

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

Appeal No. 122/2019/SIC-I

Shri Jawaharlal T. Shetye,
H.No.35/A,W. No-11,
Khorlim, Mapusa- Goa.

....Appellant

V/s

- 1) The Public Information Officer,
Administrator of Comunidade,
North Zone,
Mapusa, Bardez-Goa.
- 2) First Appellate Authority,
Additional Collector–II,
Collectorate of North Goa District,
Panaji Goa.

.....Respondents

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

Filed on: 30/4/2019
Decided on:26/6/2019

ORDER

1. The second appeal came to be filed by the appellant Shri Jawaharlal T. Shetye on 30/4/2019 against the Respondent No.1 Public Information Officer of the office of Administrator of Comunidade, North Zone at Mapusa, Bardez-Goa and against Respondent no. 2 first appellate authority under sub section (3) of section 19 of RTI Act 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 14/01/2019 had sought for the information on 7 points as listed therein more particularly pertaining to his complaint dated 26/6/2018 and the letter dated 5/7/2018 addressed to the Administrator of Comunidade, North Zone, Mapusa, Bardez-Goa by the Dy. Collector (LA) with a caption "*Revoke/Cancel temporary possession of the Plot No. 7 under chalta No. 1 P.T. Sheet No. 88 of Mapusa city belonging to*

Comunidade of Mapusa granted on aforamento basis for the purpose of construction of a residential house to Shri Sakharam H. Gaonkar r/o Khorlim Mapusa Goa at an annual lease rent of Rs. 1500/- as per Government approval conveyed by letter No. 17//21/91-RD dated 6/8/1991 of Revenue Department Panaji Goa, for violating the provisions of the Art. 338 of the code of comunidade and its latest Rules". The said information was sought by the appellant in exercise of his right u/s 6(1) of RTI Act, 2005. The appellant also enclosed the photocopy of his representation dated 5/7/2018 to his RTI application.

3. It is the contention of the appellant that his above application filed in terms of sub section (1) of section 6 was not responded by the respondent no 1 PIO within stipulated time of 30 days and as such deeming the same as rejection, the appellant filed 1st appeal on 5/3/2019 to Respondent no 2 Additional Collector II ,North Zone , at Panajim Goa being first appellate authority .
4. It is the contention of the appellant that the respondent no. 2 first appellate authority vide order dated 8/4/2019 allowed his appeal and directed the respondent no 1 PIO to furnish the information as sought by the appellant vide application dated 14/1/2019 free of cost within 10 days .
5. It is the contention of the appellant that in spite of the said order, the said information was not furnished to him by the PIO and hence he had to approach this commission in his 2nd appeal as contemplated u/s 19(3) of RTI Act thereby seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation.
6. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO was initially represented by Shri Arjun Mandrekar (LDC) and subsequent date of hearing neither the PIO

was present nor represented by any of his staff. Mrs Cibila Menezes appeared on behalf of Respondent no.2 First appellate authority and filed the reply of first appellate authority on 30/5/2019 . The copy of the same was furnished to appellant.

7. Opportunity was granted to respondent PIO to file his say to appeal proceedings and to substantiate his case, despite of same the PIO failed to file his reply. As such this commission presumes and holds that the respondent on 1 PIO has no say to be offered and the averments made by the appellant are not disputed by him.
8. On going to the records it is seen that vide letter dated 5/7/2018, the Dy. Collector (LA) had forwarded the copy of the complaint dated 26/6/2018 received from appellant and had requested to inquire and to take necessary action in a matter under intimation to their office.
9. On perusing the application of the appellant filed in terms of section 6 of RTI Act, one could gather that the appellant at point No. 1 to 4 was intending to get information pertaining to the letter dated 5/7/2018 which was made by Deputy Collector (LA) pursuant to his complaint dated 26/6/2018 . In other words the appellant was intending to know the action taken report/status/progress report made on his application representation dated 26/6/2018 by the office of Administrators of Comunidade, North Zone, at Mapusa. Further the appellant at point no. 5 & 6 was intending to know the illegal construction of housing structures etc. and the show cause notices issued to the persons involved in the illegal constructions done on the land belonging to Mapusa, Kucholim and Khorlim Comunidade and at point No. 7 he had sought for the certified copy of No objection certificate issue to various persons by the attorney of Cuchelim & Khorlim Comunidade .

10. The Hon'ble Delhi High Court in writ petition (c)No. 5957/2007; Kusum Devi V/s Central Information Commission has held that;
"The petitioner certainly has right to ask for "Information" with regards to complaints made by him, action taken and the decision taken thereafter".
11. In my opinion and subscribing to the ratio laid down by The Hon'ble High Court of Delhi in case of Kusum Devi (supra), the appellant had every right to know the status of his representation and proceedings conducted therein. Being a citizen also he is also entitle to know the other information sought by him vide his application dated 14/1/2019.
12. The appellant has contended that the respondent no.1 PIO is not serious in complying the provisions of RTI Act. It was further contended that the PIO does not respond under section 7 of RTI Act and also does not bother to comply with the order of first appellate authority and in most of the cases the records speaks for itself that the PIO is habituated in adopting such tactics. It was further contended that lots of hardship caused to him pursuing his RTI Application.
13. As per the records the application u/s 6(1) of the act was filed on 14/1/2019. U/s 7(1) of the Act the PIO is required to respond the same within 30 days from the said date. There are no records produced by the PIO that the same is adhered to. The contention of the appellant in the appeal is that the said application was not responded to at all by the PIO thus from the undisputed and un rebutted averments, I find some truth in the contention of the appellant that the responded have not acted in the conformity with the provisions RTI Act 2005.
14. It appears that the order dated 8/4/2019 of first appellate authority was not complied by the Respondent PIO. The order of first appellate authority reveals that the Respondent did not

appear before him despite of due service of notice and did not bothered to file reply. The same is also in the present case. Despite of the due service of notice and direction of this Commission to be present before this Commission, the PIO failed to appeared and show as to how and why the delay in responding the application and/or not complying the order of first appellate authority was not deliberate and /or not intentional.

15. The PIO must introspect the non furnishing of the correct and complete information lands the citizen before the first appellate authority and also before this commission resulting into unnecessary harassment of the Common man which is socially abhorring and legally impermissible.
16. From the conduct of the PIO it can be clearly inferred that the PIO has no concern to his obligation under the RTI Act or has no respect to obey the order passed by the senior officer. Such a conduct of PIO is obstructing transferacy and accountability appears to be suspicious and adamant vis-a-vis the intend of the Act.
17. From the above gesture of PIO, I prima facie find that the entire conduct of PIO is not in consonance with the Act. 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 the contravention of section 7(1) of the act, for not compliance of order of first appellate authority and for delaying the information.
18. I therefore dispose the present appeal with order as under ;

Order

Appeal allowed

- a) The Respondent No. 1 PIO is directed to comply with the order passed by the Respondent No. 2 First appellate authority dated

8/4/2019 in appeal No. RTI/AC-II/APL/5/2019 and to provide the information to the appellant as sought by him vide his RTI Application dated 14/1/2019, within 20 days from the date of receipt of this order by him.

- b) 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) ,for not complying the order of first appellate authority and for delay in furnishing the information.
- c) 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.
- d) Respondent, PIO is hereby directed to remain present before this commission on 15/7/2019 at 10.30 am alongwith written submission showing cause why penalty should not be imposed on him/her.

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