GOA STATE INFORMATION COMMISSION

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CORAM: Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 110/2020/

Dr. K.K. Nadkarni, House No. 84, Bendwada, Sanguem-Goa.

-----Appellant

v/s

 Public Information Officer, Office of the Mamlatdar, Sanguem- Goa .

First Appellate Authority (FAA),
 Dy. Collector and Sub Divisional Magistrate,
 Sanguem, Goa

-----Respondents

Filed on: 28/04/2020 Decided on: 12/04/2021

Relevant dates emerging from appeal:

RTI application filed on : 07/08/2019
PIO replied on : 23/10/2019
First appeal filed on : 18/11/2019
First Appellate Authority Order passed on : 17/01/2020
Second appeal received on : 28/04/2020

ORDER

- The second appeal filed by the Appellant Dr. K.K. Nadkarni came before this Commission on 28/04/2020 against the Respondent Public Information Officer (PIO), Office of the Mamlatdar, Sanguem -Goa under section 19 of RTI Act, 2005.
- 2. Brief facts leading to the second appeal are that :
 - a) The Appellant vide his application dated 07/8/2019 had sought for information on 08 points from the Respondent PIO, office of the Mamlatdar, Sanguem Goa.

- b) The said application was filed by the Appellant with the Respondent PIO under sub-section (1) of Section 6 of RTI Act, 2005.
- c) It is the contention of Appellant that he received the reply dated 23/10/2019 from Respondent PIO stating "This is to inform you that the said application is not in proper format as per section 3 of the Right to Information Act, 2005 hence your application stands disposed".
- d) Deeming this as the rejection, Appellant preferred the first appeal on 18/11/2019 before the Dy. Collector, Sanguem-Goa under Section 19 (1) of RTI Act, 2005.
- e) It is the contention of the Appellant that he received on 14/12/2019, a notice dated nil for the hearing fixed in the said matter by First Appellate Authority on 20/12/2019. The Appellant through e-mail informed the FAA of his inability to attend the said hearing. It is the contention of the Appellant that subsequently he was informed via phone that the matter is disposed. But the Appellant claimed that he has not received any order from FAA regarding the said appeal.
- 3. In the above background Appellant being aggrieved by the action of Public Information Officer (PIO) and the First Appellate Authority (FAA), has approached this Commission in his second appeal on 28/04/2020.
- 4. The Appellant has prayed before this Commission for correct, complete and relevant information as sought in the RTI application and also to compensate the applicant

for not getting desired information within the stipulated time thereby causing him agony, trauma and loss of money, energy and time.

- 5. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties, pursuant to which hearing in this matter began.
- 6. Respondent PIO, Office of the Mamlatdar, Sanguem Goa filed a reply on 02/09/2020 praying that the appeal may be dismissed as it lacks merit. PIO also contended that the Appellant has sought names and addresses of beneficiaries who have been granted Income and Assets Certificate under EWS scheme. The said information cannot be furnished as, such names and address are personal information and hence covered Under Section 8 (1) (J) of the Act and furnishing of such information would endanger the privacy of the applicants.
- 7. The Appellant in his written submission dated 22/09/2020 insisted that he should be provided the information sought by him because the information in contention is in the public domain.
- 8. During the hearing on 30/03/2021 Appellant's advocate stated that it was an error on the part of the Appellant not to include First Appellate Authority as Respondent no. 2. The Appellant filed an application to add First Appellate Authority as Respondent no. 2 in the cause title of Second Appeal before this Commission, and the request to amend

the cause title by adding FAA as Respondent No. 2 is allowed.

During the arguments on 12/04/2021 Appellant requested this Commission to redirect this appeal to the First Appellate Authority for fresh hearing as the FAA had dismissed the First Appeal for default and not on merit.

- 9. I have perused the documents submitted and replies filed and arguments made before this Commission. In the above circumstances, it is noted that the First Appellate Authority has not dealt with the Appeal on merit. This is confirmed from the reply filed by the PIO, alongwith the copy of the order passed by the FAA. Even though the Appellant was absent during the hearings, the First Appellate Authority should have considered his appeal on merit and on the basis of relevant documents placed before the FAA by the Appellant. Also it is the contention FAA's of **Appellant** that the order was never Communicated to him. This shows the casual approach of the First Appellate Authorities towards the Right to Information Act, 2005.
- 10. The Commission has dealt with a similar issue in Complaint No. 287/SIC/2010. Para 14 of the order of the said complaint reads:

"Judicial institutions operate in hierarchical jurisprudence. An information seeker is free to approach the Commission by way of Complaint under Section 18 if his grievance is not redressed, even after the decision of the First Appellate Authority as held above. Section 18 is subject to provisions of Section 19 and the later provides for an

efficacious remedy to the fundamental information under the Act. Such a remedy of filing an appeal would also be in conformity with the provision of Section 19 (5) of the Act and grant a fair opportunity to the PIO to prove that the denial of request for information was justified".

- 11. Upon perusal of second appeal before this Commission and subsequent documents submitted before the Commission it becomes absolutely clear that the Appellant has not received copy of order of First Appellate Authority. Also Respondents have never contented the claim of Appellant that the copy of order of First Appellate Authority was not sent to him.
- 12. Neither the RTI Act, nor the rules framed there under make it mandatory for the Appellant to remain present during the hearing before the First Appellate Authority and also before the State Information Commission. Infact rule 7 (2) of the Goa State Information Commission (appeal procedure) rules 2006, clearly state that Appellant may opt not to be present before the Commission. In the said circumstance of this Appeal, First Appellate Authority disposed the Appeal with a comment "It is observed that the applicant is absent for last three hearings. In view of the same, matter is hereby dismissed for default". Therefore, it is seen that the First Appellate Authority has not dealt with this appeal on merit.
- 13. The Appellant is a senior citizen and he had conveyed his inability to be present before the FAA for hearings. This Commission feels that in these circumstances the FAA

could have dealt with the Appellant in a more transparent and appropriate manner with respect to the spirit of Right to Information Act. This Commission has dealt a similar issue in Appeal No. 65/2019/SIC-II. Para 10 of the Order of the said appeal reads:-

"As per the RTI Act, the Appellant need not be present during the hearing and the Commission cannot dismiss the appeal case for default and as such proceeds to dispose the matter purely on merits".

- 14. The Commission without expressing its 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 First Appellate Authority upon allowing the request of the Appellant to add FAA as Respondent No. 2 in the said Appeal, with the direction to hear a fresh all concerned 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:
 - a) The matter is remanded back to the First Appellate Authority (FAA) Dy. Collector, Sanguem-Goa and the First Appellate Authority is hereby directed to hear First Appeal dated 18/11/2019 filed by the Appellant. The First Appellate Authority shall decide the same on merits in accordance with law, without insisting on the period of limitations.
 - b) The Appellant shall approach this Commission by way of fresh Appeal/Complaint, if aggrieved by the decision

of the First Appellate Authority, within the period of limitation.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Proceedings stand closed.

Pronounced in the open court.

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