

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

Appeal No. 294/2018/SIC-I

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

....Appellant

V/s

1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa Goa-403507

2) First Appellate Authority,
Chief Officer,
Mapusa Municipal Council,
Mapusa-Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 5/12/2018

Decided on: 18/01/2019

ORDER

1. The brief facts leading to present appeal are that the appellant Shri Jawaharlal T. Shetye herein by his application dated 9/8/2018 sought certain information as stated therein in the application from the Respondent No.1 Public Information Officer (PIO), office of Mapusa Municipal Council, Mapusa, Bardez-Goa pertaining to his complaint dated 12/4/2018 against the illegal constructions of commercial cum residential building near Vithal Mandir temple at Ansabhat Mapusa, Goa so also the information pertaining to his reminder letter dated 27/2/2018 and also information pertaining to his complaint dated 30/6/2014. The said information was sought in exercise of his right under section 6(1) of RTI Act .
2. 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 to Respondent no 2 First appellate authority on 17/09/2018.

3. It is the contention of the appellant that the Respondent no. 2 FAA vide order dated 24/10/2018 allowed his appeal and directed the respondent no 1 PIO to issue the information to the appellant, free of cost within 7 days as per the original application dated 9/8/2018.
4. It is the contention of the appellant that inspite of the said order, since the said information was not furnished to him by PIO as such he being aggrieved by the action of respondent PIO is forced to approach this commission on 5/12/2018 in his 2nd appeal seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation for not giving information within time.
5. Notices were issued to both the parties. Appellant appeared in person. Respondent PIO Mr. Vyankatesh Sawant appeared and filed reply on 2/1/2019 along with the enclosures to the appeal proceedings. Respondent No.2 First appellate authority opted remain absent. The copy of the reply along with the enclosures filed by Respondent PIO was furnished to appellant.
6. The Respondent PIO had also enclosed the copy of his letter dated 21/12/2018 furnishing pointwise information to his reply dated 2/1/2019 hence the appellant was directed to verify the same and report accordingly on the subsequent date of hearing .
7. The respondent PIO failed to appear before this commission after filing the reply and hence the argument of the appellant were heard.
8. The appellant during his argument submitted that though the respondent PIO had submitted the information was provided to the appellant vide letter dated 21/12/2018, he never received the copy of the said letter and it is further contention that the said document has been created by the Respondent PIO subsequently at the time of filing reply before this commission. He further submitted that he has no any further grievance with respect to information furnished

to him during the present proceedings vide letter dated 21/12/2018. However he pressed for invoking penal provision on the ground that the PIO of the Mapusa Municipal Council is not serious in complying the provisions for RTI Act. He further submitted 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.

9. Since the available information have now been provided to the appellant , I find no intervention of this commission is required for the purpose of furnishing information hence prayer-I becomes infructuous .

10. With regards to other prayers, it is seen that as per the records the application dated 9/8/2018 was filed and received by the office of Respondent no 1 PIO on 9/8/2018. 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 too. The order of the first appellate authority has directed PIO to issue the information within 7 days. As such the PIO was duty bound to comply the direction of his superior officer and was required to provide the information within 7 days. It is seen that the order was passed on 24/10/2018 as such the PIO was required to furnish the information on or before 01/11/2018. There is nothing on record produced by the PIO that the order of the first appellate authority was complied by him within time. On perusal of the order of first appellate authority dated 24/10/2018 it reveals that the PIO was present at the time of hearing and has undertaken to furnish the information within 7 days and hence the first appellate authority disposed first appeals with the direction to PIO to furnish the information to the appellant within 7 days. The information came to be provided only on 2/1/2019 thereto only after the present second appeal has been filed. The PIO is silent in his

reply and no reasons are mentioned by him showing sufficient cause why he could not furnish the information within the 7 days from the date of the passing the order of FAA till 2/1/2019. The PIO has also not produce on record the mode by which his forwarding letter dated 21/12/2018 furnishing the information was send to the appellant. Hence this commission prima facie comes to the conclusion that there was delay in furnishing the information.

11. The appellant herein has been made to run from pillar to post and lots of his valuable time has been lost in pursuing the said application. Such a conduct by PIO is obstructing transparency and accountability appears to be suspicious and adamant visa viz the intent of the act.
12. Considering the conduct of PIO and his indifferent approach to the entire issue, I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information. Such allegation is proved would call for disciplinary proceedings and imposition of penalty against PIO. However before imposing penalty I find it appropriate to seek explanation from the PIO as to why penalty should be not imposed on him for contravention of section 7(1) of the Act, for non compliance of order of first appellate authority and for delaying the information.
13. I therefore dispose the present appeal with order as under:

ORDER

1. Appeal partly allowed.
2. Since information being provided during the present proceedings, I find no intervention of this commission is required for the purpose of furnishing information.
3. Issue showcause 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 for contravention of section 7(1) of RTI act, for not complying the

order passed by the first appellate authority within time and for delaying in furnishing the information.

4. In case the PIO at the relevant time, to whom the present notice is transferred, the present PIO shall serve this notice alongwith the order to him and produce the acknowledgment before this commission on or before the next date fixed in the matter alongwith full name and present address of the then PIO.
5. The respondent PIO is hereby directed to remain present before this commission on 6/2/2019 at 10.30 a.m. alongwith written submissions showing cause why penalty should not be imposed on him.
6. Appeal proceedings deposed and closed accordingly. The registry of this commission is directed to open separate penalty proceedings.

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