

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

Appeal No.224/2019/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),
The Main Engineer Gr-I(Diniz D'Mello)
Mapusa Muncipal Council,
Mapusa-Goa – 403507.

2) First Appellate Authority (FAA),
Chief Officer, (Mr. Clen Madeira),
Mapusa Muncipal Council,
Mapusa-Goa 403507

.....Respondents

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

Filed on: 25/07/2019
Decided on: 27/12/2019

ORDER

1. The brief facts leading to present appeal as putforth by the appellant Shri J.T.Shetye herein are as under:-

- a) The appellant vide his application dated 8/5/2019 had sought the information u/s 2(j)(i) of the Right to information Act, 2005 for inspection of the entire files of Mrs Chamunda Developers pertaining to project Raturaj Residency, Khorlim, Mapusa-Goa in respect of their construction licences No. 22 dated 28/7/2010 issued in the name of Deepak S.Govekar and others C/O office at B-201, Second floor ,Saldana Business tower, Mapusa Goa, and (ii)the copy of occupancy certificate Number MMC/ENGG/23/9575/2014 dated 2/12/2014.

- b) The said information was sought from the Public Information Officer (PIO) of Mapusa Municipal Council, Mapusa, Bardez-Goa by the appellant in exercise of appellant's right u/s 6(1) of Right to Information Act, 2005.
 - c) It is also contention of the appellant that his above application was not responded by the Respondent PIO interms of sub-section(1) of section 7 of RTI Act , 2005 neither provided him the information as sought by him within stipulated time of 30 days as contemplated under the Act
 - d) It is contention of the appellant that as the information as was sought by him was not furnished to him, as such he filed first appeal interms of sub section (1) of section 19 of RTI Act on 11/6/2019 before the Chief Officer of Mapusa Municipal Council being First appellate authority.
 - e) It is contention of the appellant that the Respondent no. 2 first appellate authority as usual failed to disposed of his first appeal within mandatory period of 45 days and therefore he is preferring second appeal before this commission under the provisions of RTI Act, 2005.
2. In this background the present appeal has been filed by the appellant on 25/7/2019 interms of sub-section (3) of section 19 of the RTI Act,2005 on the grounds raised in the memo of appeal with the contention that information is still not provided and seeking order from this Commission for providing him information as sought by him, for compensation and also for invoking penal provisions .
3. The matter was taken up on board and listed for hearing. In pursuant to notice of this commission appellant was present only during the hearing before this commission on 10/10/2019 and on 23/12/2019. Respondent PIO Shri Diniz D'Melo was present along

with his APIO Vinay Agarwadekar. Respondent No.2 First appellate authority opted to remain absent.

4. Reply was filed by the Respondent No. 1 PIO on 24/09/2019 and on 10/10/2019 alongwith the enclosures . The copy of the same was furnished to the appellant. Respondent nO. 2 First appellate authority did not file his reply. Hence it is presumed that he had got no any say to offered and averments made in the memo of appeal are not disputed by him.
5. Vide replies, the respondent PIO contended that RTI matter was pertaining to technical section, as such it was marked to concerned staff Mrs. Smt. Anuraha Natekar on 14/5/2019 and she had not allowed the inspection of the file and not complied the reply to appellant so also APIO Shri Vyenkatesh Sawant of technical section till date had not furnished /complied the said information.
6. During the hearing before this commission on on 17/12/2019, since the respondent PIO submitted that the file pertaining to Chamunda developers project Raturaj residency in respect of their constructions license no. 22 dated 28/7/2010 issued in the name of Deepak Govekar and occupancy certificate no.MMC/Eng./23/9575/2014 dated 2/12/2014 are not available and not traceable, respondent PIO was directed to affirm the said fact on oath.
7. However on subsequent date of hearing i.e on 23/12/2019,the respondent PIO submitted that the file is now traced by the Technical section by Mrs Anuradha Natekar and by Mr. Janardhan Arondekar and as such showed his willingness to provide him the inspection of the said file and the inspection was fixed on 26/12/2019. Accordingly compliance report was filed by Respondent PIO on 27/12/2019 of having carried out the inspection by the appellant. The endorsement bearing the

signature of appellant of having carried the inspection was placed on record and annexed by Respondent PIO to his compliance report dated 27/12/2019.

8. It is the contention of the complainant that the information was deliberately delayed by the Respondent PIO in order to cover up the illegalities committed by the public authority concerned herein. It is his further contention that he is a senior citizen and lots of hardship has been caused to him in pursuing his RTI application. He further submitted that first appellate authority as usual deliberately doesn't hear his first appeals and also does not dispose his first appeal within stipulated time of 30 days as contemplated under the Act even though recommendation have been issued to him by the Director of Panchayat and he pressed for invoking penal provisions on the ground of delay in furnishing the information.
9. Since now the information/inspection as sought by the appellant vide his application dated 8/5/2019 has been provided to the appellant, I find no further intervention is required for the purpose of furnishing information and hence prayer (1) becomes infructuous.
10. I have scrutinised the records available in the files and also considered the submissions of both the parties.
11. It is also seen from the records that the PIO and the FAA has not acted in conformity with the provisions of RTI Act. It is seen from the records that the application was filed by the appellant on 8/5/2019 which was required to be responded by PIO by 8/6/2019 but the PIO has not produced any documents of having adhere to section 7(1) of RTI Act. If the file was not traceable, the PIO ought to have informed him the said fact at the initial stage itself.
12. It needs to mention that in every judicial proceedings, the principle of natural justice demands that both the parties should

be heard. Non hearing of the appellant and the PIO in the first appeal has resulted into mischarge of justice there by depriving the opportunity to both the parties of substantiating their case. I find that the First Appellate Authority has committed a serious irregularity of not notifying the both the parties to substantiate their grievance. Thus, I find that the First Appellate Authority, has acted in total casual and mechanical manner. There is a gross violation of principal of natural justice. Such an conduct on the part of first appellate authority who is Quashi Judicial authority was least expected.

13. Thus from the records and undisputed facts, it could be gathered that the Respondent then PIO Shri Diniz D'Melo have failed to respond the said application filed by the appellant u/s 6(1) of RTI Act and that the first appellate authority did not disposed the first appeal within the period of 45 days.
14. Both the respondents have not acted in conformity with the provisions of RTI Act. It is quite obvious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities. Such a conduct by both the Respondent is obstructing transparency and accountability appears to be suspicious and adamant visa-vis the intent of the Act.
15. The information was sought on 8/5/2019 was furnished only on 26/12/2019 during the present second appeal proceedings. There is a delay of 6 months has been caused in furnishing the information . This commission expresses her displeasure on the conduct and attitude on the part of both the Respondent's and condemns the said act of both the Respondents.
16. As there is no evidence produced on records by the appellant of detriment or losses suffered by him, the relief of compensation sought by the appellant cannot be granted.

17. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

ORDER

- a) Appeal partly allowed.
- b) Since the information have now been furnished to the appellant, no intervention of this commission is required for the purpose of furnishing the information and as such pray (i) becomes infructuas.
- c) Both the respondents are hereby admonished and directed to be vigilant henceforth while dealing with the RTI matters and to strictly comply with the provisions of the Act. Any lapses on their part in future will be viewed seriously.
- d) In excise of my powers conferred u/s 25(5) of RTI Act 2005 this Commission recommends that the Director of Municipal Administration, Panjim shall issue instruction to both the respondents to deal with the RTI matters appropriately in accordance with the provisions of the RTI Act and any lapses on the part of respondents be considered as dereliction of duties.
- e) Copy of this order shall be sent to Director of Municipal Administration, Panjim, Goa for information and necessary action.

With the above directions, the appeal proceedings 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.

Sd/-

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