

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 04/2023/SIC

Chandrakant B. Undale,
R/o E 202, Alps Valley Royale,
CHS, Socorro, Bardez Goa,
403501.

-----Appellant

v/s

1. The Then PIO, Geeta S. Naik,
O/o the Asst. Registrar of Co-op Societies,
North Zone, Mapusa-Goa,
O/o Registrar of Co-op Societies,
Head Office, Panaji-Goa, 403001.

2. The Present PIO,
O/o the Asst. Registrar of Co-op Societies,
North Zone, Mapusa-Goa 403507.

3. The First Appellate Authority,
Asst. Registrar of Co-op Societies,
North Zone, Mapusa Goa 403507.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 07/06/2022
PIO replied on	: Nil
First appeal filed on	: 26/07/2022
First Appellate Authority order passed on	: 14/10/2022
Second appeal received on	: 03/01/2023
Decided on	: 31/07/2023

ORDER

1. The second appeal filed by the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), against Respondent No. 1, Smt. Geeta S. Naik, the then Public Information Officer (PIO), Respondent No. 2, the present Public Information Officer (PIO) and Respondent No. 3, First Appellate Authority (FAA), came before the Commission on 03/01/2023.
2. It is the contention of the appellant that, he had sought information on seven points, however, received no reply from the PIO within the stipulated period, thus, filed first appeal before the FAA. The said appeal was dismissed by the FAA. Appellant further contends that the judgement of the FAA is not in adherence to the provisions of Section 7 and Section 8 of the Act, hence, he has appeared before the Commission for appropriate relief in the matter.

3. The concerned parties were notified, pursuant to which appellant appeared and filed submission dated 10/04/2023. Another submission from the appellant was received in the entry registry on 24/04/2023. Appellant on 30/06/2023 filed copy of correspondence addressed to Shri. Mangesh G. Phadte, the present PIO. Smt. Geeta S. Naik, the then PIO filed replies dated 15/03/2023, 19/04/2023, 04/05/2023 and 30/06/2023. Shri. Mangesh G. Phadte, the present PIO filed replies dated 15/03/2023 and 10/04/2023. The present PIO, later on 21/06/2023 submitted in the entry registry copy of correspondence addressed to the appellant.
4. Appellant stated that, PIO has persistently failed to disclose the information he had sought and later, FAA did not dispose the appeal expeditiously, within the mandatory period provided under the law. Appellant further stated that, he being the resident and member of Alps Valley Royale Cooperative Housing Society, had sought for information on seven points pertaining to the working of the said society. Since the Assistant Registrar of Cooperative Housing Societies, North Zone, Mapusa is the head and controls the affairs of the said society, the PIO is required to have in possession all the information requested by him and the same has to be furnished under the Act. Appellant contended that, the PIO is ignorant of the provisions of the Act and the FAA has failed to conduct the proceeding of the first appeal as per the provisions of the RTI Act, 2005.
5. Smt. Geeta S. Naik, the then PIO submitted that, it is the responsibility of the appellant to submit unambiguous and clear request for information. Information sought by the appellant is not specific and she is neither empowered nor required to create any information. That, the appellant has asked for reasons and advice to the PIO which under Section 2 (f) does not qualify as information. The then PIO further stated that, the said society is a private body and the society is the final authority in their affairs and the PIO can furnish only that information which is available in written, printed or in digital mode, in the possession of the office of the Registrar or Assistant Registrar of Cooperative Societies. Smt. Geeta S. Naik apologised for her failure to issue reply to the appellant within stipulated period, citing the health issues.
6. Shri. Mangesh G. Phadte, the present PIO stated that, the office of the Registrar of Co-operative Societies is only exercising supervisory and regulatory powers over Co-operative societies registered under the Goa Co-operative Societies Act, 2001 and Goa Co-operative

Societies Rules, 2003. That, the PIO has no jurisdiction to interfere in day to day affairs of any society, except in accordance with specific provisions of the said Act. Similarly, PIO's office is empowered to intervene only when a dispute is brought before the authority under due procedures. Since the said society is a private legal entity, information sought under point no. 1 and 2 with respect to expenditure incurred, is not required to be in the custody of the PIO. The present PIO further submitted that, with respect to information on point on. 3 to 7, the same does not qualify under Section 2 (f) of the Act as information and the PIO is not authorised to create any information or formulate his own answer in order to furnish to the appellant.

7. While seeking the information, before the Commission, the appellant has relied on various judgements passed by the Central Information Commission such as Ashok Sardana v/s Registrar of Co-operative Societies (21/10/2015), Mohanlal Jain v/s GNCTD (21/10/2015), Ramesh Hirani v/s Nav Kuni CGHS (12/12/2014) and B.C. Raana v/s Registrar of Co-operative Housing Society (30/09/2015).

Whereas, respondents the then PIO and the present PIO have relied on Hon'ble Supreme Court in Talappalam Service Co-operative Bank Ltd. & Ors v/s. State of Kerela & others (Civil Appeal No. 9017 of 2013, arising out of SLP (c) No. 24290 of 2012), Khanapuram Gandaiah v/s Administrative Officer (Special Leave Petition (Civil) No. 34868 of 2009), Hon'ble High Court of Bombay at Goa in Sainik Co-operative Housing Building Society Ltd. v/s Mr. Bismark Facho & Others (W.P. 428 of 2007), High Court of Uttarakhand in Nagar Nigam v/s Chief Information Commissioner (W.P. No. 412 (MS) of 2009).

8. The Commission has perused the submission and replies in the present matter and the judgement delivered by the above mentioned Authorities. Upon careful perusal it is seen that the appellant is aggrieved by non furnishing of the information by the PIO and procedure followed by the FAA while deciding the first appeal. On the other hand, respondent PIOs have drawn my attention to the two points one – the application is not specific and part of the information sought is not eligible as information under Section 2 (f), two- part of the information requested is not in the custody of the PIO, hence cannot be furnished.
9. This being the case insofar as the appellant and the respondents have contended, the issues needs to be decided are as follows:-

- a) whether the conduct of the PIO is satisfactory with respect to the provisions of the Act?
 - b) whether the FAA followed proper procedure while deciding the first appeal?
 - c) whether the application seeking the information is clear and specific and the information sought by the appellant qualifies as information under the Act?
 - d) whether the authority / PIO is guilty of not furnishing any eligible information?
10. Before looking into these issues let us have a look at the request of the appellant for information. Appellant filed application dated 07/06/2022 before the PIO, which states:-

Particulars of information required:-

1. In accordance with rule 24 of CHS Goa, I had called for photo copies of bills of certain works carried out by BOD and paid by treasurer from society funds, this request was vide a letter dated 23/03/2022, the Secretary/treasurer till date hasn't provided the required, amounting to arrogance and gross violation of CHS rules, I had intimated this to your office, please intimate the action taken in this respect.
2. I have written numerous letters to your office regarding lapses by AVR BOD like fraudulent tendering procedures, expenditures exceeding the vested financial powers limits etc, any action taken in this context if so please furnish details.
3. The BDO members are involved directly/ indirectly in carrying out works for the society and being unreasonably paid, importantly, without the concurrence of AGM, is this act justified? if not, why not rule 129 be invoked against the BDO to make good the losses suffered by the society, please furnish guidelines/ procedures to implement rule 129.
4. The audit of society done is not as per schedule of audits it's mere a statement of income and expenditure, this matter has been brought to your kind notice, please suggest a line of action for the lapse by the AVR BOD, relating to this erroneous act.
5. A BOD member of the society has revealed to me verbally that an enhanced approval of Rs. 4 lakhs per occasion has been accorded for society works expenditure, if true please furnish details and under what ruling /contingency the approval is given.
6. A letter regarding partial painting of the society was objected by certain rightful members of society, the matter was ignored by the BOD and completed the work without discussing the reservation of the members, copy endorsed to your office, kindly guide the line of action that can be initiated in the interest of the society.

7. The Secretary of the society had notified that two members have expressed their willingness to join the three members proposed committee to look into the day to day maintenance of the society so the required numbers including me is fulfilled, please furnish the progress in this matter.
11. With respect to the issue (a) it is observed that the then PIO did not respond to the application with the stipulated period of 30 days as required under Section 7 (1) of the Act. The said failure has been admitted by the then PIO and has apologised for the same. The Commission, upon admonishing the then PIO, Smt. Geeta S. Naik with warning to promptly respond to the applications hereafter as provided by law, accepts her apology and holds that there is no need to initiate penal action against the then PIO. Similarly, Shri. Mangesh G. Phadte, the present PIO has taken required efforts in order to get the information from the Alps Valley Royale Co-operative Housing Society, hence, the Commission does not find anything wrong in his conduct.
12. With respect to issue (b), first appeal was filed by the appellant on 26/07/2022 and the same was disposed as dismissed by the FAA vide order dated 14/10/2022. Section 19 (6) of the Act requires FAA to decide the first appeal within maximum of 45 days. Meaning, FAA in this matter was required to dispose the appeal on or before 10/09/2022, instead the authority delayed the disposal by about 35 days. However, due hearing to both the sides was given by the FAA. Nevertheless, the FAA has failed to adhere with the time frame provided under Section 19 (6) of the Act, thus the FAA is directed to abide by the said provisions hereafter while deciding the first appeals, received by him under Section 19 (1) of the Act.
13. Upon perusal of the contents of the application as mentioned in Para 10 above, it is seen that the appellant under point no. 1 has requested for photocopies of bills of certain payments done by the Managing Committee of the said society. The PIO has stated that the payment was done by the Society and according to the Goa Co-operative Societies Act, 2001 the said information is not required to be in the custody of the PIO. The Commission endorses the stand of the PIO and holds that the said information does not qualify as information under Section 2 (f) of the Act.

Similarly, with respect to point no. 2 to 7 of the application, the appellant has not sought specific information. On the contrary, appellant has vaguely referred to some letter written by him to the

Managing Committee of the society and the office of the PIO, some verbal discussion with members of the Managing Committee etc. Also, the appellant has asked for suggestions and advice, opinions and guidance from the PIO, wherein, PIO is not required to furnish any of the said requests, under the Act.

Thus, the Commission finds that, with respect to issue (c) in Para 9 above, the information sought by the appellant is not clear and specific as required under Section 6 (1) (b) and the same does not qualify as information under Section 2 (f) of the Act.

14. As the Commission has held that the information sought by the appellant is either not specific and clear or/ and the same does not qualify as information under the Act, and in some cases the information is not within the custody of the PIO, the answer to issue (d) is clearly in the negative. Thus, the PIO cannot be held guilty of not furnishing any eligible information to the appellant.
15. The Commission observes that the appellant and the Managing Committee of Alps Valley Royale Co-operative Housing Society are at loggerheads and the application which is the subject matter of the instant appeal is the outcome of the disagreement of the appellant with the Managing Committee of the said society. There is no iota of any public interest seen in the said application.
16. The PIO or the authority under the head of the Registrar of Co-operative Societies is required to furnish the information available in his possession. Apart from the information he has in his possession, PIO can gather information from Co-operative Society on which he has supervisory or/and administrative control, under the Co-operative Societies Act. Appellant in the instant matter at first instance has not sought any specific and clear information, and has not brought to the notice of the Commission, under which provision, information he has sought can be collected by the PIO from the said society and furnish the same to him. Appellant cannot expect the office of the Registrar to have in their possession all and sundry information of any /all Co-operative Housing Societies.
17. In the background of the findings of the present matter, the Commission holds that the application dated 07/06/2022 filed by the appellant is not clear and specific, does not seek any eligible information. Hence, the instant appeal based on the said application is devoid of merit and the same is required to be disposed without any grant of relief to the appellant.

18. In the light of above discussion, the present appeal is disposed as dismissed and the proceeding stands closed.

Pronounced in the open court.

Notify the parties.

Authenticated copies of the order should be given to the parties free of cost.

Aggrieved party if any, may move against this order by way of a Writ Petition, as no further appeal is provided against this order under the Right to Information Act, 2005.

Sd/-

Sanjay N. Dhavalikar

State Information Commissioner
Goa State Information Commission,
Panaji-Goa.