

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.**

Appeal No. 71/2018/SIC-I

Ravindra A. L. Dias,

Dr. Pires Colony, Block "B",
Cujira, St. Cruz, Tiswadi, GoaAppellant.

V/s

1. The Public Information Officer,
O/o. the South Goa Planning and Development Authority,
04th Floor, "D" Wing,
Commercial Arcade Near S. G. P. D. A. Market Complex,
Govt. of Goa
Margao, Salcete, Goa
2. The First Appellate Authority,
O/o. the South Goa Planning and Development Authority,
04th floor "D" Wing,
Commercial Arcade Near S. G. P. D. A. Market Complex,
Govt. of Goa
Margao, Salcete, GoaRespondents

**Appeal filed on: 2/04/2018
Decided on: 20/06/2018**

ORDER

1. This order deals with the application dated 2/04/2018 filed by the appellant Shri Rabindra A. L. Dias seeking condonation of delay caused in filing the present appeal
2. The background leading to present appeal is that the appellant had filed an application on 8/12/2016 under section 6(1) of Right To Information Act, 2005 to the PIO of the Office of Sub Divisional Police officer, Police Headquarters (South) at Margao.
3. According to the appellant the said application of his was transferred to the PIO of Town and Country Planning

Department Margao, under section 6(3) of RTI, Act vide letter dated 10/12/2016 by PIO of Sub-Divisional Police Officer which intern was transferred to Respondent No. 1 PIO of South Goa Planning and Development authority on 18/01/2017 by the PIO of town and country planning Department, Margao.

4. Accordingly to Appellant he received the reply dated 13/02/17 from the Respondent No. 1, PIO of South Goa planning Development Authority interalia informing him that the information cannot be traced from the record section on account of limited details furnished by the appellant and as such the information cannot be furnished.
5. As according to the appellant the information was denied , he moved the Respondent No. 2 First Appellate Authority (FAA) on 7/03/2017. It is his contention that the said appeal was not disposed by the FAA, however, he received notices dated 3/08/2017 and 30/10/2017 after the scheduled dates of hearing, as such he could not attend the same.
6. In this background the appellant has approached this commission by way of second appeal u/s 19(3) of RTI Act 2005. This appeal is filed before this Commission on 2/04/18 and the appeal is accompanied by application for condonation of delay alongwith copy of medical certificate dated 2/02/2018 issued by Dr. Zelio D'Mello attached to GMC. The medical certificate certifies that the appellant was under his treatment from 2/02/2018 and had advised rest for the period of one week. One more medical certificate dated 5/03/2018 issued by Campal Health Services also relied by appellant.
7. Here the petitioners besides the grievance of non furnishing of information has grievance against that First Appellate Authority under section 19(1) of RTI Act, 2005 for its inaction.

8. The notice were issued to both the parties, in pursuant to which appellant appeared only during two initial hearings and then he opted to remain absent. Respondent No. 1 PIO was represented by Advocate Sushant Korgaonkar who filed reply on 8/05/2018 to the application for condonation of delay. The copy of the same was furnished to the appellant. Rejoinder cum written argument of PIO on application for condonation of delay was filed by PIO on 6/06/2018 so also additional affidavit of Respondent PIO was filed on 15/06/2018 alongwith enclosures. The copy of both the above documents could not be furnished to the appellant on account of his absence. However the appellant was directed to collect the same but appellant failed to collect the same.
9. Arguments were advanced by Advocate S. Korgaonkar. He contended that appellant ought to have justified the delay from the end of November/beginning of December 2017 and that the medical certificate dated 5/03/2018 does not cover longgap from end of November, 2017 up to 5/02/2018, so also the other delay. It was also further contended that documents sought for is not available in their records and those documents are in the records of other various public ought authority. He further contended that the appellant to have been more specific and should have mentioned the file numbers. It was further contended that appellant surreptiously the period from which condonation is sought is conveniently omitted in the application seeking condonation of delay. He further contended that in the application for condonation of delay, nothing is mentioned as to how much period of delay is sought and the averments contained therein are also not supported by an affidavit and on this

grounds, he vehemently_ prayed to dismiss the application for condonation of delay and appeal.

10. Opportunity was awarded to appellant to argue the matter despite of same, he failed to appear and substantiate his case.
11. I have scrutinized the documents available on record and also considered the submission of Respondent.
12. The section 19 (6) states that "First appeal shall be disposed of within 30 days of the receipt of appeal or within such extended period not exceeding 45 days from the date of filing thereof" and section 19(3) of the acts provides filing of the second appeal within 90 days from the date on which the decision should have been made or for actually received with the Central Information Commission or the State Information Commission."

Proviso to section 19(3) grants power to the commission to admit the appeal after the expiry of period of 90 days on being satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

13. In the present case admittedly as per record the appeal was filed before First Appellate Authority (FAA) on 7/03/2017, it was supposed to be decided maximum within period of not exceeding 45 days. Thus for reckoning the period of limitation it starts approximately on 13/04/2017 and 90 days expires approximately on 14/07/2017, within which time the appeal was required to be filed. Any cause for delay during this period is required to be explained.
14. The Hon'ble Calcutta High Court in writ petition NO. 4775 (w) of 2011 Kashi Nath Muni V/s State of West Bengal, has held:-

“In view of the provisions of sub-section (6) of section 19 the First Appellate Authority was required to give his decision in the appeal within thirty days of the receipt of the appeal or within such extended period not exceeding a total of Forty five days from the date of filing thereof, as the case might be, for reasons to be recorded in writing. Hence on expiration of forty-five days from the date of filing of the appeal the petitioner acquired a right to lodge a second appeal under sub-section (3) of section 19.”

15. The ratio laid in above case is squarely applicable to the facts of this case and therefore the cause of action/period of limitation would have run from 13/04/2017 till 14/07/2017. The appellant is reacting only in the month of April, 2018 after the delay of nearly about 9 months after the expiry of period of limitation.
16. Nevertheless the appellant is seeking condonation of delay due to his medical requirement from 2/02/2018. The said certificate cannot help the appellant to seek the extension of limitation. The appellant nowhere has given any convincing reasons nor made out any grounds as to why he did not file the appeal during the period of 90 days.
17. Thus considering the above circumstances. I find that no grounds are made by the appellant to seek the equitable relief of extension in terms of proviso to section 19(3) of the RTI Act having failed to show sufficient cause for delay for filing appeal in time as such I am constrained to dismiss the said application for condonation dated 2/04/2018.
18. Be that as it may, the Respondent PIO vide his additional affidavit dated 15/06/2018 has clearly stated at para 11 that every documents sought for are not available with the authority. Considering the extent of the act , non

existing of information cannot be ordered to be furnished nor would be ordered to be created or collected .

19. Inview of above discussion, I pass the following order:-

ORDER

Application dated 2/04/2018 on condonation of delay and appeal filed by appellant herein stands dismissed.

Sd/-

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

Kk/-