIO clarified with respect to contention raised by the Appellant.

There is no justification before the Commission to hold as to how the same is incorrect and incomplete. In the absence of any justification, I am unable to concede to said claim of the Appellant that the information is incomplete or incorrect. This view is fortified on the basis of the judgement passed by the Hon'ble High Court of Punjab & Harayan in case of **Gurucharan Singh v/s State Information Commission, Punjab & Ors. (W.P. No. 10806/2011)**

13. Coming to the nature of information at point No. 2 and 3, the PIO categorically replied that no such information exist and available, therefore the same does not constitute information under the Act. While considering the scope of information that could be disposed under the Act, the Hon'ble Supreme Court in case of **Central Board of Secondary Education & Anrs v/s Aditya Bandopadhyay (C.A. No. 6454/2011)** has held that:

"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."

In the light of above ratio, the said information on point No. 2 and 3 are beyond consideration under the Act.

14. It is the grievance of the Appellant that PIO has failed to furnish the reply/information in time bound manner. Sub Section (1) of Section 7 requires the PIO to dispose the request of seeker within 30 days.

However in the present case application was filed on 26/08/2019 with the PIO. The information was therefore required to be furnished or rejected on or before 25/09/2019 being the 30th day. Record reveals that the available information was provided on 16/10/2019 i.e on 46th day. However the PIO has reasonably explained the delay with the justification that due to unavoidable circumstances on account of the death of the mother of APIO, he

could not furnish the information within time. This fact is not disputed by the Appellant in rejoinder. I therefore hold that the delay is marginal and has been sufficiently justified.

The High court of Bombay Goa bench at Panaji in **Writ petition No.704 of 2012 Public Authority, Office of Chief Engineer, Panaji v/s Shri Yeshwant Tolio Sawant** while considering the scope for imposing penalty has observed:-

"6. The question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such penalty is a blot upon the career of the Officer, at least to some extent. In any case the information was furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."

15. The approach of the FAA also appears to be casual and trivial. The FAA has failed to hear the first appeal. Right to file first appeal under sec 19(1) is a statutory right of the Appellant and he should not be deprived of the same. The Act grants no discretion to the FAA. Deciding the first appeal with priority as stipulated in the Act is part of duty of the FAA. Any lapse in performing such duty would amount to dereliction of duties by FAA as casted on him under the Act. Such approach to the RTI process is also not in conformity with the provisions and spirit of the RTI ACT. The Commission warns FAA that he shall be diligent henceforth and deal with the first appeal with more caution and with the spirit and intent of Act.

16. From the records it reveals that, available information has been furnished to the Appellant free of cost. The PIO also offered fresh inspection of the respective file, however Appellant denied to carry out inspection with the reason that no inspection of files has been sought for in her RTI application. I find that the approach of the PIO is bonafied and genuine.
17. In the above circumstances and considering the facts involved herein, Commission finds no ground to impose penalty under section 20 of the Act. In the result, the relief as prayed for by the Appellant cannot be granted. The appeal is disposed accordingly with the following:-

ORDER

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner