

GOA STATE INFORMATION COMMISSION
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Appeal No. 123/2023/SCIC

Anthony Lopes,
6/234, Cobravaddo, Calangute,
Bardez-Goa 403516.

.....Appellant

V/S

1. Public Information Officer,
Mamlatdar of Bardez,
Mapusa-Goa.

2. The First Appellate Authority,
Mamlatdar of Bardez Taluka,
Mapusa-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 05/04/2023

Decided on: 30/08/2023

FACTS IN BRIEF

1. The Appellant, Mr. Anthony Lopes r/o. H.No. 6/234, Cobravaddo, Calangute, Bardez-Goa vide his application dated 08/02/2023 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Mamlatdar of Bardez, Mapusa-Bardez-Goa:-

"I the undersigned am an Indian citizen and I request for the certified copies of information under Section 7() as in accordance to the RTI Act, 2005.

The said information is sought within 48 hours as an illegal criminal act of deep dangerous excavation has endangered my live and my liberty where in my residential building can collapse on me. Part of my compound wall and two electric poles have already collapsed.

1. *Kindly provide certified copies of the report drawn by the Talathi for Calangute, who visited the site where*

there is a deep dangerous excavation being carried out on the 6th afternoon. (photo enclosed for reference).

2. Kindly provide certified copies of photos clicked by the Talathi of deep dangerous excavation which I showed to him on site visit on the 6th of February around early evening.

3. Kindly provide certified copies of action taken report after talathi's report."

2. Since the said application was not responded by the PIO within 48 hours, deeming the same as refusal, the Appellant filed first appeal before the Office of Mamlatdar, Mapusa, Bardez-Goa on 16/02/2023 being the First Appellate Authority (FAA).

3. Pending the first appeal before the FAA, the PIO responded the RTI application on 10/02/2023 in the following manner:-

"With reference to your application dated 08/02/2023 of Mr. Anthony Lopes r/o. 6/234, Cobravaddo, Calangute, Bardez-Goa. I am furnishing the reply under Right to Information Act, 2005 as under:-

<i>Sr. No.</i>	<i>Information sought</i>	<i>Reply</i>
<i>1</i>	<i>Kindly provide certified copies of the report drawn by the Talathi for Calangute, who visited the site where there is a deep dangerous excavation being carried out on the 6th afternoon. (photo enclosed for reference).</i>	<i>Talathi report dated 07/02/2023 alongwith enclosures is enclosed</i>
<i>2</i>	<i>Kindly provide certified copies of photos clicked by the Talathi of deep dangerous excavation which I showed to him on site visit on the 6th of February around early evening."</i>	<i>Not available</i>

3	<i>Kindly provide certified copies of action taken report after talathi's report.</i>	<i>Letter dated 08/02/2023 addressed to Dy. Collector & SDO, Bardez, Mapusa-Goa is enclosed.</i>
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4. Upon receipt of the reply from the PIO, the Appellant has collected the information at point No. 1 and 3 on 14/02/2023. However, since the PIO has failed to provide the information at point No. 2, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act.
5. Notices were served upon the parties, pursuant to which the Appellant appeared in person on 11/05/2023, the PIO Shri. Rupesh Kerkar appeared and filed his reply on 20/06/2023, the FAA duly served chose not to appear in the matter.
6. Perused the pleadings, reply, rejoinder, scrutinised the documents on record and considered the submissions of the rival parties.
7. Admittedly, by paying the requisite fee of Rs. 28/-, the Appellant has collected the information at point No. 1 and 3 on 14/02/2023. Therefore, the controversy remains with regards to the information at point No. 2 of the RTI application which reads as under:-

"2. Kindly provide certified copies of photos clicked by the Talathi of deep dangerous excavation which I showed to him on site visit on the 6th of February around early evening."

8. It is the case of the Appellant that, he filed application under Section 7(1), requesting the information within 48 hours as there was imminent danger to his residential building due to haphazard excavation. However, since the PIO failed to provide the said information within 48 hours. The Appellant contended that, the PIO is liable for punitive action for deliberately refusing the information.

Further according to the Appellant, the photographs were clicked by the Talathi of Calangute Saza while conducting the site inspection/visit of the excavation on 06/02/2023, therefore said photos are the part of the report and therefore, he is entitled for the said photographs.

Further, according to him, the FAA also failed to hear and dispose the first appeal within stipulated time.

9. On the other hand, the PIO through his reply dated 20/06/2023 contended that, upon the receipt of the RTI application under Section 7(1) of the Act, he immediately collected the available information from the records of the public authority and tried to contact the Appellant on the phone number available on the RTI application, however, the contact number provided by the Appellant was a wrong number and consist of only 9 digit mobile number, therefore he could not manage to supply the information within 48 hours.

Further, according to the PIO, the available information has been provided to the Appellant by reply dated 10/02/2023 and the Appellant has actually collected the information on 14/02/2023 by paying the requisite fee.

Further, according to him, with regards to the information at point No. 2, same was not available in the official records of the public authority and accordingly same was communicated to the Appellant by reply dated 10/02/2023.

10. During the course of hearing on 10/07/2023, for the sake of justice, the Commission directed the PIO to verify from the concerned Talathi with regards to the availability of photographs taken in the course of site inspection dated 06/02/2023.

11. Thereafter in the course of hearing on 07/08/2023, the PIO appeared and filed his additional reply dated 07/08/2023 and submitted that, in order to obtain the information at point No. 2, he issued Memorandum to the Talathi of Calangute, Bardez-Goa on 21/07/2023 and in response to the said, the Talathi of Calangute, Saza, by letter dated 24/07/2023 informed that photographs of site were not enclosed during the time of submission of Report of Excavation dated 07/02/2023. The PIO also produced on record the copy of Memorandum issued to Talathi dated 21/07/2023 and copy of the reply dated 24/07/2023 received from the Talathi of Calangute to support his case and submitted that it is not obligatory to take the photographs while conducting the site inspection, hence the Talathi of Calangute Saza has carried out the site visit and submitted his report.
12. Once having found that securing copies of photographs is not mandatory while conducting the site inspection report, there is no obligation on the Talathi to produce the photographs together with such report.
13. The evidence on record established that, the PIO has made attempt to produce the copy of photographs from the office of the Talathi of Calangute Saza who carried out the site inspection report of the excavation on 06/02/2023. However, the Talathi of Calangute by letter dated 24/07/2023 categorically states that "the photographs of the site were not enclosed during the time of submission of report of excavation dated 07/02/2023."
14. Section 2(f) of the Act defines the "information" as something which is available in the material form and same is retrievable from the official records of a public authority. It cannot be something that is not a part of the record of a public authority.

Similarly '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 it to the Appellant.

15. The extent and scope of the information and the nature in which it is to be dispensed is elaborately discussed and laid down by the Apex Court in the case of **Central Board of Secondary Education & another V/s Aditya Bandopadhaya (Civil Appeal no.6454 of 2011)** as under:

"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. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information'

in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

16. 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."

17. In the case in hand, the Appellant miserably failed to establish that the photographs are required to be part of the report or required to be maintained under any law or the rules or regulations of the public authority. As the information is not at all in existence due to non-generation nothing can be ordered to be furnished to the Appellant.

18. In the backdrop of the above facts and circumstances, I do not find anything on record to show that the PIO has acted contrary to the law. Since all the available information has been furnished to the Appellant, I am not inclined to impose penalty on the PIO as prayed by the Appellant. With the above observation, the matter is disposed off.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner