

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 54/2022/SIC

Madonna Almeida,
H. NO. 257/1, 3rd ward, Bagdem,
Colva, Salcete, Goa

..... Appellant

V/s

1. The Public Information Officer (PIO),
O/o. Town and Country Planning Department,
Quepem, Goa
2. The First Appellate Authority,
Senior Town Planner (South)
Town and Country Planning Department,
Salcete, Margao, Goa

... Respondents

Filed on: 17/02/2022

Decided on: 08/07/2022

Relevant dates emerging from appeal:

RTI application filed on	: 26/11/2021
PIO replied on	: 29/12/2021
First appeal filed on	: 27/12/2021
FAA order passed on	: 09/02/2022
Second appeal received on	: 17/02/2022

ORDER

1. The second appeal filed under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') by the appellant against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), Town and Country Planning Department came before the Commission on 17/02/2022.
2. The brief facts of this appeal as contended by the appellant are that vide application dated 26/11/2021, she sought information on three points from the PIO. Having received no reply from the PIO within the stipulated period, she filed appeal dated

27/12/2021 before the FAA, which was decided vide order dated 09/02/2022. Terming the said order as arbitrary and unlawful, the appellant approached the Commission by way of second appeal.

3. Pursuant to the notice, PIO appeared in person on 05/04/2022 and filed affidavit in reply on 26/04/2022. On the other hand, the appellant appeared before the Commission on 26/04/2022 and later filed reply dated 01/06/2022.
4. PIO stated that the information sought is a mammoth volume of certified copies with respect to applications received by the authority and vide letter dated 29/12/2021, he informed the appellant that the staff of the office could not be directed to sort out the information. PIO further stated that the department is understaffed and whatever personnel is available has to deal with the day today applications and several other functions and duties allotted to them. Therefore, the appellant was informed that the information sought is likely to disproportionately divert the resources of the authority, and in effect the said application was rejected in terms of section 7(9) of the Act.

PIO further contended that the information sought at Point No. 2 is ambiguous. Similarly, information requested under Point No. 3 is data concerning the documents not processed within the time limit set up under the Goa (Right of Citizens to Time Bound Delivery of Public Services) Act, 2013. This would first require to conduct an enquiry and fix liability with regard to a large number of applications, reports, inspection reports etc and the said exercise is not within the ambit of the PIO. PIO further stated that he is ready to provide the inspection of the relevant records to the appellant to enable her to identify and seek information with specific applications, reports, sketches etc.

5. Appellant submitted that the information sought pertains to a period of less than two months and section 4 of the Act mandates maintenance of records in a catalogued manner, hence PIO's contention of mammoth volume is misleading and incorrect. Information requested vide her application qualifies as information under section 2(f) and 2(j) of the Act and being a citizen she is eligible to seek the said information. Section 5 of the Act makes it mandatory for any public authority to have a PIO to disperse the information sought by the citizen.

Appellant further stated that the PIO has failed to produce any evidence in support of his contentions. Similarly, there is no question of inspection of records as mentioned by the PIO in his reply, since the information sought is clearly mentioned in the application and the same is available in the records of the PIO. Appellant submitted that the requested information is in larger public interest and the same is in respect of transparency in the working and functioning of the public authority.

6. After careful perusal of the records of this case, the Commission notes that the appellant vide application dated 26/11/2021 has sought information on three points. PIO vide reply dated 29/12/2021 expressed inability to furnish the information stating that the shortage of manpower did not allow him to engage the staff with the work of tracking the records and refused to furnish the information by quoting section 7(9) of the Act. Further, the FAA while upholding PIO's decision held that the required information is not readily available in office records and it requires to divert disproportionate available resources in order to create and provide information to the appellant.

7. Section 7(9) of the Act states:

An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resource of the public authority or would be detrimental to the safety or preservation of the record in question.

The above mentioned sub section deals with the disposal of request and not denial of request. It refers to the disposal of request wherein the appellant seeks information in a particular form. The said sub section does not provide for denial of request.

8. Section 7(1) mandates the PIO to furnish the information within 30 days or reject the request for any of the reasons specified in section 8 and section 9, and even if the request is rejected under section 7(1) of the Act, the PIO under section 7(8) of the Act is required to communicate to the appellant the reasons for rejections. In the present matter PIO has rejected the request under section 7(9) of the Act, which cannot be accepted.
9. The Commission upholds the contention of the appellant that the information sought qualifies as information under section 2(f) and it is her right to seek the same under section 2(j) of the Act. Hence the Commission cannot subscribe to the stand of the PIO to reject the information, nor can endorse the order of the FAA which upholds the decision of the PIO.
10. It is seen that the appellant has sought information on three points and the information on Point No. 1 and 2 has to be readily available in the records of the PIO. Shortage of staff in his office does not allow PIO to reject the request of any citizen. However, information sought under Point no. 3 amounts to creating and collecting the information.

11. Hon'ble Supreme Court in a decision reported in AIR 2012 Pat 60; letters appeal no. 1270 of 2009 in Civil Writ Jurisdiction Case 11913/2009 ; Shekarchandra Verma V/s State Information Commissioner, Bihar has held:-

" In our view, the RTI Act contemplates furnishing of information which is available on record, but it does not go so far as to require an authority to first carry out an inquiry and collect, collate information and then to make it available to applicant."

12. The above judgement of the Apex Court makes it clear that the PIO is duty bound to furnish the information available in records, as available and as exists. PIO has not claimed that the information on Point No. 1 and 2 of the application is not available, hence he is required to furnish the same. However, regarding information on Point No. 3, the Commission observes that the appellant is required to visit the office of the PIO and identify the requested information in order to enable the PIO to furnish the same.

13. PIO has refused the information by wrongly interpreting section 7(9) of the Act. However, the Commission finds that no malafide can be attributed to the action of the PIO since the said action was based on wrong interpretation of section 7(9) of the Act. Thus subscribing to the ratio laid down by the High Court of Bombay at Goa, in A. A. Parulekar V/s Goa State Information Commission, it is concluded that there is no need to invoke section 20 of the Act against the PIO for penal action .

14. In the light to of above discussion, the present appeal is disposed with the following order:-

- a) PIO is directed to furnish information sought by the appellant on Point No. 1 and 2 of her application dated 26/11/2021, within 30 days from the receipt of this order, free of cost.
- b) Appellant if desires, may undertake inspection of records pertaining to Point No. 3 of her application dated 26/11/2021, within 15 days from the receipt of this order.
- c) PIO is directed to provide for the inspection as mentioned above at Para 14(b) and furnish the indentified information within 15 days from the last day of the inspection, free of cost.
- d) All other prayer 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