

GOA STATE INFORMATION COMMISSION

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Appeal No. 327/2019/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 following information from the Public Information Officer (PIO), Office of Goa Coastal Zone Management Authority, Porvorim-Goa:-

"1). Kindly provide information including certified copies of submissions, replies filed by Judith Almeida in reply to notice of personal hearing bearing Ref. No. GCZMA/SMWP/02/06/1237 dated 26/07/2019 issued in review application as referred to herein above.

2). Kindly provide information including certified copies of minutes, points of debate, notings, recorded opinions of GCZMA members in respect of the GCZMA meetings held on 24/08/2019 and on 07/08/2019.

3). Kindly provide certified information on whether the personal hearing in review application dated 09/07/2019 was held as per the provision of civil procedure code if yes kindly provide certified copies with respect to the same including certified copies of all rules, notifications, documents, circulars, names of members of GCZMA including officers who examined and approved the above review application for personal hearing.

4). Kindly provide certified information on structures identified for demolition in survey No. 39/1 of Colva Village in review application dated 09/07/2019 filed by Peter Coutinho.

5). Kindly provide certified information if the original of the affidavit dated 18/04/2019 sworn by Mr. Sylvester Rodrigues has been produced before this authority, if yes, kindly provide certified copies of the same.”

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.
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. Gracious appeared and filed his reply on behalf of FAA on 07/02/2020.
5. As neither the Appellant nor PIO/FAA is appearing before the Commission since long, this appeal is disposed off on the basis of available records.

6. I have perused the pleadings, reply of the PIO, reply of the FAA, rejoinder, additional reply of the PIO and written submissions. The entire issue in controversy remains with respect to information on point No. 2,3 and 4.
7. According to Appellant, the information sought is being denied with malafide intention by the PIO as well as FAA only to protect illegal construction within 200m of High Tide line and to cover up the lapses in violation of the Environment Protection Act.

Further according to Appellant, the FAA has failed to conduct the proceedings as required under the provisions of the Act and therefore liable for penalty.

8. On the other hand, PIO replied that due to the death of the mother of APIO, the information sought could not be furnished to the Appellant in time and this fact was conveyed to her 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.

Further according to PIO, the available information was offered to the Appellant on 16/10/2019 and actual information was collected by the Appellant on 20/11/2019.

9. On perusal of rejoinder dated 17/08/2020, Appellant admitted that she received information from PIO, however she alleged that provided information is incomplete, incorrect and misleading.
10. On perusal of additional reply of PIO, it is revealed that Minutes of 211st Goa Coastal Zone Management Authority Meeting held on 24/08/2019 has been furnished, similarly Minutes of 210th Goa Coastal Zone Management Authority Meeting held on 07/08/2019 has also been furnished to the Appellant which are self explanatory.

To substantiate further he stated that there are no points of debate, notings, recorded opinion of GCZMA available in the records of public authority.

According to PIO, information available with the authority has been furnished in reply to point No. 2.

11. With regards to information at point No. 3, PIO replied that the Goa Coastal Zone Management Authority is a quasi-judicial authority and it has exercised its power to review and decide review application in the 182nd GCZMA Meeting held on 28/08/2018. The GCZMA has clearly adopted the same guiding principles while deciding review application before it, and he has furnished the copy of 182nd GCZMA Meeting held on 28/08/2018 to the Appellant.
12. Further according to PIO with regards to information on point No. 4, he replied that Goa Coastal Zone Management Authority in its demolition order bearing No. GCZMA/SMWP/02/06/743 dated 30/05/2019 has clearly identified the structure as Bar and Restaurant and ground plus structure in survey No. 39/1 of Colva Village of Salcete Taluka and PIO has furnished the copy of demolition order dated 30/05/2019 to the Appellant.
13. Appellant contended that the information furnished was incomplete, incorrect and misleading. Mere general statement is not enough, the burden to show that information furnished is correct, complete lies on the PIO. On perusal of the additional reply submitted by the PIO, it is noticed that the PIO has clarified with respect to contention raised by the Appellant. The point of contention of Appellant remains with point No. 4, which has been also clarified in the additional reply. There is no justification before the Commission to hold as to how the same is incorrect and incomplete. In the absence of any cogent evidence, I am unable to accept the claim that the information is incomplete or incorrect.

This view has also been reiterated by the Hon'ble High Court of Punjab & Harayana in case of **Gurucharan Singh v/s State Information Commission, Punjab & Ors. (W.P. No. 10806/2011)**.

14. While considering the scope of information that could be dispensed 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 present matter, the available information on point No. 2 and 3 are provided to the Appellant. The PIO could only supply the materials in any form as held by public authority in terms of sec 2(f). The Act does not require the PIO to deduce some conclusion from the material and supply the conclusion so deduced to the Appellant.

15. It is observed that the approach of the FAA 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. However the Commission cannot impose any penalty on FAA, as there is no provision under the Act to impose penalty on FAA. 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. The Appellant prayed for penalty against PIO for delay in furnishing the information. 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 delay is marginal and has been sufficiently justified.

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."

17. 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.
18. 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