

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

Appeal No. 116/2020/SIC-I

Shri Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,
Near Sateri Temple, Khorlim,
Mapusa-Goa -403 507.

....Appellant

V/s

- 1) The Public Information Officer (PIO),
Mapusa Municipal Council,
Mapusa-Goa – 403507.
- 2) First Appellate Authority (FAA),
The Chief Officer,(Kabir Shirgaonkar)
Mapusa Municipal Council,
Mapusa-Goa.403507

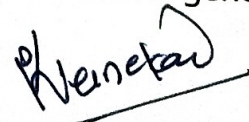
.....Respondents

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

Filed on: 17/08/2020
Decided on:17/11 /2020

ORDER

1. The facts in brief which arises in this present Appeal are that Appellant Shri. J.T. Shetye vide his application, dated 22/05/2020 sought information from Respondent No. 1, being the PIO. The said information was sought under section 6(1) of RTI Act, 2005. The Appellant had also enclosed his application dated 23/12/2019 addressed to Chief Officer, Mapusa Municipal Council, Mapusa Goa for ready reference.
2. The Appellant vide said application had sought for following information:-
 - i. Furnish certified copy of the action taken report from your end on my above referred letter dated 23/12/2019 which is self explanatory.
 - ii. Furnish certified copies of all the Notings sheets and the certified copies of all the correspondence letters generated



from your end in processing my above referred letter dated 23/12/2019 which is self explanatory.

iii. Furnish the present upto date progress report as well as the present upto date status report in respect of my above referred letter dated 23/12/2019 which is self explanatory.

iv. Furnish the certified copy of the site inspection report of checking the set back of the project M/s Profile Development at Mapusa-Goa. Where in it has been reported that the set back were checked and found as per plan approved by N.G.P.D.A vide Order No. N.GPDA/M/1624/1032/17 dated 30/08/2017.

v. Under section 2(j)(i) of the RTI Act 2005, the undersigned applicant would like to inspect the entire constructions files pertaining to M/s Profile Development, Mapusa-Goa and M/s Vision India Infrastructure Ltd, Mapusa-Goa.

3. It is the contention of the Appellant that the Respondent No. 1 PIO failed to respond his RTI application in terms of sub section (1) of section 7 and also failed provide him information within stipulated time of 30 days and as such deeming the same as rejection, the Appellant filed 1st appeal to Respondent No. 2 Chief Officer of Mapusa Municipal Council on 26/06/2020 being First Appellate Authority.
4. It is the contention of the Appellant that the Respondent No. 2 First Appellate Authority, did not disposed his First Appeal within stipulated time neither passed any order till date, as such he is forced to file the present appeal.
5. In the above background the Appellant being aggrieved by action of PIO and of First Appellate Authority (FAA), has approached this Commission in this Second Appeal on 17/08/2020 u/s 19(3) of the Act with the contention that the information is still not provided

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and seeking order from this Commission to direct the PIO to Furnish the information as also for invoking penal provisions as against Respondent PIO so also sought compensation for monetary loss and the detriment suffered by him at the hands of Respondents.

6. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties. Appellant was present in person on two dates of hearing. Respondent No. 1 PIO Shri Vyankatesh Sawant appeared. Respondent no. 2 First Appellate Authority (FAA) was absent.
7. Reply filed by Respondent No. 1 PIO on 9/10/2020 with the registry of this commission which was inwarded vide entry No. 1299. Copy of the said reply along with the enclosure was collected by the Appellant on 16/10/2020. No reply came to be filed by Respondent No.2 First Appellate Authority. Hence I presume and hold that Respondent No. 2 FAA has no say to be offered and the averment made by the Appellant are not disputed by him.
8. Respondents submitted to consider their reply as arguments. Since Appellant failed to appear after collecting the reply of PIO this Commission has no other option then to decide the matter based the records available in the file.
9. PIO contended that there was no willful delay on his part and the difficulties to furnish the information in time is genuine and not to cause any hardship or incontinence to the Appellant.
10. It was contented that he had to proceed on earned leave with effect from 18/05/2020 to 31/05/2020 and the charge was given to Shaikh Ashif A.Khan vide order No.13/ENG./2005-DMA/PER/290 dated 22/5/2020 and again from 28/07/2020 till 07/08/2020 on account of death of his brother and in support of his above contention he relied upon application dated 07/05/2020 addressed

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to Chief Officer for the sanction of his leave for the period of 12 days i.e from 18/05/2020 to 29/05/2020 letter dated 29/07/2020 for the sanction of earned leave from 28/07/2020 till 07/08/2020 and the sanction order bearing No.13/ENG./2055-DMA/PER/1507 dated 15/9/2020 and order No. 13/ENG./2055-DMA/PER/290 dated 22/5/2020.

11. It was further contented that the information sought by the Appellant has been furnished to the Appellant by letter bearing No. ENGG/ILL/RTI/5006/2020 dated 16/09/2020 and the Appellant acknowledged the same on 17/09/2020 and he placed on records letter dated 16/09/2020 thereby furnishing information bearing the signature of the Appellant of having received the information on 17/09/2020.
12. The Respondent PIO also contended that the First Appeal filed by the Appellant has been disposed of by order dated 17/09/2020. And in support of his case he relied upon the proceeding sheet of First Appeal No. 07/2020.
13. I have scrutinize the records available in the file and also considered the submission of both the parties.
14. On perusing the records it is seen that the present appeal is filed on 17/08/2020. The order was passed by Respondent No. 2 First Appellate Authority on 17/09/2020 after filing of present appeal. On perusal of the order of First Appellate Authority it is seen that the First Appellate Authority was satisfied with the information furnished by the PIO. The said information has been provided after filing of the present appeal and during the proceeding before the First Appellate Authority. The Appellant has not approached this Commission with any grievances pertaining to information furnished to him as such I presume and hold that the same is furnished as per the requirement of the Appellant.

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15. Since the information has been provided to the Appellant, I find that no further intervention of this Commission is required for the purpose of furnishing the information and hence the prayer (i) becomes infructuous.
16. The information was applied on 22/05/2020, and therefore the same has to be furnished by 22/06/2020 in terms of section 7(1) of RTI Act. The same came to be furnished on 17/09/2020 . There is a delay of approximately about 3 months. However the Respondent No. 1 PIO has tried to justify the same.
17. The Hon'ble High Court of Bombay, Goa Bench at Panaji, in Writ Petition No. 488 of 2011 (Shri. Shivanand Salekar and others v/s The Goa State Information Commission and others) has observed:
- "That apart, in the present case, the delay is really not very substantial. The information was applied on 26.10.2009 and therefore, the same had to be furnished by 25.11.2009. On 30.11.2009 itself the complainant made his complaint and no sooner, the petitioner on 15.01.2010 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this Court in the case of A.A.Parulekar (supra) is applied, then, it does appear that there was no justification for imposing penalty of Rs. 6,000/- upon the petitioner."
18. In yet another case before the Hon'ble High Court of Bombay at Goa in Writ Petition No. 704 of 2012 (Public Authority and others v/s Shri. Yeshwant Tolio Sawant), it is observed:
- "Imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is

Shri. Yeshwant Tolio Sawant

required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."

19. The reply filed by the Respondent PIO and the justification given in those reply for delay in providing information appears to be probable and convincing as the same are supported by the documentary evidence. There is also no cogent evidence on records attributing malafides on part of Respondent PIO. Thus considering the ratio as laid down by the Hon'ble High Court of Bombay as above, a marginal delay in providing the information is insignificant. Hence I am of the opinion that fact and circumstance of the present case doesn't attribute any malafide on the part of Respondent PIO and hence not a fit case warranting levy of penalty on Respondent PIO as such the relief sought by the appellant at prayer (i) and (iii) cannot be granted. Similarly the relief sought at prayer (iv) also cannot be granted as there is no any convincing evidence on records produced by the Appellant about the monetarily loss and the detriment suffered by him.
20. Before parting, it needs to be mentioned that in terms of section 19(6) of RTI Act the Respondent No. 2 First Appellate Authority requires to dispose First appeal filed before him within 30 days of the receipt of the appeal or within the extended period not exceeding a total of 45 days from the date of filing thereof. The records reveals that the First Appeal was filed before Respondent No. 2 First Appellate Authority on 26/06/2020. However the same was taken for the hearing for the first time on 17/09/2020 and the order was passed on same day. There is delay in disposing the said Appeal. No reply has been filed by Respondent No. 2 First Appellate Authority justifying the reasons for the delay in not disposal of the first Appeal within stipulated time. The Respondent No. 2 First Appellate Authority has not acted with the conformity

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with the provisions of RTI Act. The Respondent No. 2 First Appellate Authority is hereby directed to comply with the section 19(6) of RTI Act in true spirit henceforth.

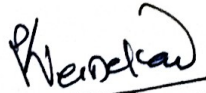
With the above direction the appeal stands closed.

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.



(Ms. Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa