

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 65/SIC/ 2010

Shri Kashinath Shetye,
R/o Bambino Building,
Alto Fondvem,
Raibandar.

..... Appellant

V/s

- 1) Public Information Officer,
Penha de Franca,
Panchayat Penha de Franca,
Britona, Bardez-Goa.
- 2) First Appellate Authority,
Block Development Officer
Bardez, Mapusa –Goa.

..... Respondents.

CORAM

Shri Prashant S.P. Tendolkar, State Chief Information Commissioner,
Smt. Pratima K. Vernekar, State Information Commissioner

Filed on : 03/03/2010
Disposed off: 29/11/2016

1) FACTS:

a) The appellant herein by his application, dated 02/12/2009 filed u/s 6(1) of The Right to Information Act 2005(Act) sought certain information from the Respondent No.1, PIO raising several queries therein. The said application was transferred to Town and Country Planning Department furnishing part of the information to point No.2 and 3. It is the contention of the appellant that the PIO failed to furnish the information and that no inspection of the files of the information was allowed.

b) The appellant filed the first appeal to First Appellate Authority (FAA) i.e. Respondent No.2, on 18/01/2010. The First Appellate Authority by order, dated 10/02/2010, allowed the said appeal and directed PIO to furnish the information within 7 days.

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c) The appellant has therefore landed before this Commission in this second appeal u/s 19(3) of the act on the ground that no information on the points 1, 2, 3, 10 to 14 has been furnished.

d) According to the appellant the PIO of the Town Planning Department vide letter, dated 29/01/2010 has directed the PIO herein i.e. Respondent NO.1 to take action for illegal user.

e) The appellant assails the action of the PIO on the ground that the PIO has not complied with the order of the FAA. According to him the PIO has committed error informing the appellant that the information is not available. It is also the grievance of the appellant that no action is taken as per section 4 (1) (d) and no action taken report is made available to appellant.

f) Appellant by this appeal has prayed the furnishing of the information free of cost. and for penalty and compensation.

g) Notices were issued to the parties, pursuant to which they appeared. The PIO on 09/06/2016 had filed a reply to the appeal . on 22/06/2016 filed an memo stating that as per the reply filed by the then PIO before the FAA the information as sought for has already been furnished. He produced a copy of the said reply filed by the then PIO before the FAA. On the said Memo this Commission has directed the present PIO to furnish copies of the information stated to have been furnished to the appellant as per the reply of the then PIO before the FAA for the records of this appeal. Accordingly the PIO filed the copy of the information. Said copy of the information was also furnished to the appellant's representative on 8/08/2016 and the appellant was directed to go through the same and inform whether the same is in accordance with the information sought under section 6(1) of the Act. The appellant has not replied nor submitted

that the information furnished to him is not in accordance with his requirement under section 6(1) of the Act. This Commission by order dated 24/10/2016 held that in view of non compliance of the said order and non objection to the said information, it would be presumed that the said information shall be held true and correct information furnished as per the requirement of appellant. In spite of the same the appellant did not attend the hearing and hence this commission proceeds to dispose of the appeal based on the records.

2) FINDINGS:

a) We have perused the application under section 6(1) of the Act. Vide said application the appellant has sought the occupancy certificate , Plan and NOC for converting residential building into commercial one. This pertain to H.No.818, 819 and 820. The said documents are reported as not available. Regarding point 4(1) of the application a copy of the NOC is furnished. With reference to point 4 (2) (3) also copies furnished. Regarding point 5, 8, 9, the information is furnished and pertaining to the other it is informed that they are not available.

b) The appellant has not objected for the said reply nor it is case of appellant that the information which is infact available is falsely reported as unavailable. Hence we find that the information as sought for is furnished.

c) Coming to the other aspect of the appeal, which pertains to the penalty it is seen that the application was filed to the PIO on 2/12/2009 and part of the information held by other authority was sought from it under section 6(3) of the Act by transferring to Town and Country Planning department on 9/12/2009. However we find no reply to the remaining requirements of the appellant. From the

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records it is found that for the first time the information is furnished through the reply filed by the PIO before the FAA. We hold firstly that this reply before the FAA does not constitute the reply to the queries as contemplated under section 7 (1) of the Act. Be that as it may, the same is filed beyond the period within which the PIO was supposed to file the reply. In the circumstance we find that there is no response from the PIO within the stipulate time under section 7(1) of the Act. This leads us to prima facie hold that this action of the PIO attract penalty under section 20 of the Act.

d) In the aforesaid circumstances we hold that the information as sought for by the appellant is furnished. However, in view of the delay in furnishing the information caused by the PIO we find it appropriate to seek explanation from the PIO as to why penalty should not be imposed on him for contravention of section 7(1) of the Act. We therefore dispose the present appeal with order as under:

ORDER

Information being furnished, we find no intervention of the commission is required thereto. However PIO to show cause as to why no action as contemplated under section 20(1) and /or 20(2) of the Right to Information Act 2005 should not be initiated against him for contravention of section 7(1) of the Right to Information Act 2005. The reply to be filed by the PIO in person, returnable on 05/01/2017 at 10.30 am.

Copy of this order shall be furnished to the parties free of cost. PIO herein shall serve the copy of this order on the then PIO if, he is

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transferred elsewhere and produce the acknowledgment thereof before this commission.

Appeal stands disposed off accordingly.

Pronounced in the open Court.

Sd/-
(Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

Sd/-
(Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission
Panaji-Goa