

**GOA STATE INFORMATION COMMISSION**

“Kamat Towers” 7<sup>th</sup> Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: [spio-gsic.goa@nic.in](mailto:spio-gsic.goa@nic.in) Website: [www.scic.goa.gov.in](http://www.scic.goa.gov.in)

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Appeal No. 90/2023/SIC**

Shri. Joaquim Nicolau Geromico Fernandes,  
H. No. 1389, Sinaibaga, Curtorim,  
Salcete-Goa 403709.

-----Appellant

**v/s**

1. The Public Information Officer,  
Dy. Town Planner/ Public Information Officer- 07,  
Town & Country Planning Department (HQ),  
Dempo Towers, Patto-Plaza,  
Panaji-Goa, 403001.

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

-----Respondents

**Relevant dates emerging from appeal:**

RTI application filed on	: 10/10/2022
PIO replied on	: 03/11/2022
First appeal filed on	: 23/11/2022
First Appellate Authority order passed on	: 27/12/2022
Second appeal received on	: 09/03/2023
Decided on	: 24/07/2023

**ORDER**

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought from Respondent No. 1, Public Information Officer (PIO) certain information. Being aggrieved by the reply of the PIO and the order of Respondent No. 2, First Appellate Authority (FAA), the appellant has filed second appeal before the Commission.
2. It is the contention of the appellant that, properties surveyed under Survey No. 116/2 and 116/3 of Village Curtorim, Taluka Salcete were in settlement zone in RP 2001 and then in RP 2021 were changed to paddy fields. Since this change happened without any notice to the appellant, vide application dated 10/10/2022, he had sought for documentation for such a change of zone. PIO, instead of furnishing the information replied stating that the question is hypothetical and amounts to interpretation, which is outside the purview of the Act.

Appellant further contended that, he is only asking for documentation and procedure adopted for such a change, as without certain criterias or documentation the said change of zone cannot happen. It is the contention of the appellant that PIO has malafidely denied the information and FAA has supported the stand of the PIO.

3. Notice was issued to the concerned parties and the matter was taken up for hearing. It is observed that, notice dated 03/04/2023 for appearance and reply was issued to the respondents and the same was delivered to the office of the respondents on 10/04/2023. Since none appeared before the Commission on 02/05/2023 and also on 18/05/2023, fresh notice dated 23/05/2023 for appearance and reply was issued and the same was delivered to their office by Registered Post on 25/05/2023. Furthermore, opportunities were provided to the PIO and the FAA on 12/06/2023, 03/07/2023 and 24/07/2023, however, none appeared, nor any say /reply was filed on behalf of the respondents justifying their action /decision. The Commission cannot subscribe to such careless and arrogant conduct of respondents.
4. Now let us see what information was sought by the appellant vide application dated 10/10/2022. The said application states:-

*"The undersigned requires the following particulars of information (certified copies):-*

1. *Criteria based on which the zoning of the properties surveyed under Sy. No. 116/2 and Sy. No. 116/3 pertaining to Village Curtorim, Taluka Salcete, has been arbitrarily changed from settlement zone in RP 2001 to paddy fields in RP 2021.*
2. *Whether a show cause notice was given to the concerned parties contemplating such a change.*
3. *Furnish to me all the copies of the correspondence / notings, perused / used, for such a change.*
4. *Whether the same criteria is used in all other similar cases, if there are any, if not, reason stated therein."*

PIO vide reply dated 03/11/2022 informed the appellant as below:-

- I. *"As regards to information sought by you at point No. 1 in your above referred application it is to inform you that PIO is only supposed to provide information available in material form includes records, documents, reports etc., but in the instant application the applicant has questioned as on criteria*

*based on which zone of the property was changed from settlement zone in RP 2001 to Paddy fields in RP 2021. The PIO can provide the available information and cannot reply on the secondary queries of the applicant about the reasons for decisions taken by the other authorities as provided in Section 10 (2) (b) of RTI Act.*

*II. As regards to information sought by you at point No. 2, 3 and 4 in your above referred application it is to inform you that information is not available in this office records as such information cannot be furnished."*

5. It is seen from the above para that, the appellant under point no. 1 has requested for certified copies of criterias, based on which zoning was changed. It is well defined procedure that if zoning of any property is changed, the same is done strictly based on pre-determined criterias and the said norms or guidelines for change of zone are laid down by the office of the PIO, i.e. Town & Country Planning Department. In such a situation, the PIO is required to have in his records the list/ document of pre-determined criterias / norms guidelines based on which zoning of properties can be changed.

The Commission cannot accept the reply of the PIO given to the appellant which states that the appellant has questioned as on the criterias based on which zone was changed. A simple reading of point no. 1 of the application makes its clear that the appellant had sought for criterias used by the authority to change the zone. The same may be referred as criteria or norms or checklist or policy or guidelines etc, but the point here is the PIO is required to have the said information by whatever name called, in his records and he is mandated to furnish the same to the appellant. The Commission finds him / her guilty of not furnishing the said information.

6. With respect to point no. 2, 3 and 4 of the application, the PIO has stated that, the information is not available in his/ her office. Section 7 (8) (i) of the Act requires PIO to communicate to the applicant the reason for rejection of the request. Here the Commission holds that the PIO was required to state reasons for non availability of the said information or under Section 6 (3) of the Act transfer the application to the appropriate authority, where the information is available. Thus, the PIO was mandated to either furnish the information or transfer the application to the appropriate authority. PIO neither furnished information, nor transferred the application. Hence, the Commission holds PIO guilty of not taking appropriate action as provided by the Act, before issuing a reply to the applicant.

7. It is observed that the PIO while denying the information has informed the appellant that under Section 5 (4) and 5 (5) of the Act he had sought help of the APIO. PIO being a senior officer of the TCP Department should have invoked Section 5 (3) of the Act. The said Section states:-

“5.(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.”

8. The above mentioned section mandates PIO to render reasonable assistance to the applicant. PIO in the present matter instead of 'dealing with' the request in the true spirit of the Act, as provided under Section 5 (3), just like a 'Post Office' forwarded the reply from APIO to the appellant without application of mind. On the contrary, he was required to assist the appellant and understand what information the appellant was seeking. Ironically, the PIO was more interested in denying the information than to assist the appellant.

9. Hon'ble High Court of Delhi in W.P. (c) 900/2021 and CM APPL 2395/2021, in Rakesh Kumar Gupta (Erstwhile CPIO) Union Bank of India & Ors v/s Central Information Commission & Anr. has held in para 16:-

*"16. Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and 'render reasonable assistance' to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the 'proper discharge' of their duties, as per Section 5(4). Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5). CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, non arbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs."*

10. In J.P. Agrawal v/s Union of India & Ors, W.P. (c) 7232/2009, decided on 4<sup>th</sup> August 2011, the Hon'ble High Court of Delhi has recognised that CPIOs/ PIOs are not merely "post offices" and have a crucial responsibility in facilitating the purpose of the Act. The Court has held:-

*"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the petitioner would contend. The expression "deal with", in Karen Lambert Vs. London Borough of Southwark (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the 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 requirements 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. As has been noticed above, penalty has been imposed on the petitioner not for the reason of delay which the petitioner is attributing to respondent no.4 but for the reason of the petitioner having acted merely as a Post Office, pushing the application for information received, to the respondent no.4 and forwarding the reply received from the respondent no.4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the respondent no.4 and/or his department and/or his administrative unit was not what was sought and that the petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.*

11. The Right to Information Act, 2005 is a beneficial Act which has been enacted by the Parliament to bring practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of public authority. However, the PIO in the present matter has acted completely against the provisions and the spirit of the Act.
12. In the background of the facts of the matter discussion above and subscribing to the ratio laid down by the Hon'ble High Court as mentioned above, the Commission finds that the PIO has failed to furnish the information sought by the appellant. The said failure amounts to contravention of Section 7 (1) of the Act and the same is liable for penal action under Section 20 of the Act. Further, the Commission with all seriousness notes that the PIO failed to attend the proceeding, neither deputed any representative, nor filed any say justifying his/ her action. Thus, the PIO needs to be admonished for his/ her irresponsible and arrogant conduct.
13. In the light of above discussion the present appeal is disposed with the following order:-
  - a) PIO is directed to furnish information sought by the appellant vide application dated 10/10/2022, within 10 days from the receipt of this order, free of cost.
  - b) Issue show cause notice to the PIO, Deputy Town Planner, Town & Country Planning Department and the PIO is further directed to show cause as to why penalty as provided under Section 20 (1) and /or 20 (2) of the Act, should not be imposed against him/ her.
  - c) In case the PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing, alongwith the present address of the then PIO.
  - d) The then PIO is hereby directed to remain present before the Commission on **28/08/2023 at 10.30 a.m.** alongwith the reply to the showcause notice.
  - e) The Registry is directed to initiate penalty proceeding against PIO.

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.