

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 175/2022/SCIC

Mr. Eduardo Camilo Da Cruz,
R/o. H.No. 9/189/C,
Behind Placiano Building,
Patrong Baina,
Vasco-Da-Gama, Goa.

.....Appellant

V/S

1. The Public Information Officer,
Mormugao Planning and Development Authority,
2nd Floor, Commerce Centre,
Vasco-Da-Gama, Goa.

2. The First Appellate Authority,
Member Secretary,
Mormugao Planning and Development Authority,
2nd Floor, Commerce Centre,
Vasco-Da-Gama, Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 30/06/2022

Decided on: 07/12/2023

FACTS IN BRIEF

1. The Appellant Mr. Eduardo Camilo Da Cruz r/o. H.No. 9/189/C, Behind Placiano Building, Patrong Baina, Vasco-Da-Gama, Goa vide his application dated 07/02/2022 filed under Section 6(1) of the Right to Information Act (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Mormugao Planning and Development Authority (MPDA), Commerce Centre, Vasco-Da-Gama, Goa:-

"Kindly provide me certified copies of the following:-

- 1) *Roznama of the M.P.D.A Authority 1st Meeting held on 11—12-2018 with reference to application received by your authority from Mrs. Margarida Basilia Sivia Vas & Ors., C/o. Mr. Mahesh V.S. Nadar & Mr. Dinesh S. Nadar, Flat No. AS-3, Mangirish Prasad Co-operative*

Housing Society, Aquem, Margao-Goa requesting to issue development permission for their construction of Multi Family Dwelling Commercial building and compound wall in property bearing chalta No. 50 of P.T. Sheet No. 136, situated at Baina, Vasco-Da-Gama, Mormugao, Taluka Goa.

2) Roznama of the M.P.D.A. Authority 3rd meeting held on 25/01/2019, with reference to application under inward no. 1560 of dated 1-01-2019, received by your authority from Mrs. Margarida Basilia Sivia Vas & Ors., C/o. Mr. Mahesh V.S. Nadar & Mr. Dinesh S. Nadar, Flat No. AS-3, Mangirish Prasad Co-operative Housing Society, Aquem, Margao-Goa requesting to issue development permission for their construction of Multi Family Dwelling /Commercial building and compound wall in property bearing chalta No. 50 of P.T. Sheet No. 136, situated at Baina, Vasco-Da-Gama, Mormugao, Taluka, Goa."

2. The said application was responded by the PIO on 22/02/2022 in the following manner:-

"Your application under Right to Information Act, 2005 has been considered under Section 7(1) of the Act and I am to inform you the following which is placed on record by the official of this Authority under Section 5(4) and 5(5) of the Act.

- i. With reference to the above subject, it is to inform you that the information sought by you in your application, i.e. Roznama of the M.P.D.A's 1st and 3rd meeting held on 11/12/2018 and 25/01/2019 respectively not available with this*

Authority however minutes of the said meeting is available with this authority. If desired the same may be collected on payment of Rs. 18/- (Rupees eighteen only).

- ii. *The period within which an appeal against the above decision can be filed in 30 days from the date of receipt of letter.*
- iii. *The particulars of the "The First Appellate Authority" is "The Member Secretary" with office at Mormugao Planning and Development Authority, 2nd Floor, Commerce Centre, Vasco-Da-Gama, Goa.."*

3. Upon receipt of the reply from the PIO, the Appellant approached the office of the PIO and upon making the requisite payment, collected the documents. However, the Appellant alleged that information provided by the PIO is misleading and not as per his request and being aggrieved and not satisfied with the response of the PIO, the Appellant filed first appeal on 18/04/2022 before the Member Secretary, Mormugao Planning and Development Authority, Vasco-Da-Gama, Goa, being the First Appellate Authority (FAA).
4. The FAA vide its order dated 02/06/2022 partly allowed the appeal and directed the PIO to furnish the copies of Roznama and Minutes of the 1st and 3rd Meeting of MPDA held on 11/12/2018 and 25/01/2019 free of cost within 10 days of the receipt of the order.
5. Since the information provided by the PIO is misleading and false, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish information as per his RTI application dated

07/02/2022, to impose penalty on the PIO and to initiate disciplinary action for non-furnishing the information.

6. Notices were served upon the parties, pursuant to which, the Appellant appeared alongwith Adv. Cliff Fernandes on 09/08/2022, Adv. J. Miranda appeared on behalf of the PIO and placed on record the reply of the PIO on 08/12/2022. Adv. Rajesh Patel appeared on behalf of the FAA and filed his reply on 08/12/2022.
7. Perused the pleadings, replies, additional replies, impugned order, scrutinised the documents and considered the submissions of the rival parties.
8. It is an admitted fact that, the Appellant by paying requisite fee collected the information. However, there is contradiction with regards to date of first meeting and date visible in noting sheet. In order to resolve the issue, the Commission directed Adv. J. Miranda to call the PIO personally for the hearings alongwith all relevant files on 01/02/2023.
9. In the course of hearing on 01/02/2023, the PIO Shri. Ramesh Parsekar appeared alongwith files and offered for the inspection of record. He also submitted that 1st Meeting of Re-constituted MPDA was held on 27/11/2018 and not on 11/12/2018 as visible in noting sheet. Adv. C. Ferenades submitted that, he is not harping on the date but confined his demand, with regards to decision taken by the MPDA on the application received from Mrs. Margarida Basilia Sivia Vas & Ors., C/o. Mr. Mahesh V.S. Nadar & Mr. Dinesh S. Nadar, thereby requesting to issue development permission of their construction of Multi Family Dwelling Commercial building and compound wall in property bearing chalta No. 50 of P.T. Sheet No. 136, situated at Baina, Vasco-Da-Gama, Mormugao, Goa. The Commission, therefore, directed the PIO to supply the above information on next date of hearing and matter was fixed for compliance on 01/03/2023.

10. During the course of hearing on 04/04/2023, the PIO, Shri. Ramesh Parsekar appeared and filed his additional reply and submitted that he has already furnished information at point No. 2 to the Appellant and with regards to information at point No. 1, he submitted that application under inward no. 1560 which was received from Mrs. Margarida Basilia Sivia Vas and others C/o. Mr. Mahesh V.S. Nadar & Mr. Dinesh S. Nadar requesting to issue development permission for construction of multi family dwelling building and compound wall in property bearing chalta No. 50, P.T. Sheet No. 136 has been approved in 3rd Meeting of MPDA held on 25/01/2019. However, Adv. C. Fernandes submitted that he is not satisfied with the contention of the PIO. Therefore, the Commission directed the PIO to clarify the queries raised by the Appellant.
11. The PIO, Shri. Ramesh Parsekar appeared alongwith Adv. M.P. Kamat and filed his clarification / Additional reply on 06/10/2023 and clarified that copy of Roznama of the meeting dated 27/11/2018 and 25/01/2019 is not available with the public authority as the same is not actually generated by the MPDA. However, information, which is the subject matter of the RTI application, has been approved in the 3rd meeting of MPDA held on 25/01/2019 and the copy of the minutes has been furnished. Adv. M.P. Kamat also submitted that the PIO has complied with the order of the FAA dated 02/06/2022. For better clarification, the PIO also placed on record the Minutes of the first meeting of MPDA held on 27/11/2018, Minutes of second meeting of MPDA held on 11/12/2018 and Minutes of third meeting of MPDA held on 25/01/2019.
12. Section 2(f) of the Act, defines the "information" as something which is available in 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 records 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 PIO to collect or create non available information and then furnish it to the Appellant.

13. 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](#)."

14. At this juncture, it is appropriate to refer the judgement of Hon'ble High Court of Bombay in the case **Dr. Celsa Pinto v/s Goa State Information Commission (W.P. No. 419/2007)** which the Court observed that:-

".....The public information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justification are matter within the domain of adjudicating authorities and cannot properly be classified as information."

15. It is pertinent to mention that, the role of the PIO is information provider and he cannot be treated as a creator of the information. He can only facilitate in providing information which is available in the records in material form and same is retrievable from the official records. The PIO cannot either confirm or deny perception of the Appellant. The PIO cannot be held responsible for the merit or accuracy of the information, or the decision taken by the competent authority.

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 background of the above facts and circumstances, the Commission is of the view that, it is not the case that the PIO was unwilling to provide the information. Records indicate that the PIO has furnished all the available information to the Appellant. He also offered the inspection of records. The Appellant substantially failed to establish that under the Goa Town and Country Planning Act, 1974, the Roznama are required to be maintained by the MPDA. In the present case, the Minutes of the proceeding of each MPDA meeting together with the names of the members present and signed have been provided to the Appellant including the list of approved or deferred project alongwith its area and survey number.

18. Considering the facts and circumstances hereinabove and since all the available information has been furnished to the Appellant by the PIO, I hold that nothing survives in the appeal. Accordingly the matter is disposed off. Proceeding closed.

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

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner