

GOA STATE INFORMATION COMMISSION

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

Appeal No. 141/2019/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,(Mr. Clen Madeira)
Mapusa Municipal Council,
Mapusa-Goa 403507

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 14/5/2019

Decided on:28/06/2019

ORDER

1. The appellant, Shri J. T. Shetye has filed the present appeal praying that the information/inspection as requested by him in his application dated 18/2/2019 be furnished to him 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 18/2/2019 addressed to Respondent No. 1 PIO, of the Office of Mapusa Municipal Council at Mapusa, had requested to provide him inspection of the entire file record of processing application for installation of "giant wheel amusement park" received from, various person for the year 2017 to 2019 during Dev Bodgeshwar Jatra at Mapusa and the NOCs, permissions issued for the same for the above years by the Municipality. The said application was filed by the appellant

with the Respondent No. 1 PIO in exercise of his rights 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 as contemplated u/s 7(1) of RTI Act.
 - c) It is contention of the appellant that as the information as sought was not furnished, he filed first appeal before the Chief Officer of Mapusa Municipal Council who is Respondent No. 2 herein on 22/3/2019 being First Appellate Authority (FAA) interms of section 19(1) of RTI Act, 2005.
 - 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 any notice was received by him from Respondent No 2 first appellate authority of the hearing, neither FAA passed any order within stipulated time as contemplated u/s 19(6) of the RTI Act, 2005.
 - e) It is contention of the appellant that as no information was received by him and he being aggrieved by the action of both the Respondent, approached this Commission in this second appeal u/s 19(3) of the Act, on 14/5/2019
3. In this Back ground the present appeal came to be filed by appellant with the contention that the information is still not provided and seeking order from this Commission to direct the PIO for providing him information/inspection as sought by him free of cost and for imposition of penalty on PIO for a delay in furnishing the information.
4. In pursuant to the notice of this Commission, the appellant was present in person. The Respondent No. 1 PIO and respondent no. 2 did not bother to appear before this commission despite of due service of notice . Opportunities were given to both the respondents to file their appropriate say despite of same , no say came to be

filed. And as such this commission presumes and holds that both the Respondents are not interested in contesting the present proceedings and doesn't have any say to be offered and the averments made by the appellant are not disputed by them.

5. It is the contention of the appellant that the both the Respondents as usual has failed to dispose off his RTI application and his first appeal within a mandatory period .It is his contention that he had sought the said information/inspection in larger public interest and hence the respondent should have been provided him the same. It was further contended that the information denied to him deliberately by the PIO in order to protect the illegality committed by the public authority concerned therein
6. 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.
7. On going through the entire records of the present case it is seen that the application was filed on 18/2/2019 and the Respondent PIO have failed to respond 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. The Respondent No. 1 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.
8. 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. Such repeated attitude on the part of the first appellate authority and the PIO was also brought to the notice of their superiors i.e Director of Municipal Administration in earlier case and recommendations u/s 25(5) of RTI Act, 2005 were given by this commission . It is learnt that the memorandum dated 8/2/2019 has been issued by the Director of Urban development in pursuant to the order of this commission, where in PIO and first appellate authority were instructed to handle the RTI matters in time bound manner under the provisions of the Act and was also informed that any lapses on the part of officials will be considered as dereliction of duties and in such cases action deemed fit under the rules will be initiated. Despite of same both the Respondents has continued their irresponsible behavior . Such a conduct on the part of both the respondent is not in conformity with the provision and the spirit of the act. It also amounts to derelictions of duties and of unbecoming of Government servant. Hence it is the need of the hour that such attitude and conduct of both the respondents cannot be taken lightly and has to be viewed seriously.

9. From the above gesture of both the Respondents , I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information and FAA deliberately did not passed any order. Such an lapse on part of PIO is punishable u/s 20(1) and 20(2) of the RTI Act. However before imposing penalty, I find it appropriate to seek explanation from the PIO as to why penalty should not been imposed on him for contravention of Section 7(1) of RTI Act and for delaying the information.
10. Considering the entire conduct of the first appellate authority, I find it appropriate to seek explanation from the concerned first appellate

authority of the Mapusa Municipal Council as to why the violations of the provisions of the RTI Act 2005 by him, non-compliance of instructions issued to him by the Director of Urban Development and the dereliction of his duty should not be reported to his parent Department i.e. the Personnel Department, and to the office of Chief Secretary and to the Director of Department of Urban Development for necessary further action as deemed fit under C.C.S. conduct rules.

11. 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 allowed.
- b) The respondent PIO hereby directed to provide inspection of the file/documents/records as sought by the appellant vide his application dated 18/2/2019 within 20 days from the date of receipt of this order .
- c) Issue notice to respondent PIO to Showcause as to why no action as 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) , and for delay in furnishing the information.
- d) In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter alongwith full name and present address of the then PIO.
- e) Issue notice to Respondent No. 2 first appellate authority to Showcause as to why the violations of the provisions of the

RTI Act 2005 by him, non compliance of instructions issued to him by the Director of Urban Development and the dereliction of his duty should not be reported to his parent Department i.e. the Personnel Department, and to the office of Chief Secretary and to the Director of Department of Urban Development for necessary further action as deemed fit under C.C.S. conduct rules.

f) Both the Respondents is hereby directed to remain present before this commission on 15/7/2019 at 10.30 am along with written submission showing cause why penalty and other action should not be taken against them.

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