

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Shri. Zeller C. De Souza,
Advocate, having office at O-S-4 and S-9,
"B" Block, Maria Luiza Plaza,
Comba, Margao- Goa.

..... Appellant

V/s

1. Block Development Officer,
Mormugao and the First Appellate Authority,
2nd Floor, Our Lady of Guia Building,
Vasco-da Gama, Goa.
2. Public Information Officer,
Village Panchayat of Cansaulim-Arossim-Cuelim,
Cansaulim, Goa
3. Shri. Deepak P. Vaigankar,
H.No. 222, Oxel,
Siolim, Bardez-Goa.
4. Shri. Narayan D. Azgaonkar,
Presently Secretary of Village Panchayat of Verna,
Verna, Salcete-Goa.

...Respondents

Appeal No. 167/2019/CIC alongwith

Appeal No. 168/2019/CIC

Appeal No. 169/2019/CIC

Appeal No. 170/2019/CIC

Appeal No. 171/2019/CIC

Appeal No. 172/2019/CIC

Appeal No. 173/2019/CIC

Filed on: 03/06/2019

Decided on: 23/06/2022

Relevant dates emerging from appeal:

| | |
|---------------------------|--------------|
| RTI application filed on | : 27/11/2018 |
| PIO replied on | : 12/12/2018 |
| First appeal filed on | : 04/01/2019 |
| FAA order passed on | : 20/02/2019 |
| Corrigendum by FAA on | : 27/02/2019 |
| Second appeal received on | : 03/06/2019 |

ORDER

1. Aforementioned seven appeals 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, First Appellate Authority (FAA), Block Development Officer, Mormugao, Respondent No. 2, Public Information Officer (PIO),

Village Panchayat of Cansaulim-Arossim-Cuelim, Respondent No. 3, Shri. Deepak Vaigankar and Respondent No. 4, Shri. Narayan D. Azgaonkar, with identical factual matrix giving rise to a similar issue and common question of law, with the consent of the parties on both sides, have been combined to be heard together and are herein decided by a common order.

2. The brief facts of these appeals as contended by the appellant are that vide application dated 27/11/2018, he had sought certain information as mentioned in the said application, from the Secretary, Village Panchayat of Cansaulim-Arossim-Cuelim /PIO. Since no information was furnished within the stipulated period, appellant filed appeal dated 04/01/2019 before the FAA. After hearing both the sides FAA disposed the appeal vide order dated 20/02/2019. Later, FAA issued a corrigendum dated 27/02/2019. Aggrieved by the said order and corrigendum the appellant approached the Commission by way of second appeal.
3. Pursuant to the notice, appellant remained present and subsequently respondents appeared before the Commission in person or through legal representative. Shri. Vidhur Phadte, Respondent No. 2 filed reply on 14/08/2019, submitted written arguments dated 30/09/2019 and additional submission on 30/09/2019. Respondent No. 4, Shri. Narayan D. Azgaonkar, the then PIO filed reply dated 06/07/2021. Respondent No. 3, Shri. Deepak Vaingankar, the then FAA filed a submission dated 18/10/2021. Appellant filed application for directions dated 30/08/2019 and application seeking clarification from Respondent No. 2 dated 30/09/2019, and furnished arguments on 29/03/2022.
4. Appellant stated that he sought specific information vide application dated 27/11/2018, however the then PIO vide reply dated 12/12/2018, termed the same as ambiguous and called the appellant to his office. Since the appellant did not know why he was asked to visit PIO's office, he did not go to the said office. No information was furnished by the PIO, hence he filed first appeal. Although the FAA heard both the sides and passed an order dated 20/02/2019, and issued a corrigendum dated 27/02/2019, the appellant did not comply with the said order and corrigendum, and termed both were illegal.

Appellant further stated that the letter dated 12/12/2018 was never referred by Respondent No. 4 before Respondent No. 1 during the proceeding of the first appeal.

However the said letter is referred by Respondent No. 1 in his order. By stating this, the appellant contended that Respondent No. 3 and 4 have manipulated the records of proceedings in the first appeal.

Appellant also stated that Respondent No. 3 and 4 have not only denied the request for information but also obstructed the furnishing of the information, for which both the respondents should be liable for penalty as provided under the Act.

5. Respondent No. 2, Shri. Vidhur Phadte, present PIO stated that the appellant has filed ten applications dated 27/11/2018 and the information requested in each application is bulky and voluminous. The appellant has sought varied information from the year 1985, about the entire village records and the PIO is required to scrutinize and apply his mind in order to furnish the information.

Respondent No. 2 further stated that, the appellant who is a panel lawyer of this village Panchayat, has been filing repeated RTI applications asking for voluminous information, which shows malafide intention of the appellant and not to serve the interest of public at large. PIO vide letter dated 12/12/2018 had requested appellant to visit his office in order to identify the information he is seeking, however the appellant refrained from visiting PIO's office.

6. Respondent No. 4, Shri. Narayan D. Azgaonkar, the then PIO stated that he was the PIO at the time of the application and subsequently transferred from the said Village Panchayat. Shri. Azgaonkar contended that the relief claimed in the first appeal before the FAA was to the extent of only directions to the respondent to furnish the information sought and there was no relief prayed against the Respondent No. 4 in the nature of an enquiry to be initiated under section 18 and section 20 of the Act, which is only an after thought and the same was never prayed before the FAA.
7. Respondent No. 3, Shri. Deepak P. Vaigankar, the then FAA submitted that, the appellant applied for information which is voluminous and more than 30 years old, the FAA in its discretion directed the appellant to inspect the files and seek the relevant information. The appellant has nowhere mentioned as to in what manner the voluminous information sought will serve public interest and the information sought for could not have been

furnished at the threshold without indentifying the information. Part of the information sought for pertained to third party information without mentioning the details of the third party, and therefore, the information could not have been furnished without affording opportunity to the third party. The order of the FAA provides for the inspection of the files and accordingly seek the relevant information and therefore the FAA is at no fault while issuing the said order.

Respondent No. 3 further stated that he is not personally liable for the actions and orders passed in the quasi judicial capacity of the FAA, hence prayer against him cannot be granted. That, corrigendum issued was only for rectifying the typographical error and there is no question of FAA being functus officio and no question of terming the order illegal, as contended by the appellant.

8. Shri. Zeller C. De Souza, appellant, while advancing arguments on 29/03/2022 stated that the questions in the RTI applications are clear and specific and not ambiguous. The information requested for is readily available in the records of PIO, hence the same should be furnished. The fact that PIO says that the information sought is voluminous and bulky means that the PIO has gone through the information and he is in the possession of the same.

Further, appellant argued that he had not referred to the PIO's reply dated 12/12/2018 before the FAA during the proceeding of first appeal, nor PIO furnished copy of his said reply to the FAA, yet FAA's order mentions the said letter, meaning FAA has connived with PIO. This amounts to misconduct by FAA in order to favour PIO.

Appellant also stated while arguing that the PIO at first instance failed to furnish the information and later at every stage has come up with new defence to shield his failure. The information requested is specific and the same needs to be furnished.

Further, the appellant argued that, the Respondent No. 4, the then PIO is responsible for not furnishing the information and Respondent No. 3, the then FAA is responsible for issuing a fraudulent order, hence he has included these respondent in their personal capacity and he prays for an inquiry to be initiated under section 18 of the Act against the Respondent No. 3 and 4

and penalise them in terms of the provisions of section 20 of the Act.

9. While the Commission looks into the application filed by the appellant before the PIO on 27/11/2018, it is seen that the application begins with the following words:-

“ The following under mentioned information is required from your Panchayat from the year 1985 onwards till date.”

Meaning, the appellant has requested for the information since the year 1985, from the records of the Village Panchayat Cansaulim-Arossim-Cuelim.

Now, let us have a glance at various points on which the appellant has sought the information vide applications dated 27/11/2018:-

- (1) All applications alongwith supporting documents relied upon by the applicants for construction in respect of structures/buildings in properties/plots having a specific area (area is as mentioned in the said application).
- (2) All construction licences alongwith the approved plans granted by your Panchayat pursuant to the applications made to your Panchayat in respect of the properties/plots having a specific area (area is as mentioned in the application).
- (3) Whether any aforementioned construction licences were granted pursuant to any resolution passed by your Panchayat or only on the basis of N.O.Cs. of your Panchayat/ Sarpanch.
- (4) Whether any construction licenses were refused and the reason for such refusal. Resolutions in such a case be furnished.
- (5) All resolutions passed by your Panchayat in granting the said construction license in respect of applications for constructions in properties/plots having a specific area (area is as mentioned in the application).

10. It appears from the said application that the appellant has requested for the information for the period of more than thirty years, pertaining to applications alongwith supporting documents for construction, all construction licenses alongwith the approved plans granted by the Panchayat, resolutions passed by the Panchayat and/or N.O.Cs. issued by the Panchayat /Sarpanch, resolutions with respect to the refusal of construction license and all resolutions passed by the Panchayat in granting the construction licenses.

The information requested pertains to every construction plan, sanctioned/rejected by the Village Panchayat in its jurisdiction, since 1985. Thus the same means that the appellant has sought for almost entire records pertaining to constructions in the jurisdiction of the Panchayat since 1985. Meaning the information sought is indeed bulky and voluminous. The Commission endorses the fact that for the PIO, along with his limited manpower, it was not possible to furnish the said voluminous information while carrying out day to day functioning of his office. Therefore, PIO vide letter dated 12/12/2018 requested the appellant to approach the office of the Village Panchayat on any working day with prior appointment. Appellant could have visited the office of the PIO and identified the documents, it would have been binding on the PIO to furnish the requested and identified information to the appellant. However appellant chose not to visit PIO's office and filed first appeal, and later approached the Commission by way of second appeal. With this the appellant, instead of seeking the information, has made mountain out of a molehill.

11. The Commission has perused the submissions of both the sides and heard arguments. After careful perusal, the Commission arrives at following findings:-

a) Appellant vide applications dated 27/11/2018 has sought information alongwith supporting documents, resolutions etc. pertaining to almost all construction activities taken place in the jurisdiction of Village Panchayat Cansaulim-Arossim Cuelim since 1985. The requested information though not ambiguous, is indeed voluminous. Section 7 (1) of the Act mandates PIO to furnish the information within 30 days, however this being the case where information sought is voluminous, the PIO requested appellant to visit his office in order to identify the information. This being the rare case

where bulky and voluminous information is sought the appellant should have visited the PIO's office and helped the PIO to identify the information. Instead, he preferred appeal before the FAA and later before the Commission. It appears that the appellant is more interested in seeking penal action against the respondents than getting the information.

- b) As per section 6(2) of the Act, the appellant is not required to give any reason for requesting the information. However in this case the Appellant, who is seeking voluminous information, could have stressed on larger public interest. Identifying and furnishing of the said information involves use of huge resources. In such a situation, the appellant, being a responsible citizen could have cited the public interest in seeking the information, or could have stated during the arguments that he is seeking this information in larger public interest, and/or to bring transparency and accountability in the administration, which is the aim behind enacting the RTI Act. Appellant failed to cite public interest in seeking such voluminous information.
- c) Appellant has termed the order dated 20/02/2019 and corrigendum dated 27/02/2019 issued by the FAA, as illegal and has accused the FAA of manipulating his order. However it is noted that the FAA has passed the said order after giving due hearing to both the sides, corrigendum dated 27/02/2019 issued by the FAA was only to rectify the typographical error and there is nothing illegal in issuing the said corrigendum to correct the typographical error.
- d) Appellant's allegation of fraud regarding the reference of letter dated 12/12/2018 do not sustain since the appellant had received the said letter and the same is part of the procedure of this appeal. The said letter was duly sent by the PIO within the stipulated period and was received by the appellant.
- e) The PIO cannot be held guilty for failing in furnishing the information mainly because of the fact that the appellant did not visit PIO's office in order to identify the information. Also, the FAA vide his order dated 20/02/2019 had provided for inspection of the records, however the appellant, instead of adhering to the order of the FAA, preferred second appeal, before the Commission. The appellant, who is an information seeker, being a responsible citizen was required to adhere to

the order of the FAA. The said action of the appellant indicate that he is more interested in ensuring action against the respondents, and not in getting the information.

- f) The respondent's contention that the part information being of personal nature is exempted under section 8(1)(j) of the Act is not acceptable. Though the information appears to be personal in nature, the same have been furnished before the public authority and the authority, based on these documents has taken decision to sanction/reject the license, hence the said information is in public domain and the same is not exempted. Therefore, the information sought by the appellant, if identified by him from the records of the PIO, is required to be furnished by the PIO, as the same is not eligible for exemption under section 8(1)(j) of the Act.

12. The hon'ble Supreme Court of India in Civil Appeal No. 6454 of 2011 (arising out of SLP (c) No. 7526/2009) in the case of Central Board of Secondary Education and Another V/s Aditya Bandopadhyaya and Ors. has held in para 37:-

"37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of

the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties."

13. Subscribing to the ratio laid down by the Apex court and with the findings of the Commission as mentioned above, the Commission concludes that the PIO has not failed in his mandate and no malafide on the part of the PIO and the FAA has been established. It is important to note that at no stage the PIO has denied the information to the appellant, rather he was willing to furnish the same after identification from the appellant. It is the appellant who refused to visit PIO's office and later refused to adhere to the directions of the FAA and opted for the appeal proceedings. Further, furnishing of information of more than 30 years in 30 days which includes holidays, while discharging his regular duties, is unrealistic and PIO is justified in calling the appellant for inspection and identification of documents/information requested vide RTI application.
14. Appellant, in prayer (a) has prayed to the Commission to call for the records and proceedings in the first appeal disposed off by the Respondent No. 1 and quash and set aside the order and corrigendum. However, the Commission does not find any such need to call for the records and proceeding in the first appeal since no wrong has been established in the said proceeding. Since no wrong has been established in the said proceeding. Further, the Commission partially upholds the order of the FAA/Respondent No. 1, and rejects the prayer of setting aside the said order and the said corrigendum.

15. Appellant, further in prayer (a) has prayed for direction to the respondent No. 2 to furnish the information as sought vide application dated 27/11/2018, free of cost. Here, the Commission observes that the appellant is required to visit PIO's office and identify the information in order to enable the PIO to furnish the information. Similarly, delay in furnishing the information has been caused due to the refusal of the appellant to visit PIO's office, hence the appellant is responsible for such delay and for this reason, he has to pay the requisite charges before collecting the identified information.
16. Appellant, in prayer (b) has prayed to the Commission for an inquiry under section 18 against the Respondent No. 3 and 4 and penalise them in terms of the provisions of section 20 of the Act. Section 18(2) of the Act provides for initiating an inquiry if there are reasonable grounds to inquire into the matter. As mentioned in above paragraphs, there are no reasonable grounds exists, hence no inquiry needs to be initiated against the Respondent No. 3 and 4. Further, respondents have not denied the information, hence they cannot be held guilty of the failure to supply the information. Subscribing to the ratio laid down by the Hon'ble High Court of Bombay at Goa bench, in writ Petition No. 205/2007, Shri. A. A. Parulekar V/s Goa State Information Commission, there is no need to invoke section 20 of the Act against the respondents.
17. In the light of above discussion, the Commission concludes that the prayer (a) and prayer (b) are bereft of merit, thus the same needs to be rejected. However, in order to keep the spirit of the Act intact, the appellant has to be afforded an opportunity of identifying the documents he wishes to seek. Thus the appeal is disposed with the following order:-
- a) The appellant, if desires may visit PIO's office and inspect and identify the information sought vide application dated 27/11/2018, within 30 days from the date of receipt of this order.
 - b) The PIO is directed to provide for the inspection to the appellant as mentioned in para (a) above and furnish the information identified by the appellant, within 10 days from the final day of the inspection, after receiving requisite charges from the appellant.

c) All other prayers are rejected.

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