

GOA STATE INFORMATION COMMISSION

"Kamat Towers" 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437208, 2437908 E-mail: spio-gsic.goa@nic.in Website: www.gsic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 74/2021/SIC

Shri Pedrito Misquitta Alias
John Peter Misquitta,
H.No. 234/B, Souza Vaddo,
Candolim, Bardez, Goa.

....Appellant

V/s.

- 1.The Secretary/
State Public Information Officer (PIO) ,
Office of the Village Panchayat Candolim,
Candolim, Bardez Goa 403515
- 2.The First Appellate Authority (FAA),
Block Development Officer,
Mapusa, Bardez -Goa
3. Mr. Saluzinho Soares,
House No. 1537, Orda,
Candolim, Bardez, Goa 403515

...Respondents

Filed on : 23/03/2021

Decided on : 11/03/2022

Relevant dates emerging from appeal:

RTI application filed on	: 08/12/2020
PIO replied on	: 05/01/2021
First appeal filed on	: 11/01/2021
FAA order passed on	: 23/02/2021
Second appeal received on	: 23/03/2021

ORDER

1. The appellant filed this second appeal under section 19(3) of the Right to Information Act, 2005 (for short, the Act) challenging the order dated 23/02/2021 passed by respondent No. 2 First Appellate Authority (FAA). The appellant, who is the third party in the said matter has prayed for quashing and setting aside order of the FAA and uphold the decision given by respondent No. 1 Public Information Officer (PIO) vide letter dated 05/01/2021.

2. It is the contention of the appellant that he had filed objection vide letter dated 14/12/2020, being third party, before the PIO, requesting not to furnish the information to the applicant Shri. Saluzinho Soares, sought vide application dated 08/12/2020. PIO denied the information to Shri. Saluzinho Soares vide letter dated 05/01/2021 thereby upholding the request of the appellant. However Shri. Saluzinho Soares filed appeal before the FAA and the FAA vide order dated 23/02/2021 allowed the appeal and directed PIO to furnish the information.
3. It is the contention of the Appellant that vide letter dated 18/01/2021 he had requested the FAA to admit him as party in the first appeal and hear him. However, the FAA dismissed the said intervening application and directed PIO to furnish the information. Being aggrieved with the said order of the FAA, the appellant who is the third party in the present matter, approached the Commission for relief, by invoking section 11 (4) of the Act.
4. Notice was issued to the concerned parties, pursuant to which appellant appeared in person and filed submission alongwith additional documents on 13/08/2021 and again on 30/09/2021. Respondent PIO was represented by Advocate Siddesh Prabhudesai, filed no reply, and on 03/02/2022 undertook to abide by the directions of the Commission. Respondent FAA, BDO, Bardez was represented by Shri. Umesh Shetgaonkar under letter of authority, filed reply dated 13/08/2021. Respondent No. 3 Shri. Saluzinho Soares, who had filed the original application dated 08/12/2020 seeking information from the PIO, did not appear initially and later was represented by Advocate Shankar M. Phadte and Advocate M. D'Souza, however filed no submission.
5. Appellant stated that he objected disclosure of the information to Shri. Saluzinho Soares because the information is pertaining to his structure, a case of which is in progress before the Deputy Director of Panchayats, wherein Shri. Soares is the respondent. The appellant further stated that in another matter before the PIO of Directorate of Panchayats, Shri. Soares has objected from providing information to this appellant. The said information is regarding the illegal structure constructed by the son of Shri. Saluzinho Soares in a property co-owned by the appellant. The PIO of Directorate of Panchayat in the said matter refused to disclose the information sought by the appellant, on the basis of objection raised by Shri. Soares. Applying the same yardstick in the present matter information pertaining to the construction

carried out by the appellant should not be furnished to Shri. Soares, Respondent No. 3 in the present case.

6. Appellant also stated that the information sought by Shri. Soares should not be furnished under section 8(1)(h) and 8(1)(j) of the Act. The matter of the structure of appellant, of which information has been sought, is currently sub-judice before the court of Deputy Director of Panchayats. He claimed that furnishing the information at this stage would impede the process of inquiry/proceeding which is in progress before the appropriate courts and providing the said information by PIO at this stage, which is personal in nature, will cause undue interference in the process of inquiry/proceeding. Hence the said information should not be furnished under section 8(1)(h) and 8(1)(j) of the Act.
7. PIO did not file any written submission. However, Advocate Siddesh Prabhudesai stated on behalf of the PIO that he shall abide by the directions of the Commission.
8. FAA vide reply dated 13/08/2021 stated that a detail order dated 23/02/2021 has been passed after hearing both the parties and PIO has been directed to handover the information to the appellant, therefore, the matter may be decided by this authority on the basis of the merits of the case.
9. After careful perusal of the records and pleadings it appears that appellant and respondent No. 3 are involved in dispute on some property jointly owned by them. Both have been seeking information pertaining to construction activity undertaken by each other and objecting to the disclosure. Appellant in the present appeal has made some allegations against respondent No. 3. However these allegations and disputes do not come under the jurisdiction of the Commission.
10. Pertinent question before the Commission is whether information sought by the applicant attracts provision of section 11 of the Act and further exempted under section 8(1)(j). On perusal of the application it is seen that the information sought is related to the structure built by the appellant. This includes construction license, approval plan, conversion sanad, permissions by Forest and Health authorities etc.

Section 8(1)(j) states as under:-

8. Exemption from the disclosure of information –(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:-

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

If one relates the provision of the above section with the information sought by the applicant, it is clear to infer that divulging of information would not relate in unwarranted privacy. The information sought is processed and generated in the office of the public authority on the documents submitted by the interested person. However, since the documents generated are from multi departmental processes and are not confidential. They are part of the functions carried by the public authority and are available in public domain. Therefore cannot be classified as personal information of third party. This implies that the appellant cannot claim exemption under section 8(1)(j).

11. Another relevant question is whether the information is eligible for exemption under section 8(1)(h) as claimed by the appellant.

Section 8(1)(h) reads as under:

8. Exemption from disclosure of information-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:-

(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

The above provision exempts disclosure of such information which would impede the process of investigation. The appellant has expressed apprehension that the matter related to the information is sub-judice before the court of Deputy Director of

Panchayats and disclosure of the same at this stage would cause interference in the process of inquiry/proceeding, since same parties are involved in the said matter.

The apprehension of the appellant, is uncalled for. In any case the court wherein the matter is being heard has access to all records and proceedings and disclosure would not impede investigation. Therefore the Commission is of the considered opinion that no harm would be caused if the information is divulged to the applicant.

12. Another important observation the Commission finds appropriate to register here is that it cannot subscribe to the argument of appellant that the information should be denied to Shri. Soares since Shri. Soares has objected the disclosure of information requested by the appellant in another matter before the PIO of Directorate of Panchayats. The Commission does not want to go into the merit of that case, since it is not before the Commission, however, the appellant may exercise his right provided in the Act, if he is aggrieved by the decision of the PIO. The Commission cannot subscribe to Tit for Tat approach.
13. Section 11 of the Act deals with disclosure of information in relation to third party. PIO, if wishes to disclose the information related to third party, is required to give written notice to such third party. Section 11 prescribes a procedure which enables PIO to take fair and just decision after following provisions of the Act and principles of natural justice. The PIO in this case, in view of the objections raised by the appellant, denied the information to the applicant (respondent No. 3). Later applicant filed first appeal and was granted relief by the FAA, however did not press for urgency before the Commission during the proceeding of this appeal. Infact Respondent No. 3 did not even file any submission.
14. In the light of above discussion and the findings, the Commission concludes that the information, disclosure of which has been objected by the appellant, is not personal information and therefore does not come under section 8(1)(j). The said information also does not qualify for exemption under section 8(1)(h) of the Act. Hence the information cannot be held back by the PIO and the same is required to be disclosed as per the

directions of the FAA. On this background, the appeal needs to be decided accordingly.

15. The appeal filed by the appellant, who is the third party, objecting disclosure of information, is bereft of merit and hence the same is dismissed

Proceeding stands closed.

Pronounced in the open court.

Notify the parties.

Authenticated copies of the order should be given to the parties free of cost.

Aggrieved party if any, may move against this order by way of a Writ Petition, as no further appeal is provided against this order under the Right to Information Act, 2005.

Sd/-

(Sanjay N. Dhavalikar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa