

GOA STATE INFORMATION COMMISSION
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Appeal No. 235/2022/SCIC

The Comunidade of Margao,
Thro' its Attorney Shri Celestino A. Noronha,
Having its office at Old Market,
Margao-Goa 403601.

.....Appellant

V/S

1. Shri. Sagar A. Desai,
The Assistant Public Information Officer,
Office of Administrator of Comunidades, South Zone,
Old Collectorate Building, Margao-Goa 403601.

2. Shri. Amaro Afonso,
The Escrivao / Clerk of Comunidade of Margao,
Old Market, Margao-Goa 403601.

3. Shri. Rolyno Fernandes,
R/o. House No. 125, Opp. Classic Hospital,
Margao-Goa 403601.

4. The First Appellate Authority,
The Additional Collector-I, South Goa,
Collectorate of South Goa, Margao-Goa 403601.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 23/08/2022

Decided on: 15/02/2023

FACTS IN BRIEF

1. The Appellant, Comunidade of Margao through its Attorney Shri. Celestino A. Noronha assails the order dated 01/08/2022 passed by the Additional Collector-I, the First Appellate Authority (FAA) in case No. 19/RTI/APPEAL/EST/AC-1/2022/9998 and the Memorandum issued by the office of the Administrator of Comunidade, South Zone dated 27/06/2022, landed before the Commission by this second appeal under Section 19(4) of the Act being contemplated as third party.
2. The facts in brief which arises in the present appeal are that, one Shri. Rolyno Fernandes r/o. H. No. 125, Opp. Classic Hospital,

Malbhat, Margao-Goa, the Respondent No. 3 hereinabove vide application dated 24/06/2022 sought certain information from the Public Information officer (PIO), Administrator of Comunidade, South Zone at Margao-Goa, under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act').

3. Upon the receipt of the said application, the Respondent No. 1 being the APIO issued Memorandum dated 27/06/2022, to the Respondent No. 2, Shri. Amaro Afonso, the Escrivao / Clerk of Comunidade of Margao and directed to furnish the certified copy of the information to the Respondent No. 3 (applicant) within the period of five days, failing which he shall be held liable for penal action under Section 20 of RTI Act; being the deemed PIO.
4. Feeling aggrieved and dissatisfied with the direction of the Respondent No. 1, the Appellant preferred first appeal before the Additional Collector-I, being the First Appellate Authority (FAA) on 11/07/2022 under Section 19(1) and 19(2) of the Act, with prayer to quash and set aside the impugned Memorandum dated 27/06/2022.
5. The FAA by its order upheld the content of the Memorandum and dismissed the first appeal on 01/08/2022.
6. Aggrieved with the order of the FAA, (the Respondent No. 4), the Appellant preferred this second appeal before the Commission with the prayer to quash and set aside the order of the FAA dated 01/08/2022 and impugned Memorandum dated 27/06/2022 issued by Respondent No. 1.
7. Notices were issued to the parties, pursuant to which Adv. S.J.F. Correia puts his appearance on behalf of the Appellant, Respondent No. 1, Sagar Desai appeared on 06/10/2022. The Respondent No. 2, Shri. Amaro Afonso appeared on 06/10/2022 but both of them opted not to file any reply in the matter. The Respondent

No. 3, Shri. Rolyno Fernandes remained absent. The FAA, Respondent No. 4 represented by Shri. Sagar Desai did not file any reply in the matter.

8. The Appellant has challenged the order of the FAA dated 01/08/2022 on several grounds as raised in the appeal memo. However, the main contention of the Appellant that the PIO and the FAA has overlooked the provisions envisaged in Section 11 of the Act.
9. It is the case of the Appellant that, Appellant is a private body and an age-old village agricultural co-operative comprising of shareholders and having its own private laws known as Code of Comunidades and day-to-day management of the Appellant is entrusted with the Managing Committee comprising the President, Attorney and Treasurer duly elected by the shareholders.

According to the Appellant, its records are private records that are kept in the custody of the Escrivao /Clerk for safekeeping and are distinct and separate from the records of the Administrator of Comunidades. Since the Comunidade of Margao is not a public authority and do not fall within the definition of Section 2(h) of the Act and therefore, the Administrator of Comunidade, South Zone, cannot interfere with the management or affairs of the Appellant.

Further according to the Appellant, the Administrator of Comunidade can gather information from the Appellant which he has access through supervisory and administrative control i.e access which is permissible under the Code of Comunidades.

Further according to the Appellant, the impugned order is passed in undue haste and without affording proper opportunity to the Appellant to present its case and therefore constitute a blatant violation of principles of natural justice.

Further according to the Appellant, the FAA erred in blindly placing reliance on a Memorandum dated 27/06/2022 issued by the APIO of Administrator of Comunidades, South Zone and therefore, liable to be set aside.

10. Perused the pleadings, scrutinised the documents on record and heard the submissions of learned Adv. S.J.F. Correia on behalf of the Appellant and the judgement relied upon by him.

11. Considering the contention of the Appellant, the points that arises for determination before the Commission are:-

"(i) Whether third party can claim the exemption under Section 8 of the Act?"

"(ii) Whether the Memorandum issued by the APIO dated 27/06/2022 is sustainable by law?"

12. While deciding the issue No. 1, it is appropriate to go through the relevant provisions of the Act, Section 2(f) and (h) of the Act reads as under:-

*"2. **Definitions.** – In this Act, unless the context otherwise requires, --*

***(f) "information"** means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

***(h) "public authority"** means any authority or body or institution of self-government established or constituted__*

- a) by or under the Constitution;*
- b) by any other law made by Parliament;*
- c) by any other law made by State Legislature;*
- d) by notification issued or order made by the appropriate Government, and includes any____*
 - i. body owned, controlled or substantially financed;*
 - ii. non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;"*

From the above it is clear that, the scope of the definition of the information is very wide and it covers information in any form be it written or stored in a computer.

The Second part of the Section 2(h) also takes within its ambit body owned, controlled or substantially financed and Non-Government Organisation substantially financed directly and indirectly by funds provided by the Government. Therefore, the information relating to any private body which can be access by public authority under any other law for time being in force is also declared to be covered in the definition of information.

13. Furthermore Section 2(n) , third party of the Act, which reads as under:-

*"2. **Definitions.** – In this Act, unless the context otherwise requires, --*

*(n) "**third party**" means a person other than the citizen making a request for information and includes a public authority."*

Third party means a person other than the citizen making a request for information. There are two parties directly involved in the right to information, first party being the information seeker and second party being the information provider (PIO). The involvement of third party may be on account of various reasons such as information belonging to third party, information supplied by the third party or the information available with another public authority. There are certain rights available to third party in the Act under Section 11.

14. Section 11 of the Act reads as under:-

"11. Third party information.____ (1) *Where a Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if

the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party."

As can be seen from the above provision of law, that disclosure of information in relation to the third party would need a PIO to give written notice to such party. In fact Section 11 prescribes the procedure to be followed when a PIO is required to divulge information which relates to or has been treated as confidential by the third party. The PIO is under obligation to give written notice to such third party within 5 days from the receipt of the request for information.

The Act stipulates that the third party shall within 10 days from the receipt of such notice, be given the opportunity to make

representation against the proposed disclosure before the PIO. After receipt of submission, the PIO has to evaluate whether information given by the third party has been treated as confidential and whether any public interest get served with disclosure of information as also the possible harm or injury to the interest of the third party is there or not. This procedural requirement gives the third party an opportunity.

However, important aspect required to be considered that, this provision of law only applicable in the case when third party treats the information required to be disclosed as confidential information.

15. Adv. S.J.F. Correia, learned advocate appearing for the Appellant vehemently argued that, the public authority, the Administrator of Comunidade, South Zone ought to have issued notice to the Appellant under Section 11 of the Act. Refusal to give opportunity to the third party is as good as depriving his legal right to voice its objection before disclosing sensitive and confidential information.

Further according to him without taking recourse to the provisions of Section 11 of the Act, the public authority outrightly directed the Respondent No. 2 to furnish the information which is not tenable and sustainable by law. He argued that the APIO of the public authority completely violated the procedure laid down under Section 11 of the Act and therefore, both the impugned orders are illegal and liable to be quashed and set-aside and to substantiate his case he relied upon the following judgements. **Reliance Industries Ltd. v/s Gujarat State Information Commission & Ors. (AIR 2007 Guj 203); Arvind Kejriwal v/s Central Public Information Officer & Anrs (2011(4) U.L.J 59 (HC)); Kausa Education and Charitable Trust**

Mumbai and Ors. v/s Maharashtra State Information Commission, Navi Mumbai & Ors (2013 (2) Mh.L.J. 246); Tyndale Biscoe School & Ors. v/s Union Territory of J& K & Ors (AIR 2022 J7K 112), and Anuj Public School Society & Ors. v/s The State Information Commissioner & Ors (2010 SCC Online Utt. 1188); Poorna Prajna Public School v/s Central Information Commission & Ors. (2009 SCC OnLine Del. 3077).

16. The High Court of Andhra Pradesh in the case **Shri. Bhavana Rishi Co-operative Housing Society v/s A.P. Information Commission & Ors** has observed as under:-

"12.... the clue to understand the true import or obligations in furnishing the information relating to third parties, would lie in trying to give the appropriate meaning to the expression information in as broad a scheme as is possible, the statute maker has advisedly left the key to its understanding in the latter part of the definition itself by the choicest usage of the following words:-

and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

Therefore the information concerning a private body also undoubtedly forms part of information for the purpose of this enactment, provided such information is liable or capable of being accessed by a public authority under any other law in force, for the time being. In other words, a clear

distinction has been wedged between the right of access of information by a private authority in contrast to right to access of information by a public authority under the provision of any other law. Further it is not mere access of public authority to the information of a private body, which would fall within the expression 'information' as defined under Section 2(f), but such information must be the one, which is accessible by a public authority in accordance with and in terms of any other provisions of any other law which is in force for the time being. Therefore, the public authority must necessarily trace its power to access the information relating to a private body, sought by an applicant, strictly in accordance with some provision of law or the other, which is in force. If that information is the one, which become accessible or capable of being accessed by a public authority in terms of any law, then it shall be the one, which is correspondingly capable of being furnished to the applicant, provided, again it does not fall within the exempted categories spelt out under Section 8 of the RTI Act. The statute maker, thus recognised that all such information, which can be lawfully accessed by a public authority, in terms of any existing law, is such that, it can be furnished to an applicant under RTI Act, subject of course, to the other stipulations concerning non-disclosure of such information under the Act."

17. I have perused the judgement of the High Court of Jammu and Kashmir and Ladakh, relied upon by the Adv. Correia in the case **Tyndale Biscoe School & Ors. v/s Union Territory of J&K & Ors. (Supra)** in which it is held that:-

"15. The society herein need not be a public authority but if the information lying with such private body can be accessed by the public authority under law, the same can be provided by public authority on an application filed by an information seeker. This, however, does not mean that such public authority shall have absolute no say in the matter. Section 8 of the Act of 2005, which is a non obstante provision overriding other provisions of the Act, lays down exceptions and rules when information sought is not required to be furnished. It is only such information relating to a private body as can be legally and legitimately accessed by a public authority under any other law for the time being in force, which can be provided by the public authority to the information seeker."

18. I have also perused the another judgement of High Court of Uttaranchal which is relied upon by Adv. S. Correia in the case **Anuj Public School Society & Ors v/s the State Information Commissioner & Ors. (Supra)** in which it is held that:-

"I have perused the judgement of this court, it has been held that the similarly situated petitioners in that writ petition were the private institutions and the Court has observed that they would be treated as third party for the purpose of Right to Information Act. If any information was to be sought from the institution, the notice under Section 11 of the Right to Information Act,

2005 (hereinafter referred to as the 'Act') can be given to them and they are obliged to give information, if it is not covered under Section 8 of the Act."

Similar view has been expressed by the High Court of Bombay in the case **Kausa Education and Charitable Trust & Ors. v/s Maharashtra State Information Commission, Navi Mumbai & Ors.(Supra)** by the High Court of Gujarat in the case **Reliance Industries Ltd. v/s Gujarat State Information Commission & Ors (Supra)** and by the High Court of Delhi in **Poorna Prajna Public School v/s Central Information Commission & Ors. (Supra)**.

19. The Administrator of Comunidades functions under Code of Comuindade, is a public authority within the meaning of Section 2(h) of the Act. As a public authority, the Administrator of Comuindade has been conferred with lot of statutory powers under the respective Code under which he is functioning. He is also duty bound to comply with the obligation under RTI Act and furnish the information to a citizen under the Act.

In the present case, the APIO of the Administrator of Comuindade, South zone did not consider Comunidade of Margao as a third party and outrightly directed them to disclose the information without obtaining their say in the matter, which is against the principles of natural justice. The Administrator of Comuindade South Zone could have issued written notice to the Appellant to ascertain whether the information sought is legitimately accessed or not and upon hearing the third party, decision could have been taken, prior to issue directions to disclose the information. The third party is expected to provide the information which is enumerated in Section 2(f) of the Act, subject to the limitations provided under Section 8 of the Act. Therefore issue No. 1 is answered as affirmative.

20. Another grievance raised by the Appellant that, impugned Memorandum dated 27/06/2022 issued by Respondent No. 1, Shri. Sagar A. Desai was issued in the capacity as APIO and claims that under the RTI Act no power has been conferred to the APIO to issue directions to other officials or public authorities.

The conjoint reading of Section 2(m) and Section 5(2) of the Act, it suggest that, the APIO's are designated officer for receiving the application for information whereas the PIO's are designated to provide information to person requesting for information and the role of APIO is limited and there is no provision for appeal against any action of the APIO. Therefore, the Memorandum issued by the APIO has no proper legal backing and the direction issued by the APIO is excess of powers conferred on him. Therefore issue No. 2 is answered as 'negative'.

21. In view of foregoing discussion and aforesaid principles laid down by the various Courts, it is clear that the APIO cannot give outright direction to the third party to disclose the information. In the backdrop of the above fact, I find merit in the appeal and therefore same is allowed with following:-

ORDER

- The appeal is allowed.
- The impugned Memorandum issued by the Respondent No. 1 (APIO) dated 27/06/2022 is quashed and set-aside.
- Consequently the order of the Respondent No. 4 (FAA) dated 01/08/2022 is se-aside and remanded back the matter to the FAA for decision in accordance with the law and in the light of observation made hereinabove, as expeditiously as possible within a period of 45 days. Proceeding closed. Pronounced in the open court. Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner