

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 240/2022/SIC

Shri. Santana Piedade Afonso,
House No. 263, Comba-Central,
P.O. Cuncolim, Salcete-Goa,
Pin Code No. 403703.

-----Appellant

v/s

1. Shri. Laxmikant Dessai,
Public Information Officer/ Mamlatdar of Salcete Taluka,
O/o. the Mamlatdar of Salcete Taluka,
1st floor, Mathany Saldhana Administrative Complex,
Margao-Salcete-Goa,
Pin Code. 403601.

2. Shri. Uday R. Prabhu Dessai,
First Appellate Authority/ Office of Deputy Collector & SDO,
1st floor, Mathany Saldhana Administrative Complex,
Margao-Goa 403601.

-----Respondents

Relevant dates emerging from appeal:

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| RTI application filed on | : 09/03/2022 |
| PIO replied on | : 21/04/2022 |
| First appeal filed on | : 28/04/2022 |
| First Appellate Authority order passed on | : 13/06/2022 |
| Second appeal received on | : 12/09/2022 |
| Decided on | : 13/02/2023 |

ORDER

1. Appellant vide application dated 09/03/2022, filed under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') had sought certain information from Respondent No. 1, Public Information Officer (PIO). Aggrieved by non-furnishing of the information he filed appeal before Respondent No. 2, First Appellate Authority (FAA). FAA directed PIO to furnish information within ten days. PIO did not comply with the said order, hence the appellant approached the Commission by way of second appeal.
2. Pursuant to the notice, Smt. Sharmila Sinai Kerkar, APIO appeared on behalf of Laxmikant Dessai, PIO on 11/10/2022 and filed reply dated 07/10/2022. Appellant appeared in person and filed submission on 09/01/2023.
3. Appellant stated that, he had requested for Suo Motu inspection and Suo Motu disclosure of the Gut-Book Maps held by village Talathi of Utorda, Salcete Goa and coloured copies of the said Gut-Book Maps

of Survey No. 104/1, 2, 3, 4 and 105/1 and 107/2 of the revenue village of Utorda. PIO, after the expiry of 30 days informed the appellant that the inspection and disclosure cannot be issued. Thus, neither the inspection, nor disclosure of the said Gut-Book was provided. Appellant further stated that, even after the direction from the FAA, PIO has not furnished the information.

4. PIO stated that, his office vide letter dated 21/04/2022 had informed the appellant, that as per his application dated 09/03/2022 in para (a) (i) Suo Motu Inspection and Suo Motu Disclosure of the Gut Book Maps of Survey No. 104/1, 2, 3, 4 and 105/1 and 107/2 of the village of Utorda, inspection can be carried out by the applicant. However, the coloured copies of the said Gut Book Maps of Survey No. 104/1, 2, 3, 4 and 105/1 and 107/2 of the Revenue village of Utorda cannot be provided and the Gut book is for the reference of the Talathi.
5. Appellant submitted that, the PIO vide reply dated 21/04/2022 had denied the request of the appellant, the same PIO has stated before the Commission that inspection can be carried out by the applicant, however, coloured copies cannot be provided and the Gut-Book is for the reference of the Talathi. Therefore, the PIO has to show whether the said Gut-Book Maps are in public domain or are private or third party information. Similarly, the Matriz copies of the landed properties, held by the Mamlatdar of Salcete, who is the PIO in the present matter, are provided, then why the Gut- Book Maps held by the Village Talathi cannot be provided. By stating this, appellant contended that the PIO has deliberately and knowingly denied the information, hence, alongwith information he is praying for imposing penalty on the PIO.
6. Upon careful perusal of the records of the instant case, the Commission notes that the appellant herein vide application dated 09/03/2022 had requested for information as follow:
"As the office of the Mamlatdar of Salcete Taluka, is aware of the records as per the Gut-Book of the Village Maps held in the custody of the Village Talathi of the village Utorda of bearing Survey No. 107/2 and 104/1, 3,4 and 105/1 of the Revenue Village of Utorda, Salcete-Goa. Therefore, i) give me the Suo Motu Inspection and Suo Motu Disclosure of the said Gut-Book Maps held by the Office of the Village Talathi of Utorda, Salcete-Goa and thereafter, provide me the colored copies of the said Gut-Book Maps of Survey No. 104/1, 2, 3, 4 and 105/1 & 107/2 of the Revenue village of Utorda as per the RTI Act-2005."

PIO vide reply dated 21/04/2022, issued after more than 40 days from the receipt of the application, informed the appellant that, "with reference to your application dated 09/03/2022 on the above cited subject, I am to inform you that Suo Motu Inspection and Suo Motu Disclosure of the Gut-Book Map of Survey No. 104/1, 2, 3, 4 and 105/1 & 107/2 of the village Utorda cannot be issued."

Aggrieved appellant filed first appeal and the FAA vide order dated 13/06/2022 directed the PIO/ Mamlatdar of Salcete to provide proper information to the appellant within ten days from the date of the order.

7. PIO did not comply with the direction of the FAA, hence the appellant was compelled to file second appeal before the Commission. The Commission is astonished to find that the same PIO who denied the request vide reply dated 21/04/2022, submitted during the hearing of second appeal that, "vide reply dated 21/04/2022 he had informed the appellant that inspection can be carried out, however, coloured copies of the Gut-Book Maps cannot be provided and the Gut-Book is for the reference of the Talathi." Here, PIO has contradicted his own reply and the Commission notes that the PIO has filed a reply with distorted statement, which cannot be accepted.
8. Information sought by the appellant under Section 6 (1) of the Act has to be furnished if the same is in public domain and forms part of the record under the custody of the PIO. Information can be withheld only if the same is eligible for exemption under Section 8 or for rejection under Section 9 of the Act. PIO, in the instant matter has not claimed exemption under Section 8 or 9 of the Act, while denying the information, nor transferred the application under Section 6 (3) of the Act to some other authority. Similarly, as provided under Section 5 (4) of the Act, PIO neither sought assistance of any other officer including the Talathi of Utorda village, nor was able to justify the denial of the request as required under Section 19 (5) of the Act. The said conduct of the PIO clearly shows that he has knowingly and deliberately denied the information, as contended by the appellant.
9. The Hon'ble High Court of Kerala at Ernakulam in WP (c) No. 6532 of 2006 (c) , Treesa Irish v/s the Central Public Information Officer and others, has held:-

"24. The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained device of construction. In a

constitutional democracy, every limb and digit of governance is ultimately answerable to the governed."

The Hon'ble High Court has further held –

"25. The difficulties a public authority may encounter in the matter of supply of information are no grounds to deny the information, if that information is available and not exempted from disclosure. Whatever be the difficulties, unless the information is exempt from disclosure, the public authority is bound to disclose the same."

10. The above mentioned judgement makes it clear that the PIO cannot create his own exemption clauses to evade the disclosure of the information available in his records and once it is established that the information sought is not exempted, whatever may be the difficulty, PIO is mandated to furnish the same to the appellant.
11. In the present matter the Commission finds that the inspection and information requested by the appellant is in public domain, not exempted under Section 8 or 9 of the Act and the PIO under Section 7 (1) of the Act was required to provide the inspection. However, PIO refused the inspection as well as the information. The contention of the PIO that copies of the said Gut-Book Maps cannot be provided and the Gut- Book is for the reference of Talathi is not acceptable to the Commission since it has been already held that any information available in the custody of the PIO has to be furnished to the applicant under the Act, if the same is not exempted or rejected under Section 8 and 9 of the Act.
12. Thus, the Commission observes that the PIO has failed to provide the inspection and information as sought by the appellant. The said failure amounts to contravention of Section 7 (1) of the Act. Firstly, PIO did not furnish the information within the stipulated period of 30 days from the receipt of the application, secondly, PIO failed to comply with the direction of the FAA by not adhering to it and thirdly, PIO maintained his adamant stand of not furnishing the information inspite of the opportunity provided by the Commission during the present proceeding. Such obdurate conduct of the PIO leads to dishonoring the provisions of the Act and the same is not at all acceptable to the Commission. Hence, the Commission concludes that the PIO is guilty of contravention of Section 7 (1) of the Act and said conduct is punishable under Section 20 (1) and /or Section 20 (2) of the Act.

13. In the light of above discussion, the present appeal is disposed with the following order:-
- a) PIO, Mamlatdar of Salcete, Margao-Goa is directed to provide inspection and furnish information as available in his custody, sought by the appellant vide application dated 09/03/2022, within 10 days from the receipt of this order.
 - b) PIO shall levy appropriate charges for color copies of the requested information as mentioned above and the appellant may collect the information after paying the prescribed charges.
 - c) Issue notice to Shri. Laxmikant R. Dessai, PIO to show cause as to why action as contemplated under Section 20 (1) and /or 20 (2) of the Act should not be initiated against him for contravention of Section 7 (1) of the Act.
 - d) In case the PIO at the relevant time, to whom the present notice is issued is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the Commission on or before the next date fixed in the matter, alongwith present address of the then PIO.
 - e) Opponent PIO, Shri. Laxmikant R. Dessai is hereby directed to remain present before the Commission on **13/03/2023 at 10.30 a.m.** alongwith written reply to the show cause notice stating why penalty as provided under Section 20 (1) and 20 (2) of the Act should not be imposed on him.
 - f) The Registry is directed to initiate penalty proceeding as mentioned above.

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

