

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

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**Appeal No. : 285/2019/SIC-I/**

Mr. Francisco Antonio Xavier Fernandes  
House No. 113, Amblai,  
Panchawadi, Ponda-Goa.

..... Appellant

v/s

1. The State public Information Officer,  
Executive Engineer,  
Public Works Department, Division XVIII(Roads),  
Ponda-Goa.

2. The First Appellate Authority for PWD,  
PWD Office, Altinho,  
Panaji-Goa.

....Respondents

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

Filed on: 06/09/2019  
Decided on:09/12/2019

**ORDER**

1. The brief facts leading to second Appeal filed by the Appellant Shri Francisco Antonio Xavier Fernandes against Respondent NO. 1 Public Information Officer (PIO) of the Office of Public work Department XVIII (Roads),Ponda Goa and against Respondent No. 2 First Appellate Authority (FAA) interms of section 19(3) of Right To Information Act, 2005 are as under:-

a)vide his application dated 26/4/2019 had sought for status/ action taken and other connected information pertaining to his complaint dated 26/9/2017 filed with the public authority concerned herein. The said information was sought by him in exercise of his right under sub-section (1) of section 6 of RTI Act,2005.

b)It is contention of the appellant that his application was responded by the Respondent PIO on 24/5/2019 interms

of sub-section (1) of section 7 of RTI Act wherein the information was denied to him on the ground that it cannot be generated as per the request of the applicant .

c) It is contention of the appellant\_ that he being aggrieved by the denial of information, preferred First Appeal before the Respondent No. 2 first Appellate Authority on 24/6/2019 in terms of section 19(1) of RTI Act, 2005 and the said was disposed by Respondent no. 2 by an order dated 2/8/2019 by giving directions to respondents to issue the certified copy of the report of inspection to the appellant which was carried on 15/7/2019.

d) It is contention of the appellant that he being not satisfied by the said order of the Respondent no. 2 first appellate authority dated 2/8/2019 and being aggrieved by the action of both the respondents, is forced to approach this commission in a second appeal.

2. In this background the Appellant has approached this Commission on 14/10/2019 on the grounds raised in the memo of the appeal there by contending that Respondent no. 1 PIO has failed to comply with the order of Respondent no. 2 First appellate authority and that information as sought by him is still not provided to him. He sought for directions from this Commission for invoking penal provisions under section 20 (1) and (2) of RTI Act, 2005 against the Respondent no. 1 PIO.
3. Matter was listed on the board and taken up for hearing in pursuant to which Appellant initially appeared in person alongwith Advocate Zulfiya Desai. Respondent No. 1 PIO Shri Sanjay vaze was present alongwith Advocate Atish Mandrekar. Respondent No. 2 opted to remain absent.
4. Reply was filed by the Respondent No. 1 PIO on 14/10/2019 alongwith enclosures resisting the appeal and denying the

averments made by the Appellant. The copy of the reply was furnished to the Appellant herein alongwith the enclosures.

5. During the hearing on 09/12/2019 Richard Fernandes appeared before this commission alongwith Advocate Z. Desai and submitted that the appellant who is his Father has expired on 11/11/2019 and also placed on record the memo and requested this commission to pass necessary order.
6. I have scrutinised the records available in the file and also considered submission of both the parties.
7. As per the Rule 13(3) of Uttar Pradesh Right to information rule,2015, so also as per regulation 21 of the Andra Pradesh Information Commission management regulation, 2007 and also as per rule 33 of Jammu and Kashmir Right to Information Act,2009 (Act No. VIII of 2009), the proceedings pending before this commission on any complaint or appeal stands abated on the death of the appellant or complainant as the case may be.
8. No such rules are prescribed under the Goa State Right to information Rules. However, it is the opinion of this commission, the right to information is a personal right of the information seeker and therefore cannot be devolve to heirs or to any one else. The Legal heir or any interested person can make a fresh application seeking for a same information. Hence this commission is of the considered view that the proceedings abates on the death of the appellant.
9. Be that as it may be , the appellant in the present proceedings has only sought for relief for invoking penal provisions against Respondent PIO.
10. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005, The Hon'ble High court of Bombay, Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed

*“The order of penalty for failure to take action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate.”*

11. In the back ground of above ratio as laid down by the Hon'ble Bombay High Court, the point arises for my determination is –
  - a) Whether the delay in furnishing information was deliberate and intentionally?
12. The Respondent PIO vide his reply contended that, he vide his letter dated 24/5/2019 requested the appellant to inspect the documents on any working day during working hours on prior appointment and support of his case he relied upon the letter dated 24/5/2019. It was further contended that even during the pendency of the first appeal, he vide letter dated 15/7/2019 and 26/7/2019 provided appellant clarification with respect to information sought.
13. It was contended that the site was inspected on 15/7/2018 by sub Division Officer and since lots of grass, bushes have grown at a sight as such existence of any road could not be found.
14. It was further contended that available, complete and correct information is already provided to the appellant and hence there is absolutely no delay on his part.
15. The explanation given by the Respondent No. 1 PIO appears to be convincing and probable as the same is supported by the documentary evidence. The PIO has responded well within stipulated time wherein the inspection of documents pertaining to said complaint were offered. Further vide letter dated 26/7/2019 and 15/7/2019 the PIO has also taken efforts in giving clarifications. It appears that there was no denial of information from the Respondent No. 1 PIO. As such I hold that there are no

grounds to hold that information was *intentionally and deliberately* not provided to appellant by the PIO.

16. In the above circumstances and as discussed above, I do not find any merits in the appeal proceedings and I am of the opinion that the levy of penalty is not warranted in the facts of the present case.

In view of above the appeal proceedings stands closed.

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.