

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

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Appeal No. 217/2021/SCIC

Mr. Jawaharlal T. Shetye,
H.No. 35/A, Ward No. 11,
Khorlim, Mapusa-Goa,
403507.

.....Appellant

V/S

1. The Public Information Officer,
Administrator of Comunidades of North Zone,
Mapusa-Bardez-Goa 403507.

2. The First Appellate Authority,
The Additional Collector-III,
Office at Government Complex,
1st Floor, Morod,
Mapusa-Goa 403507.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 30/08/2021

Decided on: 08/05/2023

ORDER

1. The Appellant, Shri. Jawaharlal T. Shetye, r/o. H. No. 35/A, Ward No. 11, Khorlim, Mapusa-Goa vide his application dated 05/04/2021 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), Administrator of Comunidades North Zone, Mapusa-Goa.
2. The said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant filed first appeal before the Additional Collector-III at Mapusa-Goa being the First Appellate Authority (FAA).
3. The FAA vide its order dated 27/07/2021 allowed the first appeal and directed the PIO to furnish the information to the Appellant free of cost within 15 days.

4. Since the PIO failed and neglected to comply with the order of the FAA dated 27/07/2021, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and impose penalty on the PIO for denying the information.
5. Notices were issued to the parties, pursuant to which Adv. Sanjiv Sawant appeared on behalf of the PIO and filed his reply on 30/03/2022. The FAA duly served opted not to appear in the matter.
6. Perused the pleadings, reply and scrutinized the documents on record.
7. On meticulous reading of the order passed by the FAA dated 27/07/2021, it appears that the order of the FAA is just and equitable in the facts of the case and there appears no palpable error in reasoning of the FAA. The FAA directed the PIO to furnish the information free of cost to the Appellant within fifteen days.
8. The PIO through his reply dated 30/03/2022 contended that, upon receiving the RTI application, he forwarded the same to the Clerk/ Escrivao of Comunidade of Mapusa, Bardez-Goa. However, the Clerk/ Escrivao of the Comunidade of Mapusa instead of furnishing information has taken stand that they are not a public authority and therefore the PIO could not furnish the information.
9. Under Article 1 of the Code of Comunidades, the Comunidades existing in the District of Goa shall be governed by the provisions of the 'Code of Comunidades'. Therefore, they are not fully independent or supreme bodies but subordinate to the State as far as its administration is concerned. The office of Administrator, North Zone is a public authority under the Act and has been granted access to the information held by the Comunidade of Mapusa.

10. Even considering that the Comunidade of Mapusa is a private body, the information pertaining to it can be accessed by a public authority viz the office of Administrator under Article 88 (d) of the Code of Comunidade. The Code further makes it mandatory on the part of the Comunidades to part with the information to the office of Administrator whenever called for.
11. At this stage it would be appropriate to cite the observation of High Court of Delhi in the matter **Poorna Prajna Public School v/s Central Information Commission & Ors. (W.P. No. 7265/2007):-**

"8... Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished."

12. The High Court of Jammu and Kashmir and Ladakh in a recent judgement in the case **Tyndale Biscoe School & Ors. v/s Union Territory of J & K & ors. (AIR 2022 J&K 112)** has observed as under:-

"14. Definition of two expression i.e. "information" and "right to information" given in Section 2(h) and 2(j) of the Act of 2005 when considered in juxtaposition and interpreted in harmony with each other would unequivocally and clearly manifest that not only the information which is held by the public authority can be accessed under the Act of 2005 but such information as is under the control of such authority, too, can be accessed. Information relating to any private body which can be accessed by a public authority under any other law for the time being in force can also be accessed by the information seeker under the Act of 2005. There is no doubt that in terms of Section 22, Act of 2005 has been given overriding effect over any other law for the time being in force or instrument having effect by virtue of any law other than the Act of 2005. It is, thus, axiomatic that if a public authority has a right and is entitled to access information from a private body under any other law, it is information as defined in Section 2(f) of the Act of 2005. The term "held by or under the control of any public authority" used in Section 2(j) of the Act of 2005 will include information to which a public authority has right to access from a private body under any other law."

From the ratio laid down in above judgements, the Administrator of Comunidades North Zone at Mapusa being designated PIO under the Act, it is within his jurisdiction to call for

information from the Clerk or Escrivao of Comunidade of Mapusa, even if the same is in the custody of Comunidades.

The stand taken by Comunidade of Mapusa, Bardez-Goa has no legal backing and is null and void in the eyes of law. Even presuming that the Comunidade of Mapusa, Bardez-Goa is a private body, same is not discharged under the obligation of provisions of RTI Act.

13. On perusal of the RTI application dated 05/04/2021, it appears that the Appellant is seeking the details of allotment of plots and information with regards to complaint against various illegal construction in the land belongs to Comunidade of Mapusa. The said information has been generated by public authority itself while performing their duties and functions. The approach of the PIO appears to be very casual and trivial.
14. The FAA has decided the matter on 27/07/2021 and directed the PIO to furnish the information within 15 days. Instead of complying the order, the PIO has filed evasive reply and thus denied the legitimate right of the Appellant.
15. The Delhi High Court in case of **J.P. Agarwal v/s Union of India and Ors. (W.P. 7232/2009)** held that:-

"7..... Under section 6(1) and 7(1) of the RTI Act, it is PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirement of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department, if the PIO finds a default by those from whom he has sought information the PIO is expected to recommend a remedial action to be taken. The RTI Act

makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO.”

16. The PIO also failed to comply the order of the FAA dated 27/07/2021. The High Court of Gujarat in the case **Urmish M. patel v/s State of Gujarat & Ors. (Spl. C.A. No. 8376/2010)** has held that, penalty can be imposed if order of the FAA is not complied with by the PIO.
17. The High Court of Bombay, Goa Bench in the case **Johnson B. Fernandes v/s the Goa State Information Commission & Anrs. (2012 (1) ALL MR 186)** has held that, law contemplates supply of information by the PIO to the party who seeks it, within the stipulated time, therefore when the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.
18. Considering the ratio laid down by various High Courts, the Commission comes to the conclusion that, it is fit case for imposing penalty under Section 20 of the Act against the PIO. However, before any penalty is imposed, the principle of natural justice demands that the explanation be called for from the concerned PIO, as to why he failed to discharge the duty cast upon him as per the RTI Act, I therefore pass following:-

ORDER

- The appeal is allowed.
- The PIO, Shri. Shivprasad Naik, the Administrator of Comunidade North Zone, Mapusa, Bardez-Goa is hereby directed to comply the order of the FAA dated 27/07/2021 within a period of **FIFTEEN DAYS**.

- Shri. Sagar Gaude, the then PIO, the Administrator of Comunidades, North Zone, Mapusa, Bardez-Goa is hereby directed to show cause as to why penalty should not be imposed on him in term of Section 20(1) and to recommend disciplinary action as contemplated under Section 20(2) of the Act for denying the information to the Appellant.
- The reply to the show cause notice to be filed on **30/06/2023 at 10:30 am.**
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner