

GOA STATE INFORMATION COMMISSION

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

Appeal No. 173/2018/SIC-I

Shri Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,,
Near Sateri Temple, Khorlim,
Mapusa-Goa -403 507

....Appellant

V/s

- 1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa-Goa – 403507
- 2) First Appellate Authority,
Chief Officer, Mapusa Municipal Council,
Mapusa-Goa 403507

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:16/07/2018

Decided on:24/09/2018

ORDER

1. The appellant, Shri J. T. Shetye has filed the present appeal praying that the information as requested by him in his application dated 16/4/2018 be furnished to him correctly and completely and for invoking penal provisions against the Respondent Public Information Officer (PIO).
2. The brief facts leading to the present appeal are as under:-
 - a) The appellant vide his application dated 16/4/2018 addressed to Respondent No. 1 PIO, of Office of Mapusa Municipal Council at Mapusa, requested to furnish certain information on 14 points as stated therein in the said application. The said application was filed by the appellant with the Respondent No. 1 PIO u/s 6(1) of Right To Information Act, 2005.
 - b) It is contention of the appellant that he has not received any reply from the PIO nor any information furnished to him within stipulated time of 30 days.

- c) As the information as sought was not furnished the appellant filed first appeal before the Chief Officer of Mapusa Municipal Council who is Respondent No. 2 herein on 28/5/2018 being First Appellate Authority (FAA).
 - d) According to the appellant his said first appeal was not taken up for hearing by the Respondent No. 2 First Appellate Authority (FAA), neither passed any order within stipulated time as contemplated u/s 19(1) of the RTI Act, 2005.
 - e) As no information was received by the appellant and he being aggrieved by the action of both the Respondents, the appellant approached this Commission in this second appeal u/s 19(3) of the Act, on 16/7/2018 with the contention that the information is still not provided and seeking order from this Commission to direct the PIO for providing him information as sought by him free of cost and for imposition of penalty on PIO for a delay in furnishing the information.
3. In pursuant to the notice of this Commission the appellant was present in person. The Respondent PIO Shri Venketesh Sawant present and filed his reply on 10/9/2018 thereby furnishing pointwise information along with the enclosures . The copy of the same was furnished to the Appellant and the appellant was directed to verify the information and report on the next date of hearing. The appellant did not approach this commission with any grievances, with respect to information furnished to him.
 4. Be that as it may, in the contest of the nature of information that can be sought from PIO the Hon'ble Supreme Court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya wherein it has been held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from the combined reading of section 3 and the definition of “information” and “right to information” under clause (f) and (j) of section 2 of the Act. If the public authority has any information in the form of data or analysed data or abstracts or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act”.

5. The Apex court in case of Peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442 has held

“under the provisions of RTI Act of Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which has passed an order”.

6. On perusal of above judgment, it is clear that the PIO is supposed to furnish the information as available and which exists in the record of the public authority. The present PIO in the present case have furnished the available information and which are not available in the records have been categorically submitted as “records not available”. As the appellant has not made out a case that information at point no. 11 is sought by him in larger public interest, the same cannot be ordered to be furnished.
7. Since now the complete information has been provided to appellant free of cost, the relief sought by the appellant at prayer (1) becomes infructuous.
8. On going through the entire records of the present file it is seen that the Respondent PIO Shri Shivram Vaze has failed to respond to the said application filed by Appellant u/s 6(1) of RTI Act, 2005 within stipulated

time of 30 days as contemplated u/s 7(1) of RTI Act, have not replied neither provided information the information as sought by the appellant have been provided on 10/9/2018 during the present appeal proceedings by the present PIO vide his letter dated 6/9/2018.

9. The Respondent No. 1 then PIO did not place any correspondence on records of having responded the application of the appellant and of having furnished full information to appellant within 30 days time. Nor the FAA filed any reply to the averments made by the appellant in his memo of appeal. As such prima facia I find truth in the contention of the appellant.
10. The displeasure is hereby expressed by this commission on the conduct and the attitude of the Respondent No. 2 First Appellate Authority (FAA). The Records shows that even though the First appeal was filed by appellant the same was not disposed by the FAA within a period of 45 days. The respondent No. 2 First appellate authority despite of due service of notice did not bother to appear before this commission neither any reply was filed by him. It is seen from the past records that the Respondent no. 2 first appellate authority have acted in similar manner and fashion showing scant respect to the provisions of the RTI Act and also to the commission. Unfortunately there are no any penal provisions against the first appellate authority under the RTI Act for non compliance of the provisions. However such repeated attitude on the part of the first appellate authority cannot be taken lightly and has to be brought to the notice of his superiors
11. The Act on the part of then PIO Shri Shivram Vaze and Respondent No. 2 First appellate authority is not in conformity with the provisions of RTI Act, 2005. The said act came into existence to provide fast relief and as such time limit is fixed under the said act to dispose the application u/s 6(1) of RTI Act, 2005 within 30 days and to dispose first appeal maximum within 45 days.

12. The Respondent PIO vide his reply dated 10/9/2018 have contended that Shri Shivram Vaze was officiating as PIO on the day of filing of the application dated 16/4/2018 by the appellant and he has been retired from the services on superannuation
13. In the present case undisputedly the then Respondent No.1 Shri Shivram Vaze has retired as such as per today he is entitle for pension. Section 11 of pension act 1871, and section 60 (1)(g) of Civil Procedure Court grant immunity to the pension holder against its attachment. The Apex court in case of Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra in Appeal (Civil) 1874 of 1999 and also in civil appeal No. 6440-41 of 2008, Radhe Shyam Gupta v/s Punjab National Bank has also given finding that retired benefits such pension and gratuity etc does not loose their character and continued to recognized by the proviso (g) of section 60(1) of the code of civil procedure. Under this circumstances the Commission is neither empowered to order a deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.
14. In the above given circumstances and in the light of the discussion above I dispose the above appeal with the following:-

Order

- a) The appeal is partly allowed.
- b) Since the information is now provided as per the requirement of the appellant I find no intervention of the Commission is required there too for the purpose of providing information.
- c) Respondent No. 2 FAA is hereby directed to be vigilant henceforth while dealing with RTI matters and to strictly comply with the provisions of the Act.
- d) In excise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Director of Municipal Administration Panjim shall issue instruction to the respondent No. 2 first appellate authority to deal with the RTI matters appropriately in accordance with the provisions

of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.

- e) Copy of this order shall be sent to Director of Municipal Administration, Panjim Goa for information and necessary action.

With the above directions, the appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

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