

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

Appeal No. 28/2020/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),
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:30/01/2020
Decided on: 26/06/2020

ORDER

1. The second appeal came to be filed by the Appellant Shri Jawaharlal T. Shetye on 30/1/2020 against the Respondent No.1 Public Information Officer of Mapusa Municipal Council, Mapusa, Bardez-Goa and against Respondent no. 2 First Appellate Authority under sub section (3) of section 19 of Right To Information Act, 2005.
2. The brief facts leading to the second appeal are that the Appellant vide his application dated 24/10/2019 had sought for certain information from Respondent No.1 Public Information Officer (PIO) of Mapusa Municipal Council, Mapusa-Goa on 5 points as stated therein in the said application mainly pertaining to representation dated 28/11/2016 made by Mapusa Peoples Union to the Chief Officer/Chairperson of Mapusa Municipal Council with a subject "*Request to issue eviction notice to the lessee of stall*

No. 212 granted to Smt. Manish Narvekar for sub-letting of stall NO. 212 to the third party Gaurav enterprises without a permission of Mapusa Municipal Council "and the other information connected to the said subject . The said information was sought by the Appellant 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 not responded by the Respondent no 1 Public Information Officer (PIO)within stipulated time of 30 days neither the information was provided to him till this date and as such deeming the same as rejection, the Appellant filed 1st appeal to Respondent no 2 chief officer of Mapusa Municipal council on 26/11/2019 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 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 u/s 19(3) of the Act with the contention that the information is still not provided 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 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. Respondent No. 1 PIO was represented on two occasion by Advocate Matlock D'Souza who undertook to file wakalatnama. The Respondent No.2 First Appellate Authority (FAA) was initially represented by Shri Vinay Agarwadekar .

7. During the hearing on 3/3/2020 and 13/3/2020 the Advocate Matlock D'Souza sought time to furnish information and to file appropriate reply and then the matter was fixed on 31/3/2020. However due to the lockdown of Covid-19 the hearing could not be taken place hence fresh notices issued to both the parties after the lockdown was lifted and the matter was then fixed on 26/6/2020 for furnishing information and for filing reply.
8. Despite of giving opportunities no reply came to be filed by both the Respondents as such this commission presumes and hold that both the Respondents has no any say to be offered and the averments made by the Appellant are not disputed by them. Hence arguments of the Appellant heard.
9. It is the contention of the appellant that the both the Respondents as usual has failed to dispose off his RTI application and his first appeal within a mandatory period .It is his contention that he had sought the said information in larger public interest and hence the respondent should have been provided him the same. It was further contended that the information denied to him deliberately by the PIO in order to protect the illegality committed by the public authority concerned therein.
10. On perusal of the application dated 24/10/2019 it is seen that the Appellant was seeking following information i.e certified copies of the action taken report, certified copies of all noting sheets and correspondence made by the public authority in processing the said representation, status and up-to-date progress pertaining to the representation dated 28/11/2016 made by the Mapusa Peoples Union so also sought the certified copies of all the trade and occupancy licence and sign board licences issued by the Mapusa Municipal Council in the name of Shri Subhash Narvekar and Smt. Manisha Subhash Narvekar for conducting trade and business activities and for running Advocates office in the municipal premises including stall Numbers

A2/20 and 212 respectively. So also sought a copy of the trade licence issued by the Mapusa Municipal council to the occupier of Stall Number A1/20 to run the business of gold and silver ornaments in the name of Gajanand jewelers .

11. The public authority concerned herein was expected to deal with the said representation and to inform and provide reasons for administrative or quashi judicial decisions taken by them.
12. The Hon'ble Apex Court in the matter ,State of U.P. V/S Raj Narayan ; (1975) 4 Supreme Court Cases 248 observed

"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They entitled to know the particulars of every public transaction in all its bearings. The Right to know which is derived from the concepts of freedom to speech, though not absolute, is a factor which can, at any rate, have no repercussion on the public security. To cover with a veil of secrecy their common routine, denial is not in the interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of partied and political or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

13. In an land mark case " Reserve Bank Of India" and others V/s Jayantilal N. Mistry and others;(Civil)Original Jurisdiction in transferred case (Civil) No. 91 of 2015 (Arising out of transfer petition (Civil) No. 707 of 2012) has held para 75 ;

"The ideal of 'Government by the people' makes it necessary that people have access to information on

matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy".

14. Yet in another decision the Hon'ble Apex Court S.P.Gupta V/S Union of India, AIR 1982 SC 149 has observed:-

*"No democratic Government can Survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government, that an open Society is the new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of the open Government is the direct emanation from the right to know which seems to be implicit in the right of freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regards to the **functioning of the Government must be the rule, and secrecy an exception,** justified only where the strictest requirement of public interest so demands".*

15. By subscribing to the ratios laid down in the above matters , considering the intends of the RTI Act and the nature of Information sought, I am of the opinion that the Appellant is entitled to receive the said information .
16. On perusal of the records, it is seen that the application dated 24/10/2019 was filed and received by the Office of Respondent PIO on 24/10/2019 itself. Under section 7(1) of the Act, the PIO is required to respond the same within 30 days from the said date.

The Respondent PIO has not placed on record any documentary evidence of having adhered to section (7)of RTI Act, 2005.

17. The records shows that the first appeal was filed by the Appellant on 26/11/2019 which was received in the Office of First Appellate Authority on the said day itself. As per section 19(1) of RTI Act, 2005 , the time limit is fixed to dispose the Appeal within 30 days and maximum within 45 days. There are no records of having passed order by Respondent no.2 first appellate authority.
18. Thus from the records and undisputed facts, it could be gathered that the Respondent PIO 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.
19. The information was sought on 24/10/2019 and till date no information has been furnished to the Appellant. There is a delay in furnishing the information. Only during the present appeal proceedings the information is volunteered to be furnished .
20. 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. Hence the Act on the part of the both the Respondents herein is condemnable.
21. Before parting it need to mention that section 4 of the Act casts an obligation on all public authorities to maintain records duly computerised and connect through network. Said provision also requires public authorities to publish certain information in the prescribed format and update the same periodically. If such and

exercise is undertaken by the Respondent authority herein, then such disseminated information would be beyond the purview of the Act. It is noted that inspite of the said obligation on the Respondent authority and direction of this commission from time to time, the Respondent authority has failed to comply with said requirement, thereby compelling not only Appellant but citizens at large to have the information in physical form by filing applications.

22. The Hon'ble High Court of Bombay at Goa Bench in PLI writ petition No. 42 of 2019; Roshan Mathias V/s Village Panchayat of Candolim had directed the public authority i.e the Village Panchayat Candolim to comply its obligation interms of section 4(1)(b) of the RTI Act as expeditiously as possible within a period of 6 months.
23. The observation made by the Hon'ble High Court and the ratios laid down in the case of Roshan Mathias (Supra)are also applicable to the public authority concerned herein.
24. In the facts and circumstances of the above case and in view of the discussion above, I find that ends of justice will meet with following directions. I therefore dispose the present appeal with order as under ;

ORDER

- a) Appeal allowed.
- b) The Respondent no.1 PIO is hereby directed to provide the information as sought by the Appellant vide his application dated 24/10/2019, free of cost within 20 days from the receipt of this order.
- 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 exercise 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) The Public Authority concerned herein i.e the Mapusa Municipal Council, Mapusa-Goa is hereby directed to comply with section 4 of Right To Information Act, 2005 within 6 months in case the same is not complied.
- f) Copy of this order shall be sent to Director of Municipal Administration, Panjim, Goa and to Chief Officer of the Mapusa Municipality at Mapusa-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