

# **GOA STATE INFORMATION COMMISSION**

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

CORAM: Smt. Leena Mehendale, State Chief Information Commissioner

**Complaint No: 123/SIC/2012**

**Decided on: 28/07/2014**

Mr. Jeremias S. B. Rodrigues  
H.No. 235, Arrais Vaddo,  
Nagoa, Bardez, Goa

----- Complainant

V/s

Public Information Officer  
Block Development Officer  
Mapusa, Bardez, Goa.

----- Opponent

## **O R D E R (Open Court)**

**RTI application filed on** : 09/03/2012 (filed with BDO Bardez)  
**PIO replied** : Nil  
**First Appeal filed on** : Nil  
**First Appellate Authority Order in** : Nil  
**Complaint filed to SCIC** : 16/08/2012

1) This is one of those cases which occasionally force the Information Commissioners to go into the very question of efficacy and relevance of the RTI Act of 2005. Although apparently the stated objectives of this Act do not mention **GOOD GOVERNANCE** as one of them, but only stop at Transparency, Accountability and Informed Citizenry, it has to be understood that these 3 objectives have no meaning unless they are a step forward in bringing Good Governance.

2) On the first look it may appear as anomaly that the objectives of RTI Act does not talk of Good Governance, but it is quite understandable as to why it is so. There is always a presumption about the word “GOVERNANCE”. It inherently includes the word “GOOD”. Hence normally the term “governance” is not required to be qualified as “good” Governance. Similarly, for the RTI Act too there is a presumption that it has to lead to “good governance”, even if it does not specifically say so.

3) Hence although it is important to deal with individual Second Appeals coming up before the Commission, and to correct the lacunae in the orders of PIO or FAA as the case may be, that action by itself will achieve only a part of the RTI objectives. Such decisions as well as the Act itself will be failing if together they cannot bring about a systemic change in the working of the Government Departments by giving clues to the Senior Officers as to what are the recurring

abberations in the working of their Junior Officers. It is in this spirit that we have to look at the role of the FAA and the Head of the Department. It is in this spirit that sections 19(1) requires a senior ranking officer of the **same** department to act as FAA and give applicant the benefit of his superior administrative ability and better understanding over that of PIO. It is also in this spirit that Section 4 puts obligations on the Head of the department who is a Public Authority. In ultimate analysis, it is the Public Authority who would take the credit or discredit for the replies given by PIO and the redressal given by the FAA.

4) Section 2(f) mentions that “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. The wording “*information means any material in any form*” needs to be pondered over.

5) A **NIL INFORMATION** is a relevant information. There are several forms through which government asks informations from citizens such as applications for a job, income tax return, passports, information for voters list etc, in which the citizens are specifically directed to state “NIL” when answer to a particular question is Nil.

6) Hence all the PIOs need to understand that a NIL information fits in the definition of Section 2(f) and must be stated while replying to RTI applications. At this stage I also feel obliged to guide the PIOs as to what is a NIL information. The evidence of an information in government parlance is to be found only in the noting or directions given in the concerned file. Similarly an evidence of NIL information is found by the **absence of any noting or direction** in the concerned file. Hence a Nil information is an information within the meaning of Section 2(f) of the RTI Act and its existence is to be acknowledged when there is absence of any noting on the file, showing any direction or at least an intention of a proposed action. They are duty-bound to furnish Nil information in following format. “As seen from the relevant file, no action has yet been taken or intended and the information is NIL”.

7) Present complaint is a typical case where a typical Government department has failed to make a appropriate enquiry and action on complaint of illegal construction and thereafter has felt shy to acknowledge that they have not taken any action. Hence have chosen not to answer the RTI question rather than acknowledging the NIL information.

8) The complaint by itself has a small compass. It is seen from page 5 of the complaint memo that on 23/12/2011 the complainant had filed a complaint before the Director of Panchayat, Junta House Panaji Goa that an illegal construction was started by M/S P.V. Builders but the Sarpanch and Secretary of Village Panchayat of Arpora Nagoa were not taking action to stop illegal construction in plot bearing survey no. 59/11 in nagoa, Bardez- Goa. It was followed up by an RTI applications dated 27/01/2012 asking information about action taken. The information on action taken was "supplied" on 16/02/2012 which is filed as exhibit 'B' and reveals that a Memorandum was issued to the BDO Bardez on 14/02/2012 to take action and submit compliance report.

9) Though the initial complaint was to stop illegal construction as stated above, the BDO apparently failed to take any action despite the Memo from the Directorate. Hence the Complainant again approached him with an application under RTI Act dated 09/03/2012, requesting the information about the action taken by him on the above stated memo dated. 14/02/2012 issued to him by the Director. It is this RTI application that has resulted in present complaint before me.

10) The Complaint before me suggest that the BDO has not replied to the above question under RTI Act.

11) The Complainant, rather than filing the first appeal, has directly filed this complaint on 16/08/2012 which was registered by the SCIC office. It is pertinent to note that the post of SCIC and SIC had both fallen vacant around this time, or shortly thereafter. The hearing before SCIC was resumed towards the end of October 2013. The PIO who has received intimation of this complaint earlier as well as on 22/04/2014, has remained absent. He has also not filed any reply.

12) This matter has arisen out of an alleged illegal construction against which the complainant had first objected. I consider it more important as a first step to deal with the question of non compliance of Director's order by the BDO who is PIO and Respondent than the question of penalty as prayed in the complaint memo. Hence it is proper to pass order even in the absence of PIO whose representative has collected the notice on 22/04/2014.

Before passing order, I have to make two observations-

I) From the appeals and complaints filed before the office of SCIC, I find a sizeable number of cases pertaining to the Department of Panchayat in which the original applicant is alleging about some illegal construction taking place at the Village level and possible connivance of the Village Panchayat Officer. Under the Village Panchayat Act it is the Responsibility and Authority of Village Panchayat itself to stop illegal construction. In addition it is also the Responsibility and Authority of BDO and also of the Directorate of Panchayat to enquire into such alleged illegal constructions and to stop them if there illegality is revealed. When these authorities fail to take action despite complaints made, the complainants generally file RTI applications to ask as to what action has been taken by the concerned authority on their complaints. Thus, such RTI questions are in a limited sense, a commentary on the working of the department.

If any of the 3 competent authorities (U.P, or BDO or Director) has enquired into the complaint and found the construction to be legal, they have to give atleast this one line statement to the RTI applicant. If they have enquired and found the construction to be illegal, again they have to give this information. under RTI and proceed with proper Administrative action. If an enquiry is in progress, they have to inform accordingly. However, if they have not made any enquiry, nor any noting on any file which will indicate their application of mind or their intention of any action, then they have to furnish NIL information in the format indicated in para 6 supra.

II) As for the present case, I have taken note that the RTI application has been filed on 09/03/2012 for which first appeal should have been filed before 09/05/2012. Instead this complaint has been filed on 16/08/2012 which is after the lapse of 5 months. Therefore I consider it appropriate not to give

any directions for prayer clause B, C, and D of the complaint. They stand dismissed at this stage. I however expect the Department of Rural Development to start monitoring their memos to the BDOs and in particular, the memo given to BDO Bardez on 14/02/2012.

13) Prayer clause A about furnishing information is allowed with direction. that the present PIO, that is, the present BDO Bardez is directed to give proper reply to the RTI application dated. 09/03/2012 within a month from receiving this order. I must also add that in case no action has been taken by any BDO between the period 14/02/2012 till now, then the present PIO is duty- bound to furnish the nil information in following format. *“as seen from the concerned files, no action has so far been initiated from 14.02.2012 onwards till date”*.

14) If the BDO fails to give information as directed above, the complainant should approach the First Appellate Authority within 30 days thereafter. The FAA shall also be guided by the format prescribed above for Nil information. Prayer Clause B,C,D are dismissed, with liberty to the complainant to agitate them if the present BDO or FAA do not furnish information as directed.

**----O r d e r ---**

Complaint is partly allowed as above directed. Order declared in open court.  
Parties to be informed.

**Sd/-**  
**(Leena Mehendale)**  
Goa State Chief Information Commissioner  
Panaji – Goa.