

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

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Appeal No.26/2019/SIC-I

Shri. Jawaharlal T. Shetye,  
H.No.35/A,W. No-11,  
Khorlim, Mapusa Goa.  
Pincode-403 507.

....Appellant

V/s

- 1) The Public Information Officer,  
Goa State Urban Development Agency,  
Shram Shakti Bhavan, 6<sup>th</sup> Floor,  
Patto Plaza , Panaji- Goa.
- 2) First Appellate Authority,  
The Chief Project Officer,  
Goa state Urban Development Agency,  
Shramshakti Bhavan ,  
Patto- Plaza, Panaji -Goa.

**CORAM:**

**Ms. Pratima K. Vernekar**, State Information Commissioner

Filed on: 08/2/2019

Decided on:2/4/2019

**ORDER**

1. The second appeal came to be filed by the appellant Shri Jawaharlal T. Shetye on 07/02/2019 against the Respondent No.1 Public Information Officer of Goa State Urban Development Agency 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 29/8/2018 had sought for certain information from Respondent No.1 Public Information Officer (PIO) of Goa state urban Development agency as listed therein at serial No.1 to 6 pertaining to his representation dated 25/7/18 addressed to Shri Hussain Muzawar and other information pertaining to shri Hussain Muzawar. The said information was sought in exercise of his right u/s 6(1) of RTI Act, 2005.

3. It is the contention of the appellant that his above application filed in terms of sub section 1 of section 6 was responded by the respondent no 1 PIO on 6/9/18 wherein it was informed to him that issue raised in the application dated 25/7/18 has been resolved by asking photo identification documents from concerned party Smt vilasini Mahale and further informing him that third party information cannot be furnished .
4. It is the contention of appellant that since no information came to be provided to him as was sought and as such deeming the same as rejection, the appellant filed 1<sup>st</sup> appeal on 9/11/18 to Respondent no 2 chief Project Officer of Goa State Urban Development Agency being first appellate authority in terms of section 19(1) of RTI Act, 2005.
5. It is the contention of appellant that Respondent No.2 FAA adjourned the hearings on 6/12/18,15/1/19,22/1/19 and on 29/1/19 as he could not attend the hearings on the said dates. It is his further contention that he vide his application dated 24/12/18 requested the Respondent No.2 FAA to furnish him certified copy of the judgement and order passed by FAA.
6. It is the contention of the appellant that the respondent no. 2 FAA failed to dispose his appeal within the mandatory period of 45 days as such he being aggrieved by the action of both the respondents is forced to approach this commission in his 2<sup>nd</sup> appeal seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation for not giving information within time.
7. Notices were issued to both the parties. Appellant was present only on two dates of hearing. Respondent PIO was represented by Advocate M. D'Souza. Respondent no.2 First appellate authority was represented by shri Pradeep Rane .

8. Reply filed by both the respondents on 29/3/2019 . Copy of the same could be furnished to the appellant on account of his absence however he was directed to collect the same and the matter was fixed for arguments
9. As appellant opted to remain absent, as such the commission had no any option then to hear the argument of Respondent PIO and to decide the matter based on the available records in the file.
10. It is the contention of the Respondent PIO that appeal filed by the appellant is bad and not maintainable in the eyes of Law as there is an suppression of facts by the appellant which disentitles him from any relief . It was further contended that the information sought is an personal information of an third party and requires the requisite NOC from the concerned person who have to be made party to the proceedings . It was further contended that appellant himself has chosen to abstain himself from appearing before FAA and on number of occasions sought time .
11. Vide reply dated 29/3/2019 the respondent No.2 first appellate authority contended that appellant had not come before first appellate authority and on many occasions appellant telephonically informed about his inconvenience and sought time .It is further submitted that that first appellate authority was diligent in his duty and has not done any injustice to any person especially with the appellant as he had heard the needs of the appellant and granted adjournment. It was further contended that appellant also in alternative did not informed the FAA that he would not be able to be present and to pass necessary orders in accordance with law and hence it is the contention of the FAA that due to the above circumstances, he was not able to pass order in the appeal proceedings filed before him within stipulated time .
12. I have scrutinised the records available in file, submissions made by respondents and pleadings made in the memo of appeal.

13. In the nut shell it is the case of both the respondents here in that the 1<sup>st</sup> appeal could not be disposed within stipulated time due to non appearance and on account of adjournments sought by the appellant .The said fact is also not disputed and unrebutted by the appellant but infect the appellant himself have fairly admitted the said fact at para 4 of his memo of appeal and also relied upon the notices dated 28/11/18,3/1/19 ,16/1/19 and letter dated 18/1/19 issued by respondent no.2 FAA wherein there is a reference of appellant non attending hearings and intimating the FAA about inability to attend hearing due to busy schedule .
14. As per Sub-Section (5) of section 19 of RTI Act ,”in any appeal proceedings , the onus to prove the denial of request was justified shall be on the central Public information officer or state public officer ,as the case may be ,who denied the request ”.
15. Hence, on bare reading of above section one could gather that the words used there in “ ANY APPEAL PROCEEDINGS ” also means FIRST APPEAL FILED U/S 19 (1) of RTI Act.
16. The facts on the records reveals that there was no opportunity to the respondent PIO to justify his denial before respondent No.2 FAA as such this commission is in agreement with the contention of respondent No.1 PIO that he is losing a forum to put forth all the facts before FAA and therefore prayed in the interest of equity and justice to remand the matter back to the First Appellate authority .
17. The Respondent No.2 FAA at Para 5 and 7 of his reply dated 29/3/19 have also expressed his desire and willingness and prayed to remand the matter to him for hearing the matter a fresh and has undertaken to dispose it within prescribed time limit.
18. This commission based on facts and circumstances placed on record and without expressing her views on the merits of the

matter, is of the opinion that in the interest of justice, equity and good conscience, the matter has to be remanded back to the Respondent NO. 2 First appellate Authority with an direction to hear both the parties and to decide the matter in accordance with law.

19. Hence this commission disposes the present appeal with order as under:-

#### ORDER

- a) The matter is remanded back to the Respondent No. 2 first appellate authority and respondent no.2 FAA is hereby directed to hear a fresh, first appeal filed by the appellant herein on 9/11/2018, bearing case No. 2/2018–GSUDA/RTI (File No. 146/3/GSUDA /RTI /part –III / 1862 and to decide same within 30 days, in accordance with law .
- b) The appellant as well as Respondent No.1 PIO is hereby directed to appear before Respondent No.2 first Appellate authority on 18/4/2019 at 10.30 a.m.
- c) The right of the appellant to approach this commission in appeal and/or in complaint, if aggrieved by the decision of First appellate Authority is kept open .

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.