

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

Appeal No. 292/2018/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 Muncipal Council,
Mapusa-Goa – 403507.
- 2) First Appellate Authority,
Chief Officer, Mapusa Muncipal Council,
Mapusa-Goa.403507

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 05/12/2018
Decided on: 11/01/2019

ORDER

1. The brief facts leading to the second appeal are that the appellant Shri Jawaharlal T. Shetye vide his application dated 1/8/2018 had sought for information on 4 points as stated therein in the said application from the Respondent no 1. PIO of the office of Mapusa Municipal council, Mapusa-Goa. The said information was sought by the appellant in exercise of his right u/s 6(1) of RTI Act, 2005.
2. It is the contention of the appellant that , he preferred first appeal on 24/09/2018 before the Respondent No. 2 The Chief Officer of Mapusa Municipal Council, Mapusa- Goa, interms of section 19(1) of RTI Act, 2005 being the first appellate authority and the Respondent no. 2 first appellate authority vide order dated 24/10/2018 allowed his appeal and directed the Respondent no 1 PIO to issue the information to the appellant, except at point No. 2 free of cost as sought by him vide application dated 1/8/2018 within 10 days from the date of the order.

3. It is the contention of the appellant that inspite of the said order of first appellate authority, the said information was not furnished to him by Respondent No. 1 PIO as such being aggrieved by the said action of PIO, the appellant had to approached this commission in his 2nd appeal as contemplated u/s 19(3) of RTI Act.
4. In the second appeal the appellant had sought for direction as against Respondent no. 1 PIO for furnishing required information as sought by him vide application dated 1/8/2018 and for invoking penal provisions including compensation.
5. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO Vyenkatesh Sawant appeared and filed his reply on 2/1/2019 alongwith the enclosure. Respondent no.2 First appellate authority opted remained absent.
6. Copy of the reply of PIO alongwith the enclosures was furnished to the appellant and the appellant was directed to verify the information furnished to him along with the said reply and the matter was fixed for argument. Respondent No. 1 PIO remained absent when the matter was fixed for argument hence argument of the appellant were heard .
7. It is the contention of the appellant that though the Respondent vide his reply have contended that available information is already furnished to the appellant vide his office letter dated 31/8/2018 and vide office letter dated 12/9/2018, the said was not received by him. He further submitted that he received the information at point No. 2 on 25/9/2018. He further submitted that at point No. 3 he had sought for the certified copy of wakalatnama filed by Advocate Tilve. The PIO vide his reply dated 31/8/2018 has replied as "not available in the records", however in the present proceeding the Respondent PIO has enclosed the copy of wakalatnama of Shri Deepak Tilve as the information at point no. 3 to the reply filed by PIO on 2/1/2019 to the present appeal proceedings. Hence it is the contention of the appellant that wrong

information at point no. 3 was provided vide letter dated 31/8/2018 with malafide intention.

8. It is the contention of the Respondent PIO as stated in his reply dated 2/1/2019 that the application of the appellant was responded well within 30 days time and the information was provided to the appellant vide letter dated 31/8/2018 and with regards to the information at point no. 2 the appellant vide letter dated 12/9/2018 was requested to collect it after deposit of requisite fees and the same was collected by the appellant on 25/9/2018. It was further contended by the Respondent PIO that information at point no. 1,3 and 4 is annexed to his present reply which is done in the compliance of the order of the first appellate authority.
9. I have scrutinise the records available in the file.
10. It is seen that as per the records the RTI application was filed by the appellant on 1/8/2018 which was received by the office of respondent no 1 on 1/8/2018. U/s 7(1) of the Act the PIO is required to respond the same within 30 days from the said date. Though the PIO has relied upon letter dated 31/8/2018 of having responded the application of the appellant intems of section 7, no records/ documents have been produced by the PIO of having posted the same to the appellant, and having received by the appellant. Assuming for a while that the same was responded however on perusal, it is seen that no complete and correct information have been provided by the PIO vide letter dated 31/8/2018 . Vide said letter the information at point No. 1,3 and 4 is only provided *and that too information at point no. 3 has not been correctly* provided as the same has been informed as "not available in the records" however the PIO himself has now enclosed the wakalatnama of Advocate Tilve at point no. 3 to the reply filed before this commission. The information given vide letter dated 12/9/2018 at point no. 2 is not given within stipulated time of 30 days and there is a delay in providing the said information. The PIO

have relied upon the Xerox copy of the acknowledgment of the Department of Post with the contention that the said information was forwarded by registered A.D. to the appellant . However on perusal of the said acknowledgment it is seen that there is a endorsement of having posted it on 22/9/2018 and having received by the appellant on 24/9/2018 as such I have no hesitation in accepting the contention of the appellant that he received the information at point No. 2 on 25/9/2018. The order of the first appellate authority had directed PIO to issue the information within 10 days. As such the PIO was duty bound to comply the direction of his superior officer and was required to provide the information within 10 days. It is seen that the order was passed on 24/10/2018 as such the PIO was required to furnish the information on or before 4/11/2018. There is nothing on record produced by the PIO that the order of the first appellate authority was complied by him within time. The information came to be provided to the appellant only on 2/1/2019 that too during the present appeal proceedings. Such a conduct by PIO is obstructing transparency and accountability appears to be suspicious and adamant visa viz the intent of the act.

11. Public authority must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this commission resulting into unnecessary harassment of a common men which is socially abhorring and legally impermissible.
12. Considering the conduct of PIO and his indifferent approach to the entire issue , I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information . Such allegation is if proved would call for disciplinary proceedings and imposition of penalty against PIO. However before imposing penalty I find appropriate to seek explanation from the PIO as to why penalty should be imposed on him/her for contravention of section 7(1) of the Act, for not compliance of order of FAA and for delaying the information.

13. I therefore dispose the present appeal with order as under:

ORDER

1. Appeal partly allowed.
2. Since information being provided during the present proceedings, I find no intervention of this commission is required for the purpose of furnishing information.
3. Issue showcause notice to respondent PIO to showcause as to why no action has contemplated u/s 20(1) and/or 20(2) of the RTI Act, 2005 should not be initiated against him/her for contravention of section 7(1) of RTI act, for not complying the order passed by the FAA within time and for delaying furnishing the information.
4. In case the PIO at the relevant time, to whom the present notice is transferred, the present PIO shall serve this notice alongwith the order to him and produce the acknowledgment before this commission on or before the next date fixed in the matter alongwith full name and present address of the then PIO.
5. The Respondent PIO is hereby directed to remain present before this commission on 23/1/2019 at 10.30 am alongwith written submissions showing cause why penalty should not be imposed on him.
6. Appeal proceedings disposed and closed accordingly. The registry of this commission is directed to open separate penalty proceedings.

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

Ak/-