



Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 1004 OF 2017**

**AND**

**WRIT PETITION NO. 1177 OF 2018**

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**WRIT PETITION NO. 1004 OF 2017**

The Comunidade of Mapusa, having its office at Comunidade Building, Horta Paroquial, Mapusa, Bardez, Goa, through its Attorney ... Petitioner Shri Maurice L. J. D'Souza of Mapusa, Bardez, Goa.

*V e r s u s*

1. The Public Information Officer, Office of the Administrator of Comunidades (North Zone), Court Junction, Mapusa, Bardez, Goa.
2. Mr. Narayan P. Parab, Dangui Colony, Alto Duler, Mapusa, Goa. ... Respondents.

**AND**

**WRIT PETITION NO. 1177 OF 2018**

Comunidade of Pilerne, House No. 485, near St. John de Baptist Church, Pilerne Marra, Bardez, Goa, 403 114. Through authorised ... Petitioner attorney Mr. Estifiano D'Mello.

*V e r s u s*

1. Francis D' Mello, r/o. Pilerne, Moica – Vaddo, Bardez, Goa – 403 521.
2. Administrator of Comunidades, North Zone, Mapusa, Bardez, Goa.
3. The Goa State Information Commission, 'Kamat Towers', Seventh Floor, Patto, Panaji, ... Respondents. Goa.

**Mr. John A. Lobo, Advocate for the Petitioner in WP No. 1004 of 2017.**

**Mr. S. Priolkar, Additional Government Advocate for the Respondent no.1 in WP No. 1004 of 2017 and for Respondent no.2 in WP No. 1177 of 2018.**

**Mr. Y. V. Nadkarni, Advocate with Ms. Simran Khadilkar, Advocate for the Petitioner in WP No. 1177 of 2018.**

**CORAM: M. S. KARNIK &  
B. P. DESHPANDE, JJ.**

**RESERVED ON : 19<sup>th</sup> JULY, 2024**

**PRONOUNCED ON : 26<sup>th</sup> JULY, 2024**

**JUDGMENT** (Per M. S. Karnik, J.)

1. These petitions raise common issues and hence disposed of by a common judgment. The issue that arises in these petitions is whether the Right to Information Act, 2005 ('RTI Act', for short) applies to Petitioner-comunidades.

2. We briefly refer to the facts of the case in Writ Petition no. 1177 of 2018 :

The respondent no.1 filed an application to the respondent no.2- Administrator of Comunidade, North Zone, Mapusa, for information under the RTI Act as regards documents relating to the petitioner- Comunidade. The respondent no.2 by Memorandum dated

29.09.2014, stated that the information sought pertains to records which are held by another Public Authority i.e. Comunidade of Pilerne and hence it is for the Escrivao/Clerk/Registrar to supply the same. The respondent no.1 preferred a first appeal no. RTI/AC-II/APL/17/2014 under Section 19 of the RTI Act. On 11.11.2014, the petitioner informed the respondent no.2 that the RTI Act does not apply to the Comunidade. The respondent no.2-Administrator informed the respondent no.1 (applicant) that in respect of the information sought under the application dated 05.09.2014, the attorney of the petitioner has refused to furnish the information. Respondent no.1 moved an application before the First Appellate Authority in December 2014 to add the petitioner as a respondent in the appeal and, as such, the petitioner was added as respondent no.2 in the said appeal. The petitioner filed a reply on 17.07.2015 in the said appeal. The First Appellate Authority disposed of the appeal on 11.03.2016 by directing the petitioner to provide the information through the Administrator. The petitioner filed a second appeal on 18.10.2016 before the Goa State Information Commission ('GSIC', for short) under Section 19 of the RTI Act. The GSIC dismissed the second appeal no. 223/SIC/2016 on 21.03.2017 as not maintainable. Writ Petition no. 556 of 2017 filed by the petitioner in this Court, was disposed of by setting aside the first appellate order dated 11.03.2016 and by directing the First Appellate Authority to decide the same

afresh. It was clarified that this Court had not dealt with the question of the maintainability of the second appeal. The First Appellate Authority allowed the appeal filed by the respondent no.1 on 23.11.2017 holding that the clerk or escrivao of the Comunidade of Pilerne is a deemed PIO under the RTI Act. The GSIC dismissed the second appeal no. 08/2018 filed by the petitioner by its order dated 30.08.2018 as not maintainable.

3. On instructions, the learned counsel for the petitioner stated before this Court that he will not press for challenge of prayer clause (A) and restricted his challenge to the order dated 23.11.2017 passed by the First Appellate Authority.

4. Learned Counsel for the petitioner stated that the petitioner is not a Public Authority under the RTI Act and hence the Comunidade is not covered under the provisions of the RTI Act. Our attention is invited to the relevant provisions of the RTI Act and the various decisions to submit that the order passed by the First Appellate Authority directing the Comunidade to provide the information to the respondent no.1 through the Administrator, called for interference. Learned Counsel therefore prayed that as an attorney of the Comunidade, it cannot be said that it falls within the ambit of the Public Information Officer within the meaning of RTI Act.

5. Mr. Lobo, learned Counsel for the petitioner in Writ Petition no. 1004/2017, placed reliance on the decisions in **People Welfare Society, through its President Madhukarrao Wasnik vs. State Information Commissioner & Ors.**<sup>1</sup> and **Thalappalam Service Cooperative Bank Limited & Ors. vs. State of Kerala & Ors.**<sup>2</sup> in support of his submissions to contend that the RTI Act is not applicable to the Petitioner.

6. Mr. Nadkarni and Ms. Simran Khadilkar, learned Counsel for the petitioner in Writ Petition no. 1177/2018, placed reliance on the decisions in **Thalappalam Service Cooperative Bank Limited & Ors. vs. State of Kerala & Ors.** (supra), **Michael Charles D'Souza vs. Ganesh V. V. Gaonkar & Ors.**<sup>3</sup>, **D. A. V. College Trust & Management Society & Ors.**<sup>4</sup> **People Welfare Society, through its President Madhukarrao Wasnik vs. State Information Commissioner & Ors.** (supra), **Nathu Vithoba Shingne vs. State of Maharashtra, through its Secretary, Dept. of Forest & Revenue & Ors.**<sup>5</sup> and **Attorney of Comunidade of Serula & anr. vs. Mr. Harihar V. Chodankar vs. Mr. Harihar V. Chodankar & Ors.**<sup>6</sup> in support of his submissions.

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1 2024 SCC OnLine Bom 716

2 (2013) 16 SCC 82

3 1991 Mh.L.J. 1432

4 (2019) 9 SCC 185

5 2024 SCC OnLine Bom 1928

6 WP No. 422/2012 decided on 09.03.2023

7. There was no appearance on behalf of the respondent no.1. We, therefore, requested the Additional Government Advocate to assist us with the counter point of view to the one canvassed by learned Counsel for the petitioners. Mr. Priolkar invited our attention to the relevant provisions of the RTI Act to submit that having regard to the provisions of Section 5(4) and 5(5) of the RTI Act, which clearly provides that the State Public Information Officer as the case may be, may seek the assistance of any other officer as he or she considers it necessary to discharge his or her duties properly, the escrivao/clerk Administrator is duty bound to supply the information to the respondent no.1. Reliance is placed on the decision of the learned Single Judge of this Court in **Attorney of Comunidade & anr. vs. Mr. Harihar v. Chodankar & Ors.**<sup>7</sup> in support of the proposition that under Sections 5(4) and 5(5) of the RTI Act, the attorney is to be held as a deemed Public Information Officer.

8. Heard learned Counsel for the parties. We have perused the memo of the petition, the annexures and the impugned order. Before we proceed to deal with the provisions of the RTI Act, it would be appropriate to rely upon the observations made in the case of **Michael Charles D' Souza vs. Ganesh V. V. Gaonkar & Ors.**<sup>8</sup> which

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<sup>7</sup> Writ Petition No. 422/2012 decided on 09.03.2023.

<sup>8</sup> 1991 Mh.L.J. 1482

explains the history of comunidades in paragraphs 4 and 5, reading thus :

“4. In order to appreciate the contentions raised by the petitioner and also the locus standi which the petitioner claims, it is necessary to briefly refer to the history of Comunidades. According to the previous history of the region known as State of Goa, the original residents of the village were known as ‘Gaoncars’ and their holding of the village was known as ‘Gaoncaria’. The Gaoncars were entitled to the shares in the income of the Comunidade of the village which used to manage its affairs. After the Portuguese rule came in Goa, the said system continued but it was regulated by the Code enacted by the Portuguese Government. The said Code was known as Code of Comunidades. It may be seen that there were new settlers who had come to reside in the village and they were given shares in the income of the Comunidade and were known as share-holders. Their rights were also regulated by the Code of Comunidades.

5. The Code of Comunidades which was enacted in 1933 had undergone changes as a result of many amendments introduced therein. A new Code of Comunidades was enacted under Legislative Diploma No. 2070 dated 7-6-1961 (for short, the Code) which presently governs the rights in any land belonging to the Comunidades. After Goa was liberated and became a part of India with effect from 19-12-1961, the Code of Comunidades dated 15-4-1961 still governed the rights in land belonging to the

Comunidades. The said Code is an existing law by virtue of Goa, Daman and **Diu Administration Act, 1962**. It will be at this stage useful to refer to the scheme of the relevant provisions of the Code whose original is in Portuguese and its translation made available to us in English may not be free from some mistakes.”

9. A reference to the decision of this Court in **Dr. Fenton De Souza & anr. vs. State of Goa, Through its Chief Secretary and Ors.**<sup>9</sup>, is relevant at this juncture itself to appreciate the scope and import of administrative tutelage of the State over the comunidades provided under Article 5 of the Code. It is important to understand that the village communities were governed by the Code of Comunidades. Paragraphs 39, 43, 44, 47, 48 and 49 are relevant which read thus :

39. Article 5 of the Code of Comunidades provides that the Comunidades shall be under the administrative tutelage of the State, in terms established in the Code, and its immovable properties may be granted on emphyteusis and alienated in the manner provided in this Court. There are several provisions in the Code of Comunidades which relate to the control of the Administrator and the State Government as regards the functioning of the Comunidades. There are several provisions relating to the administrative and fiscal controls exercised by the Administrator and the State

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9 2023 SCC OnLine Bom 2094

Government, particularly when it comes to the finances and properties of the Comunidades. A Comunidad is required to obtain approval from the Administrative Tribunal before settling or compromising any litigation *inter alia* concerning the Comunidad property.

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43. The provisions in Article 5 of the Code of Comunidades, which provide that the Comunidades shall be under the administrative tutelage of the State, cannot be interpreted to mean that the State Government, in the exercise of its powers of tutelage or rather its responsibility of tutelage can force the Comunidad to give up its property even temporarily for fees which are almost 50% to 70% lesser than the fees resolved to be levied by the general body of the Comunidad. Such an interpretation would amount to doing violence to the salutary provisions imposing the responsibilities or duty of tutelage upon the State Government when it comes to Comunidad and the properties of the Comunidades. Fortunately, this was not even the stand of the State Government before us. This was the stand of the seventh Respondent, who was the beneficiary of the Administrators ultra vires and ambiguous impugned communications based upon which this respondent made a short payment of almost Rs. 35,00,000/- or thereabouts.

44. Even the definition of “*tutelage*” in the *Black's Law Dictionary* (Eighth Edition) relied upon by Mr. Sardesai refers to “*tutelage*” being “*the act of protecting or guiding*”. This means that if the Managing Committee or even the general body of the

Comunidade wishes to fritter away the Comunidade property for charges lesser than the market value, even for a temporary basis, the State Government, in the exercise of its responsibility of tutelage, can step in and prevent the frittering away of the Comunidade property. Such an intervention would amount to protection of the Comunidade or the Comunidade properties. Such an intervention would amount to guiding the Comunidade in the matter of disposal of its properties in the best interest of the Comunidades and its members.

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47. Another co-ordinate Bench of this Court (Reis KM. and Wadane K.L., JJ.) in the case of *Trajano D'Mello v. State of Goa*<sup>4</sup>, has held that the ancient system of Village communities of Goa was governed by the Code of Comunidades in which many of their practices came to be codified into clear provisions. The Comunidades are governed by their own laws, that is Code of Comunidades. The Code is a compilation of customary laws codified from age-old customs and usages and is the law of shareholders' (Gaunkars) self-determination and for the development of common and joint welfare interests in the respective localities. The Code of Comunidades was declared to be a Public Law by Diploma Legislative No. 2070 dated 15.04.1961. The Bench has observed that this Code acknowledges that the properties and consequently the Comunidade did not have the obligation to pay the ground rents to the State Government.

48. The Division Bench held that the beauty of the Comunidades lies in its system of administration (governance). Thus, though the Comunidades are legalized and their activities codified, it had a tool by which they could function and survive in posterity. The Comunitade is large in system of administration and most of the decisions taken have to be by consensus. The decisions taken by the General Body by proper quorum on any item or issue, is what is meant as the say of the respective Comunitade. This can only take place by strictly following the procedure on any issue, within the scope and powers of the General Body. It becomes final only in case it is not contrary to the provisions of the Code. The Managing Committee cannot substitute the General Body and/or overrule the decision of the General Body. The say of the Managing Committee is not the say of the Comunitade to bind the Comunitade unless supported by the minutes of the appropriate General Body Meeting.

49. The Division Bench, significantly held that the State continues to be under the constitutional obligation to comply with the duty to provide the same tutelage and respect the “Code”. The Administrator and other staff of the administration are lawfully bound to give timely assistance and compliance to the provisions of the Code. The Comunidades are the absolute owners of the land. They reserved large tracks of land for grazing cattle in the village for the benefit of the farmers and cultivators and also reserved land for religious and festival purposes such as Temples and Churches,

Crematoriums and Cemeteries besides other common benefits for the community. It also provides for health centres and shelter for needy villagers and farmers. The income from the produce as well as the revenues generated are spent for the welfare of the people. Thus, the Court found that the activities of the Comunidade are regulated by the Code and it is the duty of the State to ensure that the provisions of the Code which have been enacted for the specific purpose are strictly followed.

**10.** The aforesaid observations will help us in better understanding the issue that arises in the present case. Now let us exercise the relevant provisions of the Code of Comunidade.

Article 1 of the Code stipulates that the comunidades or ‘*gauncarias*’– (association of *gaucars*) existing in the District of Goa shall be governed by the provisions of the present Code, and in particular, by the specific statutes governing each of them and in matters where the code is silent, the general law shall apply.

The Code provides that (1) A group of two or more comunidades under one single administrator or the group of several villages forming one single comunidade, is called *Torofo* – ( group of *comunidades*)– and the provisions by which the comunidades are governed shall be applicable to them. (2) By statute it implies any written instrument or regulation by which a comunidade had been governed, and in absence

of these, by the practice invariably observed at least for 50 years prior to 1904. (3) The statute of the comunidades of Goa, Salcete, Bardez, Mormugao are, as mentioned in map which forms an integral part of this code and that of to the other comunidades, shall be formulated within a period of six months from the date of publication of this code by the respective administrative boards and submitted for the approval of the Government which also, after the approval, shall form integral part of the same Map.

**11.** Article 3 of the Code stipulates that each comunidade comprises of (a) members by birth-joneiros zonnkars; (b) shareholders; (c) members by birth and shareholders; and (d) participants. Sub-para (1) of Article 3 stipulates that shares of the annual income belonging to comunidade members by birth (zonnkars) is called the zonn (profit) and that of the shareholders is called the dividend. Sub-para (2) of Article 3 provides that in case of dissolution of the comunidades by means of distribution of its properties or of its values among members by birth (zonnkars) or shareholders, the holders of these properties substitute in all respect such members by birth (zonnkars) or shareholders subject to all the burden lying over the respective comunidades.

12. Article 4 of the Code stipulates that only the comunidade members by birth (zonnkars) and shareholders are entitled to the profits or losses of the comunidades and only they have the rights and duties that are guaranteed and imposed by this Code to the members of the comunidade.

13. Article 5 of the Code stipulates that the comunidades shall be under the administrative tutelage of the State, in terms established in this Code and its immovable properties may be granted on emphyteusis and alienated in the manner provided in this Code. Before proceeding further, we note that the definition of ‘tutelage’ in Black’s Law Dictionary is – (1) *the act of protecting or guiding; guardianship.* (2) *The state of being under the care and management of an international organization such as the League of Nations or United Nations. - This term applies, for example, to the status of a people who do not yet benefit from a fully operational government of their own – such as people displaced by war and living in a territory that will in the future be given its autonomy.*

14. Article 39 stipulates that the affairs of each comunidade shall be managed by the managing committee elected every three years in the manner prescribed in the Code and rules framed thereunder. Article 70(1) of the Code provides that the elected part of the committee may

only be dissolved by the Government after conducting an inquiry in which it is proved that its performance was against the interests of the comunidades. In this inquiry the defendants must be given a hearing.

**15.** We now turn to Section VI of Chapter II of the Code comprising of Articles 84 to 98 which deals with clerks/escrivao of the comunidade and their powers and duties. Article 88(3) provides that all the documents and records of the comunidades shall be under the custody of the registrar, who shall be responsible to the Administrator of comunidades. Article 94 provides that the clerks of comunidade belong to a general cadre and shall be appointed, promoted and transferred by the Government under the terms prescribed in the present Code.

**16.** Article 100(2) of the Code stipulates that the treasurer of the comunidade shall have the power to pay to the administration of comunidades every month and in the first three days of the month, the respective shares in the ordinary and extraordinary '*derrama*' to the National Treasury at the appropriate time, property tax and other taxes due; and to zonnkars, shareholders, consignees and other creditors of the comunidade, each year or at the proper seasons of the year, as per the provisions of this code or in the respective contracts, or on the orders of a higher authority, the profits, dividends, interest, salaries or

other payments. We need to note that '*Derrama*' means compulsory financial contribution from the net revenue to make up the deficit in the budget of the administration office of Comunidades.

17. Article 117 of the Code stipulates that the administration offices of the comunidades are considered for all purposes as public offices. Article 118 of the Code stipulates that in each of the Administration of Comunidades, the respective administrator shall be appointed by the Government on deputation from amongst the Junior grade officers of Goa Civil Service. Article 125(4) of the Code gives power to the administrator of comunidade to enforce the collection of supplementary *derrama* when there are extraordinary expenses duly authorised. Article 125(5) of the Code empowers the Administrator of comunidades to inform the comunidades and the parties concerned, by 15<sup>th</sup> December, of the share of *derrama* which they are required to pay, and at appropriate time, the share of *derrama* which they are required to pay, and at appropriate time, the share in an extraordinary *derrama*. It further provides that the recovery of the respective installments, either by voluntarily payment or by coercive measures, shall be done as per the provisions in this Code.

18. Article 153 stipulates the powers of the Government under the Code. Article 153(3) empowers the Government to appoint and dismiss

the effective and substitute presidents of the managing committees, dissolve the elected part of them, and appoint suitable persons to replace them, in terms foreseen in this Code. Article 153(20) of the Code gives power to the Government to direct the Administrator of comunidades, without prejudice to any other remedy provided to recover such amount or sum due, if any, from the comunidade as arrears of land revenue and for this purpose the Administrator thereof may forward to the Collector a certificate as early as possible in the prescribed form mentioning, the sum due from such comunidade and requesting that such sum may be recovered as if it were an arrear of land revenue.

**19.** Chapter VI of the Code from Articles 324 to 348 deals with grant of aforamento or emphyteus by the comunidade and the formalities prescribed therein. As provided under Articles 335(1), the Government on going through the file, shall consider the request of such grant of aforamento or emphyteus. Article 354 of the Code stipulates that remission of fees of offices of clerks of comunidades and any charges shall be applied to the Government through the administrator attaching to the application the copy of the minutes of the comunidade in which it was deliberated to effect the remission and a certificate stating that the safe of the comunidade is in position to pay the same.

**20.** Article 471 of the Code stipulates what the income of the comunidades comprises and Article 472 deals with provisions relating to the expenses by the comunidades. Article 472(10) includes as an expense the property tax and other taxes payable to the National Treasury. Article 472(5) prescribes the pay of the clerk of the comunidade. Article 472(2) mentions the tribute *foros* that the comunidade pays to the National Treasury until the cessation of such payment in terms of sole paragraph of Article 5 which stipulates that with effect from the year 1962, the comunidade shall cease to pay the *foro* to the National Treasury.

**21.** In the context of the aforesaid provisions, let us first consider whether the comunidade is a “public authority” within the meaning of Section 2(h) of the RTI Act. Section 2(h) defines ‘public authority’, thus :

“public authority’ means any authority or body or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed directly or indirectly by funds provided by the appropriate Government;”

**22.** A reading of the provisions of the Code in the context of clause (a) of Section 2(h) of the RTI Act, reveals that a comunidade is not an authority or body or institution of self government established or constituted (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature and (d) by notification issued or order made by the appropriate Government or that it is (i) body owned, controlled or substantially financed; and (ii) non-Government organization substantially financed directly or indirectly by funds provided by the appropriate Government;

**23.** It is significant to note that Article 1 of the Code stipulates that the comunidades existing in the District of Goa shall be governed by the provisions of the present Code. As such, the Code of Comunidades, Legislative Diploma No. 2070 dated 15.04.1961 is only a regulatory code governing the comunidades. There is nothing on record to indicate that a comunidade is a non-governmental organization substantially financed directly or indirectly by funds provided by the appropriate Government to be covered under category (i) and (ii) of Section 2(h).

24. On a reading of the provisions of the Code, we find that the comunidade is not owned by the appropriate Government nor can it be said to be a body which is controlled by the appropriate Government. According to us, the control of the appropriate Government must be a control of substantial nature and mere supervision or regulation by a statute would not make it a public authority within the meaning of Section 2(h) of the RTI Act. There is nothing to suggest that the control of the appropriate Government over the comunidade is of such a degree which amounts to substantial control over the management of its affairs.

25. It is pertinent to note that Article 5 of the Code stipulates that the comunidade shall only be under the administrative tutelage of the State and further by Article 39 of the Code, the affairs of each comunidade shall be managed by a managing committee elected every three years in the manner prescribed under the Code. It needs to be noted that it is only the members and shareholders that are entitled to the profits and losses of the comunidade. We thus find that the powers exercised by the State Government and/or the Administrators of the comunidade under the Code are only regulatory or supervisory in nature and would not be so dominant to indicate a substantial control. We do not find any provisions in the Code nor can we discern from any other materials that there is any funding or financing directly or indirectly by the State

Government much less substantial financing. It is pertinent to note that a reading of Articles 100(2), 125(4), 125(5), 153(20), 472(5) and 472(10) of the Code of comunidades would show that, on the contrary, it is the comunidade which is required to pay ‘*derrama*’ to the State Government as also pay salaries to the clerks who are appointed by the State Government. The respondent no.1 does not appear to have placed any materials in discharge of his burden to show that the comunidade is owned and substantially financed and in all that it is a non-governmental organization substantially financed directly or indirectly by funds provided by the appropriate Government. We, therefore, have no hesitation in holding that the comunidade would not be a public authority within the meaning of Section 2(h) of the RTI Act.

**26.** Having formed an opinion that the comunidade is not a public authority within the meaning of Section 2(h) of the RTI Act, we may now refer to Section 2(j) dealing with “right to information”, which means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or

through printouts where such information is stored in a computer or in any other device.

27. In this context it is pertinent to note the obligations of public authorities provided under Section 4 of the RTI Act. Section 4 reads thus :

**“Section 4 - Obligations of public authorities.**

(1) Every public authority shall-- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act,--

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed; and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be,

available free or at such cost of the medium or the print cost price as may be prescribed.

*Explanation.*--For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

28. Section 5 of the RTI Act deals with designation of Public Information Officers. This section places an obligation on every public authority to designate as many officers as the Central Public Information Officers or State Public Information as may be within the time frame stipulated therein in all administrative units or offices under it as may be necessary to provide information to persons requesting for information under the RTI Act. Much turns on the applicability of sub-section (4) and (5) of the RTI Act and hence the provisions of Section 5 needs to be extracted for a proper appreciation of the issue. Section 5 reads thus :

**“Section 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 the 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.” (emphasis supplied)

**29.** Thus, Section 5(4) of the RTI Act stipulates that the Central Public Information Officer or State Public Information Officer, as the case may be, may seek assistance of any other officers as he or she considers it necessary for the proper discharge of his or her duties. A reading of the provision of Section 5(5) of the RTI Act, indicates that 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.

**30.** Therefore, once we hold that the comunidade is not a public authority within the meaning of Section 2(h) of the RTI Act, there is then no obligation on it to fulfill the requirements of Section 4 in

maintaining the records or publications stipulated therein or providing reasons for administrative or quasi judicial decisions to the affected persons. The right to information in terms of Section 2(j) is that information accessible under the RTI Act, which is held by or under the control of any public authority. Furthermore, there is no obligation on the comunidade to designate any Central Public Information Officer or State Public Information Officer, as the case may be, to provide information to persons requesting for information under this Act. Once the comunidade is not obligated to designate Central Public Information Officer/s or State Public Information Officer/s as it is not a public authority, there is no question of applicability of Section 5(4) and 5(5) to the comunidades.

**31.** The question then is that whether the clerk/escrivao or the Administrator is obliged to furnish the information under the RTI Act on an application made by the person seeking information merely because they are appointed by the State Government. As indicated earlier, Articles 84 to 98 deals with clerks/escrivao of the comunidade and their powers and duties. Article 83(3) stipulates that all the records and the documents of the comunidade shall be under the custody of the clerks, who shall be responsible to the Administrator of comunidade. Article 94 of the Code provides that the clerk of comunidade belongs to a general cadre and shall be appointed,

promoted and transferred by the Government under the terms prescribed by the Code. No doubt, Article 117 stipulates that the Administrative Offices of the comunidades are considered for all purpose as public offices. This, however, does not mean that merely because the records of the comunidade are in the custody of the clerk or that the information is available with the Administrator, the application can be made to the Administrator or clerk to supply any information relating to the comunidades under the RTI Act. The reason being that the information essentially pertains to the affairs of the comunidade, which is not public authority. It is in the capacity as a regulator or as a supervisor or as a custodian of records that the information is available with the Administrator or clerk appointed by the State Government. Such regulatory control by the Administrator in respect of the matters stipulated under the Code already referred to herein before can by no stretch of imagination be said to be so deep and pervasive to bring the Comunidades within the meaning of the term 'public authority'.

**32.** In our opinion, merely because the records are in the custody of the clerk or that the information is available with the Administrator, will not bring the Comunidade within the ambit of RTI Act. For the RTI Act to apply, the comunidade has to be necessarily regarded as a public authority within the meaning of Section 2(h), for it is then and only then that the requirement of designation of Public Information

Officer will arise under Section 5 of the RTI Act. Therefore, as the comunidade is not a public authority, the question of applicability of Section 5(4) or Section 5(5) for the purpose of seeking assistance by the Administrator from the clerk with whom the records are available will not arise.

**33.** Shri Priolkar, learned Additional Government Advocate, relied upon the decision of this Court in **Attorney of Comunidade & anr. vs. Mr. Harihar Chodankar & Ors.** (supra) in support of his submission that the Administrator has to be regarded as deemed Public Information Officer in terms of Sections 5(4) and 5(5) of the Act. We are afraid that this decision is distinguishable on facts. In paragraph 6, this Court observed that the main issue involved is not whether the Attorney of the Comunidade is primarily a Public Information Officer. Thus, the issue raised in this petition did not arise for consideration in the matter before the learned Single Judge. It was in the facts that this Court was of the opinion that the attorney of the comunidade supplied part of such information but the balance was not supplied, that the Administrator was justified in seeking assistance from the attorney and even the attorney by partly supplying such information did not resist this position. The issue was thus not concluded. The issue whether the attorney was primarily a Public Information Officer was not finally adjudicated. It needs mention that in the facts of the case before the

learned Single Judge, it was observed that there was no jurisdictional error or even otherwise any error in treating the attorney as the deemed Public Information Officer. In such circumstances, this Court did not interfere with the impugned orders made by the authorities under the RTI Act, 2005. The observations of the Court thus were *prima facie* in nature.

**34.** Consequently, the Petitions are allowed.

**35.** Writ Petition No. 1004 of 2017 is allowed in terms of prayer clause A, which reads thus :

“A. This Hon’ble Court be pleased to issue an appropriate writ, order or direction quashing and setting aside the order dated 04.07.2017 of the State Information Commission Annexed hereto as Exhibit ‘A’”

**36.** In Writ Petition No. 1177 of 2019, the impugned Order dated 23.11.2017 passed by the First Appellate Authority is quashed and set aside.

**37.** Rule is made absolute with no order as to costs.

**B. P. DESHPANDE, J.**

**M. S. KARNIK, J.**