

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 28/2023/SIC

Satish K. Naik,
H.No. 569, Thorlem Bhat,
Dongri, Tiswadi, Goa, 403104.

-----Appellant

v/s

1. The Mamlatdar of Tiswadi Taluka,
Public Information Officer,
Office of the Mamlatdar,
Panaji-Goa 403001.

2. Dhamda Khazan Tenants Association,
Neura –O-Grande, Neura, Tiswadi, Goa,
Through its Chairman,
Shri Gokuldas Naik,
R/o H.No. 617, Thorlem Bhat,
Dongri, Tiswadi Goa 403104.

3. The First Appellate Authority,
Mamlatdar of Tiswadi Taluka,
Panaji- Goa 403001.

----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 30/09/2022
PIO replied on	: 11/10/2022
First appeal filed on	: 11/11/2022
First Appellate Authority order passed on	: 06/12/2022
Second appeal received on	: 16/01/2023
Decided on	: 22/02/2024

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), Office of the Mamlatdar of Tiswadi Taluka, information on seven points. It is the contention of the appellant that, the PIO furnished incomplete information, thus, he preferred first appeal before Respondent No. 3, First Appellate Authority (FAA). The first appeal was heard and subsequently dismissed by the FAA. Being aggrieved by the action of PIO and FAA, the appellant has filed the present second appeal under Section 19 (3) of the Act, before the Commission. The said appeal has been filed against Respondent No. 1, PIO, Respondent No. 2, Shri. Gokuldas Naik, Chairman of Dhamda Khazan Tenants Association and Respondent No. 3, FAA.

2. Notice was issued to the concerned parties and the matter was taken on board for hearing. Smt. Anusha Gaonkar, PIO appeared and filed reply dated 16/03/2023. Respondent No. 2, Shri. Gokuldas Naik, appeared alongwith Advocate Arjun F. Naik and filed reply dated 16/03/2023. Shri. K. B. Dessai, FAA appeared in person and filed reply dated 17/08/2023 and submission dated 08/01/2024. Shri. Satish K. Naik, appellant appeared alongwith Advocate Pravin U. Naik, filed application dated 15/06/2023 and another application dated 17/08/2023. Arguments of both the sides were heard on 05/01/2024, 29/01/2024 and 13/02/2024.
3. PIO stated that, upon receipt of the application, she issued note under Section 5 (4) and 5 (5) of the Act, to the dealing hand. Further, information provided by the dealing hand on point no. 1 to 6 was furnished to the appellant within the stipulated period and that the appellant was informed that the information on point no. 7 was not available in records.
4. PIO submitted that, the appellant under Point No.7 had asked for copy of entries in the bank pass book of the bank account belonging to Dhamda Khazan Tenants Association and that the office of the Mamlatdar is not required to maintain such record. Also the said association is not a subordinate agency of the Mamlatdar. Hence, the said information cannot be furnished.
5. Respondent No. 2, Shri. Gokuldas Naik, Chairman of Dhamda Khazan Tenants Association through Advocate Arjun F. Naik stated that, financial details sought by the appellant of bank account number of the Tenants Association cannot be provided since the said Tenants Association is not a public authority under the Act.
6. FAA stated that, Dhamda Khazan Tenants Association is not public authority under Section 2 (h) of the Act. Further, the Mamlatdar is not the controlling authority of the said association. Managing Committee of the Tenants Association enjoys a great deal of autonomy as far as the financial matters are concerned. Goa Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975 nowhere casts a statutory obligation on the Mamlatdar to maintain copies of such passbook entries. The Managing Committee submits an audited annual account to the Office of the Mamlatdar and the Office of the Mamlatdar is not in possession of such pass book entries of Tenants Association. Accordingly, while dealing with the first appeal, he had held that the available information has been

furnished by the PIO and had upheld PIO's decision that the information on point no. 7 cannot be furnished.

7. The Commission has perused the records and submission of both the sides and heard arguments of the appellant as well as respondents. Upon careful perusal, it is seen that, the appellant had requested for information on seven points, pertaining to the Bund and the Sluice Gate belonging to Dhamda Khazan Tenants Association, Neura –Goa. The PIO furnished information on point no. 1 to 6, within the stipulated period of 30 days and with respect to point no. 7, informed the appellant that the said information cannot be furnished, since the same is not available in her records.
8. It is noted that, the appellant has expressed satisfaction over the information received on point no. 1 to 6 and has prayed for information on point no. 7. However, the PIO contends that she cannot furnish the said information since the same is not available in her records and the said Tenants Association, being a private body, has not provided the said information. Also, the FAA has upheld decision of the PIO by holding that the said Tenant Association is not a public authority and the respondent authority is not required to maintain the information sought under point no. 7, by the appellant.
9. This being the case, the issue before the Commission in the present matter is whether the PIO is required to furnish the information on point no. 7 of the application dated 30/09/2022, filed by the appellant.
10. Appellant under point no. 7 of his application had requested for the information as follows:-

"kindly furnish the following information in respect of the Bund and the Sluice Gate belonging to Dhamda Khazan Tenant's Association, Neura-O-Grande, Neura, Goa.

1.

2.

3.

4.

5.

6.

7. Copy of the entries in the bank pass book of the bank account bearing no. 716, Bank of India, Mandur-Neura Branch, Neura, Goa for the period from 01.01.2021 to 30.09.2022".

11. Section 2 (f) of the Act defines information as:-

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. Here, Dhamda Khazan Tenants Association is a body or an association formed by the farmers in that area to protect their right and interests. Mamlatdar of Tiswadi, FAA in the present matter, under Goa Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975, works as regulatory authority of the said Tenants Association. However, it is seen from the above mentioned Rules that the Tenants Association cannot be termed as subsidiary of the Mamlatdar, nor the Mamlatdar has jurisdiction over the functioning of the Managing Committee of the Association. On the contrary, the Managing Committee of the said Tenants Association being a private body, enjoys functional autonomy.

13. The Commission finds that, the PIO in the present matter has furnished the information which was available in her records, i.e. point no. 1 to 6. Also, the PIO had attempted to get from Respondent No. 2, the information sought on point no. 7 by the appellant. However, Respondent No. 2, Chairman of the Tenants Association refused to disclose the said information. Meaning, the PIO never denied any information and made efforts to collect the remaining information, yet her efforts went in vain.

14. Also, the Commission agrees with the stand of the respondents that the Goa Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975 does not cast a statutory obligation on the PIO, office of the Mamlatdar to maintain copies of passbook entries of the said Tenants Association. Only audited annual accounts of Tenants Association are submitted to the Mamlatdar by the concerned association.

15. Advocate Pravin U. Naik on behalf of appellant, during the proceeding, had produced documents to substantiate his statement that the Mamlatdar, in some other matter under the Act, earlier, had furnished similar information to the applicant. However, the Commission holds that the said action was taken by the Mamlatdar in his own wisdom and the concerned Tenants Association had provided

the information to the applicant via office of the Mamlatdar. However, the PIO in the present matter is not mandated to furnish the information sought by the appellant under point no. 7 of his application.

16. The Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 arising out of SLP (C) No. 7526 / 2009 (Central Board of Secondary Education & Anr. V/s Aditya Bandopadhyay & Ors. has held in para 35:-

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and /or making of assumptions. It is also not required to provide "advice" or "opinion" to an applicant, nor required to obtain and furnish any "opinion" or "advice" to an applicant. The reference to "opinion" or "advice" in the definition of "information" in section 2 (f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act".

17. Subscribing to the ratio laid down by the Apex Court, the Commission concludes that, the PIO has furnished the available information and that, the PIO is not required to furnish the information sought by the appellant on point no. 7 vide application dated 30/09/2022. In the background of the facts and findings of the Commission and the ratio laid down by the Hon'ble Supreme Court, it is held that the present appeal is devoid of merit and the same needs to be disposed accordingly.

18. In the light of the 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.