

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Appeal No. 302/SCIC/2016

Mr. Vaikunth V. Parab Gaonkar,
R/o Gaonkarwada,
Bicholim-Goa.
Pin: 403504. Appellant

V/s

The Public Information Officer,
Bicholim Municipal Council,
Bicholim –Goa.
Pin: 403504. Respondent.

Filed on : 28/12/2016

Decided on: 17/08/2017

O R D E R

- 1) When the appeal came for hearing before this Commission on 14/7/2017, the appellant who was present personally, submitted that the information which was sought by him by his application, dated 24/06/2015 is received by him after the orders passed by the FAA and hence he is not pressing for any order on prayers (I) and (II) and that he is only pressing for the relief in terms of prayer (III). Hence the present appeal is heard only for the purpose of considering the prayer of compensation under the act.

...2/-

- 2) The PIO on 14/07/2017 filed his reply to the appeal, a copy of the same was furnished to the appellant. In the said reply it is the contention of the PIO that in response to the appellant's letter, dated 24/06/2016 filed under section 6(1) of the Right to Information Act, he sent a letter to the appellant bearing No.BMC/Admn./RTI/2016-17/653, dated 22/07/2016 addressed to the appellant thereby calling upon him to deposit the fees of Rs. 1940/- according to him the said letter was dispatched through the outward register of the council at Sr. No.653 dated 22/07/2016 the PIO has filed the Xerox copy of the said letter alongwith the copy of the outward register.
- 3) In view of presumption that arises in favour of the PIO based on the said records, submissions of the appellant were heard in rebuttal . Appellant submitted that the said letter was not received by him till the First Appeal. He further submitted that the outward register that was produced does not contain the postal stamp. According to him in case the said letter was received by him within time he would have not claimed the information free of cost. He produced for my perusal the copy of the said letter, dated 22/7/2016, received by him alongwith the envelope mentioning at the top the reference number of the said letter and also the postal stamp

...3/-

which according to him carried the said letter dated 22/07/2016. The appellant however submitted that he cannot give the correct date of receipt but it was received after filing of the first appeal.

- 4) Appellant also produced for my perusal another letter dated 28/07/2016 send by the PIO informing the appellant that the information cannot be given free of cost. According to appellant as said letter dated 28/07/2016 was sent by registered post but why this earlier letter dated 22/07/2016 was sent by ordinary post.

According to him there is a manipulation in the date of the earlier letter dated 22/07/2016.

The appellant further submitted that the said letter which is purported to have been dated 22/07/2016 was been received by him after 25/07/2016 on which date he had sent another letter to the PIO claiming information free of cost. While concluding his arguments he reiterated that the information is already received by him after the order of the FAA and that he is not pressing for prayer (I) and (II) but he is claiming only compensation which is in terms of Prayer (III) of his appeal memo.

- 5) The PIO who is present today submitted that the reply filed by him are his submissions.

- 6) I have perused the records and also considered the submissions. The short point which is required to be addressed herein is whether the delay in furnishing the information by the PIO was deliberate and intentional.
- 7) The contention of the PIO herein is that on receipt of the application from the appellant on 24/6/2016, he responded to him that the information can be collected on payment of Rs.1940/-. The PIO has filed on record the copy of such letter, dated 22/7/2016 alongwith the copy of the outward register showing therein, at serial no.653, a letter addressed to the appellant. It is nowhere the contention of appellant that the said letter which is reflected in said register is not the same letter.
- 8) I have perused the proceeding sheet in the first appeal which is filed along with this appeal. As per the records of the first appeal, in the said appeal before the FAA, it was also informed by the PIO that such a letter was sent to the appellant. It was further informed by the PIO during the first appeal that by subsequent letter, dated 28/7/2016 also the appellant was informed of having sent the said letter, dated 22/7/2016.
- 9) This second appeal was filed by the appellant before this commission on 28/12/2016. The appellant has neither mentioned in this appeal regarding the

receipt of the said letter, dated 28/7/2016 nor has filed the copy of the same which was in his possession as on the date of filing this appeal. As per the submissions of the appellant before me the said letter, dated 22/7/2016 was received by him two to three days after filing of the first appeal. The appellant thus does not dispute the receipt of the said letter, dated 22/7/2016, but only date of receipt is in dispute.

- 10) The contention of the appellant is that he has responded to the said application of the appellant on 22/07/2016. The appellant does not dispute its receipt but according to him from the envelop containing the said letter it is not clear as to on which date the said letter was posted or received by him. The appellant has produced the said envelop for my perusal during hearing. According to appellant he has received the said letter dated 22/7/2016 after 25/07/2016. It is also the contention of the appellant that the PIO has not produced any stamp from the postal authorities showing as to one on which date the said letter was posted. According to him it can be even manipulated.

I am unable concur with this submission of the appellant. The said letter dated 22/07/2016 is received by the appellant. The reference of said letter is also found in the subsequent letter of the

...6/-

PIO, dated 28/7/2016. Hence there is no dispute regarding the sending of said letter but the only question is regarding the date of dispatch. As per the records i.e. the register produced by PIO the said letter is dispatched on 22/07/2016. There is no evidence showing any other date as the date of dispatch. Hence an un rebutted presumption arises in favour of the PIO that it was dispatched on the same date as is shown in the dispatch register. The date of receipt by the addressee due to postal or administrative delay cannot be considered as a deliberate of the PIO. It is also a consistence plea of the PIO, vide his letter dated 28/07/2016 and by way of submissions before first Appellate Authority that the said letter dated 22/7/2016 was infact send by him. The PIO thus has discharged his burden that the delay in furnishing information was justified. The FAA also after being convinced of the said action of PIO has passed the order directing the PIO to furnish the information.

- 11) As per the averments in the appeal memo the appellant has filed this second appeal being aggrieved by the order of FAA. However I find that by the said order of the FAA, the PIO was directed to furnish the information to the appellant free of cost. As per the submissions of the appellant such information was furnished to him within 2 to 3 days
...7/-

from the date of the said order. Being so there was no cause to the appellant to approach this commission with this appeal as the relief of the appellant was granted in the first appeal. I am fortified in this view on the bases of ratio laid down by the Hon'ble High Court of Kolkata in the case of *Metropolitan Co-operative Housing Society Ltd. And another v/s The State Information Commissioner and other (W.P. No. 12292 (w) of 2009)* wherein it is held:

"16..... The fifth respondent having succeeded in his claim before the first Appellate Authority, he could not have filed second appeal. The order dated 25/06/2009 is also not sustainable in law on this sole ground."

It is to be noted that the appeal memo does not contain any statement that the information which was ordered was actually furnished. Such a statement is made only in the course of arguments. There was in fact no cause of action for the appellant to file this appeal as there was no decision against him in the first appeal.

- 12) Considering the above, I find that though the information was received by the appellant after the order of the FAA, the delay cannot be attributed to the PIO. I do not find any intention on the part of PIO to delay the information. I therefore find no

...8/-

ground to invoke the provisions of section 20(1) and/or 20 (2) or section 19(8)(b) of the act.

In the fact and circumstances I find no merits in the appeal. Consequently the same is dismissed.

Notify the parties.

The proceeding closed.

Pronounced in the open proceedings.

Sd/-

(Mr. Prashant S. Prabhu Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji-Goa