

# **GOA STATE INFORMATION COMMISSION**

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

CORAM: Smt. Leena Mehendale, State Chief Information Commissioner

**Appeal No. 31/SCIC/2014**

**Decided on :11/12/2014**

Smt. Cesaria Barretto

R/o. 8/123, Martinho Fernandes Bldg,

Rua Jose Inacio de Loyola,

Margao, Goa.

.....Appellant

V/s

1. Village Panchayat Secretary(Sernabatim)/Public Information Officer,

O/o. Village Panchayat of Sernabatim,

Sernabatim, Colva,

Salcete, Goa.

2. Block Development Officer/First Appellate Authority,

O/o. BDO of Salcete Taluka,

New Collectorate Building,

Margao, Goa.

..... Respondents

## **ORDER (Open Court)**

RTI application filed on	: 11/11/2013
PIO reply	: 17/12/2013
First Appeal filed on	: 02/01/2014
FAA Order allowed on	: 05/03/2014
Second Appeal filed on	: 01/04/2014

1. This second appeal arises out of RTI application dated 11/11/2013 made to PIO and Village Panchayat Secretary Sernabatim, Colva, Salcete, Goa, in respect of a Village Panchayat road whose existence is mentioned in a letter No. VP/SVCG/019/2001-2002 DATED 07/10/2001 and Construction License No VP/SVCG/Const 49/2006-2007/1273 dated 02/12/2006 issued to a residential project on Survey No. 90/14 of Colva Village. This residential project is named "Comfort Zone"(referred as 'Project' hereafter). The first plan of 2006 was later revised as per construction licence No. VP/SVCG/Const/02/2012-13/121 dated 21/04/2012.

2. Question No. 1 and 2 are as below.

*"In the approved plan for the construction of the said project "Comfort Zone" there is a reference about an existing panchayat road vide letter No. VP/SVCG/019/2001-2002 dated 07/10/2001, as also a reference about an internal road 4 mts wide. Is the said internal road a continuation of the said existing panchayat road and whether the said internal road is only meant for the said project or for the public at large?"*

Contd....2/-

*For the said project one Mrs. Sylvia Bangera, one of the Directors of COMFORT ZONE REAL ESTATE PVT LTD had given an 'Undertaking' dated 01/12/2006 that if the said internal road is required to cross the property she will do the same at her cost outside existing property boundary. Kindly explain what the meaning is of "if the said road is required to cross the property she will do the same at her cost outside the existing property (S. No. 90/14) boundary".*

3. A reply was given on 17/12/2013 but without information of question No. 1 and 2. Hence appeal No. 04/2014 was filed and the FAA and BDO directed to furnish information within 7 days.
4. The second appeal was filed on the ground that despite the order of the FAA information of questions 1 and 2 was not given within time.
5. In the second appeal the appellant also refers to yet another RTI application dated 02/01/2014 to which the same PIO did not give any reply and 1<sup>st</sup> appeal was filed with the BDO and FAA under No. 18/14. Here also the BDO order dated 20/03/2014 directs the PIO to give information within 7 days, which is once again not furnished.
6. Hence the second appeal is filed jointly with a request that PIO should furnish information sought under first RTI application 11/11/2013 and second RTI application dated 02/01/2014.
7. Notice was issued to Respondent No. 1 PIO of Village Panchayat Office of Sernabatim. The earlier PIO has been transferred. The present PIO has given some information on 26/08/2014 with respect to the second RTI application and some additional information about first RTI application. These clarify that the queries regarding road width becoming 10.00 meters from the earlier plan of 5 meters cannot be ascertained except that 1<sup>st</sup> plan was passed in 2006, revised plan in 2012 and the occupancy certificate released on 21/11/2012. Further, the Panchayat Office has approved the construction plan only after TCP approval.

Contd....3/-

8. On 17/09/2014 the Advocate for Appellant has filed his say and objections to the above mentioned say of PIO. Some lacunae was noted in his argument. However he stated that he has nothing more to clarify.
9. The real problem behind the two RTI applications appears to be that a narrow V.P. road existed upto 2001 and perhaps upto 2006 as seen from the letter No. VP/SVCG/019/2001-2002 dated 07/10/2001. Being V.P. road it must have been available for free passage to all the villagers or atleast to the neighbouring plot holders. The 1st site plans for the project sanctioned in 2006 mentions a road which is 5 meter wide and revised plan sanctioned in 2012 mention its up-gradation to a 10 meter wide road. Hence the PIO needs to first clarify as to what happened to the village road and whether it is same or different from the 10 meter road that is now a part and parcel of the project. Needless to say that if this 10 meter road of the project is also open for the public or atleast for the neighbouring plot holders then the gravity of the situation becomes much less. If this 10 meter wide road has the same geographical location as the V.P. road referred in the V.P. letter dated 07/10/2001 (para 2-Supra), then it cannot be acquired for the project without the permission of V.P. nor can the project authority stop the villagers for using it.
10. Coming to para 5 of the submission made by appellant on 17/09/2014, it is claimed that the relevant question asked was  
*“in which year, the width of the road of 5 meters as shown in SITE PLAN-I was widened to 10 meters as shown in the SITE PLAN-II”*. Instead of giving a specific year when the said road was widened from 5 meters to 10 meters, the Respondent No. 1 has stated that *“The First Plan was approved in the year 2006”*. Hence the PIO has not supplied proper answer.
11. I do not consider that the PIO has given misleading information. If the project authorities got a construction plan approved in 2006 showing a road width of 5 meters but have quietly started constructing it as a 10 meters road, the V.P. is not likely to have this information. As the project authorities were able to get second plan approved, the construction of 10 meters wide road is now a matter of past that concerns no one except if there is evidence to show that the sites of this 10 meters road is the same where the earlier V.P. road existed and further if the access to this upgraded V.P. road is denied to those outside the project.

12. On the other hand there is some lacuna in the reply of PIO. In his reply dated 17/12/2013 he has stated that letter under Ref. No. VP/SVCG/19/2001-02 dated 07/10/2001 is not on Panchayat record, hence the existence of V.P road cannot be ascertained. This reply raises the basic questions about the existence of V.P. road. The PIO should make efforts to ascertain from other records of V.P. whether any record shows the existence of Village road. The letter dated 07/10/2001 is not the sole evidence that can give this information. Thus PIO has a responsibility to find out if there existed a village road at the project site prior to the application for construction licence in 2006. The PIO is correct in saying that Land Acquisition if at all done for the road widening, it may have been done by the authority who has passed the site Plan. The Appellant should approach the authority who has passed the site plan II for that information. However the PIO has to first bring the clarity by identifying the V.P. road.
13. If the V.P. road existed and if it has the same location as the 10 meter road of the project or if the Gram Panchayat has passed any resolution to increase the road width from 5 meters to 10 meters, the PIO shall supply the copy of the Resolution to the appellant. Else he will inform them the factual position.
14. The RTI applicant would have greatly felicitated the whole sequence of question answers if he had straight away stated at the beginning whether his main concern was survival of the V.P. road or its conversion into a project road and its accessibility by the villagers. In absence of such clarity the PIO is likely to misinterpret the questions and therefore give information which does not meet the purpose of the RTI questions.
15. In the instant case I have no other option but to go by para 2(supra) which clearly mentions the existence of a V.P. road. Hence I direct the present PIO to clarify whether a V.P. road existed till 2001 and whether it has now been converted into 10 meter wide road of the project. The PIO should send this information to the appellant within 30 days from receiving this order.

**-----Order-----**

The appeal is partly allowed with the above instructions. Declared in Open Court. Parties may be informed.

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