

GOA STATE INFORMATION COMMISSION

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

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

Appeal No.304 /SCIC/2016

Mrs Cassita Telles,
R/o H. No.7/185, Osnimadem,
Cuncolim, Salcete Goa.

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Appellant

V/s

1) The Municipal Engineer &
Public Information Officer,
Cuncolim Municipal Council,
Cuncolim, Salcete -Goa.

2) The Chief Officer &
First Appellate Authority,
Cuncolim Municipal Council.

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Respondent.

Filed on:29/12/2016

Decided on :07/09/2017

O R D E R

1) FACTS:

a) The appellant herein by her application, dated 23/06/2016 filed under section 6(1) of the Right to Information Act 2005 (**Act** for short) sought from the respondent PIO certain information on thirty points as contained in her said application.

b) According to the appellant, the PIO did not respond the said application within time as contemplated u/s 7(1) of the act inspite of reminders of appellant. However the PIO by his letter, dated 09/08/2016, called upon the appellant to collect the information, which was accordingly collected by her on 18/08/2016.

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c) It is according to appellant that the information as was furnished was false, fabricated, concocted, irrelevant, vexations, incomplete and inconsistent to her application and that accordingly she filed first appeal.

d) It is the contention of appellant that the First Appellate Authority (FAA) failed to dispose the first appeal within the time stipulated under the act and hence she has filed this second appeal u/s 19(3) of the act.

e) The appellant in this appeal has prayed for a direction to PIO to furnish true, correct and complete information as also for imposition of penalty for delay in furnishing information, and for disciplinary proceedings. The appellant has also prayed for grant of compensation to her from the PIO and FAA.

f) Notices were issued to parties, pursuant to which they appeared. During the hearing on 08/05/2017, the appellant filed a memo submitting the developments that took place after filing of this second appeal. Vide said memo appellant submitted that after receipt of the notice of the second appeal, the FAA issued notice of the first appeal, to appear before him on 28/04/2017 and prayed for action against the present FAA by contempt proceedings.

g) The Respondent No.2, the FAA filed his reply inter alia submitting that he viz. Shri Shankar Gaokar was posted as FAA only on 21/10/2016 and that earlier to him one Mr. Kedar Naik was posted as the FAA. According to present FAA, this second appeal is filed without cause of action since First

Appeal was sub judice and that vide order, dated 28/04/2017 the said first appeal is disposed with direction to PIO to furnish information, within 15 days.

The FAA also denied the allegations against him and that as to how he could not take up the appeal earlier and submitting as to how he has disposed the said first appeal.

h) The PIO filed his reply on 27/06/2017 interalia submitting that the information as was sought in furnished to appellant and that same was prepared by taking assistance of concerned staff. The PIO has denied the allegation that the information furnished was not true or complete. According to PIO he was holding additional charge and has sought assistance of concerned staff to comply with the information. According to him he was holding full charge of Curchorem, Cacora Municipal Council and was visiting Cuncolim Municipal Council as per the need of Chief Officer.

i) The appellant filed her written arguments. In the said arguments she has reiterated the sequence of events as contained in memo of appeal. The PIO also made his submissions.

2) FINDINGS:-

a) I have perused the records. considering the rival contentions of the parties the main issues which arise for discussion are (i) Delay in furnishing information (ii) Allegation of falsity of information and (iii) Non disposal of the first appeal in time.

b) By her application, dated 23/06/2016, the appellant has sought information on 30 points as contained therein. In ordinary course the said application was required to be responded within thirty days i.e. on or before 24/07/2016.

The PIO has an explanation that he was holding additional charge and hence had instructed the staff to verify for providing information. According to him he was holding full charge of Curchorem, Cacora Municipal Council and visiting Cuncolim Municipal Council as per the need and direction of the Chief Officer.

e) I have considered the reply. The application of the Appellant contained thirty points to be considered for information. Hence for the purpose of furnishing information a substantial scrutiny was required to be done. Considering the quantum of information sought, the scale of time for disposal of request in ordinary cases cannot be applied herein. The information being bulky, the PIO cannot be expected to dispense the same time limit.

f) While dealing with the cases of bulky and voluminous information the Hon'ble High Court of Punjab & Haryana in the case of **(Dalbir singh V/S Chief Information Commissioner Haryana & others WP©No.18694 of 2011)** has observed.

"There appears to be no justification to deny the information on this ground. Suffice it to mention that if the records are bulky or compilation of the information is likely to take some time, the Information Officer might be well within his

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right to seek extension of time in supply the said information, expenses for which are obviously to be borne by the petitioner."

g) It is also the ground raised by PIO that he was holding the additional charge of Cuncolim Municipal Council alongwith that of Curchorem, Cacora Council. Being so the time for furnishing the information cannot be the same. The period as stipulated u/s 7(1) of the Act for responding the application is a clear 30 days with the authority. If the said time had to be utilized for other authority the PIO shall be entitled for additional period.

Thus I find that though there is delay in dispensing information, the cause is satisfactorily explained.

h) The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others) 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."

i) The next contention on which I dwell is regarding the veracity of the information furnished. At para (8) of the memo of appeal , it is contended by the appellant that the information provided by the PIO On 18/08/2016 is false, fabricated, concocted irrelevant, frivolous, vexatious, incomplete and inconsistent to her application, dated 23/06/2016 vis a vis the complainants dated 16/05/2016 and

13/06/2016. It needs mention that the appellant has sought the information pertaining to her said complaints, dated 16/05/2016 and 13/06/2016.

j) I have perused the application of the appellant u/s 6(1) dated 23/06/2016. On perusal of the same it can be seen that at points (5) (7) (8) (9) (10)(11) (12) (17) to (22) the appellant has tried to seek assistance of PIO to create information and at points (25) to (30) the PIO is called upon to take certain actions.

The role of PIO under the act and that of the Public authority which he represents are distinct and separate. PIO is a custodian of the information held by Public Authority. He is neither liable to collate or collect information or to give advises. He is also not liable for taking actions in respect of any activity complained of. In seeking information the appellant has misinterpreted the scope and powers of PIO under the act and wants him to take action pertaining to the issues which may not relate to him as PIO.

I have also perused the reply of the PIO dated 16/08/2016, which is at exhibit E of the appeal memo. On perusal of the same it is found that the PIO has answered all the points appropriately.

In the aforesaid circumstances I find that the PIO has furnished the available information which was dispensable under the Act.

k) Coming to the last issue regarding the delay in disposal of the first appeal, I find great force in the said

contention of the appellant. The act under section 19(6) caps the time limit for disposal of the appeal as thirty days with a relaxation of further fifteen days. Thus in totality the FAA has a maximum period of forty five days for disposal of the first appeal. In this case I find that the FAA failed to dispose the same within said time. In view of the said cut off date the FAA loses its Jurisdiction to deal with such appeals after said date.

In the present case, as rightly pointed out by the appellant, the FAA apparently after receipt of the notice of this appeal, took up the first appeal for hearing and disposed the same. Such an exercise of the FAA after the said period of 45 days is without jurisdiction and hence the said order of FAA is redundant and cannot have any effect on this appeal. I am therefore not in agreement with the argument of FAA that the present appeal is filed pending disposal of first appeal. The right of appellant to approach Commission in second appeal accrues on the 46th day from the date of filing of the first appeal. The appellant thus has approached this Commission after maturity of the time for filing second appeal.

l) In the facts and circumstances of the case, I find that though there is delay in furnishing the information the delay is satisfactorily explained. I find that the information which is in the records of public Authority is furnished and hence I find no merits in those contentions.

Regarding the delay in disposal of the first appeal, I express my displeasure on the part of then FAA for not adhering to

the time limit granted under the act. Such delay causes hindrance in implementation of the act and hence required to be viewed seriously.

m) In the above circumstances I proceed to dispose the present appeal with the following:

ORDER

The appeal is dismissed. FAA is hereby directed to be diligent while dealing with the first appeals by strictly adhering to the time schedule prescribed for such disposal. The present incumbent FAA is hereby directed to send a copy of this order to the then incumbent. FAA, Shri Kedar Naik.

Proceedings closed. Parties be notified.

Pronounced in open hearing.

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

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Cuncolim Municipal Council. Respondent.

O R D E R

Perused the note of the bench clerk considering the typing mistake the page number 7, 8, and 9 of the order dated 07/09/2017 be read as page number 6, 7, and 8.

(Mr. Prashant S. P. Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa