

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

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

Appeal No.106/SCIC/2017

Jawaharlal T. Shetye,
H. No.35/A Ward No.11,
Khorlim-Mapusa-Goa. Appellant

V/s

- 1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa-Goa.
- 2) The First Appellate Authority,
Mr Clen Madeira,
Mapusa Municipal Council,
Mapusa-Goa. Respondents

Filed on :19/07/2017

Disposed on:30/4/2018

1) FACTS IN BRIEF:

- a)** The appellant herein by his application, dated 29/3/2017 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several points therein.
- b)** The said application was replied on 28/4/2017. However according to appellant the information as furnished was not satisfactory the appellant filed first appeal to the respondent No.2, being the First Appellate Authority (FAA).

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c) The FAA by order, dated 7/6/2017, allowed the said appeal and directed PIO to furnish the updated position on the representation of the appellant.

d) The PIO by reply, dated 31/5/2017 furnished further reply but according to appellant the same is not satisfactory and has therefore landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 26/2/2018 filed reply to the appeal . Arguments on behalf of the PIO were heard. Appellant remained absent.

2. FINDINGS:

a. Perused the records and considered the pleadings of the parties. By application, dated 29/3/2017 u/s 6(1) of the act the appellant has sought the action taken if any on his representation dated 14/6/2016. The further information under said application was in respect of various aspects of the investigation of the said representation.

b. The PIO by reply, dated 28/4/2017 has informed that no action taken on the said representation dated 14/6/2017. Thus having informed the fact that no action was taken any further details were either based on surmises or hypothetical in nature. The PIO is supposed to furnish the information as is available and not furnish his own version or comments.

c. I have perused the reply of the PIO dated 28/4/2017 in the said reply the answer to point (1) is specific that no action has been taken. The PIO has furnished the further

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details of the movement of the representation. Such information may be out of gratis but not as a mandate. The representation of the appellant herein pertaining to which information was sought is a non statutory representation by the appellant and only to point out certain irregularities.

d. While dealing with the cases of non statutory representation, High court of Allahabad in the case of ***Subhash Chandra Vishwakarma V/S Chief Information Commissioner U.P. State Information & Ors. in case No. Misc. Bench No. 69 of 2016,*** has held:

“Soon after filing the application for fresh investigation, the petitioner chose to file an application under Section 6 of the Right to Information Act (hereinafter referred to as the Act) on 28/01/2015 praying for information to the effect as to what action was taken by the respondent No.2 on his representation made on 23/01/2015. Failure on the part of Information Officer to furnish the information within the statutory period is said to have given rise to first appeal filed on 05/02/2015 and the said appeal not yielding any result became the cause of filing second appeal before the commission on 16/03/2015.”-----

The information to be furnished under Right to Information Act many broadly fall under two categories. i.e. action and inaction.

(1) Actions of the State Government culminating into an information are to be understood in the light of definition provided under Section 2(f) which reads as under:-

f) “Information mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The aforesaid provision defining information makes it clear that an inaction on a non statutory representation filed by any person does

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not fall within the strict sense of definition of information. On a close scrutiny of the provisions of definition clause, it is further seen that inaction on the part of the authorities cannot be construed to be an information unless and until there is a statutory obligation on the part of the competent authority to take a decision on the representation or complaint filed by an aggrieved person and even if such an inaction is noticed, the representation remains at the stage of investigation and the protection of section 8(f) comes into play.”

“we have no hesitation to record that inaction on non-statutory applications/complaints filed by any person where the State Authorities are not obliged to take a decision would not fall within the definition of information giving rise to a cause under section-6 of the Act. If all such inactions are construed to be cognizable under the Right to Information Act, the misuse of the Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse of the process of law. Once it held that the application filed by the petitioner did not fall within the scope of information under the Right to Information Act, the impugned order passed by respondent No.1 on 24/11/2015 does not call for any interference and the writ petition being devoid of merit deserves to be dismissed.

We may also put on record that in various cases it is noticed that cognizance of proceedings under Section 18 of the Act is taken without discharging the obligation to examine the maintainability of appeals and complaints. Once the Information Officers either fail to discharge their duties or there is some other grievance which is amenable to the remedy of first appeal, the provisions of Section 18 of the Act have to be scrupulously applied so that the purpose of Section 19 of the Act is not frustrated but is rather strengthened to serve better. Needless to say that exceptions carved out under

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Section-8 of RTI Act, 2005 remain protected under the Official Secrets Act, 1923 or any other law for the time being in force.”

e. The appellant herein while challenging the stand of PIO has contended that the reply of the PIO is not satisfactory. Satisfaction of the information being subjective in nature cannot be a ground for nullifying the reply unless the same is substantiated. In the present case the appellant beyond making a passing reference that the information is not satisfactory, has not substantiated his stand by offering any grounds as to why he claims so.

f. The FAA also without considering the above aspect has mechanically directed the PIO to furnish the updated position. The PIO is neither the investigator of any representation. Under the act PIO is required to respond within the time prescribed. Getting updates of the investigation may lead to missing of the time.

g. As held above I find that the information as is due to be dispensed is furnished and hence I find no merits in the appeal. Consequently I dispose the same with the following:

ORDER

The appeal is dismissed. Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

Sd/-

(Prashant S.P. Tendolkar)

State Chief Information Commissioner
Goa State Information Commission
Panaji - Goa