

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Appeal No. 321/2023/SCIC

Rupesh Shinkre,
House No. 1063, Povoacao,
Curtorim, Salcete-Goa.

.....Appellant

V/S

1. The Public Information Officer-6/ Dy. Town Planner,
Town & Country Planning Department (HQ),
2nd Floor, Dempo Towers, Patto-Plaza,
Panaji-Goa 403001.

2. The First Appellate Authority,
The Senior Town Planner (HQ),
Town & Country Planning Department (HQ),
2nd Floor, Dempo Towers, Patto-Plaza,
Panaji-Goa 403001.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 01/09/2023

Decided on: 11/12/2023

FACTS IN BRIEF

1. The Appellant Shri. Rupesh Shinkre r/o. H.No. 1063, Povoacao, Curtorim, Salcete-Goa vide his application dated 12/07/2023 filed under Section 6(1) of the Right to Information Act (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Office of Chief Town Planner, Town and Country Planning Department, Patto, Panaji-Goa.
2. The said application was responded by the PIO on 18/07/2023 in the following manner:-

"With reference to the above, it is to inform you that, the matter pertaining to issue of information under reference has been referred to Government in view of the instructions received in this regard pertaining to

technicalities involved and for the legal examination of the same.

Application shall be dealt further on receipt of the further correspondence in this regard.

3. Being aggrieved and not satisfied with the reply of the PIO, the Appellant filed first appeal before the Senior Town Planner on 25/07/2023, being the First Appellate Authority (FAA).
4. The FAA vide its order dated 14/08/2023 allowed the first appeal and directed the PIO to furnish the information to the Appellant as soon as the approval is received from the Government.
5. Since the PIO failed and neglected to comply with the order of the FAA dated 14/08/2023, the Appellant preferred this second appeal before the Commission under Section 19(3) of the Act, with the prayer to direct the PIO to allow the inspection of relevant files and to provide the information as per his RTI application.
6. Notices were served upon the parties, pursuant to which, the Appellant Shri. Rupesh Shinkre appeared on 16/11/2023. The PIO Shri. Prakash Bandodkar appeared and filed his reply on 16/11/2023 and submitted that he has complied with the order of the FAA and furnished all the information to the Appellant on 15/09/2023. To substantiate his claim, he also placed on record the acknowledgment of the Appellant.
7. The Appellant also confirmed that he has received the information and that he is satisfied with the information provided by the PIO. However, he contended that he is more concerned with the reasoning cited by the PIO for causing delay in providing the information. The Appellant submitted that no Government authorities are permitted to withhold the information and the reason given for denying the information is absurd and indefensible.

8. It is well settled position of law that, in order to deny the information under the Act, the PIO would have to show a justification with regards to Section 8(1) and /or Section 9 of the Act. Once having found that information sought for is not exempted under any provision of Act, it is bounden duty of the PIO to furnish the information.
9. The Constitutional Bench of Hon'ble Supreme Court in the case of **S.P. Gupta v/s Union of India ((1981) Supp. SCC 87)** has observed that:-

"67..... The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy and exception justified only where the strictest requirement of public interest so demands. "

10. Further the full bench of the Hon'ble High Court of Delhi in the case **Secretary General Supreme Court of India v/s Subhash Chandra Agarwal (AIR 2010 Delhi 159)** has observed as under:-

"60..... The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19((1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right.

Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed.

61. The words "held by" or "under the control of" under Section 2(j) will include not only information under the legal control of the public authority but also all such information which is otherwise received or used or consciously retained by the public authority in the course of its functions and its official capacity."

11. There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if there is no approval of Government authorities or lack of Government approval.
12. At this stage, the PIO Shri. Prakash Bandodkar submitted one judgement of Hon'ble High Court of Bombay at Goa in the case Dr. Claude Alvares & Ors. v/s The State of Goa through the Secretary and Ors. (PIL W.P. No. 34/2023) challenging the order / note dated 18/05/2023 and 16/08/2023, which is a cause of concern of the Appellant.
13. In the said petition, upon receipt of the summons from the Hon'ble High Court of Bombay at Goa in supersession of the earlier note dated 16/08/2023, the Minister for Town and Country Planning Department issued a fresh note/ instructions vide bearing No. TCP/RTI/371/1507 dated 30/10/2023, thereby instructing the PIO of Town and Country Planning Department to dispose the application received under RTI at their level adhering the provisions of the RTI Act, thus providing the relief to the information seekers and particularly to the Appellant.

14. In the case in hand, it is evident that the purported information has been furnished by the PIO to the satisfaction of the Appellant therefore, nothing survives in the appeal. Accordingly, the matter is disposed off.

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

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner