

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

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Appeal No. 135/2022/SCIC

Mr. Jose Remedios Rodrigues,
B4, Riviera Residency,
PDA Colony, Alto, Porvorim,
Bardez-Goa 403521.

.....Appellant

V/S

1. The Public Information Officer,
Block Development Officer – Tiswadi Block,
Junta House, Panaji-Goa.

2. The First Appellate Authority,
Dy. Director (Admin),
Directorate of Panchayats,
Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 24/05/2022

Decided on: 22/02/2023

ORDER

1. The Appellant, Mr. Jose Remedios Rodrigues, B4, Riviera Residency, PDA Colony, Alto-Porvorim, Bardez-Goa vide application dated 29/01/2021 filed under the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Block Development Officer (BDO), Junta House, Panaji-Goa.
2. The said application was responded by the PIO on 23/02/2021 and furnished part of the information, and with regards to Point No. 1 of the application, the PIO replied that information sought for is not available.
3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal on 22/03/2021 before the Deputy Director (Administration), Directorate of Panchayats at Panaji-Goa, being the First Appellate Authority (FAA).

4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 29/04/2022.
5. Feeling aggrieved and dissatisfied with the order of the FAA dated 29/04/2022, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act, with the prayer to direct the PIO to trace out the record/ reasoning and furnish the information as regards to point No. 1.
6. Notices were issued to the parties, pursuant to which Appellant appeared in person on 04/08/2022, representative of the PIO, Shri. Ramanand Naik, Gram Sevak from the office of BDO appeared and placed on record the reply of the PIO.
7. During the course of argument, the Appellant produced on record a letter dated 17/11/2020 written by Secretary of Village Panchayat Curca, Bambolim and Talaulim addressed to the BDO Panaji with regards to inspection notice vide No. 3/VPT/BDO-TIS/Insp Notice/2020-21/4511 dated 10/11/2020 and pointed out that, content of the said letter shows that inspection notice to the concerned parties were served through hand delivery and alleged that the BDO malafidly did not conduct the site inspection of illegal construction with ulterior motive
8. As against this, the representative of the PIO, Shri. Ramanand Naik submitted that, office of the BDO did not receive any communication from the Secretary of Village Panchayat Curca, Bambolim and Talaulim on 17/11/2020 or thereafter with regards to any inspection notice as claimed by the Appellant. Therefore in order to ascertain the true fact, the Commission directed the PIO to produce on record Inward and Outward Register of the office of BDO from 17/11/2020 to 27/11/2020.
9. On the next date of hearing on 13/12/2022, the representative of the BDO, Shri. Ramanand Naik appeared and placed on record the

copy of Inward & Outward Register of the Block Development Office Tiswadi-Goa from 17/11/2020 to 27/11/2020 as directed by the Commission.

10. On perusal of Inward and Outward Register maintained by the office of the BDO, Tiswadi-Goa, no corresponding entry is found in the Inward and Outward Register with reference to communication from the Secretary of the Village Panchayat Curca Bambolim and Talaulim to the office of Block Development Office, Tiswadi, Goa between 17/11/2020 and thereafter. Therefore, I find no force in the arguments of the Appellant.
11. On perusal of the prayer clause of this second appeal, it reveals that the grievance of the Appellant is only restricted to the information at point No. 1. The information sought for by the Appellant at point No. 1 reads as under:-

"1) Reason to non-execution of site visit to my co-heir property and complaint of illegal construction by Edwin Rodrigues and in respect of your inspection notice dated 10-11-2020 No. 3/VPT/BDO-TIS/Insp Notice/2020-21/4511. Site inspection was fixed on 23-11-2020. The verbal reason given to me was that Edwin Rodrigues was under Covid isolation. If yes, kindly furnish me the proof along with medical certificate if any, of any other proof, which the BDO couldn't execute the site inspection."

For which the PIO at first instance replied being not available. However, in the additional reply filed by the PIO dated 20/01/2023, the PIO elaborated that on receipt of the RTI application dated 29/01/2021, he instructed inward clerk to check the inward register maintained by the office of the BDO. The inward clerk after searching the inward register informed the PIO that no medical

certificate or any other letter or evidence / correspondence was received in the office of the public authority therefore, the PIO vide reply dated 23/02/2021 responded the RTI application that information at point No. 1 is not available.

12. In the present case, the information at point No. 1 has been denied due to non-availability of the same. Under Section 2(f) of the Act, information can be something that is available in a material form and is retrievable from the official records. It cannot be something that is not a part of the records. The role of the PIO under the Act is of information provider and he cannot be treated as a creator of the information. If a matter has been decided, he can communicate the decision. He cannot provide reason for such decision. That is clearly outside the purview of the RTI under the ACT.

13. The Hon'ble Supreme Court in the case of **Central Board of Secondary Education & Anr. v/s Aditya Bandopadhyaya (Civil Appeal No. 6554 of 2011)** at para No. 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.
A public authority is also not required to furnish information which require drawing of inferences and /or making of 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' of the 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.

14. The High Court of Patna in the case **Shekhar Chandra Verma v/s State Information Commissioner (LPA 1270/2009)** has held that:-

"10. In our view, RTI Act contemplates furnishing of information which is available on records, but it's does not go so far as to require an authority to first carry out an inquiry and thereby 'create' information, which appears to be what the information seeker had required of the Appellant."

15. In the instant case, the PIO replied to the RTI application on 23/02/2021, same is within the stipulated time. The Commission is of the view that there is no denial of information by the PIO, since the information sought for by the Appellant is not in existence, the Commission cannot issue any direction to the PIO to furnish non-existing information, therefore the appeal is dismissed.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner