**GOA STATE INFORMATION COMMISSION**
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**Appeal No. 89/2021/SCIC**

Mr. Purshottam Shirodkar,
R/o. H.No. 179/128,
Bella Vista, Sangolda,
Bardez-Goa. .....Appellant

V/S

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

2. First Appellate Authority,
The Additional Collector-III,
Mapusa, Bardez-Goa. .....Respondents

**Shri. Vishwas R. Satarkar** State Chief Information Commissioner

**Filed on: 12/04/2021**
**Decided on: 08/03/2023**

## FACTS IN BRIEF

1. The Appellant, Mr. Purshottam Shirodkar r/o. H.No. 179/128, Bella Vista, Sangolda, Bardez-Goa vide his application dated 27/08/2020 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), Administrator of Comunidades, North Zone, Bardez-Goa.

2. The said application was responded by the PIO on 24/10/2020 in the following manner:-

> *"With reference to your application dated 27/08/2020 under Right to Information Act, 2005 in respect to furnish certain information regarding Administration of Comunidades of North Zone and Comunidade of Serula.*
>
> *The information sought by you was excessive and steps to furnish this voluminous information would affect regular functioning of the office, it would*

*disproportionately divert the resources of the Public Authority. Hence rejected U/s 7(9) of R.T.I. Act, 2005."*

3. Being aggrieved and dissatisfied with the reply of the PIO, the Appellant preferred first appeal under Section 19(1) of the Act before the Additional Collector- III on 26/10/2020 being the First Appellate Authority (FAA).

4. The FAA vide its order dated 14/01/2021 allowed the first appeal and directed the PIO to furnish the information free of cost within 15 days.

5. Inspite of the order of the FAA, the PIO failed to furnish the information, the Appellant therefore landed before the Commission by this second appeal under Section 19(3) of the Act.

6. Notices were issued to the parties, pursuant to which Appellant appeared on 26/08/2021, representative of the PIO, Adv. Sanjiv Sawant appeared and filed his wakalatanama on 08/12/2021 and subsequently placed on record the reply cum written argument of the PIO on 30/03/2022. He also placed on record the order of this Commission dated 10/02/2020 passed in Appeal No. 34/SCIC/2012.

7. Since none of the parties appeared for the subsequent hearings, the Commission finds no reason to further prolong the proceeding and hence decided to dispose the appeal on the basis of available records.

8. On meticulous reading of the order passed by the FAA dated 14/01/2021, 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 30/03/2022 contended that, upon the receipt of the order of the FAA, the then PIO issued

Memorandum to the clerk of the Comunidade on 25/01/2021 requesting to furnish the information at serial No. 1 and 3 within seven days. However, the Clerk of Comunidade instead of providing information, has taken a stand that they are not public authority. Hence he could not furnish the information. Nevertheless, the PIO miserably failed to produce anything on record to substantiate his claim, and to justify his bonafides in the matter.

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 Serula.

11. Even considering that the Comunidade of Serula 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. On perusing the RTI application dated 27/08/2020, the Appellant is seeking the copies of Inward and Outward Register maintained by the office of Administrator. 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 with public authority or it cannot be furnished to the Appellant. Approach of the PIO appears to be very casual and trivial.

13. The FAA has decided the matter on 14/01/2021 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.

14. 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."*

15. 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.

16. 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.

17. 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.

18. 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 27/08/2020 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 **18/04/2023 at 10:30 am.**

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

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