

GOA STATE INFORMATION COMMISSION

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Appeal No. 179/2023/SCIC

Dinesh Dias,
H. No. 443, Salem Waddo,
Salvador-do-Mundo,
Bardez-Goa 403101

.....Appellant

V/s

1.The Public Information Officer (PIO),
Administrator of Comunidades of North Zone,
Mapusa Bardez-Goa

2.The First Appellate Authority,
The Additional Collector III,
Government Complex Building,
Mapusa, Bardez-Goa 403507

.....Respondents

Filed on: 26/05/2023
Decided on: 16/02/2024

Shri. Vishwas Satarkar, State Chief Information Commissioner

FACTS IN BRIEF

1. The Appellant, Mr. Dinesh Dias, r/o. H. No. 443, Salem Waddo, Salvador do Mundo, Bardez Goa, 403101, vide his application dated 19/11/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as Act), sought following information from the Public Information Officer (PIO), Administrator of Comunidades, North Zone, Mapusa, Bardez-Goa:-

"a) List of names of allottees of plots in respect of which reversion/reversal proceedings have been initiated since the year 2005 till 2021.

b) List of Plots in respect of which temporary possession was granted to the allottees since 2005 till 31st December, 2021.

c) List of plots and names of allottees for which the Government has accorded approval for allotment of Plots since 2005 till 2021 alongwith approval number.

d) The name of the attorney of the Comunidade of Serula from a period commencing April, 2016 and ending on 31st March, 2020.”

2. The said application was not responded by the PIO within the stipulated time, hence deeming the same as refusal, the Appellant filed first appeal before the Additional Collector-III, Mapusa, Bardez-Goa, being the First Appellate Authority (FAA).
3. The FAA, by its order dated 24/02/2023, allowed the first appeal and directed the PIO to furnish the information to the Appellant within fifteen days.
4. Since the PIO failed and neglected to comply with the order of the FAA dated 24/02/2023, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and to impose penalty on the PIO, in terms of Section 20(1) of the Act.
5. Notices were issued to the parties, pursuant to which, Adv. K. Ticlo put his appearance on 22/08/2023 on behalf of the Appellant. The representative of the PIO, Ms. Richa Manerkar appeared on 21/06/2023 and placed on record the

reply of the PIO. The FAA, duly served, opted not to appear and file his reply in the matter.

6. The PIO, through his reply dated 21/06/2023, contended that he instructed his daily wage staff to get the information but they could not find any records pertaining to the RTI application dated 09/03/2023.

He further contended that he instructed the clerk of Serula Comunidade to provide the information by issuing him a memorandum dated 29/11/2022.

7. The Appellant, through his rejoinder dated 22/08/2023, contended that, the reply of the PIO is very casual and trivial. Further, according to the Appellant, the PIO cannot abdicate its duty to provide the information. He emphasized that the PIO miserably failed to comply with the order of the FAA.

8. The RTI Act is based on the principle of maximum disclosure. The principle of maximum disclosure means all the information held by the public authorities is accessible to the public as a matter of principle, except in very limited circumstances as outlined in sections 8 and 9 of the Act. In the present case, it is not the case of the PIO that the information is not at all generated in the office of Public authority. However, he denied the information for the reason that daily staff attached to his office could not locate the information. Considering the aforementioned position, the fact that emerges is that, no efforts whatsoever nature have been carried out by the PIO to provide the information and to get rid of the RTI application, he mechanically informed the Appellant that the 'Record not available'. Nor did he cite

the exact provision of Act to reject the request, nor give any reasoning as to why said information is not available. Such a vague reply cannot be accepted as response under Section 7(1) of the Act. The PIO has refused to furnish the information without any basis of law and same is not sustainable. No reasonable cause has been shown by the PIO to deny the information.

9. Under Section 19(5) of the Act, if the PIO denies the information to the information seeker, the PIO has to provide a valid reason for such a denial in the appeal proceeding. In other words, the onus to prove the denial of information solely lies on the PIO, being the same is a legal obligation and the PIO cannot be exonerated from said obligation merely by using the term 'not available'
10. The reply filed by the PIO dated 21/06/2023 in this second appeal is also evasive and is in bad taste, I express my displeasure to that effect. The PIO should keep in mind that he is the responsible officer designated under the Act, and he is obliged to maintain the records of the Public authority. It is also a well-settled proposition of law that additional workload or lack of staff in the organization cannot be considered a valid ground to deny the information.
11. Hon'ble High court of Delhi in the case of **J. P. Agrawal V/s Union of India and Ors. (W.P. No. 7232/2009)** has held that

" 7.... [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;*

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO.

....The PIO is expected to apply his/her mind, duly analyse the material before him/her and 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 subordinate.

12. Hon'ble High Court of Delhi in the case of **Vivek Mittal V/s B. P. Srivastava (MANU/DE/4315/2009)** held that a PIO cannot escape his obligations and duties by stating that person appointed under him had failed to collect documents and information, that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied.

13. The Hon'ble High Court of Delhi in the case of **State Bank of India V/s Mohd. Shahjahan (W.P. (c) 9810/2009)** has held as under:-

"22. The very object and purpose of the RTI Act is to make the working of public authorities transparent and accountable. For the purpose of the RTI Act, all information held by a public authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the public authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the public authority to show why the information sought from it should not be disclosed."

14. The whole purpose of the Act is to bring about as much transparency as possible in relation to the activities and affairs of public authority. The failure of the PIO to discharge

his statutory functions as mandated under the law cannot be countenanced. The Hon'ble High Court of Delhi in the case **Mujibur Rehman V/s Central Information Commission (LNIND 2009 DEL 8657)** has held as under:-

"The Court cannot be unmindful of the circumstances under which the RTI Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider Section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure, they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends, which time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

15. The High Court of Kerala in the case **Janilkumar v/s State Information Commission & Ors (LNIND 2012 Ker.982)**, the Court has held that failure to furnish information is penal under section 20 of the Act.

16. The High Court of Bombay, Goa Bench in the case **Johnson B. Fernandes V/s The Goa State Information & Anr. (2012 (1) ALL MR 186)** has held that, law

contemplates supply of information by the PIO to party who seeks it, within the stipulated time, therefore, where the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.

17. Considering the fact and circumstances of the case and ratio laid down by various courts, the Commission comes to the conclusion that the PIO has miserably failed to concede the mandate of the Act. Hence, it is a fit case for imposing penalty under section 20(1) of the Act, against the PIO. However, before any penalty is imposed, the principle of natural justice demands that an explanation be called from the concerned PIO as to why he failed to discharge the duty cast upon him as per the RTI Act. I, therefore, pass the following:

ORDER

- The appeal is allowed.
- The incumbent PIO, Shri. Sagar Gaude Administrator of Comunidades, North Zone Mapusa Goa is hereby directed to provide the information to the Appellant free of cost as per his RTI application dated 19/11/2022 within the period of FIFTEEN DAYS from the date of receipt of the order.
- The then PIO, Shri. Shivprasad S. Naik is hereby directed to show cause as to why penalty should not be imposed on him in terms of Section 20(1) of the Act for dereliction of the duty
- The Reply to the show cause notice to be filed on 22/04/2024 at 10.30 a.m.

- The appeal is disposed accordingly.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner