

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.422/2012

1. ATTORNEY OF COMUNIDADE
OF SERULA having Office at West
Cost Residency, 1st floor, (Opp Bank
of India) P.I. Porvorim, Bardez Goa.

2. MR PETER MARTINS, major in
age, Attorney of Comunidade of
Serula, having Office at West Cost
Residency, 1st floor, (Opp Bank of
India) P.I. Porvorim, Bardez Goa.

... PETITIONERS

Versus

1. MR HARIHAR V.
CHODANKAR, major in age, Block
A-1, Ground floor, Kamat Woods,
Pedem, Mapusa, Bardez - Goa.

2. THE PUBLIC INFORMATION
OFFICER, Administrator of
Comunidades (North Zone),
having Office at Near Civil Court,
Altinho, Mapusa - Goa.

3. FIRST APPELLATE AUTHORITY,
Additional Collector North Goa,
Panaji-Goa.

... RESPONDENTS

Mr Pranay A. Kamat, Advocate for the Petitioner.

Mr Vishwadh Sardesai, Additional Government Advocate for
Respondent Nos.2 and 3.

CORAM: M. S. SONAK, J.

DATED: 9th March 2023

ORAL JUDGMENT:

- 1.** Heard Mr Pranay Kamat for the petitioners, and Mr Vishwadh Sardesai learned Additional Government Advocate for respondents no.2 and 3.
- 2.** The challenge in this petition is to the orders dated 03.02.2010, 01.07.2010 and 28.10.2011 made by the Goa State Information Commission at Panaji.
- 3.** Insofar as the Order dated 28.10.2011 is concerned, Mr Kamat agreed that there are no powers to review vested and, therefore, the petition for review was not maintainable. He, however, submitted that recall was permissible because the Division Bench of the Goa State Information Commission, in another matter, had held that an Attorney of the Comunidade cannot be treated as deemed Public Information Officer for sub-sections (4) and (5) of Section 5 of the Right to Information Act, 2005 (RTI, 2005). He submitted that this decision was binding and a single member could not have ignored it. Therefore he

offered that the application for recall was maintainable even though there were no powers of review.

4. The above contention of Mr Kamat cannot be accepted. By styling a review application as an application for recall, a jurisdiction that is not vested cannot be conferred. Therefore, the review/recall application was not maintainable, and the same was rightly rejected by Order dated 28.10.2011.

5. In any case, the Order dated 31.10.2008 in the case of *Digamber S. Shirodkar vs The Public Information Officer* in Complaint/13/2008 was restricted to the facts of the said case. Therefore, no law as such has been laid down therein by the SIC to suggest that the Attorney of a Comunidade can never be treated as Public Information Officer in terms of Section 5(4) and 5(5) of the RTI, 2005. Besides, the statement in paragraph 7 of this Order is backed by no reasoning; therefore, it cannot be held as a declaration of law.

6. In any case, in the present case, the main issue involved is not whether the Attorney of the Comunidade is primarily a Public Information Officer. That issue did not arise for consideration in the present case. The authorities under the Act have gone by the provisions of Section 5(4) and 5(5) of the RTI,

2005, and to appreciate the same, the provisions of Section 5 of the RTI, 2005 are incorporated below for the convenience of reference:-

"5. Designation of Public Information Officers.—

(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be.

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be."

7. In the facts of the present case, it is apparent that the Administrator of Comunidades had requested the Attorney and sought the Attorney's assistance in supplying the information applied for by the applicant. The Attorney of the Comunidade supplied part of such information, but the balance was not supplied. Section 5(4) of the RTI, 2005 clearly provides that the State Public Information Officer may seek assistance from any other officer as he or she considers it necessary to discharge his or

her duties properly. Therefore, the assistance sought from the Attorney was under Section 5(4) of the RTI, 2005.

8. Section 5(5) of the RTI, 2005 then provides that an officer whose assistance has been sought under sub-section (4), shall render all assistance to the State Public Information Officer and such other officer shall be treated as the State Public Information Officer. Thus, this is not a matter where the Attorney has been primarily treated as a State Public Information Officer. Instead, this is a case where the Attorney, by virtue of Section 5(5), has been treated as a deemed State Public Information Officer.

9. Mr Kamat referred to several clauses of the Code of Comunidades to suggest that it is the Clerk or Secretary of the Comunidade who would possibly answer the definition of a Public Information Officer for RTI. Such an issue does not arise in the present petition. As pointed out, the Administrator was justified in seeking assistance from the Attorney and even the Attorney, by partly supplying such information, did not resist this position. Concerning the balance information, again, the authorities under the RTI, 2005 or the State Public Information Officer, were entitled to seek the Attorney's assistance. Under the provisions of Section 5(5), such an Attorney whose assistance was

sought was therefore rightly regarded as a deemed Public Information Officer.

10. Even otherwise, the contention about the Attorney not being primarily the Public Information Officer is *prima facie* not acceptable. However, there is no necessity to go into the said issue because, in terms of Sections 5(4) and 5(5), the Attorney was correctly held as a deemed PIO. However, it is clear that in the facts of the present case, there was no jurisdictional error, or even otherwise, any error in treating the Attorney as the deemed Public Information Officer. Thus, there is no good reason to exercise jurisdiction under Article 227 of the Constitution of India and interfere with the impugned orders made by the authorities under the RTI, 2005.

11. This petition is therefore dismissed. Accordingly, the interim Order, if any, is vacated.

12. There shall be no order for costs.

M. S. SONAK, J.