

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 133/2015

Shri Kalpesh Kavlekar,
R/o H.No.203, Sorvem Wado,
Near Government High School,
Namoshi, Guirim Bardez Goa.

.....Appellant

V/s.

1. Public Information Officer (PIO),
Administrator of Comunidades of North Zone,
Mapusa Goa.

2. The First Appellate Authority (FAA),
Additional Collector-II,
North Goa District Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 22/12/2015

Decided on: 25/10/2017

ORDER

1. By this appeal the Appellant Kalpesh Kavlekar assails the order, dated 17/11/15 passed by the Additional Collector-II and first appellate authority in case No. RTI/AC-II/APL/32/2015 filed by the appellant herein .
2. The facts in brief in arises in the present appeal are that the appellant by his application dated 4/5/15, sought information from Respondent No. 1 PIO , Administrator of Comunidade of North Zone at Mapusa with respect of details of vacant land for housing to be allotted to Gaonkars and Government servants by the Comunidade of Moira . The said information was sought by the appellant in exercise of his right u/s 6(1) of the RTI Act 2005.
3. It is the contention of the appellant that PIO failed to respond the same nor furnish the information to him within stipulated time as

such he filed first appeal with additional collector –II North Goa Panajim District being first appellate authority who is the respondent No. 2 herein. The respondent No. 2 first appellate authority by his order 17/11/15 disposed the said appeal as withdrawn.

4. Being aggrieved by the action of both the Respondent the present appeal came to be filed by the appellant on 22/12/2015. The appellant by this appeal has prayed for direction for furnishing him required information free of cost and for invoking penal provisions.
5. The notice of the appeal was given to both the parties. The appellant appeared in person. The then PIO Shri Dasharath Redkar was present. Reply filed by Respondent No. 2 First appellate authority on 2/8/17 and by Respondent no. 1 PIO on 7/9/2017.
6. The appellant has challenged the order passed by First appellate authority on several ground as raised in the memo of appeal. The salient grounds beings that
 - a) The Respondent no. 1 has not furnished the requested information neither any intimation has been received from the Respondent No. 1 PIO within stipulated 30 days time and that letter was received by him on 11/9/2015 while a first appeal before the Respondent No. 2 was pending, thereby informing him that no such details of vacant land of Moira Comunidade are available in their office hence no such ready information available in their office. It is his contention that Respondent PIO has deliberately on such ground denied him the information.
 - b) The appellant never admitted before Respondent No. 2 the mistake and did not withdrew the said appeal as such it is his contention that the order passed by the FAA is perverse and illegal.
7. The Respondent no. 1 PIO has resisted the appeal interalia on the ground that they have intimated vide their letter dated 11/09/2015

that the information is not with them since it is held by another authority. The Respondent PIO vide said reply also have contended that he was holding two more charges apart from the charge of public authority concerned herein and the dealing hand Mrs. Baldomera kept the said application pending and he learnt about it when he received the notice in the first appeal.

8. The copy of the replies were furnished to the appellant.
9. On subsequent dates of hearing the appellant and the respondent remained absent as such this commission decided to dispose the appeal based on the records available in the files.
10. On scrutiny of records it is seen that the application u/s 6 was filed by the appellant on 4/5/2015 which was replied and responded by the PIO on 11/9/2015. The said reply is filed beyond the period which the PIO suppose to reply /provide the information . I find that there is no response from then PIO within stipulated time u/s 7(1) of the Act . This leads me to prima facie hold that this action of then PIO attracts penalty u/s 20 of the Act .

Be as it may be;

11. Assuming for while the information is not available with the PIO and it was held by another private authority, the appellant under article 88(d) of the code of comunidade could have sought the same from the clerk of comunidades. The office of Administrator, which is the public authority under the RTI Act, has been granted access to the information held by the comunidade. The code of Comunidades further makes it mandatory on the part of Comunidades to part with a information to the office of Administrator whenever called by it. The then PIO has not placed on record any letters made by him to the concerned Comunidade of Moira for seeking the said information. It appears that he had not taken any necessary steps towards that directions and the reply dated 11/9/2015 was given as more formality without proper application of mind.

12. The Respondent No. 2 FAA also has failed to place on record any substantial evidence or the endorsement made by the appellant withdrawing the first appeal despite of directions by this commission as such there appears to be some substance in the submission of the appellant.
13. Considering the nature of application u/s 6(1) of the Act I find that appellant is entitled to have the information and the Respondent No. 1 PIO is hereby directed to call for such information from the Comunidade of Moira.
14. In view of delay caused by the PIO in responding to the said application I find it appropriate to seek explanation from the then PIO as to why the penalty should not be imposed on him for contravention of section 7(1) of the Act I therefore dispose the present appeal with order as under.

order

1. Appeal is allowed, order of the Respondent No. 2 First appellate authority is quashed and set aside.
2. The present PIO is directed to call from the Comunidade of Moira the information and shall furnish the same to the appellant which was sought by him vide his application dated 4/5/15 free of cost within 20 days from the receipt of this order.
3. The then PIO to showcause as to why no action as contemplated u/s 20(1) of the RTI Act 2005, should not be initiated against him for contravention of section 7(1) of the RTI act 2005. The reply to be filed by then PIO in person on 14/11/2017 at 10.30 a.m.

In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice

alongwith the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter alongwith the full name and present address of the then PIO

Appeal disposed accordingly . proceedings stands closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided under the Right to Information Act 2005.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

AK/-