

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 43/2017

Shri Guilherme A. Fernandes,
H.No. 323, Modsai, Macasana,
Salcete Goa.

..... Appellant

V/s.

1. Public Information Officer
Mamlatdar of Salcete,
Collectorate South building,
At Margao Goa .

2. The First Appellate Authority,
Dy. Collector and SDO-II, Margao,
Collectorate South building,
At margao.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 18/4/2017

Decided on: 13/09/2017

ORDER

1. Vide application dated 21/12/16 the appellant Shri Guilherme Fernandes sought for attested copies of each and every documents i.e. the entire case file of the mutation case under No. 49073 standing the name of Joquim Sebastiaian Fernandes nad veronica Antao. The said information is sought u/s 6(3) of the Right To Information Act, 2005 from the Public Information Officer (PIO) , Office of the Mamlatdar Salcete Margao Goa. To the said application the form I & IVX of Survey No. 32/11 of Village Macazana and election card was enclosed.

2. According to the appellant the said was not responded by Respondent No. 1 PIO within stipulated time of 30 days as contemplated under the RTI Act and as such he preferred 1st appeal before Respondent No. 2, the Dy. Collector and SDO, Salcete Margao Goa being First Appellate Authority (FAA) on 18/02/17 .
3. The Respondent No. 2 FAA by an order dated 6/3/17 disposed the said appeal by observing information sought by the appellant in said mutation case No. 4973 been already have been provided to the appellant and the copy of the acknowledgment of appellant of having received the information is produced .
4. The appellant being not satisfied with the information provided to him during the course of the proceedings before the FAA, has approached this commission on 18/4/17 by way of second appeal filed u/s 19(3) of the RTI Act on the grounds raised in the memo of appeal. In the said second appeal the appellant has sought for a prayer to provide him true , correct authentic mutation application bearing date, signature, thumb impression, office inward no. with other details of the office of Mamlatdar. And also for invoking for penal provisions .
5. In pursuant to the notice of this commission, the appellant appeared in person Respondent No. 1 Shri Vishal Kundaikar appeared and filed his affidavit in reply on 13/9/17. The copy of the same was furnished to the appellant . The respondent No. 2 opted to remain absent nor filed their reply.

6. The appellant admitted of having received the information during the proceedings before FAA however it is his grievance that the said information which was furnished to him was without any covering letter and the same is required by him to file before the court of law. It is his second contention that application of Mutation of Survey No. 32/11 of Macazana Village made by Shri Joaquim Sebastian does not bear the date, month and year on which the said application was filed so also other details like the date, month and year and inward no. etc. of when the application was received in the office of Malatdar. It is also further contention that it does not bear any acknowledgment of the office clerk of Mamlatdar Talathi on the said application to know under whose instruction mutation / proceedings were initiated etc. It is his further contention that he and received the said information not within 30 days and there is a delay of total 39 days .
7. It is the contention of the Respondent PIO that at the relevant time when the Mutation application was filed and when the mutation was carried he was not attached to said office and that he has provided the said information based on the record available in the said file. It is his further contention that he had furnished the information on 1/2/17 and that the reference of having received the same have been made by the appellant himself in his application for the certified copy of order dated 6/3/17 passed by the FAA which was inwards in the office of collector on 6/3/17 under No. 3162 and in his written argument which was filed before the FAA on 6/3/17. The PIO submits that there is delay

of about 7 to 8 days in furnishing the information and the same may be condoned. He also prayed for taking lenient view . He also further submits that he is willing to provide the information a fresh after duly attesting documents/ by covering letter. The appellant submits that the same may be provide to him by Registered A.D. which the Respondent PIO agrees.

8. The grievance of the appellant as mentioned at point C and D of para 9 of the memo of appeal are beyond the scope of this commission to deal and entertained as this Commission is not an competent authority to deal with such issue.
9. The PIO on affidavit has submitted that he had provided the information as available in the official records. It is the duty of the PIO to furnish the information as available on record and he is not required to create documents as per the requirement of information seeker. The appellant if so desire may redress his grievances pertaining to ground No. C and D mentioned at par 9. of his memo of appeal with the competent and appropriate authority.
10. The appellant has also not produce sufficient and convincing evidence on records in order to established that the losses , damages, detriment etc. have been caused to him in entire process of pursuing the said application u/s 6(1) of RTI Act as such the prayer D cannot be granted.

11. The delay in furnishing information is very marginal. There is nothing on record brought by the appellant that the lapses on part of the PIO are persistent and deliberate.
12. The Hon'ble High Court of Bombay of Goa in W. P. No. 704/2012 The Public authority office of Chief Engineer V/S Yashwant Tolio Sawant has held ;
"That there is an marginal delay, the PIO cannot be blamed and the imposition of such penalty is blot upon the carrier of the officer, " at least to some extent", in any case the information is ultimately furnished though after some marginal delay, no penalty ought to have imposed on PIO" .
13. The Hon'ble High Court at Bombay at Goa Bench at Panaji in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:

"11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."
14. In the present case there is nothing brought on record by the appellant that delay was intentional and deliberate. On the contrary the respondent PIO have shown his bonafide by providing information before the FAA has disposed the said appeal and also before his commission by volunteering himself to furnish the information fresh to the appellant as such I am declined to grant prayer C of memo of appeal.

15. In the above given circumstances the following order is passed.

Order

The PIO is directed to provide the attested copies of the documents as sought by the appellant vide his letter dated 21/12/16 by a covering letter within a week free of cost. The same shall be sent to the appellant by Registered A.D.

Appeal disposed off 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 against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

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

Ak/-

