

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Appeal No.36/2019/CIC

Shri Jawaharlal T. Shetye
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa
403507.

..... Appellant

V/s

- 1) Public Information Officer,
Mapusa Municipal Council,
Mapusa -Goa
403507.
- 2) First Appellate Authority,
The Chief Officer,
Shri Clen Madeira,
Mapusa Municipal Council,
Mapusa -Goa 403507.

..... Respondents

Filed On: 18/02/2019

Disposed On: 04/10/2019

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 17/09/2018 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, PIO under several points therein.
- b) The said application was not responded to by the PIO within time and as such deeming the same as refusal appellant filed first appeal to the respondent no.2, being the First Appellate Authority (FAA).

Sd/-

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- c) The FAA failed to dispose the first appeal in time and hence the appellant has landed before this commission in this second appeal.
- d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 26/06/2019 filed reply to the appeal.
- e) In the said reply it was contended by PIO that on receipt of the said application/s 6(1) the same was referred to one Smt. Anuradha Natekar, seeking her assistance u/s 5(4) of the act. A copy of such memo is filed on record. In view of said contention a notice was issued to said Smt. Anuradha Natekar as deemed PIO under the act.
- f) Said Smt. Natekar accordingly filed her reply on 29/08/2019. It is her contention therein that she is not dealing with the subject matter and hence was marked to Smt. Manasvi Gaude.
- g) Submission of the deemed PIO was heard. Appellant remained absent on the date fixed for clarification.

2) **FINDINGS:**

- a) Perused the records as considered the submission of the parties in the present case it is the contention of the appellant that the information as was sought for has not be furnished. The First Appellate Authority has not passed the order in the appeal. The PIO herein has filed the reply showing the purported reason for not furnishing the information with in time. However it is nowhere the contention of PIO that the information as sought is at all

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exempted from disclosure either u/s (8) or (9) of the act Being So I find no grounds to withhold the information from disclosure.

- b) It is the contention of the appellant that in view of the delay, the commission should invoke the powers u/s 20(1) and 20(2) of the act. To this it is the contention of the PIO that for furnishing the information he has sought assistance from Smt. Anuradha Natekar u/s 5(4) of the act and hence she should be deemed as PIO u/s 5(5) of the act. The PIO has annexed copy of the said memorandum dated 04/10/2018. This commission has issued notice to said Smt. Anuradha Natekar as deemed PIO to file the reply .As per her reply she is not handling the matters pertaining to erection of mobile towers in support of her contention she enclosed office order dated 18/07/2016.
- c) In the course of her submissions she submitted that on getting the memorandum she transferred the same to one Smt. Manasvi Gaude, LDC requesting her to furnish the information and thus she is not responsible for the delay. It is her further contention that even in the first appeal she was not joined as the party which would have enabled her to give her proper say on the issue. In any case according to her delay that has caused is not on account of her lapse and hence should not be punished.
- d) On considering the said submission and I do not find any records to show that she has directed the said Manasvi Gaude to deal with the application. Being an office all such request ought to have been in writing and duly acknowledge. No such records are produced.

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Consequently her stand that she has sought the assistance from said Smt. Manasvi Gaude cannot be accepted. Moreover there are also records produced by PIO that said Smt. Manasvi Gaude was on maternity leave from 12/05/2018 to 07/11/2018, which is the interim period.

- e) It is further contention of the deemed PIO, Smt. Natekar that she was not joined as a party in the first appeal. I find force in such submissions. As per the memo of first appeal filed by the appellant, only the PIO is joined as a party. In these circumstances a valuable opportunity to represent and make out the case in favor of said deemed PIO was taken away. Being so I find that any order passed in this appeal would be in violation of principles of natural justice as she was deprived of a forum to prove her bonafied. Penalty proceedings are criminal in nature. ***The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty (Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others)*** has observed:

"11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

- f) In the above circumstances, I find that the ends of justice can be met by directing the PIO to furnish the information

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as sought. The penalty proceeding either against the PIO or the deemed PIO cannot be considered in the back drop of the above situation.

g) However the PIO and the deemed PIO are hereby made aware that under the act they owe liability to the seeker to furnish the information as sought within time. Any lapse on their part to adhere to the requirements of the act can be considered as dereliction in duties. They are therefore warned that hence forth they should be diligent while dealing with such matters under the act. Any lapse on their part may result in penalty including ordering of an inquiry

h) I therefore dispose the above appeal with the following:

O R D E R

The appeal is partly allowed. The PIO is directed to furnish to the appellant the information as sought for by him vide his application dated 17/09/2018, free of cost within 15 days from the date of receipt of this order by him. Rests of the prayers are rejected.

Order to be communicated to the parties.
Proceedings closed.

Pronounced in open hearing.

Sd/-
(Shri. P. S. P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji –Goa