

GOA STATE INFORMATION COMMISSION

“Shrama Shakti Bhavan”, Ground Floor, Patto Plaza, Panaji – Goa.

CORAM: Smt. Leena Mehendale, State Chief Information Commissioner

Appeal 94/SIC/2013

Decided on: 03/06/2014

Shri Swapnesh B. Sherlekar,
Hno: 284, Shirodwadi,
Mulgao, Bicholim – Goa.

V/s

- 1) First Appellate Authority (FAA),
Public Work Department,
Altinho, Panaji – Goa.
- 2) Public Information Officer (PIO),
Dy. Director of Administration,
Public Work Department,
O/o the Principal Chief Engineer,
Altinho, Panaji – Goa.
- 3) The Manager/A.P.I.O,
P.W.D. Labour Supply Society,
Altinho, Panaji – Goa.

ORDER (Open Court)

RTI application dated	:	04/03/2013 & 28/03/2013
PIO reply dated	:	15/03/2013
First Appeal dated	:	24/04/2013
FAA Order dated	:	10/06/2013
Second Appeal filed on	:	24/07/2013

This Second Appeal, arises from the original RTI Application dated 04/03/2013 made to the PIO, PWD, Monitoring Officer Co-ordinator, Altinho.

2] This case has a typical background. There exists a society duly registered under the Societies Registration Act 1860 that carries a name “P.W.D. Labour Supply Society” (PWDLSS) having their official address at, “*The office of the Principal Chief Engineer, Altinho, Goa*”. Thus, from the first day of their existence they have been using the name of the PWD department and also their office address. Thus they have been basking in the glory of being somebody who, if not

the Government, are very close to the Government. They have their byelaws which proclaim that the Principal Chief Engineer will be the chairman of this PWDLSS. Even if he may or may not receive honorarium for his work as chairman, he carries the topmost position in the Society and thus has lot of authority. The byelaws mention that the first governing body of the society consisted of;

- 1) Chief Engineer
- 2) Superintending Surveyor of works
- 3) Joint Director of Accounts
- 4) Superintending Engineer V
- 5) Superintending Engineer VIII
- 6) Executive Engineer (Legal)
- 7) Dy. Director of Administration

3] I am informed by the Respondent No. 3 that the Governing body has so far always unanimously decided to elect the Principal Chief Engineer as their Chairman, The Vice-Chairman is always the Superintending Surveyor of Works, the treasurer is always the Joint Director of Accounts, PWD, the two Members are the Superintending Engineer – V and Executive Engineer (Legal) respectively and their Member Secretary is always the Deputy Director Administration (Respondent No. 1). All these are by unanimous decisions and there was never any occasion for holding election for these posts.

4] The byelaws shows that the primary objective of the society includes –
(a) *“To engage the unemployed people on daily wages or regular basis to render services to PWD, various government departments, Government Undertakings, Social Institutions, Business establishment, needy individuals, etc. by providing their services to sweeping, cleaning, security services, driving vehicles and for other type of services like Electrician, Plumber, Supervisors, Carpenters, Pump operators, Mechanic grade – II, Computer Operators, etc.”* and
(c) *“To provide adequate and proper service to the Govt. Departments, other agencies and individuals as mentioned in sub-rule (a)”*

5] Thus it is obvious that the senior officers of PWD have joined together to create this Society which is solely under their command and control. The aims and

objects also include,

“To receive grants from the State and the Central Government for the maintenance of administrative set-up of the society”

6] It is but natural that whenever any division of PWD anywhere in the state of Goa has to carry out any jobwork, this PWDLSS is likely to receive the treatment as the most preferential agency, if not as the sole agency.

7] With above background, the relevant questions before me is whether the PWD Labour Supply Society is a Public Authority under the RTI Act, and whether the appellant is entitled to receive answers to hi questions.

8] On 11/12/2012 the Director Administration of PWD who is the PIO for PWD also issued a Circular which states as below,

“The Manager, PWD Labour Supply Society, Altinho, Panaji – Goa is hereby designated as Assistant State Public Information Officer under sub-section (1) and (2) of Section 5 of the Right to Information Act, 2005 (hereafter called the “said Act”) to perform functions such as to collect the requisite information and data and furnish the said information and assist State Public Information Officer”

9] This further reinforces the apparent nature of the close linkage between the Government in PWD department on one hand and the PWDLSS using the office and the services of Principal Chief Engineer, Altinho and other senior officers of PWD on the other hand. It is to be noted that all the senior most officers of the PWD do work as the office bearers of the PWDLSS while sitting in their respective rooms and chairs in their Govt. office.

10] Against this backdrop we come to the issue at hand. On 04/03/2013, the present appellant filed his RTI application asking information on 5 questions, the application was addressed to the PIO, PWD-Govt. of Goa/Monitoring Officer Co-ordinator, Altinho, Panaji – Goa. The 1st question is whether PWDLSS is a Government Organisation or Non-Government Organisation. The 2nd question is whether the PWDLSS having its office at the department of PWD Altinho Panaji-Goa falls under the preview of RTI Act. The other 3 questions pertain to the details of PWDLSS. A second RTI application dated 28/03/2012 also seeks some more

information about the PWDLSS. In reply the PIO of the PWD Department has simply forwarded a reply received from the manager of PWDLSS which states that the RTI Act is not applicable to the PWDLSS, it being a Non-Government Organisation.

11] When the matter was taken up in first appeal the FAA's order mentions as below-

“The Appellant submitted that the Respondent was requested to furnish the official address of the Society, certified copies of agreement/contract, inspection of records.

The Respondent submitted that the matter regarding furnishing of information pertaining to Labour Society under R.T.I Act 2005 was discussed with District Registrar and Head of Notary Services. He advised that the information cannot be furnished unless it is routed through District Registrar and Notary Services.

The Respondent further stated that the matter was discussed with Department of Information and Publicity who has furnished the list of A.P.I.O/P.I.O and F.A.A under RTI Act 2005 where the PWD Labour Society is not reflected as having any A.P.I.O/P.I.O.

The Respondent further submitted that as per para 3(i) of Memorandum of Association of P.W.D Labour Society the Society it shall act as non-Government organization with the aim of providing employment to the unemployed and work for their welfare and upliftment. The fund and the income of the Society shall be solely utilized for the achievement of this object and no portion of it shall be utilized for payment to the trustees (Members)”

Accordingly, the FAA has dismissed the Appeal on the ground that PWDLSS does not fall under the purview of the RTI Act.

12] The Second Appeal is filed with a request to

- set-aside the order of FAA,
- to provide information as asked,
- to impose a Penalty,
- and to grant suitable compensation to the Appellant.

The main grounds stated in the appeal memo are found in para 13, 14 and 17. Para 13 raises objection to discussion with the District Registrar and Head of Notary Services, as is described in order of FAA as below,

“Furnishing the information pertaining to Labour Society under RTI Act 2005 was discussed with District Registrar and Head of Notary Services. He advised that the information cannot be furnished unless it is routed through DRNS”

Appellant argues that this ground is in sharp contrast to the provision of section 6(3) of the Act. Respondents themselves should have forwarded the RTI application to the DRHNS but they cannot seek their opinion and then make it as the ground for denial of information.

13] Thus the plea of the Appellant is that if it is claim that information cannot be furnished unless it is routed through the DRHNS, then the PIO and the FAA were duty bound to transfer the RTI application under section 6(3) of the RTI Act to the DRHNS.

The second ground as taken in para 14 is that

(14.1) Society is indirectly owned, controlled and substantially financed by the PWD and Government of Goa.

(14.2) The basic infrastructure including the office space for the Society is provided by the PWD free of cost.

(14.3) The Society has not produced any audit or inspection report performed by competent authority to support the claim that the fund and the income of the society is been solely utilized for the achievement of the objective of the society and no portion of it is been utilized for payment to the trustees (Members), as mentioned in the memorandum.

(14.4) The copy of he said memorandum was not furnished to the Appellant.

14] The 3rd ground mentioned in para 17 is that the information asked from the PIO of the PWD department was about the payments made by Government of Goa to the Society and the reason thereof. Hence the PIO of PWD is clearly obliged to give this information irrespective of the fact whether the PWDLSS falls under the purview of the act or not.

15] Further, in view of the close link between PWD department and PWDLSS as

brought out in para 2 to 9. The RTI applicant who asked the questions regarding PWDLSS under his RTI application dated 04/03/2013 and 28/03/2013 is correct in his presumption that the said labour society attracts the provisions of RTI Act. Hence according to the RTI applicant the office bearers of the labour society are obliged to answer the question asked under RTI Act.

16] It is a separate matter that the PWDLSS refuses to admit that they have officially appointed their Public Information Officer or their First Appellate Authority. However the answer to the question whether the RTI Act is applicable and whether the society is a public body or not does not depend on whether the PIO or FAA are appointed or not. The obligation to give proper information to RTI applicants can also not be neglected simply by abstaining to appoint the PIO and FAA. In case they are not appointed, the liability for so appointing comes on the head of organization, in this case the Principal Chief Engineer, and the Chairman of PWD Labour Supply Society.

17] In the instant case the very fact that the Director, Administration has issued the order dated 11/10/2012 implies that the Director Administration has assumed the role of Public Information Officer of the PWDLSS. It is also to be presumed that she has the consent of chairman of PWDLSS, for doing so.

18] As far as the ordinary RTI applicants are considered, they are not expected to make a fine distinction between the PIO of the PWDLSS and the PIO of the office of the Principal Chief Engineer of PWD when not only the said PIO but also the Principal Chief Engineer himself along with many other senior officers of the department are seen and known to be functioning as the office bearers of the PWDLSS. Hence the RTI application made by the applicant to the "PIO, PWD-Govt. of Goa/Monitoring officer Coordinator" is to be taken as application made to the PIO of PWDLSS.

19] In reply to second appeal memo, the PIO has filed a letter dated 09/04/2013 from the Manager of PWDLSS to say that during 42nd Meeting of Governing Body of P.W.D Labour Supply Society held on 31st January 2013 at 11:00a.m. in the Chamber of Chairman/PCE PWD, members of Governing Body after thorough

discussion came to the conclusion that RTI Act 2005 is not applicable to PWDLSS in view of provisions of RTI Act 2005 Para 2 (h) (d) II as the society being Non Government Organization not substantially financed directly or indirectly by funds. However, acting upon that the PIO issued as late as on 06/3/2014 an order No. 14-17-2012-PCE-PWD-ADM9II0/398 dated 06/03/2014 that reads as -

“The order No 14-17-2012-PCE-PWD-ADM(II)/285 dated 11-12—2012 designating manager, P.W.D. Labour Supply Society, Altinho Panaji – Goa as Assistant State Public Information Officer under sub-section (1) & (2) of section 5 of the Right to Information Act, 2005 (hereafter called the “said Act”) is hereby withdrawn forthwith in view of the fact that P.W.D. Labour Supply Society is Non Government entity as per para 3(i) of Memorandum of Association of Byelaws and that name of the manager, P.W.D. Labour Supply Society is not enlisted in the list of APIO’s and PIO’s and First Appellate Authority under RTI Act 2005 published by Department of Information and Publicity, Panaji – Goa.”

20] It is important to note that this order is signed by her in her Governmental capacity as Deputy Director Administration and it has been issued after about 1 year from the original RTI application and during the pendency of the present Appeal.

21] In view of this it is held that the PIO of the PWD department is obliged to answer all questions asked in respect of the PWDLSS. If the Secretary of the society does not cooperate with the PIO, then the onus of answering RTI Questions shall shift on the Chairman of the society. The order of the First Appellate Authority dated 10/06/2013 passed in his First Appeal no 399/2013 is set aside. He is directed to take cognizance of this aspect and accordingly decide future First Appeals in regard to the PWDLSS. I also direct that the order dated 06/03/2013 issued by the PIO, Director of Administration and having effect to withdraw the earlier order dated 11/12/2012 is declared ultravirous.

22] The PIO of the PWD who is also the PIO of the PWDLSS by implication through her order dated 11/12/2012 is hereby directed to supply all the right and sufficient information to the applicant within one month from receiving this order.

If there is any information which is with another office bearer of the society then the PIO should transfer the relevant question to such office bearer under Sec. 6(3), who will thereby become the deemed PIO.

23] The Second Appeal is allowed with above directions. I also consider it pertinent to add that if the information is supplied within one month, as above directed, then the ground that the original two RTI applications dated 04/03/2013 and 28/03/2013 were not satisfactorily answered within the 30 days period will be taken as closed and there shall ensue no Penalty case.

Order declared in open court. Parties shall be informed of this detailed order.

Sd/-

(Leena Mehendale)

Goa State Chief Information Commissioner

Goa State Information Commission

Panaji-Goa