

GOA STATE INFORMATION COMMISSION
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Appeal No. 185/2022/SCIC

Shri. Lavu Pandurang Halarnkar,
R/o. H.No. 81, Chavthevaddo,
Ibrampur, Pernem-Goa 403503.

.....Appellant

V/S

1. The Public Information Officer,
Office of the Administrator of Comunidades,
North zone, Mapusa-Goa 403507.

2. Attorney,
Comunidade of Ibrampur,
Ibrampur, Pernem-Goa.

3. Mr. Gopi Naik,
Clerk of Comunidade of Ibrampur,
Office of the Administrator of Comunidades,
North zone, Mapusa-Goa 403507.

4. The First Appellate Authority,
The Additional Collector-III,
Mapusa, Bardez-Goa 403507.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 05/07/2022

Decided on: 27/02/2023

FACTS IN BRIEF

1. The Appellant, Shri. Lavu Pandurang Halarnkar r/o. H.No. 81, Chavthevaddo, Ibrampur, Pernem-Goa vide application dated 25/10/2021 filed under the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of Administrator of Comunidades, North Zone, Mapusa-Goa.
2. The PIO of the Administrator of Comunidades transferred the said application to the Clerk/ Escrivao of Comunidade of Ibrampur vide letter dated 30/11/2021 under Section 5(4) of the Act.

3. Upon receipt of the reply from the Escrivao of Comuindade of Ibrampur, the PIO responded back to the Appellant vide letter dated 21/12/2021 thereby denying to disclose the information.
4. Feeling aggrieved with the reply of the PIO, the Appellant preferred first appeal before the Additional Collector –III at Mapusa, Bardez-Goa being the First Appellate Authority (FAA).
5. The FAA by its order dated 29/03/2022 allowed the first appeal and directed the PIO to furnish the information to the Appellant within 10 days.
6. Since the PIO failed and neglected to adhere the order of the FAA dated 29/03/2022, the Appellant landed before the Commission by way of second appeal under Section 19(3) of the Act with the prayer to direct the Respondents to furnish the information and to impose penalty on the PIO and other reliefs.
7. Notices were issued to the parties, Appellant appeared alongwith Adv. Arjun F. Naik on 12/08/2022. In spite of valid service of notice none of the Respondents appeared before the Commission. Since the Respondents failed and neglected to appear in the matter, I am disposing this second appeal upon hearing the Advocate for the Appellant and upon considering the documents on record.
8. On perusal of record, it is revealed that, the Appellant has filed an application under Section 6(1) of the Act on 25/10/2021 before the Respondent No. 1, the Administrator of Comunidades at North Goa, being the PIO, upon which the PIO sought the assistance from the Respondent No. 2 under Section 5(4) of the Act thereby requesting to submit the information within 7 days.
9. Upon the receipt of the communication from the representative of the Respondent No. 1, the Comunidade of Ibrampur, Pernem Goa adopted a Resolution in the ordinary meeting of the Managing

Committee for the purpose of better convenience said Resolution is reproduced as under:-

"Comunidade of Ibrampur

Proceedings of ordinary meeting of the managing committee of Ibrampur comunidade of Pernem taluka:

On 18th December 2021 at 10.30 am and at the meeting place of above comunidade, the managing committee consisting President Shamsundar M. Gawas Treasurer Atmaram Bappa Gawas Attorney Satyam Vasant Gawas and myself G. N. Naik clerk of above comunidade came to deliberate up on below matter:-

Reso no. M.C. 04/21.

To discuss on the Memorandum No. ACNZ/ RTI/114/ 2020-21-1361 dt 30/11/2021 And enclosed RTI application of Shri. Lavu Pandurang Halarnkar dt 205/10/2021 with a request to provide information under RTI act 2005.

The clerk of comunidade place before the managing committee the above subject of RTI application of above person.

The managing committee verified the application and state as below:-

That the information sought under the Right to Information Act by Mr. Lavu Pandurang Halarnkar cannot be furnished as the comunidade do not come under the Right to information Act as it is private body and not a public body. Further the comunidade is governed by private law i.e the code of comunidade

which is private law and therefore the information sought under Right to information Act cannot be given.

There being no more subject to be discussed and the present meeting has been closed by the President order the above content of the resolution read by the present members they found it correct and are signing below. "

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

"Whether information can be rejected to the citizens under RTI on the basis of Resolution adopted by the Managing Committee of Comunidade of Ibrampur, Ibrampur, Pernem Goa?"

11. It is a matter of fact that, under Article 5 of the Code of Comunidades, the Comunidades shall be under the Administrative tutelage of the State. That being the case the appropriate Government has appointed Respondent No. 1 as the Administrator of Comunidades North zone and hence he is the designated PIO under RTI Act.

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 concern. 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.

12. 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 3 rd 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 achieves, 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; "

13. Thus under the Code of Comunidades, the office of administrator, which is a public authority under the Act, has been granted access to the information held by the Comunidades.

14. 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; "

15. Thus considering the requirement of the act and even assuming that the appellant herein is 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. Thus under the RTI Act, PIO of Administrator of Comunidade, a public authority can call for such information. In the circumstances I find no irregularity or illegality on the part of the Respondent No.1 in seeking information from the appellant.

16. Now coming to the adoption of Resolution by the Managing Committee of the Comunidade of Ibrampur, Pernem- Goa dated

18/12/2021 the same is not sustainable in law. As discussed above the Government has the control over the functioning of the Comunidade of Ibrampur through Administrator of Comunidades of North 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.

17. 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."*

18. 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."

- 19.** Hon'ble Supreme Court in the case **Thalappalam Service Cooperative Bank Ltd. and Ors. v/s State of Kerala & Ors. (2013 16 SCC 82)**:-While considering the question as to whether a co-operative society registered under the Kerala Co-operative Societies Act 1969 would fall within the definition of 'Public authority' under Section 2(h) of the Act and be bound by the obligations to provide information sought by the citizen under the

Act. It was held that Co-operative Society which was not a 'public authority' as defined by Section 2(h) of the Act was nevertheless bound to supply information to the Registrar of Co-operative Societies under the Act governing such co-operative society. The Registrar functioning under the Co-operative Societies Act was a 'public authority' within the meaning of Section 2(h) of the Act and hence as a public authority he could exercise of statutory powers under the Kerala Co-operative Societies Act 1969 gather information from a society on which he had supervisory or administrative control.

20. In the present case, the Administrator of Comunidades, North Zone, Mapusa-Goa being the designated PIO under the Act, it is within his jurisdiction to call for information from the Clerk or attorney of Comunidade of Ibrampur, even if the same is in the custody of Comunidade.

Being APIO it is obligatory on the part of Attorney of Comunidade of the Ibrampur, Pernem 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.

21. By passing a resolution dated 18/12/2021, the Managing Committee of Comunidades of Ibrampur, Pernem, Goa has deliberately deprived the legitimate right of the citizen which he enjoyed through Constitution of India. Therefore, the stand taken by the Managing Committee of Comunidade of Ibrampur, Pernem, Goa has no legal backing and hence null and void in the eyes of law. The Respondent No. 1, 2 and 3 have failed to concede the mandate of the Act.

22. On perusal of records, it can be seen that inspite of valid service of notice, the Respondents have failed and neglected to appear before the Commission for hearing Viz. 12/08/2022, 23/09/2022, 01/11/2022, 30/11/2022, 23/12/2022, 01/02/2023, 14/02/2023 and 27/02/2023, thus shown complete lack of concern to the process of RTI Act and failed to discharge their duty and responsibility which amounts to abuse of process of law.
23. The PIO also failed to comply the order of the FAA dated 29/03/2022. 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.
24. 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.
25. 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.
- (i) The Respondent No. 1, the Public Information Officer of Administrator of Comunidades, North Zone, Mapusa-Goa

(ii) The Attorney of Comunidade of Ibrampur, Ibrampur, Pernem-Goa and (iii) Mr. Gopi Naik, the Clerk of Comunidade of Ibrampur, Office of Administrator of Comunidades, North Zone, Mapusa-Goa is hereby directed to provide the information to the Appellant free of cost as per his RTI application dated 25/10/2021 within the period of **FIFTEEN DAYS** from the date of receipt of the order.

- The PIO, Administrator of Comunidades, North zone, Mapusa, Bardez-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 **03/04/2023 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