

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

Appeal No. : 91/2019/SIC-I

Bhavesh Kalia, B/803. Krishna,
Vasant Sagar Complex,
Thakur Village, Khandivali East,
Mumbai-400101.

....Appellant

V/s

1. Shri Rajesh Mahale,
Public Information Officer (PIO),
Joint Director of Accounts,
Directorate of Small Savings & Lotteries,
Serra Bldg., Altinho, Panaji.

2. Shri Meghanath Porob, Director,
First Appellate Authority (FAA),
Directorate of Small Saving and Lotteries,
Altinho, Panaji-Goa.

...Respondents

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

Filed on: 11/04/2019
Decided on: 26/06/2019

ORDER

1. The second appeal came to be filed by the Appellant, Shri Bhavesh Kalia on 11/04/2019 against the Respondent No. 1 Public Information Officer (PIO), Office of the Directorate of Small Savings and Lotteries , Altinho, Panaji-Goa and against Respondent No. 2 First Appellant Authority (FAA), under sub section (3) of section 19 of RTI Act, 2005.
2. The brief facts leading to the second appeal are that:-
 - (a) The appellant vide his application dated 18/01/2019 had sought for the certain information from the Respondent No. 1 PIO of Directorate of Small Savings and Lotteries , Altinho, Panajim on 2 points as listed therein viz-viz;
 - (i) The name of the company with all the related documents, terms and conditions and who is running lottery at present in Goa .

- (ii) Copy of all extensions, agreements executed between Government of Goa and the company/market agents who is running the lotteries in present in the Goa State.
- (b) The said application was filed by appellant with Respondent No. 1 PIO in exercise of his right under sub-section (1) of section 6 of RTI Act, 2005.
- (c) It is the contention of appellant that he received a reply dated 4/2/2019 from the Respondent No. 1 PIO in terms of sub section (1) of section 7 of RTI Act, 2005, thereby providing him only the name of the company and the rest was denied to him interms of section 8(1)(d) of RTI Act 2005. As such deeming the same as rejection he preferred the first appeal on 11/2/2019 before the Respondent no. 2 in terms of section 19(1) of RTI Act, 2005.
- (d) It is the contention of the appellant that the Respondent No. 2 First appellate authority , did not conduct hearing neither disposed his first appeal within stipulated time as such he was forced to file the present appeal.
3. 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 11/4/2019 on the grounds raised in the memo of appeal and with the contention that the complete information is still not provided intentionally 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.
4. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties, pursuant to

which appellant appeared in person. Respondent No. 1 PIO Shri Rajesh Mahale and Respondent No. 2 Shri Meghnath Porob appeared .

5. Since the information sought also pertained and related to third party as such notices were issued to the third party M/s Sumit Online Trade Solutions Pvt. Ltd. in terms of section 19(4) of RTI Act, 2005 by this Commission and in pursuant to which Shri Yogesh Chawan, Senior Executive of Company appeared.
6. Respondent no. 1 PIO filed his reply on 28/5/2019 and the third party M/s Sumit Online Trade Solutions Pvt. Ltd. filed their reply on 26/6/2019 resisting the appeal and vehemently objecting for disclosure of information on the ground that it being confidential and personal in nature and has no relation to any public activity or interest.
7. The respondent No. 2 first appellate authority also filed his reply on 28/5/2019. The Respondent No. 2 First Appellate Authority (FAA) vide his reply submitted that it was not possible for him to conduct the hearing on the first appeal as he was busy attending various important writ petitions and in that connection he had to also visit the office of the learned Advocate General besides office assignment. He further submitted that he was holding additional charge of post of Chief Executive Officer of Khadi and Village Industries Board. It was further contended that non conducting hearing of first appeal was not intentional or deliberate but because of want of time and the other factors in the prevailing circumstances. He further showed his willingness to conduct the hearing in case the matter is remanded back and also assured that due care will be taken in future to deal with first appeal in accordance with law.
8. The copies of the above replies of the Respondents were furnished to the appellant .

9. On going through the records, it is seen that the PIO in the present case has denied the information under section 8(1)(d) of the RTI Act. The onus lies on PIO to prove and justify denial of request by him in appeal proceedings in terms of section 19(5) of RTI Act. In other words the PIO is required to show in appeal proceedings as how the disclosure of information would adversely effect the competitive position of the third party.
10. The information seeker also doesn't get any opportunity to substantiate his case as the stage of processing the application by the PIO.
11. Under the statute, options are kept open to all the parties to raise their all concerns before the appellate authority and all the parties gets opportunities to substantiate their case before the appellate authorities. The hierarchy of the forum is also specified under the RTI Act and the word "appeal proceedings" used in under section 19(5) also includes first appeal as contemplated under section 19(1) of RTI Act.
12. Undisputedly the first appeal was filed by the appellant herein before the Respondent No. 2, First appellate authority the same was suppose to be disposed within 30 days or maximum 45 days by the FAA in terms of section 19(6)of the RTI Act. However due to the certain circumstances as explained by first appellate authority, the same could not be heard by him. There was no opportunity to the respondent PIO and to third party to put forth their grievances and to justify their denial before respondent No. 2, FAA, as well as to the Appellant to substantiate his case before respondent No.2 first appellate authority and to exhibit that the said was sought by him in larger public interest. By not hearing the first appeal, the parties have been deprived of a forum available to them to justify their claims. As such this Commission is of the view that the

respondent PIO, the third party and the appellant are losing one forum to put forth all the facts.

13. Further, in case requested information is treated as confidential by the PIO which is so claimed by the Respondent No. 1 PIO, in this present case, then such circumstances demands that PIO is required to give written notice to the third party and invite third party to make submissions and such submissions of third has to be kept in view while disposing the RTI application. It appears that no notice was given to third party in terms of section 11 of the RTI Act, 2005.
14. In the above circumstances, as there is no order passed by respondent no. 2 first appellate authority, considering that respondent No. 2 the First appellate authority has expressed his willingness to conduct the hearing of the first appeal filed before him in accordance with law, in case the matter is remanded back, 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 including third party and to decide the matter in accordance with law
15. In view of above discussion, the present appeal is disposed with order as under:-

ORDER

a) The matter is remanded back to the Respondent No. 2 first Appellate Authority (FAA) and Respondent No. 2 first appellate authority is hereby directed to hear, first appeal dated 11/02/2019 filed by the appellant, and to decide same within 30 days, in accordance with law by passing a speaking order.

b) The appellant as well as Respondent No.1 Public Information Officer (PIO) and the third party namely M/s

Sumit Online Trade Solutions Pvt. Ltd is hereby directed to appear before Respondent No.2 first Appellate authority on 18/07/2019 at 3.30 p.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