

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

Appeal No. 66/2019/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, (Clen Madeira)
Mapusa Municipal Council,
Mapusa-Goa 403507

.....Respondents

CORAM: Ms. Pratima K. Vernekar, State Information Commissioner

Filed on: 13/03/2019

Decided on:08/05/2019

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Jawaharlal Shetye by his application, dated 12/12/2018 filed u/s 6(1) of The Right to Information Act, 2005 sought for certain information as listed at point no. 1 to 15 therein from the Respondent No. 1 Public Information Officer of the Mapusa Municipal Council pertaining to the letter bearing No. DC/SDM /MAP/MISC/2017/9519 dated 25/5/2017 addressed to the Chief officer of Mapusa Municipal Council by Shri Chandrakant B. Shetkar, Dy. Collector and SDO Mapusa and also the information pertaining to Mobile towers, mobile companies procedure prescribed by Mapusa Municipal Council for issuing NOCs/permissions for erection/installation of mobile towers and other connected information pertaining to the same subject matter .
2. It is the contention of the appellant that he did not receive any reply to his above application from the PIO nor any information was furnished to him.

3. As the information as sought was not furnished, the appellant filed first appeal on 21/1/2019 to the Respondent No.2 Chief Officer of Mapusa Municipal Council being the First Appellate Authority in terms of section 19(1) of RTI Act, 2005.
4. It is the contention of the appellant that the Respondent No. 2 First appellate authority , did not disposed his first appeal within stipulated time as such he was forced to file the present appeal.
5. In the above background the appellant being aggrieved by action of PIO and of First Appellate Authority (FAA), has approached this commission in this second appeal u/s 19(3) of the act on 13/3/2019 with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for invoking penal provisions as against respondent PIO so also sought compensation for the detriment suffered by him at the hands of Respondents.
6. Matter was listed for hearing and was taken up on board and accordingly notices were issued to the parties, pursuant to which appellant appeared. Respondent PIO Shri Venkatesh Sawant appeared along with Advocate Matlock D'Souza. The Respondent No.2 First Appellate Authority (FAA) opted to remain absent despite of due service of notice nor filed any reply to the proceedings. As such it is presumed that the respondent no. 2 First Appellate Authority has no say to be offered and the averments made by the appellant in the memo of appeal are not disputed by him.
7. The respondent PIO Shri Vyankatesh Sawant filed his reply thereby enclosing the forwarding letter dated 2/5/2019 of the present PIO Shri Diniz C.T.D'Mello wherein the point wise information and zerox copies of the documents were enclosed . The copy of the same was furnished to the appellant.

8. On perusing of the information and the documents submitted to the appellant it was noticed that the documents were not certified at all by the present PIO. The information at point no. 9 and 15 were replied as " the requisite information/detail data sought is not readily available with the council". Hence the information furnished vide forwarding letter 2/5/2019 is not complete and in accordance with RTI Act.
9. During the hearing before this commission the appellant submitted that the Respondent No.2 first appellate authority deliberately does not pass any judgement in the first appeal filed by him in order to protect and cover up the illegalities committed by the public authority concerned herein i.e Mapusa Municipal council. He further submitted that he did not receive any notice of hearing from the Respondent No.2 FAA and he has lost one forum to put forth his case . He further submitted and prayed that the matter may be remanded to the First appellate authority for its just decision and accordingly endorsed his say on the memo of appeal.
10. The respondent PIO at para 8 of his reply dated 2/5/19 had also submitted that since the matter is not heard and decided by the First Appellate Authority , the same may be remanded back to Respondent No.2 FAA.
11. It is invariably seen that the present PIO and the FAA doesn't appear before this commission neither file their say. From the undisputed and unrebutted facts, it could be presumed that the first appeal was not taken up for hearing nor the order was passed by respondent No.2 FAA. No reasons what's so ever was placed on record by the respondent No.2 first appellate authority. Hence in order get clarification again for a second time , fresh notice was issued to both the Respondents and it

was handed over to then PIO Shri Vyankatesh Sawant for service and the both the Respondents were directed to file their respective replies in the matter . Despite of same they did not bothered to appear and to file their respective say in the proceedings. Such act and conduct on the part of both the respondent is not in accordance with law and hence condemnable .

12. The facts on the records reveals that the fist appeal was filed on 21/1/2019 and from the endorsement given by the Mapusa Municipal council to the appellant , it could be gather that the same was received on the same day in the office of first appellate authority. There are no records to show that notices were issued by the first appellate authority to both the parties intimating date of hearing. it appears that the Respondent No. 2 did not hear the first appeal filed by the appellant on 21/1/2019 neither disposed the first appeal within stipulated time as contemplated under RTI Act. The entire conduct of the Respondent No. 2 first appellate authority appears to be casual and not in conformity with the provision of RTI Act.
13. There was no opportunity to the respondent PIO as well as to the Appellant to put forth their grievances/justify his denial before respondent No.2 first appellate authority as such this commission is in agreement with the contention of the appellant and respondent No.1 PIO that he is losing a forum to put forth all the facts before first appellate authority.
14. It is quite oblivious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities .
15. This commission, without expressing her views on the merits of the matter, is of the opinion that in the interest of justice, equity

and good conscience, the matter has to be remanded back to the Respondent No. 2 First appellate Authority with a direction to hear both the parties and to decide the matter in accordance with law.

Hence this commission disposes the present appeal with order as under:-

ORDER

- a) The matter is remanded back to the Respondent No. 2 first appellate authority and respondent no.2 FAA is hereby directed to hear a fresh, first appeal filed by the appellant herein on 21/1/2019, and to decide same within 30 days, in accordance with law .
- b) The appellant as well as Respondent No.1 PIO is hereby directed to appear before Respondent No.2 first Appellate authority on 24/5/2019 at 11.00 a.m.
- c) The right of the appellant to approach this commission in appeal and/or in complaint, if aggrieved by the decision of First appellate Authority is kept open .

Notify the parties.

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.

Pronounced in the open court.

Sd/-

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