

GOA STATE INFORMATION COMMISSION
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**Appeal No. 111/2022/SCIC
&
Appeal No. 113/2022/SCIC**

Mr. John Philipe Pereira,
R/o. H.No. 520, Mazilwada,
Nagao, Salcete-Goa 403713.

.....Appellant

V/S

1. The Public Information Officer,
Office of the Administrator of Comunidades,
South Zone, Margao-Goa 403601.

2. The Escrivao of Comunidade of Cortalim,
Cortalim-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 20/04/2022

Decided on: 26/04/2023

FACTS IN BRIEF

1. Both these appeals involve common question of law and facts and therefore are decided by this common judgement.
2. For convenience, I refer to facts of appeal in Appeal No. 111/2022/SCIC.
3. The Appellant, Mr. John Philipe Pereira r/o. H. No. 520, Mazilwada, Nagao, Salcete-Goa vide application dated 29/09/2021 filed under the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Office of Administrator of Comunidades, South Zone, Margao-Goa:-

"It is submitted that I am an Indian National, residing at the abovementioned address.

It is further submitted that the clerk in charge of Cortalim Comunidade had issued a certificate dated 12th April 2021, to

Mr. Isidoro Agotinho Tome Carvalho, resident of Cortalim Goa, stating that the Lote No. 74(Part), was granted on permanent lease on emphyteusis to Mrs. Maria Pia Sobrinho e Carvalho, in connection to the file No. 19/1958 (copy of the said certificate is enclosed herewith)

Kindly issue to me copies of the following documents concerning the entries made in the Tombo register in connection with the file No. 19/1958 of Cortaim Comunidade, pertaining to which the abovementioned certificate has been issued:-

- 1. Name of the property and its location.*
 - 2. Name and residence of the possessor.*
 - 3. Amount of foro and taxes inherent to it.*
 - 4. Boundaries of the lote No. 74.*
 - 5. Number of the transfers.*
 - 6. Documents that were presented and the name of the person who had presented the same.*
 - 7. Date of issue.*
 - 8. Subsequent transfer if any and the copies of the documents of such transfers.*
 - 9. Documents pertaining the details of the foro paid as also the payment of other taxes.”*
4. The said application was not responded by the PIO within the stipulated time, deeming the same as refusal, the Appellant preferred first appeal before the Additional Collector – I, South Goa District at Margao-Goa being the First Appellate Authority (FAA).
5. The FAA by its order dated 15/02/2022 allowed the first appeal and directed the PIO to furnish the information free of cost to the Appellant within 15 days.

6. Since the PIO failed and neglected to comply the order of the FAA dated 15/02/2022, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act with the prayer to direct the PIO to furnish the information and to impose maximum penalty for not furnishing the information.
7. Notices were issued to the parties, pursuant to which the representative of the Appellant, Adv. Uday S. Naik appeared on 16/05/2022, the PIO Raju Desai appeared and filed his reply on 29/09/2022 and submitted that the information sought by the Appellant pertains to records held by and under the custody of Comunidade of Cortalim and submitted that, the Escrivao of Comunidade of Cortalim may be added as a party in the second appeal.
8. On 05/01/2023, the Appellant moved application and urged to add, Shri. Shivdas H. Borkar, Escrivao of Comunidade of Cortalim as the Respondent No. 2 in the present appeal. In the interest of justice and fairness, the said application was granted and notice was issued to the Respondent No. 2 to appear in the matter. Though served, the Respondent No. 2 failed and neglected to appear in the matter for the reason best known to him.
9. The PIO through his reply dated 29/09/2022 contended that, upon the receipt of the order of the FAA dated 15/02/2022, he issued Memorandum to the Escrivao / LDC of the Comunidade of Cortalim on 28/02/2022 with the direction to submit the information. However, in response to the Memorandum, the Escrivao of Comunidade of Cortalim informed him that in view of Resolution adopted by the Comunidade of Cortalim in its extra ordinary meeting dated 21/09/2016 that Comunidade of Cortalim is not coming within the preview of the Right to Information and being so the, information sought for by the Appellant has been declined.

The PIO also produced on record the copy of the Resolution adopted by the Comunidade of Cortalim and copy of the Order of the Hon'ble High Court of Bombay at Goa in Writ Petition No. 722/2017 and Writ Petition No. 1004/2017.

10. Perused the pleadings, reply and scrutinised the documents on record.

11. On perusal of record, it is revealed that the Comunidade of Cortalim, Cortalim-Goa has adopted a Resolution in the Extra Ordinary Meeting of the Managing Committee; for the purpose of better convenience the said Resolution is reproduced as under:-

"Item No 1:- Placed before the Managing Committee memorandum No. ACSZ/120/RTI/2016-17/468 dated 21/09/2016.

The Managing Committee wishes to inform that the Comunidade of Cortalim is a private agricultural society which is governed by the Code of Comunidade and does not come under the purview of Right to Information Act.

Further it was also informed vide resolution of the Managing Committee dated 1st August, 2016 also informed that the Comunidade of Cortalim does not come under the purview of Right to Information Act, hence the application is rejected."

12. In view of the above, the following issue arises for consideration of the Commission:

"Whether information can be rejected to the citizens under RTI Act on the basis of Resolution adopted by the Managing Committee of Comunidade of Cortalim, Salcete-Goa?"

13. Under Article 1 of the Code of Comunidades, the Comunidades existing in the District of Goa shall be governed by the provisions of the "Code of Comunidades". Therefore, they are not fully independent or supreme bodies but subordinate to the State as far as its administration is concerned. Hence the Administrator of Comunidades being public authority is the controller of administration of the Comunidades whose competence is expressly stated in Article 125 of the Code of Comunidade.
14. For the purpose of better understanding, it would be appropriate to refer Article 118 of the Code, as amended by Goa Act No. 3 of 1998:-

*"**Art.118.**-In each of the administration office of the Comunidades of Goa, Salcete and Bardez, the respective administrator shall be appointed by the Governor General, on deputation from amongst the **junior grade officers of Goa Civil Service** and possessing the minimum qualification of 3rd cycle of Lyceum"*

*The duties of the clerk of Comunidade under the Code, as amended by Goa Act no.3 of 1998, dated 17/1/1998, are as contained at article 88. It reads:
"Art.88- The clerk of the Comunidades- shall, in particular, be bound to:-*

a) Keep the books and accounts;

b) Keep custody and maintain the archives, which they can do at their residence, with the permission of the administrator when the Comunidade does not have its own building for that purpose;

All the land dealings and transactions shall be kept open and shall be made available at least for ten years. Copies of such land dealings or any such important matters shall be sent to the Administrator of Comunidades, for maintaining duplicate copies in his office.

c)-----

*d) **Provide information which the administrator may require**, within the period of five days and the necessary clarifications that may have been requested by any member; "*

15. It is a matter of fact that, under Article 5 of the Code of Comunidades, the Comunidades shall be under the Administrative tutelage (guardianship) of the State. That being the case, the appropriate Government has appointed Administrator of Comunidades, South Zone as an administrative head. Therefore, under the RTI Act, the office of the Administrator of Comunidade, South Zone is a public authority and coming within the purview of the Section 2(h) of the RTI Act.

16. Section 2(f) of RTI Act defines information as under:-

"2. Definitions. In this Act, unless the context otherwise requires,___

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public

authority under any other law for the time being in force; "

17. Thus, considering the requirement of the Act and even assuming that the appellant herein is a private body, the information pertaining to it can be accessed by a public authority viz. the Office of Administrator under 88(d) of the Code. The code further makes it mandatory on the part of Comunidades to part with the information to the office of Administrator whenever called by it. The Administrator of Comunidades functions under Code of Comunidades, and is a public authority within the meaning of Section 2(h) of the Act. As a public authority, the Administrator of Comunidade, South Zone, Margao has been conferred with lot of statutory powers under the said Code under which he is functioning. He is also duty bound to comply with the obligation under the RTI Act and furnish the information to the Appellant under the Act. In the circumstances, I find no irregularity or illegality on the part of the Respondent No.1 in seeking information from the appellant.

18. Now coming to the adoption of Resolution by the Managing Committee of the Comunidade of Cortalim, Cortalim- Goa dated 21/09/2018, the same is not sustainable in law. As discussed above, the Government has the control over the functioning of the Comunidade of Cortalim through Administrator of Comunidades of South Goa. Therefore, the Administrator of Comunidades is a public authority within the meaning of Section 2(h) of the Act. As a public authority, the Administrator of Comunidades has been conferred with lot of statutory powers under the Code of Comunidades. He is also duty bound to comply with the obligation under RTI Act and furnish the information to a citizen under the Act.

19. High Court of Delhi in the case **Poorna Prajha Public School v/s Central Information Commission & Ors. (2009 SCC On Line Del 3077)** has observed as under:-

"8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f) expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term "held by or under the control of any public authority" in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term "information" as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term "information" in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and

the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.

13. *If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied."*

20. The High Court of Jammu and Kashmir and Ladakh in a recent judgement in the case **Tyndale Biscoe School & Ors. v/s Union Territory of J & K & ors. (AIR 2022 J&K 112)** it is observed as under:-

"14. *Definition of two expression i.e. "information" and "right to information" given in Section 2(h) and 2(j) of the Act of 2005 when considered in juxtaposition and interpreted in harmony with each other would unequivocally and clearly manifest that not only the information which is held by the public authority can be accessed under the Act of 2005 but such information as is under the control of such authority, too, can be accessed. Information relating to any private body which can be accessed by a public authority under any other law for the time being in force can also be*

accessed by the information seeker under the Act of 2005. There is no doubt that in terms of Section 22, Act of 2005 has been given overriding effect over any other law for the time being in force or instrument having effect by virtue of any law other than the Act of 2005. It is, thus, axiomatic that if a public authority has a right and is entitled to access information from a private body under any other law, it is information as defined in Section 2(f) of the Act of 2005. The term "held by or under the control of any public authority" used in Section 2(j) of the Act of 2005 will include information to which a public authority has right to access from a private body under any other law."

21. In the present case, the Administrator of Comunidades, South Zone, Margao-Goa being the designated PIO under the Act, it is within his jurisdiction to call for information from the Clerk or Escrivao of Comunidade of Cortalim, even if the same is in the custody of Comunidade.

Being APIO it is obligatory on the part of the Escrivao of Comunidade of the Cortalim, Cortalim, Goa, to act promptly in furnishing the purported information. Needless to say that, Respondent No. 2 and 3 shall be entitled to deny information sought by the Respondent No. 1 (PIO) in terms of exemption granted under Section 8 of the Act.

22. By passing a resolution dated 21/09/2016, the Managing Committee of Comunidades of Cortalim, Salcete, Goa has deliberately deprived the legitimate right of the citizen which he enjoyed through the Constitution of India. Therefore, the stand taken by the Managing Committee of Comunidade of Cortalim, Salcete, Goa has no legal backing and hence null and void in

the eyes of law. The Respondent No. 1 and 2 have failed to concede the mandate of the Act.

23. The Delhi High Court in case of **J.P. Agarwal v/s Union of India and Ors. (W.P. 7232/2009)** held that:-

"7..... Under section 6(1) and 7(1) of the RTI Act, it is PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirement of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department, if the PIO finds a default by those from whom he has sought information the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO."

24. The PIO also failed to comply the order of the FAA dated 15/02/2022. The High Court of Gujarat in the case **Urmish M. Patel v/s State of Gujarat & Ors. (Spl. C.A. No. 8376/2010)** has held that, penalty can be imposed if order of the FAA is not complied with by the PIO.

25. The High Court of Bombay, Goa Bench in the case **Johnson B. Fernandes v/s the Goa State Information Commission & Anrs. (2012 (1) ALL MR 186)** has held that, law contemplates supply of information by the PIO to the party who seeks it, within the stipulated time, therefore when the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.

26. I have perused the judgement of the Hon'ble High Court of Bombay at Goa relied upon by the PIO in the **case Tome Carvalho v/s State of Goa, through Chief Secretary & Ors. (Writ Petition No. 722/2017)** and **The Comunidade of Mapusa v/s The Public Information Officer & Anrs. (Writ Petition No. 1004/2017)** in support to his submission. In my view these P.C. orders do not support the case of the Respondents and in fact go against them. For better understanding the operative part of the order dated 12/06/2018 is extracted below:-

".....We make it clear, in these circumstances, we have not stayed the pronouncement of law by the State Information Commission."

Considering the above facts, the stand taken by the Respondents are not tenable in the eyes of the law.

27. Considering the ratio laid down by various High Courts, the Commission comes to the conclusion that, it is fit case for imposing penalty under Section 20 of the Act against the PIO. However, before any penalty is imposed, the principle of natural justice demands that the explanation be called for from the concerned PIO, as to why he failed to discharge the duty cast upon him as per the RTI Act. I therefore pass following:-

ORDER

- The appeal is allowed.
- The Respondent No. 1, the Public Information Officer of Administrator of Comunidades, South Zone, Margao-Goa and Respondent No. 2, the Escrivao of Comunidade of Cortalim, Salcete-Goa is hereby directed to provide the information to the Appellant free of cost as per his RTI application dated 29/09/2021 within the period of **FIFTEEN DAYS** from the date of receipt of the order.

- The PIO, Administrator of Comunidades, South Zone, Margao-Goa is hereby directed to show cause as to why penalty should not be imposed on him in terms of Section 20(1) and / or recommend for disciplinary proceeding against him in terms of Section 20(2) of the Act.
- The reply to the show cause notice to be filed on **20/06/2023 at 10:30 am.**
- The appeal is disposed accordingly.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner