

GOA STATE INFORMATION COMMISSION

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

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 39/2021/SCIC

Shri. Jairam A. Parsekar,
R/o. Govt. Police Quarters
No. B-19-3, 1st Floor,
Alto, Porvorim, Bardez-Goa.

.....Appellant

V/S

The Public Information Officer,
Mamlatdar, Pernem Taluka,
Pernem-Goa.

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 16/02/2021

Decided on: 07/04/2022

FACTS IN BRIEF

1. The Appellant, Shri. Jairam A. Parsekar, r/o. Government Police Quarters No. B-1-3, 1st Floor, Alto Porvorim Goa by his application dated 10/10/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information on 9 points from the Public Information Officer (PIO) of Mamlatdar of Pernem Taluka at Pernem, Goa.
2. Since the application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant preferred first appeal before the Deputy Collector and SDO at Pernem Goa being the First Appellate Authority (FAA).
3. The FAA by its order dated 21/01/2021 allowed the said first appeal and directed the PIO to furnish the information to the Appellant free of cost.
4. 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.
5. Notice was issued to the parties, pursuant to which the PIO, Shri. Aditya Kamat appeared and filed his reply on 26/07/2021.

After filing the rejoinder on 24/08/2021 by the Appellant, matter was posted for arguments.

6. During the course of hearing on 24/11/2021, the PIO submitted that he is ready and willing to furnish the available information. The Commission therefore directed the PIO to furnish the information on the next date of hearing.
7. That on 17/12/2021, PIO appeared and furnished bunch of documents to the Appellant, which is duly acknowledged by the Appellant and matter is posted for clarification / arguments. The PIO also filed his additional reply on 31/03/2022 to substantiate his contention.
8. According to the Appellant, he has sought information pertaining to action taken report in respect of his complaint filed before the Mamlatdar Office at Pernem, Goa on 30/03/2011 for clearance of encroachment on his way. However the PIO denied him information with evasive reply 'not available' and he alleged that the PIO did not make efforts to trace the file and comply with the order of FAA.
9. On the other hand, the PIO by his reply dated 17/12/2021 and additional reply dated 31/03/2022 contended that RTI application of the Appellant is vague and not specific and filed only for redressal of his grievance.

Further according to him, information on point No. 1 to 4 that is report of Talathi regarding alleged illegal construction by Dasharat G. Konadkar in survey No. 360/7, Rough sketch, survey records and copy of checklist forwarded by Mamlatdar of Pernem to the Dy. Collector & SDO, Pernem-Goa has been furnished to him.

Further according to him, he has made enough efforts to trace the records, however he could not trace the file, therefore available

information has been provided to the Appellant. He also contended that information with regards to point No. 5,6,7 and 9 has been duly furnished to Appellant and information on point No. 8 is transferred to PIO of Deputy Collector & SDO at Pernem, Goa under section 6(3) of the Act.

10. On perusal of the records, it reveals that father of the Appellant, Shri. Atmaram Jairam Parsekar was the tenant of the property situated at Mandrem, Pernem Goa bearing survey No. 360/7 of Mandrem Village. Appellant alleged that, one Shri. Dashrath Konadkar r/o Dandoswado Mandrem has constructed illegal residential house thereby obstructing and encroaching the way. In spite of several request, he has declined to remove the said encroachment and therefore a complaint was filed before the office of Mamlatdar on 30/03/2011 to remove the encroachment and allow 3 meters access to enter in his property. The Appellant had sought action taken report on that complaint from the PIO.
11. On bare reading of the appeal memo, it appears that Appellant is confused and unclear about the provisions laid down by this Act. Aggrieved with the reply of the PIO, the Appellant filed this second appeal with the prayer such as (i) to direct the Mamlatdar of Pernem to delete the entry from survey record, (ii) to direct the Mamlatdar to delete the rice entry recorded in cultivators column in survey record bearing survey No. 343/3/3A of Mandrem Village, (iii) to direct the Police Inspector Pernem to lodge FIR against Mamlatdar for non-compliance of order of District Court and (iv) Preliminary inquiry may be initiated on Mamlatdar of Pedne. To substantiate his claim he relied upon the judgement and order of District Court at Mapusa, Sale Deed dated 17/12/2013, Deed of Sale dated 07/07/2017, Partition proceeding, Deed of

Succession, Inventory proceeding, copy of Will, survey records and other title documents of the said property.

12. The Commission has to function within the provision of the Right to Information Act, 2005. This Commission is constituted under the said Act with powers, more particularly described under section 18,19 and 20 of the Act. Such powers consist of providing existing information held in any form and in case of non-compliance of said mandate without reasonable cause, then to penalise PIO. No powers are granted to the Commission to deal with any grievance beyond the said Act, as there is no provision under the Act to redress the grievances.
13. By the present proceeding, the Appellant requires this Commission to grant the relief as prayed which include, interalia matter not connected with this provision. In other words the Appellant wants this Commission to direct the Police Inspector Pernem to lodge the FIR against the Mamlatdar for non-compliance of order of District Court or to initiate preliminary enquiry against the Mamlatdar of Pernem, Goa and grant reliefs to him. Such relief are beyond the powers of this Commission.
14. Hon'ble High Court of Gujarat in case of **State of Gujarat & Anrs v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj.12)** has held that:-

"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed

for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act.”

15. Under the RTI Act, the authority has a basic function to be performed either to give the information or to deny to furnish the information. Prayers such as directing the Mamlatdar to delete the entry from the survey records cannot be granted by this authority under the Act. In another judgement by High Court of Gujarat in case of **Gokalbhai Nanabhai Patel v/s Chief Information Commissioner & Ors (AIR 2008 Guj.2)** the court has held that:-

"Whenever additional prayers are made, than to get information, it may not be granted by the authority, without following due procedure of law. To pass an order of demolition is completely out of jurisdiction of Chief Information Commissioner. Moreover whether there is encroachment or not is a civil dispute. It cannot be decided by Chief Information Commissioner.

The impugned order is passed without any power, jurisdiction and authority vested in Chief Information Commissioner under RTI Act. The order of removal of encroachment passed by Chief Information Commissioner is absolutely illegal and dehors of provision of RTI Act.”

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 legal forum and seek the legal remedy in the matter.

16. The Appellant argued that he is not satisfied with the information furnished to him as the Mamlatdar of Pernem failed to initiate any action as regards to his various representations. Commission feels that PIO 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 source 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 source or item of information."

17. 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 Bandopadhyaya (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. 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."

18. During the course of hearing on 17/12/2021, the PIO of Mamlatdar of Pernem furnished the bunch of information and

submitted that available and existing information has been furnished to the Appellant and matter was posted for order on 06/04/2022.

19. Although this appeal was heard finally and it was posted for order on 06/04/2022, Appellant appeared and mentioned the matter and placed on record his rejoinder No. III / written submissions. Therefore the appeal is further heard on 06/04/2022 and a written submission of the Appellant was considered. However nothing substantial was found to consider any relief to the Appellant.

20. In the light of above legal position and considering the facts and circumstances as discussed above, I find no merit in appeal and consequently the present appeal is disposed with the following:-

ORDER

- The appeal is dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner