

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 30/2021

Mr. Ramchandra Anil Raikar,
R/o. E3/3, Naika Vaddo,
Ida Maria Resort, Calangute,
Bardez-Goa

..... Appellant

v/s

1. The Public Information Officer,
Village Panchayat of Calangute,
Calangute, Bardez-Goa
2. First Appellate Authority,
Block Development Officer,
Bardez-Goa

..... Respondents

Filed on : 08/02/2021

Decided on : 01/09/2021

Relevant dates emerging from appeal:

RTI application filed on	: 10/11/2020
PIO replied on	: Nil
First appeal filed on	: 17/12/2020
FAA order passed on	: 19/01/2021
Second appeal received on	: 08/02/2021

ORDER

1. The Second Appeal filed by Shri. Ramchandra Anil Raikar, Resident of Calangute Bardez-Goa under section 19(3) of the Right to Information Act, 2005 (RTI Act) against Respondent No. 1 Public Information Officer (PIO), Secretary, Village Panchayat Calangute and Respondent No. 2 First Appellate Authority (FAA), Block Development Officer, Bardez-Goa, came before this Commission on 8/02/2021.
2. Brief facts leading to the Second Appeal, as contended by the Appellant are that:-

- a) The Appellant vide application dated 10/11/2020 had sought under section 6(1) of the RTI Act, information from the PIO on 8 points regarding construction in the property bearing survey No. 165/01 and 483/01 of Village Panchayat Calangute, Bardez-Goa. The information consisted of construction license, technical clearance, title documents, power of attorney, occupancy certificate, conversion Sanad, approved plans etc. It is contended by the Appellant that the said construction is undertaken illegally by Mrs. Vishaya Abdullah and Mr. K. Abdullah and M/s Prime Properties Pvt. Ltd. in the property belonging to the Appellant.
- b) The PIO did not furnish information within the stipulated period of 30 days as mandated under section 19(1), the Appellant moved before the First Appellate Authority by way of first Appeal to seek the said information.
- c) The FAA scheduled hearing on 5/01/2021 and 12/01/2021 and again on 19/01/2021. However, the PIO did not appear on single occasion. The FAA passed an order dated 19/01/2021 directing the PIO to furnish entire information as sought by the Appellant vide application dated 10/11/2020, within 15 days from the date of the Order.
- d) The Appellant submitted immediately copy of the FAA's Order to the PIO in order to seek the information. However, the PIO did not comply with the FAA's Order.
- e) The PIO is intentionally neglecting the Appellant and purposely delaying to furnish the information as he is involved in the illegal construction being carried out by Mrs. Vishaya Abdullah and Mr. K. Abdullah and M/s Prime Properties Pvt. Ltd., in the property of the Appellant. In the process, the PIO has violated and disobeyed

order of the FAA by not furnishing information as directed by the FAA.

f) The Appellant has preferred Second Appeal dated 08/02/2021 as the PIO has not complied with the order of the FAA. The Appellant is also aggrieved due to the ineffective and inadequate order of the FAA. The Appellant has filed second Appeal with following prayers:-

(i) Quash and set aside the plain, simple, non effective and inadequate order dated 19/01/2021 passed by the Respondent No. 2.

(ii) The Appeal be allowed and Respondent No. 1 be directed to furnish the information sought by the Appellant.

(iii) The Respondent No. 1 be directed to pay the compensation amounting to Rs. 20,000/- towards the mental harassment caused to the Appellant and an amount of Rs. 10,000/- towards the legal cost borne by the Appellant in seeking the basic documents pertaining to the construction activity in his own property.

(iv) Any other Order or relief that this court deems fit in the circumstances of the case.

3. . In the background mentioned above, the Appellant filed second Appeal before this Commission. The matter was taken up on board and was listed for hearing. Pursuant to the notice, Advocate Tejaswini Kole appeared before the Commission on behalf of the Appellant. The PIO and the FAA remained absent on three occasions. Fresh notice was issued to both the Respondents on 06/08/2021 and pursuant to this notice the FAA deputed Shri. Umesh Shetgaonkar and Shri. Suresh Fadte to appear on his behalf. The FAA filed reply

dated 24/08/2021 stating he has directed the PIO to hand over the complete information to the Appellant pertaining to the application dated 10/11/2020 within 15 days from the date of the Order.

4. The Commission has noted with all seriousness that the PIO, Secretary of the Village Panchayat Calangute did not appear before the Commission even once. In spite of receipt of the notice dated 23/03/2021 and 06/08/2021 the PIO neither filed any reply, nor appeared before the Commission. It is seen from the proceedings of first Appeal that the PIO has also failed to appear before the FAA, inspite of several opportunities given by the FAA. Therefore, contention of the Appellant regarding the role of PIO in the alleged illegal construction being carried out in the property of the Appellant is not rebutted by the concerned PIO.
5. On perusal of records it is seen that the application was received by the PIO on 10/11/2020. The PIO was required to respond to the same within 30 days, u/s 7(1) of the RTI Act. The PIO has not placed on record any documents of having adhered to section 7(1) of the RTI Act. Subsequently the Appellant filed first Appeal on 17/12/2020, the FAA passed order dated 19/01/2021, which was neither complied by the PIO, nor challenged before this Commission. Also it is noted by the Commission that the PIO has neither sought exemption under section 8 nor rejected the application under section 9 of the RTI Act.
6. In the context of the information sought by the Appellant, it is pertinent to see what the hon'ble Supreme Court has held in Civil Appeal No. 6454 of 2011 in the matter of Central Board of Secondary Education and another V/s Aditya Bandopadhyay and Others. The Hon'ble Court has held in para 35:

*"At this juncture, it is necessary to clear some misconception about the RTI Act. **The RTI Act provides access to all***

information that is available and existing. This is clear from the combined reading of section 3 and the definition of "information" and "right to information" under clause (f) and (j) of section 2 of the Act. If the public authority has any information in the form of data or analysed data or abstracts or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act."

7. In yet another decision the Apex Court in the case of Peoples Union for Civil Liberties V/s Union Government of India (AIR, Supreme Court 1442 has held :-

"Under the provisions of RTI Act, Public Authority is having an obligation to provide such information which is recorded and stored but not thinking process which transpired in the mind of authority which has passed an Order."

8. As held in the above mentioned judgements of Hon'ble Supreme Court the PIO is duty bound to furnish the information as available and as exist in the office records. However, considering facts and circumstances of the said Appeal cumulatively it can be concluded that the PIO has not only failed to adhere to the provisions of the RTI Act, but also has shown complete disrespect to the RTI Act. It can be clearly inferred from the conduct of the PIO that he has no concern to his obligations under the RTI Act, and has no respect to obey the Order passed by the Senior Officer. Such a conduct of the PIO is obstructing transparency and accountability and appear to be suspicious and adamant vis-vis the intent of the RTI Act.

9. Such a lapse on the part of the PIO is punishable under section 20(1) and 20(2) of the RTI Act. However, before imposing penalty the Commission finds it appropriate to seek explanation from the PIO as to why penalty should not be imposed on him for the contravention

of section 7(1) of the Act and for non compliance of the Order of the FAA.

10. In view of the above discussion the Appeal is disposed with the following Order:-

- a) The Appeal is partly allowed.
- b) The PIO, Secretary of Village Panchayat Calangute is directed to furnish information to the Appellant sought vide application dated 10/11/2020 within 10 days of the receipt of this Order, free of cost.
- c) Issue notice to the PIO, Secretary and the PIO is further directed to show cause as to why penalty as provided under section 20(1) and 20(2) of RTI Act, 2005 should not be imposed against him.
- d) In case the then PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing, alongwith full name and present address of the then PIO.
- e) The then PIO, Secretary, Village Panchayat Calangute is hereby directed to remain present on 8/10/2021 alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceedings.
- f) Rest of the prayers are rejected.

Appeal Proceedings stand 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