

GOA STATE INFORMATION COMMISSION
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Appeal No. 293/2021/SCIC

Mr. Ramchandra L. Mandrekar,
R/o. H.No. 6, Wadachawada,
Shirgao, Bicholim-Goa 403503.

.....Appellant

V/S

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

.....Respondent

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 02/12/2021

Decided on: 15/03/2023

FACTS IN BRIEF

1. The Appellant, Mr. Ramchandra L. Mandrekar r/o. H.No. 6, Wadachawada, Shirgao, Bicholim-Goa vide his application dated 21/04/2021 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Administrator of Comunidades, North Zone, Bardez-Goa:-

"Regarding: Allotment of plot bearing Plot No. 41 in property bearing Sy. No. 28/3 of Sirsaim Village Badrez-Goa admeasuring 276 sq.mts (256 sq. mts) ref file No. 1-152-82-ACB.

1) kindly issue certified copies of all the documents of entire file towards the above referred file and plot."

2. Since the said application was not responded by the PIO within the prescribed 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. Pending the hearing of the first appeal, the PIO by letter dated

27/07/2021, informed the Appellant that, file bearing No. 1-152-82-ACB has not been traced and hence information sought by you cannot be provided.

4. The FAA vide its order dated 08/10/2021 allowed the first appeal and directed the PIO to furnish the information free of cost to the Appellant within 15 days.
5. Since the PIO failed and neglected to comply the order of the FAA dated 08/10/2021, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with prayer to direct the PIO to furnish the information, impose penalty and to initiate disciplinary action against the PIO for denying the information.
6. Parties were notified, pursuant to which Adv. N. D'Mello appeared on behalf of the Appellant on 18/01/2022. Adv. Sanjiv Sawant appeared and filed his wakalatanama on 18/01/2022. The PIO filed his reply through entry registry on 02/08/2022. The FAA duly served opted not to appear in the matter.
7. Perused the pleadings, reply, scrutinised the documents on record and considered the written submission of the parties.
8. On meticulous reading of the order passed by the FAA dated 08/10/2021, it appears that the order of the FAA is just and equitable in the facts of the case. I do not find any palpable error in reasoning or jurisdictional error. The FAA directed the PIO to furnish the information free of cost to the Appellant within 15 days.
9. The PIO through his reply dated 02/08/2022 contended that, upon receiving the RTI application, he transferred the said application to the Clerk / Escrivao of Comunidade of Sirsaim, Bardez-Goa. However, the Clerk / Escrivao of the Comunidade of Sirsaim instead of furnishing the information has taken the stand that they are not a public authority and therefore, the PIO could

not furnish the information to the Appellant and to support his case he relied upon the Memorandum dated 21/06/2021 and also produced on record the order passed by this Commission dated 10/02/2020 in Appeal No. 34/SCIC/2012.

10. 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 concern. 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 Sirsaim.

11. Even considering that the Comunidade of Sirsaim 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.

12. 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.”

13. 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)** it is 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 Sirsaim, even the same is in the custody of Comunidades.

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

14. On perusing the RTI application dated 21/04/2021, which is produced hereinabove in para No. 1, the Appellant is seeking the details of one plot allotted by Comunidade of Sirsaim under file No. 1-152-82-ACB. The said information has been generated by the public authority itself while conducting their duties and functions. I am unable to hold that the information is not available/ traceable with public authority or it cannot be furnished to the Appellant. The approach of the PIO appears to be very casual and trivial.
15. The FAA has decided the matter on 08/10/2021 and directed the PIO to furnish the information within 15 days. Instead of complying the said order, the PIO has filed evasive reply and denied the legitimate right of the Appellant.

16. 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."

17. The PIO also failed to comply the order of the FAA dated 14/01/2021. 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.

18. 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.

19. I have perused the order relied upon by Adv. S. Sawant in the case **Shri. J. T. Shetye v/s The State Public Information**

Officer, Administrator of Comunidades North Goa (34/SCIC/2012) dated 10/02/2020. Firstly this is the view of the CIC and does not bind on this Commission, at the most said order can persuade this Commission to form its view. Said order cannot be accepted as a precedent in the matter. Secondly, I am not concede with the ratio laid down in the said order.

20. 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, Administrator of Comunidade North Zone, Mapusa, Bardez-Goa shall furnish to the Appellant, free of cost the information as sought by the Appellant vide his application dated 21/04/2021 within a period of **FIFTEEN DAYS**.
- The PIO, 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 terms of Section 20(1) of the Act.
- The reply to the show cause notice to be filed on **28/04/2023 at 10:30 am.**
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner