

GOA STATE INFORMATION COMMISSION

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Appeal No. 187/2022/SCIC

Mr. Mohan Vishnu Naik,
R/o. H.No. 689, Parampoi,
Marcaim, Ponda-Goa 403403.

.....Appellant

V/S

1. The Assistant Public Information Officer,
Assistant Engineer-IV,
Office of the WDIII/PHE-N,
Public Works Division,
Daag, Ponda-Goa 403401.

2. The Executive Engineer,
Public Information Officer,
Office of the Executive Engineer,
Division III, (WS), Public Works Division,
St. Inez, Panaji-Goa.

3. FAA/ Suptd.Surveyor of Works,
Public Works Department,
Altinho, Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 05/07/2022

Decided on: 20/11/2023

ORDER

1. The Appellant Mr. Mohan Vishu Naik r/o. H.No. 689, Parampoi, Marcaim, Ponda-Goa vide his application dated 08/12/2021 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), Executive Engineer, Public Works Department, Works Division-III, Daag, Ponda-Goa.
2. The said application was responded by the PIO on 07/01/2022 in the following manner:-

<i>Sr. No.</i>	<i>Questions</i>	<i>Reply</i>
<i>1</i>	<i>Kindly issue me true copy of your letter dated 30/11/2021, made by you to the Dy. Collector & SDO, Ponda-Goa thereby requesting for</i>	<i>Enclosed at C/17</i>

	<i>the Police Protection to release water connection to Shri. Vidhyadar M. Naik, H.No. 694/A.</i>	
2	<i>Kindly issue me true copy of letter/ order dated 02/12/2021, issued by the Dy. Collector & SDO, Ponda-Goa granting the Police Protection for release water connection to Shri. Vidhyadar M. Naik, H.No. 694/A.</i>	<i>Enclosed at C/16</i>
3	<i>Kindly give me in writing as to which section and provision of law you sought police protection to release water connection to Shri. Vidhyadar M. Naik, H.No. 694/A., who is a private party?</i>	<i>To maintain law and order.</i>
4	<i>Kindly provide me information whether there was any court order or an direction to release the water connection to Shri. Vidhyadar M. Naik, H.No. 694/A., who is a private party? If yes kindly provide me certified copy of the same</i>	<i>Order of Primary Health Centre, Marcaim is enclosed at C/9.</i>
5	<i>Kindly provide me certified copies of all documents submitted by Shri. Vidhyadar M. Naik for release of water connection to the, H.No. 694/A.</i>	<i>Enclosed at page C/2 to C/14.</i>
6	<i>Whether office of the WDIII/PHE-N, PWD, Daag, Ponda-Goa obtain necessary NOC from the owner of the property surveyed under No. 486/1 of Village Marcaim, Ponda-Goa before laying pipeline in the property surveyed No. 486/1? If yes kindly provide me certified copy of the said NOC. If not then under which provision of law you are empowered lay water pipeline from the private property without the permission of owner.</i>	<i>Same as point no. 5</i>
7	<i>Whether say/ reply of objector (Mr. Mohan Vishnu Naik) was taken or intimated before obtaining police protection for release of water</i>	<i>Not available</i>

	<i>connection to Shri. Vidhyadar M. Naik, H.No. 694/A. from the property belongs to other than said Shri, Vidhyadar M. Naik?</i>	
8	<i>Whether the office of the WD III/PHE-N, PWD, Daag, Ponda-Goa can lay pipeline in any property in any property belongs to third party in order to release water connection to the applicants</i>	<i>Not available.</i>
9	<i>Kindly provide me names and employment code if any of the employees of the PWD, deployed for releasing the water connection to Shri. Vidhyadar M. Naik, H.No. 694/A.</i>	<i>Kindly clarify point No. 9.</i>
10	<i>Whether sanction was sought from the Higher Authority (EE) before seeking police protection for releasing water connection to Shri. Vidhyadar M. Naik, H.No. 694/A., who is a private party?</i>	<i>Not applicable</i>
11	<i>Kindly issue me certified copy of letter/ reply of Dy. Collector, Ponda under No. SDO/PON/MISC/2019/5812 dated 06/08/2019, pursuant to the application for police protection sought in past by the office of the WDIII/PHE-N, PWD, Daag, Ponda-Goa</i>	<i>Enclosed at C/15.</i>

3. Being aggrieved and not satisfied with the reply of the PIO dated 07/01/2022, the Appellant filed first appeal before S.S.W. at Altinho, Panaji-Goa on 27/01/2022 being the First Appellate Authority (FAA).
4. The FAA vide its order dated 24/05/2022, disposed off the first appeal without granting any relief to the Appellant.
5. Being aggrieved and dissatisfied with the order of the FAA dated 24/05/2022, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information as per his RTI application and impose penalty on the PIO for denying the information.

6. Notices were issued to the parties, pursuant to which the Appellant Shri. Mohan Naik appeared alongwith his counsel, Adv. Nashir Herekar on 12/08/2022, Adv. A.P. Mandrekar put his appearance on 29/11/2022 on behalf of Respondent No. 1 and 2, representative of the FAA, Shri. Dilip Khaute appeared and placed on record the reply of the FAA dated 29/11/2022.
7. It is admitted fact that, the Appellant by paying the requisite fee collected the part information on 17/01/2022 from the PIO. According to the Appellant, he received the information with regards to point No. 1,2,3,4,5 and 11, therefore, the controversy that remains now only with regards to information at point No. 6,7,8,9 and 10.
8. It is the case of the Appellant that, the Office of the public authority i.e. Works Division-III/ PHE-N, Public Works Department, Daag, Ponda-Goa released water connection under the guise of police protection to one Shri. Vidhyadhar M. Naik residence of Parampoi, Marcaim Goa in the property surveyed under Survey No. 486/1 of Marcaim Village on 07/12/2021. In order to know the details in the matter he sought various information from the PIO on 08/12/2021 under Section 6(1) of the Act.

However, information at point No. 6 to 10 has been denied to him on the ground that said information is not available/ not applicable. Further, according to the Appellant, the PIO has given evasive reply only to hide the information. Further, according to the Appellant, the reply of the PIO to his RTI application is devoid of any judicious backing and PIO did not provide correct reply and therefore the PIO is liable for penal action.

9. Refuting the contention of the Appellant, the Respondent No. 1 and 2 through their reply dated 29/11/2022 contended that, upon the receipt of the RTI application, the PIO obtained the requisite

information from the Assistant Engineer, Sub-Div-IV, Works Division III (PHE-North) Daag, Ponda-Goa and based upon said reply/ information he furnished the reply/ information to the Appellant by letter No. 3/1/2021-22/PWD/DIV-III(W)/ADM/1166 dated 27/01/2022.

Further, according to the Respondents, the available information was furnished to the Appellant by the PIO within stipulated time and there is no lapse on the part of the Respondents.

Further, according to the Respondents, the FAA heard the matter and considered the explanation given by the respondents and passed the reasoned order dated 24/05/2022 and therefore, no interference is required.

Further, according to the Respondents there was no intention either to hold any information or deny the information and that PIO was ready to give the inspection of the file, however, same was rejected by the Appellant for the reason best known to him.

10. The FAA through his reply dated 29/11/2022 contended that, upon receipt of the first appeal, he heard both the parties and disposed off the first appeal on 24/05/2022 as per his wisdom.
11. I have perused the pleadings, replies, scrutinised the documents on record and considered the arguments advanced by the rival parties.
12. The information sought by the Appellant at point No. 6 reads as under:-

“Whether office of the WDIII/PHE-N, PWD, Daag, Ponda-Goa obtain necessary NOC from the owner of the property surveyed under No. 486/1 of Village Marcaim, Ponda- Goa before laying pipeline in the

property surveyed No. 486/1? If yes kindly provide me certified copy of the said NOC. If not then under which provision of law you are empowered lay water pipeline from the private property without the permission of owner."

At the initial stage, the PIO replied the same as "enclosed at page c/1 to c/14 and by way of clarification dated 10/05/2022 filed before the FAA, the PIO elaborated that water connection is released under the Public Health Act. A perusal of the documents exhibited at c/9 i.e. the Order passed by the Medical Officer of Primary Health Centre Marciam, Ponda-Goa dated 04/03/2021, the alleged water connection was granted to Mr. Vidhyadar M. Naik under the provisions of Goa Public Health Act, the extract of the said order is produced below for better clarification:-

"And whereas, after verifying the position of the structure and occupation thereof it is just and necessary to direct the concerned authority to grant him water connection as a necessity from the angle of health.

I, therefore in exercise of powers conferred on me under Section 94 A of the Goa Public Health Act, 1985 & Rules, 1987 as amended from time to time, hereby convey No Objection to Mr. Vidhyadar M. Naik, major in age, Indian National and a resident of House No. 694/4, situated at Parampoi, under Survey No. 486/1 of Village Marcaim, Taluka, Ponda-Goa to get 'water connection ' from the Assistant Engineer, Sub-Div IV, W.D.-III, (PHE-North), PWD, Daag, Ponda-Goa after complying with necessary formalities by the applicant."

Bare reading of the above , would make it clear that said water connection was granted to the concerned party under the Goa Public Health Act, 1985.

13. Moreover, Section 94 A(4)(b) of the said Act provides that, in the event any dispute as regards the land or legality of structure arises, such dispute, list, proceedings, right, privilege shall remain unaffected and shall not prejudice any person in any way whatsoever. Therefore from the above, it is clearly established that, for releasing the water connection ownership or title document is not mandatory as the potable water is considered as essential service under the Goa Essential Services Maintenance Act, 1988.

14. The information sought by the Appellant at point No. 7 and 8 are as under:-

"7. Whether say/ reply of objector (Mr. Mohan Vishnu Naik) was taken or intimated before obtaining police protection for release of water connection to Shri. Vidhyadar M. Naik, H.No. 694/A. from the property belongs to other than said Shri, Vidhyadar M. Naik?

8. Whether the office of the WD III/PHE-N, PWD, Daag, Ponda-Goa can lay pipeline in any property belongs to third party in order to release water connection to the applicants."

Initially the PIO replied that information "not available" however, by way of clarification in the reply dated 10/05/2022 filed before the FAA urged that, the objector has not produced any ownership document, thus, objection cannot be considered at this stage, further, he has not produced order/ stay from any court. It is further clarified that in this case the pipe/ tapping connected/ taps on old existing pipeline only.

15. Perusal of the above replies of the PIO it is emerged that, the information sought by the Appellant has been denied as it is not available in the records. Once having found that securing ownership document is not mandatory while releasing water

connection, there is no obligation on the public authority to maintain said records.

16. 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.

17. 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 Bandopadhyaya (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](#)."

18. With regards to information at point No. 9, the Appellant is seeking the names of the employee who executed said work of releasing the water connection.

Initially, the PIO requested that Appellant to clarify the issue and similarly in the reply before the FAA contended that "Office of the Assistant Engineer, Sub-DivIV, W.D-III, Daag, Ponda-Goa deployed the staff and that the Assistant Engineer is empowered to carry out the necessary work."

19. Another grievance of the Appellant is that the Police protection sought by the office of Assistant Engineer on 30/11/2021 and which is granted by the office of the Deputy Collector, Ponda-Goa on 02/12/2021 is illegal and without following due process of law. No any explanation to that effect was furnished by the PIO and that he is not satisfied with the reply.

20. At this juncture, it is appropriate to refer the judgement of Hon'be 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 definition of information cannot include within its fold answers to the question 'why', which would be the same thing as asking the reason for a justification for a particular thing. 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."

It is not open to an RTI applicant to seek explanation, reason etc from the public authority in the guise of seeking information.

21. 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. If the Appellant feels that any official is doing something that is contrary to the law, he can approach the concerned higher authorities or legal course of action on the basis of information provided to him.

22. 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 the information sought for is actually generated by

the public authority and the PIO denied said information with malafide intention.

23. 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