

GOA STATE INFORMATION COMMISSION

Kamat Towers' Seventh Floor, Patto, Panaji – Goa

CORAM : i) Shri. Prashant S. P. Tendolkar

State Chief Information Commissioner

ii) Smt. Pratima K. Vernekar

State Information Commissioner

Appeal No.283/SCIC/2016

Ivan Frances Fernandes,

H.No. 37/1, Vaddem,
Socorro, Bardez – Goa.

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Appellant

V/S

1) The Public Information Officer

Administrator of Comunidade of North zone,
Near Court (JMFC),
Mapusa, Bardez – Goa.

2) F.A.A.(Additional Collector-II)

Collectorate of North Goa,
Panaji – Goa.

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Respondents

Filed on : 07/12/2016

Disposed on :02/05/2017

1) FACTS:

- a) The Appellant herein by his application, dated 01/06/2016 filed u/s 6(1) of The Right to Information Act 2005(Act) sought from the Respondent No.1, PIO, the copy of the order, dated 22/05/1996 approving the resolution dated 11/11/1994 passed by the General Body Meeting of comunidade of Serula granting permission/ allotting wooden gada to one Luis Antonio Fernandes.

- b) The said letter was not responded by the PIO and deeming the same as rejection, the Appellant filed the first appeal to the Respondent No.2, which was finally disposed by order, dated 13/10/2016. By this order the F.A.A. directed the PIO to furnish the said information within a period of 15 days from the date of receipt of said order.
- c) It is the contention of the Appellant that inspite of the said order the said information was not furnished and hence the Appellant has approached this Commission in his second appeal seeking relief of direction to PIO to furnish the information as also seeking penalty for not giving information within time.
- d) According to the Appellant as per memo of appeal, what was sought in the letter, dated 22/05/1996, written by PIO Respondent No.1 addressed to Comunidade of Serula approving the general body resolution and that the PIO ought to have sersed his files for locating such letter.
- e) The notice of this appeal was sent to the PIO and the same was received by the said office on 16/12/2017. The proof of such service produced by the Appellant on 25/04/2017. On going to the same it is found that inspite of service notice on PIO on 16/02/2017, PIO never bothered to appear and no reply is filed on behalf of PIO. Being so the submission on behalf of Appellant was heard.
- f) The Appellant in his submissions submitted that the information as sought by the Appellant was not furnished to him nor his application u/s 6(1) of the Act was responded by the PIO. By referring to memo of appeal and annexure to the appeal he submitted that only on 02/11/2016 the Respondent

No.1, by unnecessarily directing the clerk of Comunidade to produce the same, when the said information was existing with PIO.

2) FINDINGS :

- a) We have perused the records and considered the submissions on behalf of the Appellant. As per the records the application u/s 6(1) of the Act was filed on 01/06/2016. U/S 7(1) the PIO was required to respond the same within 30 days from said date. There are no records produced by the PIO to show that the same was adhered to. The contention of the Appellant in the appeal is that the said application was not responded to at all by the PIO. Thus from the undisputed and unrebutted averments the PIO has failed to respond to the Appellant's application within stipulated time nor has furnished the information within the time stipulated u/s 7(1) of the Act.
- b) In the first appeal filed by the Appellant before the F.A.A., the PIO remained absent indicating that he has no concern for the concern of the Appellant. It is only after the order of the F.A.A., which resulted in a direction to PIO to furnish information, that the PIO writes to the Escrivao of the concern Comunidade to furnish the information for being disseminated to the Appellant. However such a gesture of PIO also appears to be malicious as the information sought was already existing with PIO.
- c) It is further seen that on 18/11/2016 the PIO intimates the Appellant of the receipt of the letter, dated 13/11/2016 from the Escrivao. It is thus seen that the entire action of the PIO are mechanical and as a postman. The PIO has reacted to the order of F.A.A. and thereafter intimated the response of the Escrivao to the Appellant. The reference of the request to the

Comunidade seeking the information from it also appears to be evasive and without any reason. The PIO has not performed any of his obligation under the Act. The PIO had an opportunity to show before the F.A.A. the bonafides is not responding to the request of Appellant in time, which the PIO has not availed.

- d) Be that as it may the PIO was duly served by this Commission with the notice in the above appeal inspite of which the PIO has failed to appear and show as to how and why the delay in responding the application was not deliberate and/ or intentional.
- e) As per the letter, dated 18/11/2016, addressed by PIO to Appellant, it is his contention interalia that the files containing the information were missing. Neither the Escrivao has informed nor the PIO has sought as to what further action is taken to recover the files. There is also no order/ records showing any action by the Public Authority i.e. Administrator, against the concerned Comunidade or its Registrar who is responsible to the administrator u/s 88(11)of the code of Comunidade as amended.
- f) Be that as it may, on perusal of the application of Appellant filed u/s 6(1) of the act as also from the pleading of the Appellant, it is the copy of order, dated 22/05/1996 passed by the office of Administrator of Comunidade approving the resolution dated 11/11/1994, was sought as information. Such an order being a document existing in the office of PIO was required to be furnished from the same office. It is nowhere the case of PIO that said same is not in the records of Administrator. No reasons are given by PIO as to why the said document was required to be sought from the Comunidade.

- g) From the above gesture of PIO, we find that the entire conduct of PIO is not in consonance with the Act. Such a lapse on the part of PIO is punishable u/s 20(1) and 20(2) of the Act.
- h) In the above situation, we find merits in the appeal. We therefore dispose the same with the following :

ORDER

PIO is hereby directed to furnish to the Appellant a certified copy of the order dated 22/05/1996, passed by the Administration of Comunidade, North Zone approving the resolution dated 11/11/1994 passed by the general body of Comunidade of Serula, within 15 days from the date of receipt of this order by him.

The Then PIO, Clen Madeira is hereby directed to show cause as to why penalty as provided u/s 20(1) and/ or 20(2) of The Right to Information Act 2005, should not be ordered against him.

Reply to show cause shall be filed on 12/06/2017 at 10.30 am.

Notify the parties.

Copy of this order be furnished to parties free of cost.

Pronounced in open proceedings.

Appeal disposed.

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

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

