

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

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Appeal No. 307/2022/SCIC

Master Sousa Leonardo Caetano,
Mundakar H. No. 370, Sao Bras,
Ilhas Marcella, North Goa,
403107.

.....Appellant

V/S

1. The Public Information Officer,
O/o. The Mamlatdar of Tiswadi,
Panaji-Goa, 403001.

2. The First Appellate Authority,
Mamlatdar of Tiswadi,
Panaji-Goa, 403001.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 12/12/2022

Decided on: 13/07/2023

ORDER

1. The Appellant, Master Sousa Leonardo Caetano r/o. Mundakar H.No. 370, Sao Bras, Ilhas Marcella, North Goa vide his application dated 26/09/2022 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), Mamlatdar of Tiswadi, Panaji-Goa:-

"Furnish information

- 1) *w.r.t. letter dt: 13-01-2021 signed by the Chairman of Dhauji Ella Tenants Association Cumbharjua Goa issue inspection of the proceedings recorded by the Chairman in updating Form-III dated nil and signed by the Chairman with issue place nil.*
- 2) *w.r.t. above point No. 1 furnish list of tenants deleted from previous updated Form-III which are not included in updated Form-III of application dt: 13.01.2021 signed by the Chairman.*

- 3) *issue certified copies w.r.t. addition of new names in Form-III w.r.t. above point No. 1 regarding orders issued by the Mamlatdar if any only issue copies of such orders from Mamlatdar.*
- 4) *Furnish w.r.t. point No. 1, names & Address of all Administrative Body of above association.*
- 5) *issue survey No & sub division w.r.t. point No. 1 of updated Form-III i.e. from latest computerised copy of Form No. I & XIV of Sr. No. 1 to 83 corresponding to given No. of the Lotes.*
- 6) *Issue Registration Certificate of DHAUJI TENANTS ASSOCIATION OF ELLA.*
- 7) *issue Inspection of documents w.r.t. point No. 1 about No. of Lotes w.r.t. corresponding Sr. no. 1 to 83 if any.*
- 8) *Give brief statement of current balance in Bank Accounts including FD's in Authorised / unauthorised Banks.*
- 9) *Give brief statements for not maintaining revers sluice Gates since 1979 to till date.*
- 10) *Give names of the protective bundles of above said Association."*

2. The said application was responded by the PIO on 07/10/2022 in the following manner:-

"With reference to your RTI application dated 26/09/2022, it is to inform you that;

- 1) *In respect of the point no. 1, 2, 5, 6, 7 and 9 of the application not available in the office records.*
- 2) *In respect of Point No. 3, 4, 8, 10 is ready. You are requested to visit this office alongwith ID proof to collect the same within 7 days from the date of receipt of this letter between 10.00 a.m. to 12.00 p.m. and*

*2.30 p.m. to 4.00 p.m. on payment of necessary fees.
Hence your application stands disposed."*

3. Since no information was provided to him, the Appellant filed first appeal before the Mamlatdar of Tiswadi, Panaji-Goa on 27/10/2022 being the First Appellate Authority (FAA).
4. The FAA vide its order dated 15/11/2022 directed the Appellant to approach the PIO and collect the information, upon paying requisite fee.
5. Admittedly by paying the requisite fee, the Appellant has collected the information on point No. 3, 4 and 10 from the PIO on 15/11/2022. However, the PIO denied to furnish information at point No. 1,2,5,6,7 and 9 being not available in the office records.
6. Since the PIO failed and neglected to provide complete information as sought by him, the Appellant preferred this second appeal under Section 19(3) of the Act with the prayer to direct the PIO to furnish the information.
7. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 18/01/2023, the PIO Ms. Anusha Gaonkar appeared and filed her reply on 18/01/2023, the FAA duly served opted not to appear in the matter.
8. The PIO through her reply contended that the Tenants Association is an independent body and the functioning of the same is governed by the Rules under the Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975.

Further, according to the PIO, the role of the Mamlatdar is only supervisory in nature and the decisions of the Managing Committee are taken by the elected General body of the Tenants Association and therefore the said information is not obliged to be

maintained by the office of Mamlatdar and they are not the custodian of the said documents.

9. Refuting the contention of the PIO, the Appellant argued that, though the information is not available with the PIO (AK-II), it is the duty of the PIO to call the same from the records of Tenants Association as and when required. He further argued that since the Mamlatdar is the public authority under Section 2(h) of the Act, it is the bounden duty of the PIO to collect the information from the Tenants Association and furnish to the Appellant.
10. The RTI application dated 26/09/2022 was replied on 07/10/2022 which is produced hereinabove at para No. 2 for better clarity. In the said reply the PIO, mechanically informed the Appellant that, information at point No. 1, 2, 5, 6, 7 and 9 are not available in the office records. In the said reply, the PIO neither cited exact provision to deny the request of the Appellant nor gave any reasoning as to why the said information has been denied. The word 'not available' is vague in as much as it does not suggest what efforts the PIO made to obtain such information. Such a vague reply cannot be accepted as a response under Section 7(1) of the Act.
11. Considering the nature of information sought by the Appellant, it appears that the Appellant is seeking the list of Tenants of Dhauji Tenants Association; Registration certificate of Dhauji Tenants Association of Ella, updated copy of form No. III maintained by Chairman of Dhauji Ella Tenants Association etc.
12. The relevant provisions of the **Goa, Daman and Diu Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975**, reads as under:-

"3. Constitution and Recognition of Tenants Association.

1) XXX XXX XXX

2) *Every association of tenants shall be registered and recognized by the Mamlatdar concerned on an application filed on behalf of the majority of the tenants of the area in Form I appended to these rules. The certificates of recognition shall be in Form II appended to these rules. For recognizing an Association, the total number of member should be at least ten.*

3) *The initial list of members of the Association shall be prepared by the Mamlatdar in Form III and the same will be open for inspection by members for 15 days from the date of its display on the notice board at places where notices are displayed for meeting of the Association. After deciding the objections, if any, the list shall be finally displayed. The list shall be kept up-to-date by the managing committee through its Secretary.*

6. Constitution and functions of the Managing Committee.

11. *The Mamlatdar concerned shall have power to call from the Managing Committee any records, statements, registers, account or reports which he may think necessary.*

10. Powers of the Mamlatdar. - *The Mamlatdar shall have full power to take necessary action on the matters*

which have not been specifically provided in these rules in connection with the discharge of joint responsibility by the tenants."

From bare reading of the above provision, it is clear that the Mamlatdar concerned is having access to all the information generated by the Tenants Association. Therefore, he is duty bound to comply with the obligation under RTI Act and furnish the information to the information seeker under the Act. The said Act further makes it mandatory on the part of Tenants Association to part with the information to the office of Mamlatdar concerned wherever called by it.

13. Thus, considering the requirement of the Act and even assuming that the Tenants Association is a private body, the information pertaining to it can be accessed by a public authority i.e. Office of Mamlatdar under Rule 6 of the said Act.

14. The High Court of Delhi in the case **Poorna Prajha Public School v/s Central Information Commission & Ors. (2009 SCC On Line Del 3077)** has observed as under:-

".....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."

15. 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."

16. Hon'ble Supreme Court in the case **Thalappalam Service Co-operative Bank Limited & Ors. v/s State of Kerala & Ors. ((2013) 16 SCC 82)** has observed as under:-

"52. Registrar of Cooperative Societies functioning under the [Cooperative Societies Act](#) is a public authority within the meaning of [Section 2\(h\)](#) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the [RTI Act](#) and furnish information to a citizen under the [RTI Act](#). Information which he is expected to provide is the information enumerated in [Section 2\(f\)](#) of

the RTI Act subject to the limitations provided under [Section 8](#) of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the [Cooperative Societies Act](#). Consequently, apart from the information as is available to him, under [Section 2\(f\)](#), he can also gather those information from the Society, to the extent permitted by law.

Considering the above ratio set down by various courts, I find merit in the submission of the Appellant.

17. Under the Act, the PIO is designated person or representative of the department who is responsible to ensure compliance under the RTI Act. He cannot take the defence that the information is with the superior or subordinate officer and therefore information is 'not available' with him. The PIO has a duty to deal with the applications received from the citizens for furnishing the information and he is under obligation to render reasonable assistance to the information seeker. Sum and substance of Section 5 of the Act provides that every PIO should extend all reasonable assistance in making the information available.

18. In this background, the appeal is allowed. The Commission hereby direct the PIO to furnish the remaining information to the Appellant as per his RTI application dated 26/09/2022 within **FIFTEEN DAYS** from the date of receipt of the order.

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner