

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 101/2022/SCIC

Namdev R. Gawde,
Block-I, F-12, First Floor,
Madhu-Vihar Co-op Housing Society Ltd.,
St.Inez, Panaji-Goa.

.....Appellant

V/S

1. The Public Information Officer (PIO),
Dy. Conservator of Forests,
North Goa Division,
Ponda-Goa.

2. The First Appellate Authority,
Conservator of Forests,
Office of Principal Chief Conservator of Forest,
Goa Van Bhawan,
Forest Department,
Altinho, Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 01/04/2022

Decided on: 22/06/2023

FACTS IN BRIEF

1. The Appellant, Shri. Namdev R. Gawde r/o. Block-I, F-12, First Floor, Madhu-Vihar Co-op Housing Society Ltd., St. Inez, Panaji-Goa vide his application dated 08/10/2021 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Deputy Conservator of Forests, North Goa Division at Ponda-Goa.
2. The said application was responded by the PIO on 01/11/2021 in the following manner:-

"With reference to your application dtd. 08/01/2021 received in this office on 11/10/2021 under Right to Information Act, 2005, this is to inform you that the information sought by you is as under:-

<i>S.No.</i>	<i>Information asked</i>	<i>Information provided</i>	
1.	<i>Copy of diary of inspection report carried out on 18/09/2021 by Forest Officer Tuem, Pernem.</i>	<i>Since the inquiry is in progress the information sought by you is denied under Section 8(1) of RTI Act, 2005.</i>	
2.	<i>Copy of diary of inspection report carried out on 21/09/2021 by Forest Office Tuem.</i>		
3.	<i>Copy of Panchanama carried out by Forest Officer of Tuem</i>		
4	<i>Statement copy & additional statement copy of Raghunath Joshi.</i>		
5.	<i>Charge sheet copy against Raghunath Joshi.</i>		<i>Not applicable</i>
6.	<i>All other remaining documents related to my complaint against said Raghunath Joshi.</i>		<i>Information available in 2 pages</i>

3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Conservator of Forest (Conservation), Goa Van Bhawan, Altinho, Panaji-Goa being the First Appellate Authority (FAA).
4. The FAA vide its order dated 04/01/2022 partly allowed the first appeal and directed the PIO to furnish the information at point No. 01, 02 and 03 free of cost to the Appellant within the period of 15 days.
5. Since the PIO failed and neglected to comply with the order of the FAA dated 04/01/2022, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act.

6. Notices were issued to the parties, pursuant to which Adv. N.N. Gawde appeared on behalf of the Appellant on 27/04/2022, the representative of the PIO, Shri. Vishwas Chodankar appeared and placed on record the reply of the PIO on 13/05/2022. Representative of the FAA appeared and placed on record the reply of the FAA dated 19/05/2022.
7. It is the case of the Appellant that, he is the tenant in possession of the agricultural property bearing survey No. 149/2 of Morjim Village, Pernem taluka in the state of Goa. That on 18/09/2021, one Shri. Raghunath Joshi from Morjim Pedne-Goa entered his tenanted property and destroyed the said property by cutting and felling of trees without obtaining permission from any authority. Therefore, he lodged complaint before the office of Range Forest Officer at Pernem Goa on 18/09/2021 and in order to know the status of his complaint, he filed RTI application dated 08/10/2021 before the Forest authorities under Section 6(1) of the Act. The Appellant alleged that, the PIO, Deputy Conservator of Forest, North Goa Division failed to provide the information within stipulated time with the reason that investigation process was ongoing and therefore, information was denied under Section 8(1)(h) of the Act.

Further according to the Appellant, the FAA also erroneously upheld the reply of the PIO and rejected the information at point No. 4. Therefore, he approached this forum by way of this second appeal.

8. On the other hand, the PIO through his reply dated 13/05/2022 contended that, though the information was initially denied to be disclosed by the PIO, as the matter was under investigation, pending investigation, the FAA vide its order dated 04/01/2022 directed the PIO to furnish the information at point No. 01, 02 and 03 within 15 days.

The PIO further contended that, upon the receipt of the order of the FAA, the Range Forest Officer, Pernem, Goa dispatched a letter dated 11/01/2022, requesting the Appellant to visit the office of Range Forest Office at Pernem, Goa on 19/01/2022 at 10:30 am for inspection of records and to identify the required documents, and to substantiate his claim, the PIO also produced on record the copy of letter dated 11/01/2022 and the copy of acknowledgement (A/D) receipt of the postal authority.

Further, according to the PIO, despite receipt of the letter dated 11/01/2022, the Appellant did not approach the office of Range Forest Office, Pernem-Goa either to inspect the file or identify the required documents.

9. In the course of hearing on 20/07/2022, the representative of the PIO, Shri. Vishwas Chodankar submitted that, he is ready and willing to give inspection of records as the investigation and inquiry in the matter is completed and over.
10. Accordingly, to resolve the issue, the Commission fixed the date for joint inspection of the said file at the office of Forest Department at Tuem, Pernem-Goa on 04/08/2022 between 10:30 am to 11:30 am. The Appellant was also directed to appear on given time and date for inspection and identification of required documents. The PIO was also directed to furnish the photo copies of the documents as specified by the Appellant and matter was posted for clarification on 14/09/2022.
11. During the course of hearing on 14/09/2022, APIO, Shri. Vishwas Chodankar appeared and submitted that, as per the direction of the Commission, the inspection of file was carried out by the Appellant personally in the office of Range Forest Officer at Tuem, Pernem on 04/08/2022, and the PIO furnished the bunch of documents to Adv. N.N. Gawde and submitted that, he furnished

all the documents as identified by the Appellant and matter was fixed for further clarification.

12. Since, Adv. N. Gawde was not satisfied with the information provided by the APIO, in order to resolve the issue, the Commission directed the PIO, to appear alongwith the relevant file on next date of hearing and matter was posted for compliance on 20/10/2022 at 10:30 am.
13. In the course of hearing on 20/10/2022, APIO, Shri. Vishwas Chodankar appeared alongwith all records pertaining to the subject matter. Adv. N. Gawde inspected the records and identified the required documents. The Commission directed the APIO to furnish the specified documents to the Appellant on next date of hearing and matter was posted for compliance on 10/11/2022 at 10:30 am.
14. That in the course of hearing on 10/11/2022, the APIO, Shri. Vishwas Chodankar appeared and furnished a bunch of documents to Adv. N. Gawde and submitted that, he has furnished all the available information to the Appellant, which was identified by Adv. N. Gawde. However, Adv. N. Gawde was still not satisfied with the information provided by the PIO and therefore matter was posted for arguments.
15. Adv. N. Gawde argued that, the PIO has miserably failed to furnish the information within stipulated period. She further argued that, the PIO did not furnish the copy of diary of inspection report carried on 18/09/2021 and 21/09/2021 and the copy of the charge sheet against Raghunath Joshi and thus violated the order of the FAA. Therefore, Section 20 of the RTI Act is attracted in the case and she prayed that the PIO may be penalised as per Section 20 of the Act.
16. Opposing the contention of the Appellant, the APIO argued that complying the order of this Commission, the inspection of the

relevant file has been provided to the Appellant in the office of Range Forest Officer at Tuem, Pernem-Goa on 04/08/2022. The Appellant personally inspected the file and identified the documents and by letter dated 08/08/2022, identified documents have been furnished to the Appellant. Since, Adv. N. Gawde was not satisfied with the information provided by the PIO, in order to put an end to the proceeding, second inspection of the records was granted to Adv. Gawde on 20/10/2022 before the open court of the Commission, and the documents identified by Adv. N. Gawde were also furnished to the Appellant on 10/11/2022.

He further argued that, under the Goa Daman and Diu Preservation of Trees Act, 1984, there is no provision to maintain diary of inspection, therefore, no such information has been generated by the public authority, and hence, no such information is available in the records.

He further argued that, since the matter is closed by the Forest Department as the accused compounded the offence under Section 22 of the Goa Trees Act by making payment of requisite penalty amount as fixed by the competent authority, the question of filing a charge sheet / complaint does not arise. Being so, such type of information is not generated at all by the public authority, and therefore is not available in the records.

17. Having gone through the entire material on record, it reveals that after completing the investigation, all the available information has been supplied to the Appellant. The Appellant substantially failed to establish that the information sought for, has been actually generated by the public authority and that the PIO denied the said information with malafide intention. The Right to Information means only access to information which is actually held or in existence with the public authority. The Act does not cast

an obligation upon the public authority to collect or create non available information and then furnish to the Appellant.

18. While considering the extent and scope of information that could be dispensed under the Act, the Hon'ble Supreme Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhyay (Civil Appeal no.6454 of 2011)** at para 35 has observed:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant."

19. The High Court of Delhi in the case **The Registrar, Supreme Court of India v/s Commodore Lokesh K. Batra & Ors. (W.P. No. 6634/2011)** has held that:-

"Insofar as the question of disclosing information that is not available with the public authority is concerned, the

law is now well settled that the Act does not enjoin a public authority to create, collect or collate information that is not available with it. There is no obligation on a public authority to process any information in order to create further information as is sought by an applicant.”

20. Considering the above, the Commission is of the view that, there is no malafide denial of information by the PIO. Since the information sought for by the Appellant is not at all generated by the public authority and the same is not available / exists, the Commission cannot issue any direction to the PIO to furnish non-existing information. I do not find anything on record to show that the PIO has acted contrary to the law, therefore, I am not inclined to impose penalty on the PIO as prayed by the Appellant.

21. Considering the facts and circumstances as discussed hereinabove and in view of all the available information has been furnished to the Appellant on 08/08/2022 and again on 27/10/2022, the matter is disposed off.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner