

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 280/2022/SIC

Shri. Anil V. Sawant Dessai,
H. No. 189/9, “SAIEE-KUNJ”,
Sanfator-Xeldem Housing Board,
Xeldem-Quepem-Goa, 403705.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Administrator of Devalaya cum
Office of the Mamlatdar- Sanguem,
Sanguem Taluka,
Sanguem-Goa, 403604.

2. The First Appellate Authority,
Office of the Dy. Collector-Sanguem,
Sanguem-Goa, 403604.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 17/03/2022
PIO replied on	: 29/03/2022
First appeal filed on	: 01/04/2022
First Appellate Authority order passed on	: 03/08/2022
Second appeal received on	: 31/10/2022
Decided on	: 10/07/2023

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, Public Information Officer (PIO), Office of the Administrator of Devalayas / Office of the Mamlatdar of Sanguem and Respondent No. 2, First Appellate Authority (FAA), Office of the Deputy Collector- Sanguem, came before the Commission on 31/10/2022.
2. It is the contention of the appellant that, he had sought from the PIO information pertaining to Shree Nagnath Betal Devasthan, Dhadem, Sanguem. Being aggrieved by the denial of the said information he filed first appeal before the FAA. It is the contention of the appellant that, the first appeal was dismissed by upholding PIO's stand, thus he has appeared before the Commission by way as second appeal, seeking the information and action against the respondents.
3. Notice was issued to the concerned parties and the matter was taken up for hearing. Pursuant to the notice, appellant appeared in person.

Shri. Rajesh Sakhalkar, the then PIO appeared in person and filed reply dated 16/01/2023 and 16/05/2023. Submission dated 06/12/2022 was filed on behalf of Shri. Pravinjay Pandit, present PIO. Shri Viraj Malkarnekar, Awal Karkun appeared for the FAA under authority letter and filed replies on 06/12/2022, 16/01/2023 and submission on 16/05/2023. Appellant filed counter reply to the reply of both the respondents.

4. Shri. Pravinjay Pandit, present PIO stated that, the notice issued by the Commission has been served to Shri. Rajesh G. Sakhalkar, the then PIO, who is presently posted as Joint Mamlatdar- I at Ponda.
5. Shri. Rajesh G. Sakhalkar, the then PIO stated that, the information sought by the appellant is not covered under the Act since the information pertains to a Devasthan and Devasthans are not coming under the RTI Act, 2005 as per the order dated 17/08/2017 passed by the Chief Information Commissioner, Goa State Information Commission, in Appeal No. 135/SCIC/2016. That, PIO, as claimed by the appellant, never misguided the appellant, on the contrary has acted in compliance with the above mentioned order of the Chief Information Commissioner. The then PIO further stated that, he had acted and replied the appellant within the stipulated period as provided in the Act and the FAA had upheld his action by dismissing the first appeal.
6. FAA submitted that, the notice was issued to the concerned parties upon receiving the first appeal and the matter was disposed and the order was passed as provided by the Act. That, the FAA has acted diligently and he prays that the present proceeding against him be dropped.
7. Appellant stated that, he had sought information from the PIO who is Administrator of Devalayas in Sanguem Taluka and instead of furnishing the information, PIO has tried to misguide the appellant by citing order passed by the State Chief Information Commissioner in Appeal No. 135/SCIC/2016. The said order is not connected to the present matter. Appellant further submitted that, the PIO in the capacity of Administrator of Devalayas in Sanguem Taluka is required to possess the information he had sought, pertaining to Shree Nagnath Betal Devasthan, Dhadem, Sanguem. That, the PIO be directed to furnish the information and penal action may be initiated against the PIO.

8. Upon perusal of the records of the present matter it is seen that, the appellant vide application dated 17/03/2023 had sought information pertaining to Shree Nagnath Betal Devasthan, Dhadem, Sanguem. Appellant had sought the information from the PIO/Mamlatdar of Sanguem who is also the Administrator of Devalayas in Sanguem Taluka. PIO vide reply dated 29/03/2022 denied the request by stating that the Devasthan is not under the RTI Act, 2005 as per the order dated 17/08/2017 passed by the State Chief Information Commissioner, Goa State Information Commission in Appeal No. 135/SCIC/2016.
9. It appears that the PIO has relied on the order passed by the State Chief Information Commissioner in Appeal No. 135/SCIC/2016. The said appeal was filed by the appellant Shri. Subhas G. Narvekar against Respondent No.1, Shree Dev Bodgeshwar Sansthan and Respondent No. 2, the Managing Committee, Shree Dev Bodgeshwar Sansthan and Respondent No. 3, Mamlatdar of Bardez /Administrator of Devasthan, Bardez Taluka. The State Chief Information Commissioner in his order had held that Respondent No. 1 and Respondent No. 2 are not public authorities as defined under Section 2 (h) of the Act.
10. There is a basic difference between the above mentioned matter and the present matter. The appellant in the above mentioned matter had directly sought the information from the Devasthan/ Managing Committee of Devasthan and the State Chief Information Commissioner had rightly held that the Respondent No. 1 and Respondent No. 2 are not public authorities under Section 2 (h) of the Act, whereas, in the present appeal proceeding before the Commission, appellant has requested the Administrator of Devalayas to furnish the information pertaining to the Devasthan within his jurisdiction / Taluka.
11. It is pertinent to note Section 2 (f) which defines the term information as under:-
 2. (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."
12. On the background of the definition of 'information' let us have a look at Article 70 of the Devasthan Regulations. As per Article 70 of

Devasthan Regulation, the Mamlatdar, being the Administrator of Talukas (Concelho) is designated as Administrator of the bodies of members (mazanias), i.e. Managing Committee, the Mamlatdar is bestowed upon the functions such as to watch over the execution of regulations and bye-laws, to maintain the order of regularity of the bodies (mazanias), to audit the accounts of bodies, to examine the documents and book-keeping, to transit Government decisions to the Committee etc; meaning, Article 70 of Devasthan Regulations gives supervisory powers to the Administrator / Mamlatdar of Devasthan.

To be even more specific, Article 70 (16) states as under:-

Art.70- It shall be incumbent on the Administrator of Talukas (concelho) as Administrator of the bodies of members (mazanias):

16) To examine the documents and book-keeping, to inspect the records, services and works, to initial the books of the bodies of members (mazanias) it being allowed to empower any employee of their confidence to perform this act.

13. From the above provisions, it is clear that the Administrator / Mamlatdar acts as a supervisory head of Devasthans in his Taluka. Therefore he should be in possession of records of Devasthans pertaining to budget, audits, deposits in the form of cash and other valuable, minutes of the meetings of the Managing Committee of Devasthan (mazanias), etc. With this, the Commission finds that all the information pertaining to Devasthans is presumed to be in the custody of the Administrator and if any information / details not provided by the Devasthan, Administrator/ Mamlatdar is authorized under Article 70 of Devasthan Regulation to take custody of the same. Also, as per the definition of 'information' as mentioned in Para 11, information relating to any private body which can be accessed by a public authority under any other law for the time being in force is termed as information under the Act.
14. Thus, the Commission holds that even though the information sought by the appellant pertains to a private body, i.e. Shree Nagnath Betal Devasthan, Dhadem, Sanguem; the Administrator of Devalays / Mamlatdar of Sanguem under Devasthan Regulation has access to all such information of the said Devasthan and is required to furnish the information to the appellant.
15. In a similar matter, the Hon'ble High Court of Delhi in Poorna Prajna Public School v/s Central Information Commission & Ors. (W.R. No. 7265/2007) has held in Para 8:-

"8.... 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. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished."

16. The High Court of Jammu and Kashmir and Ladakh in a recent judgment in the case Tyndale Biscoe School & Ors. v/s Union Territory of J & K & ors. (AIR 2022 J&K 112) has observed as under:-

"14. Definition of two expressions 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. There is no doubt that in terms of Section 22, Act of 2005 has been given overriding effect over any other law for the time being in force or instrument having effect by virtue of any law other than the Act of 2005. It is, thus, axiomatic that 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 Act of 2005. The term "held by or under the control of any public authority" used in Section 2(j) of the Act of 2005 will include information to which a public authority has right to access from a private body under any other law."

17. It is clear from the ratio laid down in above judgments that the PIO/ Administrator of Devalayas should be in possession of the information pertaining to Devasthans in his jurisdiction. Further, Administrator has access to any such information of Devasthans in his jurisdiction. Although Shree Nagnath Betal Devasthan, Dhadem, Sanguem is not a public authority under the Act, the Commission holds that the Administrator/ Mamlatdar of Sanguem has access to all the information pertaining to the said Devasthan and the PIO / Administrator / Mamlatdar is required to furnish the same.
18. The Commission observes that, the PIO though was required to furnish the information, had denied the same to the appellant and the FAA had upheld the stands of the PIO. However, in the background of the findings in the present matter, the Commission holds the PIO guilty of not furnishing the information. Similarly, the Commission holds that the order of the FAA needs to be quashed and set aside.
19. The appellant alongwith the information has prayed for penal action against PIO and FAA, as well as compensation against the expenditure he was compelled to incur to get the information. Appellant, however, while requesting for compensation has not elaborated on the details of expenditure, hence, the same cannot be granted. Similarly, the Act does not empower the Commission to take penal action against the FAA. However, the Commission holds PIO guilty of contravention of Section 7 (1) of the Act and concludes that the failure of the PIO to furnish the information is liable for penal action under Section 20 (1) of the Act.
20. In the light of the above discussion, the appeal is disposed with the following order:-
 - a) The appeal is partly allowed.
 - b) The order of FAA is quashed and set aside.
 - c) The present PIO is directed to furnish information to the appellant sought vide application dated 17/03/2022, within 15 days from the receipt of this order, free of cost.
 - d) Issue show cause notice to Shri. Rajesh G. Sakhalkar, PIO, Administrator of Devalaya of Sanguem / Mamlatdar of Sanguem and the PIO is further directed to showcause as to why penalty as provided under section 20(1) of the Act should not be imposed against him.

- e) Shri. Rajesh G. Sakhalkar, the then PIO, Administrator of Devalaya of Sanguem / Mamlatdar of Sanguem is hereby directed to remain present before the Commission on 07/08/2023 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceeding.
- f) In case the then PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing , alongwith full name and present address of the then PIO.
- g) All other prayers are rejected.

Proceeding of the present appeal 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.