

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 01/2020

Shri Shrikant V. Gaonker,
FA 501/505 Sinari Apartments,
Near Datta Mandir, Patto,
Ribandar Goa 403006.

..... Appellant

v/s

1. The Public Information Officer,
Office of the Corporation of the City of Panaji,
Municipal Bldg., Panaji Goa 403001.

2. The First Appellate Authority,
Office of the Corporation of the City of Panaji,
Municipal Bldg., Panaji Goa 403001.

..... Respondents

Filed on : 13/12/2019

Decided on : 25/08/2020

Relevant dates emerging from appeal:

RTI application filed on : 09/07/2019

PIO replied on : 08/08/2019

First appeal filed on : 05/09/2019

FAA order passed on : Nil

Second appeal received on : 13/12/2019

ORDER

1. The Second Appeal filed by Shri. Shrikant V. Gaonkar, R/o. Ribandar Goa, under section 19(3) of the Right to Information Act, 2005 (RTI Act) against Respondent No. 1, the Public Information Officer (PIO), Office of the Corporation of the City of Panaji (CCP), Panaji-Goa and Respondent No. 2, the First Appellate Authority (FAA), O/o. the Corporation of the City of Panaji (CCP), Panaji-Goa was admitted in this Commission on 13/12/2019.

2. Brief facts leading to the second Appeal, as contended by the Appellant are :-

- a) That the Appellant vide application dated 09/07/2019 had sought information from the PIO under section 6(1) of the RTI Act. The Appellant had requested for following information:-
- (i) The present status of the Complaint letter dated 03/04/2019 filed by the Appellant having subject "stamp duty evasion, cheating etc. by M/s Sinari Developers."
 - (ii) The present status of Complaint letter dated 21/06/2019 filed by the Appellant having subject "forgery, cheating, fraud and invasion of government taxes by Mr. Dinesh Sinari."
 - (iii) Inform if any notices have been issued to the parties against whom Complaint is filed. If yes, provide the copies of the said notices and replies.
 - (iv) Inform if any investigation has been carried out by the Office of the Commissioner on the aforesaid Complaints.
 - (v) Inform if any corrective/penal action to revoke the construction license or occupancy certificate is initiated in the said matter. Provide the copies of the report and remarks of the Commissioner.
 - (vi) Provide the names and designation of the Investigation Officer/s who have been assigned the work of investigation in the aforesaid complaint and the action taken by the said Officer.
 - (vii) Provide the certified copies of relevant official notings and roznama, pertaining to the aforesaid complaints.
- b) That the then PIO Ms. Roshell Fernandes, in a reply dated 08/08/2019 furnished information. However the Appellant found the information improper, inaccurate, incomplete, misleading and wrong.

- c) That the Appellant filed first Appeal dated 05/09/2019 before the Respondent No. 2, FAA, Commissioner of the Corporation of the City of Panaji. That the FAA on 01/10/2019 gave oral directions to the PIO to furnish information and the hearing was adjourned. During the hearing on 06/11/2019, the PIO furnished revised copy of the reply and matter was adjourned to the next date to enable the Applicant to verify the information received. That the hearing dates were scheduled 3-4 times thereafter, but the matter was not taken up and decided by the FAA and no order was passed despite the Appellant requesting the FAA to pass the reasoned speaking order on the basis of evidence on records.
- d) That aggrieved due to incomplete and wrong information furnished by the PIO and failure of the FAA to pass order, the Appellant preferred Second Appeal dated 13/12/2019 before the Information Commission with following prayers:-
- (i) To direct the PIO to furnish accurate and correct information.
 - (ii) To direct the FAA to pass written order in each Appeal brought before him, within prescribed period and furnish copy of the Order, free of cost to every Appellant.
 - (iii) To direct the Respondents to pay compensation to the Appellant for giving inaccurate, incomplete, misleading information.
 - (iv) To reprimand the Respondents and impose penalty under section 20 for failure in their duties and responsibilities.
 - (v) To initiate disciplinary action against officials for giving wrong and misleading information.

- (vi) To direct the concerned authorities to conduct the training for officials on the RTI Act, 2005.
 - (vii) To issue any other directions or recommendation as it may deem fit and proper in the interest of justice.
- 3. Pursuant to the notice, the matter was taken up for hearing, and the Appellant and the PIO appeared in person, whereas the FAA was represented by one Shri. Dinesh Maralkar. However, inspite of oral directions from the Commission, the said representative of the FAA never filed the authority letter and subsequently preferred to remain absent.
- 4. The Commission has noted that inspite of number of hearings neither the PIO nor the FAA has made any written submissions before the Commission, and no efforts were made to furnish correct and complete information to the Appellant. Only ray of hope for the Appellant was shown by the present PIO Shri. Vivek Parsekar by offering inspection of the concerned files. The Appellant had agreed to undertake inspection on 27/04/2021 and the present PIO Shri. Parsekar had assured to furnish documents identified by the Appellant within 10 days from the date of inspection. However due to health issues the Appellant could not visit PIO's office for inspection and conveyed the same to the PIO, vide letter dated 12/08/2021. The Appellant, in a rejoinder dated 25/08/2021 has again prayed for information and strict penal action against the Respondent for defeating the very purpose of the RTI Act, 2005.
- 5. It is the statutory right of the citizen to seek correct and complete information under section 6(1) of the RTI Act. Also it is statutory responsibility of the PIO to furnish correct and complete information under section 7(1) of the RTI Act, to the citizen within 30 days from the date of application. The PIO has neither sought

exemption under section 8 nor rejected the RTI application under section 9. Therefore it was mandatory obligation of the PIO to furnish correct and complete information within the prescribed time limit.

6. The Right to Information Act, 2005 has given statutory right to the Appellant to file Appeal against the rejection/deemed denial of the information by the PIO, before the First Appellate Authority under section 19(1) and the FAA is required under section 19(6) to dispose the first Appeal within 30 days or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.
7. On the contrary, the FAA did not decide the appeal at all. The FAA scheduled hearing 4-5 times, issued notice to the Appellant every time and on some occasions the Appellant contends, kept the Appellant waiting without hearing him and simply postponed the hearing to the next date. This episode continued even after the expiry of stipulated period of 45 days. The Appellant at least on two occasions vide letter dated 18/11/2019 and 4/12/2019 requested the FAA to conduct hearing in his absence and pass the order on the basis of evidence on record. Neglecting these requests from the Appellant completely the FAA continued sending notice to the Appellant even after the period of 45 days, without conducting hearing and did not decide the Appeal. The FAA's attention is required to be drawn to the fact that, the Rules framed by the Government of Goa under the Act, provide that the Appellant need not remain present. Rule 7(2) of the Goa State Information Commission (Appeal Procedure) Rule, 2006 states:-
"the Appellant or the Complainant as the case may be, may, at his discretion, at the time of hearing of the Appeal or Complaint by the Commission, be present in person or through his duly authorised representative, or may opt not to be present."

The FAA was statutorily mandated to decide the Appeal within the stipulated period, as per the Section 19 (6) of the Act even in absence of Appellant.

8. As stated by the Appellant and also as evident from the records Shri. Sanjit Rodrigues, the then Commissioner of the CCP was the designated FAA of the CCP from the date of RTI application of the Appellant till the date of filing the Second Appeal. Unlike the PIO, though the RTI Act, do not hold the FAA personally liable for monetary penalty, the Commission thinks it appropriate and necessary to name Shri. Sanjit Rodrigues, the then FAA, for his non cooperative and non transparent conduct on the said Appeal. This is least of all that is expected from Senior Officers in the administration.
9. The Preamble of the Right to Information Act, 2005 reads: -
"The Right to Information Act, 2005, an Act to provide the practical regime of Right to Information for Citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto."
10. The conduct of the FAA is contrary to the Preamble of the RTI Act. The PIO and the FAA are the officers appointed under the Act to dispense and facilitate the information. However Presumably the PIO erred in discharging duty, the FAA should, after an appeal is filed before him, intervene through the order to meet the end of justice. Here, neither the then PIO, nor the then FAA has shown any concern to the application filed by the Appellant under the Act. Hence such act on the part of the said officials is deplorable and

therefore, the Commission in no way can subscribe to such inaction of Public Authorities.

11. As per the documents brought on record it is clear beyond any doubt that the PIO did not furnish complete and correct information to the Appellant. This non cooperative approach of the PIO compelled the Appellant to file first Appeal and as if this was not enough, the arrogant approach of the FAA resulted into unnecessary harassment of the Appellant.
12. The Commission finds that the conduct of the PIO is not in consonance with the RTI Act and smells malafide. Such a lapse on the part of the PIO is punishable under section 20 of the RTI Act. However, before imposing penalty the Commission finds it appropriate to seek explanation from the PIO as to why the penalty should not be imposed on her for contravention of section 7(1) of the Act.
13. Similarly Respondent No. 2, the FAA did not pass order on the first Appeal, when the Act mandates to pass the order within 30 days, and with extended period in 45 days. As per the provisions of the RTI Act, only the PIO can be penalised under section 20. There is no any provision conferring powers to the Commission to impose penalty or initiate disciplinary proceedings against the FAA. In the above circumstances, the Commission finds it appropriate to recommend the Chief Secretary to issue instructions to all FAAs to adhere to the provisions of the Act with respect to hearing of First Appeal in the time frame provided, and communicate the order to the Appellant and Respondents.
14. In the light of above discussion the Appeal is disposed with the following order:-
 - a) The Appeal is partly allowed.

- b) The present PIO, the office of the Corporation of the City of Panaji is directed to furnish correct and complete information to the Appellant sought by him vide application dated 09/07/2019, within 10 days of the receipt of this Order, free of cost.
- c) Issue notice to the then PIO and the then PIO is further directed to showcause as to why penalty as provided under section 20(1) and/or 20(2) of the RTI Act, 2005 should not be imposed against her.
- d) In case the then PIO is transferred, the present PIO shall serve the notice alongwith this order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing, alongwith the full name and present address of the then PIO.
- e) The then PIO is hereby directed to remain present before this Commission on 24/09/2021 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceedings.
- f) The Chief Secretary shall seek an explanation from the then FAA Shri. Sanjit Rodrigues for not deciding the first Appeal in confirmity with section 19(6) of the RTI Act. The Registry is directed to send the copy of this Order to the Chief Secretary, Government of Goa.
- g) The present FAA of the Corporation of the City of Panaji is directed to send the Copy of this Order to Shri. Sanjit Rodrigues, the then FAA, Corporation of the City of Panaji.
- h) All other prayers rejected.

Proceedings stands closed.

Pronounced in the open court.

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.

Sd/-

(Sanjay N. Dhavalikar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa