

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

CORAM: Shri Juino De Souza: State Information Commissioner

Compliant No: 25/2018/SIC-II

Shri. Ramchandra Manjrekar,
r/o House NO.452, Tisca,
Usgao Goa.

..... Complainant

v/s

1. Public Information Officer
Chief Administrative Officer,
District & Sessions Court,
South Goa, Margao Goa.
2. First Appellate Authority,
District Judge-I & Addl. Sessions Judge,
District & Sessions Court,
South Goa, Margao-Goa.

..... Opponents

Relevant emerging dates:

Date of Hearing : 27-02-2019

Date of Decision : 27-02-2019

ORDER

1. **Brief facts** of the case are that the Complainant vide an RTI application dated 19/01/2018 sought certain information u/s 6(1) of the RTI Act, 2005 from the PIO, District & Sessions Court, Margao - Goa. The Complainant is *inter alia* seeking information regarding 1) A) Record/Register of the Legal Opinion provided by various Public Prosecutors at District & sessions Court, Margao to Police Stations in and around Ponda/Margao. B) Record/Register of the Legal Opinion sought by Police Stations in and around Ponda/Margao, from various Prosecutors at District & Sessions Court, Margao and 2) A) Inward No & date of all the written request to the Public Prosecutor, by Police Stations from 30/09/2014 to 05/10/2014 (certified copy of the relevant pages of the Inwards Register to be provided) B) Outward No & date of all the written legal Opinions provided by the the Public Prosecutor from 12/10/2014 to 18/10/2014 (certified copy of the relevant pages of the Outwards Register to be provided)

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2. It is the case of the Complainant, that no reply nor information was furnished by the PIO as is mandated u/s 7(1) of the RTI act 2005 and therefore the Complainant filed a first Appeal on 05/03/2018 and First Appellate Authority (FAA) informed the Complainant vide letter dated 08/03/2018 rejected the First Appeal due to the fact that there was no cause title for Appeal and that the Appeal application was not accompanied with fee Rs. 20/- as per Rule 14 of the Goa Daman & Diu and Dadra & Nagar Haveli, Right to Information Rules 2009 framed by the Hon'ble High Court and published in the Official Gazette, Serie I No 25 dated 17/09/2009 and the Appellant was asked to take note and comply the same within seven days.
3. It is seen that the Appellant has thereafter filed a proper first appeal dated 19/03/2018 after affixing Rs.20/- court fee stamps. It is further the case of Complainant that the first hearing of the appeal was fixed on 13/04/2018 and that the Complainant chose not to be present and considered that his absence would not affect the progress of the proceedings.
4. The Complainant however finding that there is no order from FAA has subsequently filed a Complaint case before the Commission registered on 25/05/2018 and has prayed to initiate necessary strict action in line with the facts and circumstances of the present case against the PIO and for other reliefs.
5. **HEARING:** This matter has come up before the Commission on four previous occasions and thus is taken up for final disposal. During hearing Complainant Shri Ramchandra Manjrekar, is absent. The Respondent PIO, is represented by Shri Dattaram Shetgaonkar, Head Clerk with the Public Authority. Adv. K.L. Bhagat is also present on behalf of both PIO & FAA.

6. **SUBMISSION**: Adv. K.L. Bhagat submits that the RTI Application was not responded by the PIO as it was not filed as per the prescribed of the rules and regulation of the Goa Daman & Diu and Dadra & Nagar Haveli, Right to Information Rules 2009 published in the Official Gazette, Serie I No 25 dated 17/09/2009.
7. Adv. K.L. Bhagat further submits that First Appellate Authority (FAA) had passed an order dated 21/04/2018 on the ROZNAMA dismissing the First appeal for non prosecution in view of the absence of the appellant and that the said order has been received by the Appellant.
8. A copy of the Order passed by First Appellate Authority (FAA) is furnished before the Commission which taken on record. Adv. K.L. Bhagat also furnishes a copy of a gazette notification issued by the High Court of Judicature at Bombay dated 17th September 2009 which is taken on record.
9. **FINDINGS**: The Commission has perused the material on record including the copy of the Order of the FAA dated 21/04/2018 and the copy of the official gazette dated 17/09/2009. The Commission has also perused two applications both dated 04/10/2018 filed by the Complainant for impleading of the Supdt-Admn & Supdt –II-Admn and for Production & Discovery of Documents.
10. The Commission at the outset finds that although the Complainant had filed a proper RTI Application dated 19/01/2018 by affixing Rs 10/- court fee stamp and has given his name, address and the information sought, the PIO has not given any reply as is mandatory within the stipulated 30 days period as per section 7(1) of the RTI act 2005. It is also seen that the PIO has not given any intimation of rejection as per Form 'C' of the rules and regulation of the Goa Daman & Diu and Dadra & Nagar Haveli, Right to Information Rules 2009.

11. The Commission is not inclined to accept the argument of Adv. K.L. Bhagat that since the RTI Application was not submitted in the prescribed format and as such no reply could be furnished to the Complainant. Even assuming that the RTI application was not filed as per the prescribed format, it was the bounden duty of PIO to have intimated the rejection of the application in FORM 'C' as per the rules and regulation of the Goa Daman & Diu and Dadra & Nagar Haveli, Right to Information Rules 2009 notification dated 17/09/2009 and which has not been done and which tantamount to 'Dereliction of duty and also 'Deemed refusal'.
12. The Commission also finds that First Appellate Authority (FAA) who in the present case is holding post of District /Additional Sessions Judge has dismissed the First Appeal by a short four line Order passed on the Roznama for non prosecution (by default) merely because the appellant was absent during the hearing and which itself is unwarranted and uncalled for.
13. The FAA being a quasi judicial body should have applied his mind and decided the First Appeal based on the material on record purely on merits even if the appellant was absent. The appellant has in para 5 of the First Appeal memo clearly stated 'that the Appellant may appear before the FAA in person or at his discretion opt not to be present'.
14. Therefore the FAA was duty bound to see that the justice is done. There is no provision in the RTI act 2005 nor in the rules and regulation of the Goa Daman & Diu and Dadra & Nagar Haveli, Right to Information Rules 2009 notification dated 17/09/2009 for dismissing a first Appeal for non prosecution (for default)

Hon'ble Supreme Court of India in Union of India vs. Namit Sharma [Review Petition (C) No. 2309 of 2012 in Writ Petition (C) No. 210 of 2012] held that

“While deciding whether a citizen should or should not get a particular information “which is held by or under the control of any public authority”, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.” “The Information Commission, therefore, while deciding this is does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act.”

15. **DECISION:** The Commission in the instant case accordingly, quashes and sets aside the Order of the First Appellate Authority (FAA) dated 21/04/2018 and remands the matter back to the First appellate Authority for hearing the proceedings afresh. The FAA is directed to issue fresh notices to the parties i.e. both the Respondent PIO and the RTI applicant Shri. Ramchandra Manjrekar within 30 days of the receipt of this order i.e latest by 10th April 2019.
16. The FAA shall after hearing the parties decide the First Appeal purely on merits as per the material on record by passing an appropriate speaking order irrespective of whether Shri. Ramchandra Manjrekar who is the RTI applicant is present or not at the hearing. It is needless to say that during the hearings of the First appeal, Shri. Ramchandra Manjrekar, the appellant therein and who is the Complainant herein may opt to remain present in person or through his duly authorized representative or may opt to remain absent.
17. The said First appeal should be disposed off within 30 days from the date on which the parties attend on the date of the first hearing. In exceptional cases, the FAA may take 45 days, however where disposal of appeal takes more than 30 days, the FAA should record in writing the reasons for such delay.

18. If the FAA comes to a conclusion that the appellant should be supplied information by the PIO, then he may either i) pass an order directing the PIO to give such information to the appellant or ii) he himself may give information to the appellant while disposing off the First Appeal. It is made clear that the said information shall be supplied after collecting the necessary payment in advance, including higher amount for certified copies as prescribed under the rules.
19. It is open to the Complainant, if he is still aggrieved by the order of the FAA to approach this commission either by way of a Second Appeal u/s 19(3) or a Complaint u/s 18 as the case may be.

With these directions the Complainant case stands disposed.

20. Consequently both the applications dated 04/10/2018 filed by the Complainant for impleading of the Supdt-Admn & Supdt –II-Admn and for Production & Discovery of Documents and the relief sought for initiating inquiry against PIO and u/s 20 (1&2) of RTI Act 2005 for imposing penalty and disciplinary action stand rejected.

Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-

(Juino De Souza)
State Information Commissioner