

GOA STATE INFORMATION COMMISSION
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Appeal No. 320/2019

Shri Nazareth Baretto,
H.No. 126, Borda,
Margao, Salcete Goa.
403602

-----Appellant

v/s

1. Public Information Officer,
South Goa Planning and Development Authority,
Margao, Salcete-Goa.

2. The Member Secretary,
First Appellate Authority,
Office of the Member Secretary,
SGPDA, Margao-Goa.

-----Respondents

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-06/11/2019

Decided on:-31/08/2021

FACTS IN BRIEF

1. The Appellant, Shri. Nazareth Baretto, r/o H.No. 126, Borda, Margao, Salcete Goa by his application dated 25/04/2019, filed under sec 6(1) of the Right to Information Act, 2005 (Act for short) sought certain information from the Public Information Officer (PIO) of South Goa Planning and Development Authority in the following manner.

“Be pleased to provide me the following information under the Right to Information Act:

1. copy of the entire file based on which the notice under Section 52 of TCP Act, 1974 was served to Smt. Sebastiana Cardozo, Camilo Folriana Baretto, resident of H.No. 126, behind Old survey office, Borda, Margao-Goa vide notice SGPDA/P/5116/1824/10-11 dated 14/03/2011 and SGPDA/P/5116/1447/11-12 dated 17/10/2011 for the illegal development.”
2. The said application was replied on by PIO on 15/05/2019 as follows:
 - “1. The cost of providing photo copies of information sought as is available in the file no. SGPDA/P/5116 is Rs. 1048/- (Rupees One Thousand Forty Eight Only) which may please be deposited at the earliest and the information collected thereafter.”

According to the Appellant, he has not received the said reply dated 15/05/2019 within stipulated time hence he preferred a first appeal before Member Secretary, SGPDA, Margao-Goa being the First Appellate Authority (FAA) on 21/06/2019. However since FAA failed to decide the first appeal within stipulated time, the Appellant landed before this Commission under sec 19(3) of the Act.
3. Notice was issued to the parties, pursuant to which PIO appeared and filed his Affidavit in reply on 20/12/2019 and FAA appeared filed his Affidavit in reply on 06/01/2020.
4. According to the Affidavit in reply of the PIO, the subject matter of the RTI application is in respect of demolition of the house of one Sebastiana Cardozo.

By his earlier application dated 28/03/2018, the Appellant had sought for information regarding the same subject matter,

however in the earlier RTI application, he sought the copy of the report prepared by the demolition squad as it was not found in the record as the said demolition was partly carried out, it was not furnished to the Appellant.

The Appellant by way of this second RTI application needs additional information. He also produced on record the earlier application filed by Appellant dated 28/03/2018.

PIO further stated that, the RTI application was replied within stipulated period i.e. on 15/05/2019 and informed the Appellant to deposit advance sum of Rs. 1048/- (Rupees One Thousand Forty Eight Only) and collect the information. He also produced on record the outward correspondence register of SGPDA. He also submitted that he is ready and willing to furnish information, the moment the Appellant deposits the said amount.

5. According to Appellant, he has not received the said letter dated 15/05/2019 or any other response to his RTI application dated 25/04/2019 and therefore he should be furnished the information free of cost, considering the delay in furnishing the reply.
6. During the course of proceeding and after hearing the rival contention of both the parties, this Commission directed the PIO to initially furnish the information and adjudicate issue of payment of fee on next date of hearing.
7. Accordingly on next date of hearing i.e. on 05/02/2020, Adv. Menino Pereira appeared on behalf of PIO and furnished to the Appellant the copies of the documents of entire file as sought by the Appellant which was duly endorsed by Appellant on covering letter dated 05/02/2020.

As the information sought was provided to the Appellant the matter was posted for order on the point of payment of fees.

8. The Appellant thereafter through entry section filed his written argument on 18/08/2021 and also appeared on 19/08/2021 and submitted that, the information furnished to him is incorrect and incomplete , however there is no justification before this Commission to hold as to why/ how the same is incorrect and incomplete. In the absence of any justification, I am unable to concede to said arguments that the information is incomplete or incorrect. This view is fortified on the basis of the order passed by **Hon'ble High Court of Punjab & Haryana in case of Gurcharan Singh v/s State Information Commission, Punjab & Ors. (W.P. (C) No. 10806/2011).**

9. It is the grievance of the Appellant that, FAA has failed to dispose the appeal within the stipulated time. From the records it appears so. However the same has not affected the right of Appellant as non deciding of the first appeal has resulted in deemed rejection and the Appellant has approached before this Commission by this second appeal.

10. In the Affidavit in reply filed by the FAA dated 06/01/2020, he submitted that Appellant by earlier application dated 28/03/2019 had sought the information in respect of demolition of the house of one Sebastiana Cardozo and this being the second RTI application seeking further information in respect of same subject matter, there cause misunderstanding and error from the Head Clerk who is the APIO and under false impression, matter was closed and he deeply regret and apologize for lapse of the Head Clerk for not placing the file before FAA.

Such a lapse on the part of FAA is certainly dereliction of his duties as FAA. The Commission warns the FAA that he shall be diligent henceforth and deal with the first appeal with more caution and with the spirit and intent of Act.

11. Since the information is being furnished to the Appellant free of cost and in view of endorsement of Appellant, nothing further remains to be decided. Since the Appellant failed to prove beyond reasonable doubt that the delay is deliberate and intentional, I am unable to invoke the penalty proceeding under sec 20 of the Act. I hereby dispose the appeal with following:

O R D E R

The appeal is dismissed.

Proceedings closed.

Pronounced in open court.

Notify the Parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner