

GOA STATE INFORMATION COMMISSION

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

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 206/2021/SIC

Shri Nilesh Raghuvir Dabholkar,
R/o. H.No. 275/2 (New) Dabholwada,
Chapora, Anjuna,
Bardez-Goa 403509.

-----Appellant

v/s

1. The Public Information Officer,
Awal Karkun,
Office of the Mamlatdar of Bardez Taluka,
Mapusa, Bardez-Goa.

2. The Mamlatdar of Bardez Taluka,
First Appellate Authority,
Mapusa Bardez-Goa 403507.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 29/10/2020
PIO replied on	: 17/11/2020
First appeal filed on	: 28/12/2020
First Appellate Authority order passed on	: 28/07/2021
Second appeal received on	: 23/08/2021
Decided on	: 28/11/2022

ORDER

1. The second appeal filed by the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') against Respondent No. 1, Public Information Officer (PIO), Awal Karkun, Office of Mamlatdar of Bardez, Mapusa-Goa and Respondent No. 2, First Appellate Authority (FAA), the Mamlatdar of Bardez Taluka, Mapusa –Goa, came before the Commission on 23/08/2021.
2. The brief facts of this appeal as contended by the appellant are that, vide application dated 29/10/2020 filed under Section 6 (1) of the Act he had sought information on five points from the PIO. Being aggrieved by non furnishing of the information, he filed appeal dated 28/12/2020 before the FAA. Further, being aggrieved by the order of the FAA, appellant filed second appeal before the Commission.
3. Notice was issued to the concerned parties, pursuant to which appellant appeared in person. PIO was initially represented by authorized representative and later appeared in person. Appellant filed written arguments on 10/01/2022, 30/06/2022 and 27/09/2022. PIO filed reply cum submission on 14/12/2021, 13/05/2022 and

07/06/2022. Later, on 22/08/2022 PIO filed an affidavit and written arguments on 18/10/2022

4. Appellant stated that, he had sought from the PIO of the office of the Mamlatdar of Bardez, information pertaining to Sidheshwar Devasthan situated at Chapora-Anjuna, Bardez. Mamlatdar, being the Administrator of the said Devasthan must have the said information available in his records and is required to furnish the same, since the information is in public domain, however, the PIO has provided incorrect and improper information. Appellant further contented that, the PIO and the public authority are trying to mislead the Commission and under the guise of providing the information, PIO has furnished totally different information than what was requested for, hence he has been trying to escape from discharging duties enshrined under the Act.
5. PIO stated that, the information sought by the appellant was not available in his records, so he forwarded the application to the Sidheshwar Devasthan and information received from the Devasthan was furnished vide letter dated 17/11/2020 to the appellant. Later, during the present proceeding Sidheshwar Devasthan was again requested to provide additional information, to which, vide reply dated 23/05/2022 the President of the Devasthan stated that they are not liable to provide any information since the Devasthan is not the public authority under Section 2 (h) of the Act. PIO further stated that, he has taken all the efforts to furnish information available with him and has acted in accordance with the Act.
6. Upon perusal of the available records it is seen that, the appellant vide his application had sought from the office of the Mamlatdar of Bardez certain information pertaining to Sidheshwar Devasthan, Chapora, Bardez. As per Article 70 of Devasthan Regulation as approved by Diploma Legislative No, 645 dated 30/03/1933 and amended by Diploma Legislative No. 1989 dated 29/05/1959, the Mamlatdar, being the Administrator of Talukas (Concelho) is designated as Administrator of the bodies of members (mazanias), i.e. Managing Committee. The Mamlatdar is bestowed upon functions such as to watch over the execution of regulations and bye-laws, to maintain the order of regularity of the bodies (mazanias), to audit the accounts of bodies, to examine the documents and book-keeping, to transit Government decisions to the Committee etc. Meaning, Article 70 of Devasthan Regulation gives supervisory powers to the Administrator / Mamlatdar of Devasthan.

7. It becomes clear from the description in para 6 that the Administrator / Mamlatdar acts as a supervisory head of Devasthan in his Taluka. Therefore, he should be in possession of records of Devasthan pertaining to budget, audit, deposits in the form of cash and other valuables like gold and silver, minutes of the meetings of Managing Committee of Devasthan (mazanias), etc. Appellant, in the present matter, had requested for similar information and as mentioned above, the said information has to be available in the records of the Administrator / Mamlatdar of the concerned taluka.
8. PIO has stated that the information sought by the appellant was not available in his records i.e. office of the Administrator /Mamlatdar, hence he requested the Managing Committee of Sidheshwar Devasthan to provide the said information and made available the appellant whatever information received from the Devasthan. Further, President of the Managing Committee has refused to disclose additional information stating they are not the public authority under Section 2 (h) of the Act and information disclosure under the Act is not binding on the Devasthan Committee. The Commission endorses the stand taken by the President of Managing Committee of Sidheshwar Devasthan and holds that the Devasthan, not being the public authority under the Act, is not liable to furnish any information under the Act.
9. The appellant has contended that the information provided to him by the PIO is incorrect and improper, whereas, PIO's contention is that he has provided the information whatever was received from the Devasthan. The Commission observes here, that the appellant has not produced before the Commission whatever information he has received from the PIO. Hence, the Commission is unable to verify and comment on the correctness of the information provided by the PIO. The Commission cannot blindly subscribe to the contention of the appellant since the same is not substantiated by documental evidence. On the other hand, PIO has stated that, he has furnished the information as received from the Devasthan Committee. PIO had informed the appellant vide letter dated 17/11/2020, issued within the stipulated period, that he is requested to collect the information on any working day. It was appellant who raised question on the correctness of the said information, hence onus was on appellant to substantiate his contention.
10. Appellant is right in stating that the office of the Mamlatdar, being the Administrator of the Devasthan in his Talukas, is required to maintain and preserve all relevant details with documents pertaining

to the affairs of Devasthan, in the records of his office. However, PIO has consistently stated that the information pertaining to Sidheshwar Devasthan, as sought by the appellant, is not available in the records of the office of the Mamlatdar, hence he requested Devasthan Committee to provide the information, and whatever information received from the Committee is provided to the appellant. Here, the Commission notes that the Act requires the office of the Mamlatdar to maintain and preserve the relevant information pertaining to the affairs of Devasthan, in safe custody, yet the information is not available with the PIO. Hence, the Commission finds that the office of the Mamlatdar and the PIO have failed to maintain and preserve the said information and such a lapse needs to be enquired by the said authority.

11. During the hearing of the instant matter on 22/08/2022, PIO filed an affidavit before the Commission stating that the information sought by the appellant is not available in the office. The Commission has perused the affidavit and found that the PIO has clearly stated that the information is not available in his office. The Commission finds no ground to discard on disbelief the said affidavit. Consequently, the Commission concludes that information sought by the appellant does not exist in the office of the PIO, hence the same cannot be ordered to be furnished. However, needless to say that in case at any stage or at any time the statement in the said affidavit are found false, the person swearing the same would be liable for action for perjury.
12. Before closing, the Commission notes with all seriousness, the way the first appeal was disposed by the FAA. First appeal was filed on 28/12/2020. Under Section 19 (6) of the Act, FAA was required to hear and dispose the appeal within maximum of 45 days, however FAA passed order on the appeal on 28/07/2021. FAA took more than 200 days to dispose the appeal, without recording any reasons for the delay. FAA is reminded that such a delay is not acceptable under the provision of the Act.

Similarly, FAA has noted in the Roznama order dated 28/07/2021 that "the appellant is not satisfied with the information provided by Devasthan after verification, hence appeal is disposed off". Such an erroneous order from the officer of senior rank is not expected. The Commission expected the FAA to hear the appeal on merit and pass a reasoned order.

13. In the light of the above discussion and the findings, the Commission concludes that, the information sought by the appellant is not

available in the office of the PIO and the information received from Sidheshwar Devasthan was provided to the appellant by the PIO. Hence, no relief can be granted to the appellant and there is no need to recommend penal action against the PIO. However, the Commission shall direct the concerned authority to institute an enquiry into the issue of the said information being not available in the records of the PIO.

14. Thus, the present appeal is disposed with the following order:-

The FAA, Mamlatdar of Bardez is directed to undertake appropriate enquiry into the issue of information pertaining to the affairs of Sidheshwar Devasthan, Chapora-Bardez, being not available in the records. The Mamlatdar shall complete the enquiry and submit the findings to the Commission, within 6 months from the receipt of this order.

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

