

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

**CORAM: Shri Juino De Souza: State Information Commissioner**

**Appeal No.48/SIC/ 2013**

Shri J. T. Shetye,  
C/o Mapusa Jana Jagruti Samiti,  
H. No.35, Ward no. 11,  
Khorlim, Mapusa – Goa

..... **Appellant**

v/s

1. Public Information Officer,  
The Chief Officer,  
Mapusa Municipal Council,  
Mapusa – Goa.
2. The First Appellate Authority,  
Directorate of Municipal Administration  
& Urban Development,  
Collectorate Building,  
Panaji – Goa.

..... **Respondents**

**Relevant emerging dates:**

Date of Hearing : 16-02-2018

Date of Decision : 16-02-2018

**O R D E R**

1. Brief facts of the case are that the Appellant filed an RTI application u/s 6(1) of the RTI act 2005 dated 11/09/2012 seeking information on six different points pertaining to an Issue of NOC to Rainbow Play School illegally operating in Ganeshpuri, Mapusa.
2. The Appellant is *inter alia* is seeking information about action taken on the Complaint made by the Mapusa Jana Jagruti Samiti to the Mapusa Municipal Council against Rainbow Play School and to provide certified copies of all notings sheets and all correspondence processing and to provide the names of all official responsible for keeping pending the files pertaining to process of application of trade license and to provide pending applications received by MMC for trade licences since the year 2008 and to give inspection of all the files and also to furnish details of legal notice dated 23/08/2012 served on the Chief Officer, Mapusa Municipal Council from Adv. Valmiki Menezes, for taking action against illegal Rainbow Play School and other such information.

3. It is seen that the Respondent PIO as per 7(1) furnished information vide his reply No.EST/RTI/6064/2012 dated 09/10/2012 in Tabulation form on all six points. In point No.1 it was informed the information does not fall without the definition of " Information " as deferred under Section 2 (f) of Right to Information Act 2005. In point 2, appellant was instructed to collect the information on payment of Rs.4/-. In point No.3, it was informed that the official issued letter twice vide dated 25/04/2011 and 26/06/2012. In Point No.4, it was informed that no single application is pending with the council in respect of trade license. In point No.5, it was informed that there are no files/proposals pending with this council. In point No.6, it was informed to collect information on payment of Rs.02/-.
4. Not satisfied with the reply of the Public Information Officer, the Appellant preferred a First Appeal on 18/10/2012 and the First Appellate Authority(FAA) vide an order dated 31/01/2013 dismissed the First Appeal for non appearance of the Appellant.
5. Being aggrieved with the order of the FAA preferred thereafter preferred a Second Appeal before the Commission registered on 16/04/2013 and has prayed to direct the PIO, to furnish information to the satisfaction of the appellant with respect to the Right to Information application and to invoke penalty under 20(1) & 20(2) against one Shri Hanumant Toraskar of Mapusa, Municipal Council and other such reliefs.
6. Pursuant to the notices dispatched, this matter has come up before the Commission on several previous occasion and during the hearing the Appellant is absent. It is seen from the Roznama that he has remained absent on 10 previous occasions and it appears that the appellant is not interested to pursue his appeal case. The Respondent PIO, is represented by Shri Vinay Agarwadekar, UDC with the public authority

7. Mr. Agarwadekar submits that PIO had furnished the information timely vide his reply on 09/10/2012 with respect to the RTI application dated 11/09/2012 in tabulation giving information on all six points. It is further submitted that the former PIO Shri. Hanumant Toraskar against whom the appellant has prayed for penalty has since retired from acting Government services.
8. The Commission after hearing the submission of the PIO and perusing the material on record indeed finds that the PIO has given a timely reply to the Appellant and furnished all available information in tabulation on all six points. The Appellant was also asked to collect the information documents on payment of certain fees.
9. As stipulated in the RTI Act the role of the PIO is to provide information as is available from the records. Regrettably the PIO cannot procure information for the satisfaction of the Appellant/Complainant.
10. The PIO is not authorized to give information which is non-existent nor can he create or analyze the information correctly as per the whims and fancies of the Appellant/Complainant. The very fact that the PIO has furnished a timely reply 09/10/2012 furnishing information in tabulation form is sufficient to prove the bonafide that there is no malafide intention on the part of the PIO to deny or delay any information.
11. Therefore the prayer of the appellant at point '2' to compel the PIO to furnish information to the satisfaction of the appellant stands rejected. Also the prayer at point 3 for imposing penalty on the PIO stands rejected as penalty proceeding cannot be enforced on a PIO who has retired from acting Government service. Consequently prayer for considering payment of compensation also is rejected as information as was available has been furnished to the appellant.

**Nothing therefore survives in the Appeal case which is devoid of any merits and accordingly stands dismissed.**

12. Before parting, the Commission observes that the First Appellate Authority (FAA) has erred by dismissing the First Appeal for default due to the non appearance of the Appellant. There is no provision in the RTI act or the rules under which an appeal can be dismissed for default by the FAA. On the contrary, sub-rule (2) of Rule 7 of the Goa State Information Commission (Appeal Procedure) Rules, 2006 allows the Appellant or Complainant to opt to remain absent.
13. The notification DI/INF/RTI/BILL/2005/6474 issued in exercise of powers conferred by section 27 of the RTI act 2005, the Government of Goa in Rule No 7(2) - Presence of the Appellant or Complainant clearly states that the appellant or complainant 'may opt not to be present'. Therefore even if the appellant was absent, it was the bounden duty of the FAA to have decided the First Appeal by passing a speaking Order on merits of the case and not merely dismissing for default. The order of the FAA is accordingly quashed and set aside.
14. The Commission has come across several such cases where the First Appellate Authorities (FAA's) are passing short random orders dismissing first appeals on the flimsy grounds for default which is totally contrary to the rules contained in the notification bearing no DI/INF/RTI/BILL/2005/6474. As such the Commission directs the Chief Secretary to bring to the notice of the HOD's of all Public Authorities who are the designated First Appellate Authorities that such dismissals of First Appeal on the ground of non appearance of the Appellant /Complainant are not maintainable and to pass speaking orders.

**With these directions the Appeal case stands disposed.**

All proceedings in Appeal case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-

**(Juino De Souza)**

**State Information Commissioner**

*Copy of the Order be sent the Chief Secretary for information and onward action in notifying all HOD's who are the First Appellate Authorities.*