

GOA STATE INFORMATION COMMISSION

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Appeal No. 307/2019/SIC-II

Shri. Sushant P. Nagvenkar,
House No. C-312, Fondvem,
Ribandar – Goa.

-----Appellant

v/s

1. Shri. Amir Parab,
Under Secretary, Hon. Minister for
Urban Development and P.I.O,
Secretariat, Porvorim-Goa.

2. Joint Secretary & F.A.A.
General Administration Department,
Secretariat, Porvorim-Goa.

-----Respondents

Shri Vishwas Satarkar - State Chief Information Commissioner

Filed on:- 17/10/2019

Decided on: 23/01/2023

FACTS IN BRIEF

1. The Appellant Shri. Sushant P. Nagvenkar r/o. H.No. C-312, Fondvem, Ribandar, Goa by his application dated 28/05/2019 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), office of Minister of Urban Development, Secretariat, Porvorim-Goa.
2. The office of the Minister for Urban Development transferred the said application to the PIO, the Director, Directorate of Urban Development, Panaji-Goa on 07/06/2019 under Section 6(3) of the Act with the following instructions:-

"In this connection I am to submit that the court Case files which are already disposed of have been send to your office. As such the information pertaining to those cases are not available to this office.

Your are therefore requested to provide the information directly to the applicant under sec 6(3), of R.T.I. Act 2005 of the cases disposed from Jan 2012 till date under section 358 of the Goa, City of Panaji Corporation Act, 2002, preferably as per format provided by the applicant."

3. The said application was also responded by the PIO O/o Hon'ble Minister (UD) on 20/06/2019 in the following manner:-

"With reference to your application dated 28/05/2019 regarding cited subject above, it is to inform you that the information sought by you is ready and you are requested to pay Rs. 60/- (Rupees Sixty Only) in the office of G.A.D. Cash Section Secretariat Porvorim and produce the receipt of payment, to collect the information in this office during office hours in any working day."

4. Meanwhile, another officer, Shri. Ramesh Naik, Additional Director of Department of Urban Development (Municipal Administration) at Panaji-Goa vide letter dated 09/07/2019 communicated the Appellant in the following way:-

"I am directed to refer to the letter No. MIN(U.D)1-9/RTI/19-20/159 dated 07/06/2019 received from Under Secretary, O/o the Minister for Urban Development, Secretariat, Porvorim-Goa.

As per the record, the files pertaining to Appeals were forwarded to this office by the office of the Hon'ble Minister for Urban Development for safe custody. In this regards, since the information is voluminous, you are requested to come for inspection

of the files on any working day during working hours, so that the necessary information can be taken.

However, some information readily available through the files which were traced from the records/ Godown/store room may be collected on payment of Rs. 20/- (Rupees Twenty only) on any working day during working hours. ”

5. Feeling aggrieved and dissatisfied with the above replies, the Appellant preferred first appeal before the Joint Secretary, General Administration Department, Secretariat, Porvorim-Goa being the First Appellate Authority (FAA).
6. The FAA by its order upheld the reply of the PIO and dismissed the first appeal on 28/08/2019.
7. Thereupon aggrieved with the order of the FAA dated 28/08/2019, the Appellant preferred a second appeal before the Commission under Section 19(3) of the Act.
8. Notices were issued to the parties, pursuant to which Adv. Harsha Naik appeared on behalf of the PIO on 28/09/2021 and filed her reply through entry registry dated 11/05/2022. The FAA is represented by Adv. K.L. Bhagat and filed his reply on 28/09/2021.
9. It is the case of the Appellant that, he has received part information from the subordinate office of a public authority. According to him the Respondent No. 1, the PIO was erred in transferring the RTI application under Section 6(3) of the Act and being he is the senior officer he ought to have sought information under Section 5(4) and 5(5) of the Act and furnish to him.

It is also the case of the Appellant that, he did not receive the information as per the prescribed format provided by him alongwith his RTI applications.

Further according to the Appellant, no notice of intimation with regards to hearing was sent to him by the FAA in first appeal and the FAA decided the first appeal ex-parte thus violated the principles of natural justice.

10. Adv. Harsha Naik appearing on behalf of the PIO submitted that, all the available information has been provided to the Appellant by the office of the Minister for Urban Development and further the part of information sought by the Appellant was transferred to the Directorate of Municipal Administration under Section 6(3) of the Act to be replied directly to the Appellant. According to her, after the disposal of appeal by the office of Ministry, the disposed files have been sent to its parent office for maintenance of records and as such information pertaining to those cases are not available with the office of the PIO, therefore only to facilitate the Appellant in obtaining rest of the information, his RTI application has been transferred to the office of Directorate of Urban Development at Panaji-Goa.
11. Adv. K.L. Bhagat appearing on behalf of the First Appellate Authority (FAA) submitted that first appeal was inwarded in the office of the FAA on 25/07/2019 and the same is disposed off by the FAA on 28/08/2019 by giving opportunity of hearing both the parties. According to him, inspite of a valid service of notice the Appellant did not appear for hearing for first appeal and to support his case he produced on record the copy of notice 01/08/2019 and copy of acknowledgement receipt (A/D card) from the postal authority dated 03/08/2019.
12. I have perused the pleading, replies scrutinized the documents on record and heard the rival parties.
13. Admittedly by paying the requisite fee the Appellant collected the part of the information. It is also admitted fact that Appellant

has carried out the inspection of the file from the office of the PIO and available information has been provided to the Appellant.

14. It is the grievance of the Appellant, that he has not been provided the information as per the format/ proforma provided by him, thus he alleged that the PIO has violated the provision of Section 7(9) of the Act, and submitted that he is entitled for the information as per the format / proforma sheet provided by him. It is therefore relevant to go through the provision of Section 7(9) of the Act, which reads as follows:-

"7. Disposal of request-

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resource of the public authority or would be detrimental to the safety or preservation of the record in question."

On bare reading of the above provision, it is clear that, this section provides that the information has to be given in that mode or form in which the information has been sought. However, the purported information can be given in an alternative mode or form where it will disproportionately divert the resources of the public authority. This provision does not allow the PIO to withhold the disclosure of information, it merely makes provisions for the disclosure of information in a format other than that in proforma requested by the Complainant.

15. Hon'ble High Court of Delhi in the case the **Registrar Supreme Court of India v/s Commodore Lokesh K. Batra & Ors. (LPA 24/2015)** while dealing with the identical issue, wherein, the specific case of the PIO that no data is maintained by the public authority in the manner as sought by the Appellant, the Court has held as under:-

"15..... As already noticed above, "right to information" under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant."

16. The Central Information Commission in the case **Mr. Sant Kumar Singh v/s Food Corporation of India (Appeal No. 2690/ICPB/2008)** has held that:-

"2.... The appellant has sought for huge information in a particular format. Whenever the appellant is requesting information in a particular format, unless that information is maintained in that format, there is no obligation on the part of the CPIO to create the information in a format in which, it was desired by the appellant."

From the above, it is clear that, provisions under Section 7(9) of the Act is directory and not mandatory.

17. Another grievance of the Appellant that, the FAA has decided the first appeal without giving valid notice of hearing, above argument cannot be accepted, as the FAA argued that notice of the first appeal was served upon the Appellant and to substantiate his case he has produced on record the copy of notice of the first appeal dated 01/08/2019 alongwith copy of acknowledgment receipt of postal authority. The said documents are not disputed by the Appellant in the course of arguments. Record indicates that notice of the first hearing viz on 12/08/2019 was served upon the Appellant on 03/08/2019. The Appellant having failed to attend the hearing on 16/08/2019, it was not incumbent upon the FAA to

intimate the date of all further hearings by fresh summons or notice to the Appellant, no such provision is available in the Act. Once the party is served with the notice in any proceedings before any judicial or quasi-judicial authority it is the responsibility of the concerned party to attend the further hearings on such proceedings regularly.

18. The Appellant also raised the issue that the PIO erred in invoking Section 6(3) of the Act by transferring the RTI application instead of he ought to have collected the information under Section 5(4) and 5(5) of the Act. Under Section 5(4) and 5(5), the PIO may seek the assistance of any other officer for the proper discharge of his duties.

Section 5 of the Act makes it obligatory on every public authority to designate as many officers as PIO in all administrative units or offices as may be necessary to furnish the information to the applicant. However, the Act does not confer any specific jurisdiction in respect of each such officer either in terms of geographical or subject wise or the like. The Act also does not prescribe that each PIO is a separate public authority by himself. The object of designation of many PIO's is only with the view that citizens have proximity of approach.

It is pertinent to note that, aggrieved with the reply of the PIO, the Appellant preferred first appeal under Section 19(1) of the Act before the FAA and prayed that, the PIO, Directorate of Municipal Administration be impleaded as a party. This admission itself on the part of the Appellant reflects that, Directorate of Municipal Administration has separate designated PIO. Therefore, the act of transferring the copy of the RTI request or relevant part of it to the other PIO who is the actual custodian of the information and informing back to the applicant about such transfer is fair and

rational. This is not the case where the PIO forwarded the RTI application mechanically in order to escape his obligation.

19. Even otherwise the reply received from Shri. Ramesh Naik, the Additional Director of Urban Development dated 09/07/2019 same is not in contravention to the provisions of the Act, infact, the other PIO offered the inspection of file to the Appellant on any working day, during working hours. Therefore, at this stage there does not appear to be denial of information by the said public authority.

20. The grievance of the Appellant that, he is not satisfied with the information. The information to be furnished is the one which as exist and available. All information cannot be to the satisfaction of the information seeker. Besides a bare statement, the Appellant has not clarified as to how the information furnished is not satisfied. Moreover, it is admitted by the Appellant that, the PIO has granted him the inspection of the entire file.

21. In the facts and circumstances discussed hereinabove, the Commission is of the view that, it is not the case where the PIO was unwilling to provide the information. The PIO has furnished all the available information to the Appellant which has held by him and transferred the relevant part to the other PIO and informing back the Appellant about the transfer. Therefore I am not inclined to impose penalty against the PIO as prayed by the Appellant. Hence, I dispose the appeal with the following:-

ORDER

- The appeal stands dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner

