

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

Appeal No. 38/2020/SIC-I

Mrs. Siddhi Naik,
H.No.CF 1, Vaman Residency,
Behind Mapusa Municipal Council,
Mapusa-Goa -403 507.

....Appellant

V/s

1) The Public Information Officer (PIO),
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:10/02/2020
Decided on:13/07/2020

ORDER

1. The second appeal came to be filed by the Appellant, Mrs Siddhi Naik on 10/2/2020 against the Respondent No. 1 Public Information Officer (PIO), of the Office of the Mapusa Muncipal Council, Mapusa-Goa, and against Respondent No. 2 First Appellant Authority (FAA), under sub section (3) of section 19 of RTI Act, 2005.
2. The brief facts leading to the second appeal are that:-
 - (a) The Appellant vide her application dated 22/10/2019 had sought for the certain information from the Respondent No. 1 PIO of Mapusa Muncipal Council, Mapusa-Goa on 4 points as listed therein viz-viz;
 - (i) Furnish the Complete and detailed list of names of all the mobile towers (Antennas) companies to whom Mapusa Municipal Council has granted permission

/NOCs for installation of the towers/antennas on the roof top of the buildings and residential houses in the jurisdiction of Mapusa Municipal council since the period since the year 2000 till date.

- (ii) Furnish complete and detailed list of all the mobile towers which are with valid permission/NOC's from Mapusa Municipal Council and without the permission /NOC's from your office.
 - (iii) Furnish complete and detailed information with regards to all the legal mobile towers (Antennas) whose validity period of the permission has expired and not renewed and inform me as to what sort of action has been initiated from your concerned department .
 - (iv) Furnish the names and designations of your official entrusted the duties of processing and monitoring the installations of mobile towers and to keep a check on the expiry of their licenses /permissions /NOCs issued by your office in view of loss to the Municipal exchequer. .
- (b) The said application was filed by Appellant with Respondent No. 1 PIO in exercise of her right under sub-section (1) of section 6 of RTI Act, 2005.
- (c) It is the contention of Appellant that she received a reply dated 14/11/2019 from Respondent No. 1 PIO in terms of sub section (1) of section 7 of RTI Act, 2005 there by seeking short time to provide the information on the pretext that it is not readily available and subsequently Respondent No. 1 PIO vide letter dated 21/11/2019 denied her the information on the ground that it does not come under the definition "Information" as per section 2(f) and 2(j) of

RTI Act 2005. As such deeming the same as rejection she preferred the first appeal on 11/12/2019 before the Respondent no. 2 Chief Officer of Mapusa Municipal Council in terms of section 19(1) of RTI Act, 2005 being First Appellate Authority .

- (d) It is the contention of the Appellant that the Respondent No. 2 First Appellate Authority did not conduct hearing neither disposed her first appeal within stipulated time as such she is forced to file the present appeal.
3. 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 on 10/2/2020 on the grounds raised in the memo of appeal and with the contention that the information is still not provided intentionally and seeking order from this commission to direct the PIO to furnish the information as also for invoking penal provisions as against Respondents and for implementation of section 4(1) (a) and (b) of RTI Act.
 4. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties, pursuant to which Appellant was represented by Shri J.T.Shetye and Respondent No.1 PIO represented by Advocate Matlock D'Souza who undertook to file wakalatnama and sought time to furnish information and to file reply. Respondent No. 2 opted to remain absent.
 5. The matter could not be heard on 31/3/2020 in view of the lock down due to Covid-19, hence after lifting out the lockdown, fresh notices were issued to the parties to appear before this commission on 26/6/2020. In pursuant to which the Appellant was present in person. Both the Respondent were absent despite of due service of notice.

6. Opportunity was granted to Respondents to file their say in appeal proceedings. Since the commission was not equipped with the virtual hearing/ video conferencing in order to avoid delay in disposal of case, it was ordered that the parties if so desire shall file their says/documents in Appeal proceedings by Email to the commission in PDF format by forwarding the same to the opposite parties. Despite of same no any reply came to be filed by the Respondents. It appears that both the Respondents are not interested in the present proceedings, hence I presume and hold that the averment made in the memo of appeal are not disputed by them.
7. In view of the absence of both the parties, this commission had no any other option then to decide the matter based on the records available in the file.
8. On going through the records, it is seen that the PIO in the present case vide letter dated 21/11/2019 has denied the information on the ground that "it doesn't come under the definition of "information" as per section 2(f) and 2(j) of RTI Act, 2005". The onus lies on PIO to prove and justify denial of request by him in appeal proceedings in terms of section 19(5) of RTI Act.
9. The information seeker also doesn't get any opportunity to substantiate his case as the stage of processing the application by the PIO.
10. Under the statute, options are kept open to all the parties to raise their all concerns before the Appellate Authority and all the parties gets opportunities to substantiate their case before the Appellate Authorities. The hierarchy of the forum is also specified under the RTI Act and the word "Appeal Proceedings" used in under section 19(5) also includes first appeal as contemplated under section 19(1) of RTI Act.

11. Undisputedly the first appeal was filed by the Appellant herein before the Respondent No. 2, First Appellate Authority, the same was suppose to be disposed within 30 days or maximum within 45 days by the First Appellate Authority in terms of section 19(6)of the RTI Act. From the unrebutted facts, it could be gathered that the First Appeal filed by the Appellant dated 11/12/2019 was apparently not heard by the Respondent No. 2 First Appellate Authority neither disposed by any order within stipulated time as contemplated under the Act. There was no opportunity to the Respondent PIO to put forth their grievances and to justify their denial before respondent No. 2, First Appellate Authority, as well as to the Appellant to substantiate his case before respondent No.2 First Appellate Authority and to exhibit that the said was sought by him in larger public interest. By not hearing the first appeal, the parties have been deprived of a forum available to them to justify their claims. As such this Commission is of the view that the Respondent PIO, and the Appellant are losing one forum to put forth all the facts.
12. It is pertinent to note that vide letter dated 14/11/2019 the Respondent PIO volunteered to furnish the information to the Appellant and sought short time and while vide letter dated 21/11/2019 refused the information by quoting section 2(f) and 2(j) of RTI Act. Both the replies are contrary to each other. It appears that the then PIO has not applied his mind. The information sought by Appellant is required to be maintained by the Public authority concerned herein.
13. The present PIO Shri Venkatesh Sawant has submitted with the Registry of this commission the copy of the letter addressed to then PIO Shri Deniz C.T.D'Melo dated 3/7/2020 bearing NO.MMC/ENGG/3650/2020 which was inwards vide entry No. 93 dated 6/7/2020 and also letter bearing No. MMC/Engg/7650 /2020 dated 3/7/2020 where in the copy of the notice of hearing issued by this commission was forwarded by him to Shri

Denis C.T.D'Melo on the ground that he was appointed as PIO of Mapusa Municipal Council by virtue of order No. 1/03/DMA/Admn/RTI/ 2950 dated 4/1/2019 on the date of RTI application hence he should attend the hearing before this Commission. A letter address to Under Secretary Cum Registrar dated 9/7/2020 by Mr. Denis C.T.D'mello then PIO was also submitted with the Registry of this commission which was inwards vide entry no 879 dated 9/7/2020 informing that the concerned PIO Mr. Venkatesh Sawant of Mapusa Municipal Council solely to be held responsible for the delay in furnishing information after due date . The present PIO and the then PIO is trying to shield their responsibilities and are playing a blame game. Such a conduct of the above named persons appears to be irresponsible behavior thereby effecting adversely the very intends of RTI Act and hence the Chief Officer of Mapusa Municipal Council needs to take a serious note of it.

14. As there is no order passed by Respondent no. 2 First Appellate Authority, considering the contrary stand taken by then PIO vide letters dated 14/11/2019 and 21/11/2019 and as there are no records available in the file of the Commission and that this Commission on account of absence of PIO was unable to seek clarification whether the records sought by the Appellant whether are maintained or not, by the public authority concerned herein, Hence considering the said facts, I am of the Opinion that the First Appellate Authority being a senior officer will be in better position to deal with the said issue first and to issue appropriate directions. Hence this Commission , 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 a direction to hear both the parties and to decide the matter in accordance with law.

15. In view of above discussion, the present Appeal is disposed with order as under:-

ORDER

- a) The matter is remanded back to the Respondent No. 2 First Appellate Authority . The Respondent No. 2 First Appellate Authority is hereby directed to hear, first appeal filed by the Appellant on 11/12/2019, and to decide same within 30 days, in accordance with law by passing a speaking order.
- b) The Appellant as well as Respondent No.1 Public Information Officer (PIO) is hereby directed to appear before Respondent No.2 first Appellate Authority on 3/8/2020 at 10.30 a.m. for the hearing
- 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