

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 122/2021/SIC

Shri Deepak Gracias
R/o. Karishma Apartments,
'C'-Block, Near Cine Vishant,
Aquem, Malbhat, Margao-Goa,
403601

.....Appellant

V/s.

1. Public Information Officer,
Director of Municipal Administration,
Dempo Towers, 1st floor,
Patto, Panajim-Goa, 403001

2. First Appellate Authority,
Director of Municipal Administration,
Dempo Towers, 1st Floor,
Patto, Panajm-Goa

.....Respondent/Opponent

Filed on : 03/05/2021

Decided on : 25/10/2021

Relevant dates emerging from appeal:

RTI application filed on	: 15/02/2021
PIO replied on	: Nil
First appeal filed on	: 16/03/2021
FAA order passed on	: Nil
Second appeal received on	: 03/05/2021

ORDER

1. The brief facts leading to this appeal filed by Shri. Deepak Gracias, resident of Margao Goa are that the Appellant vide application dated 15/02/2021 had sought under section 6(1) of the Right to Information Act, 2005 (for short, the Act) from Respondent No. 1 Public Information Officer (PIO), the Director of Municipal Administration, Panaji Goa, the following information:-

- 1) Copy of wakalatnama of Respondent No. 1 and Respondent No. 2.
- 2) Copy of reply of Respondent No. 1 and Respondent No. 2.
- 3) Status report of the matter pending in the office bearing case no. 20/2019/DMA.

4) Status report of the matter bearing inward No. 3328 dated 08/09/2020.

5) Date for next hearing of the matter pending in the office bearing case no. 20/2019/DMA

2. It is the contention of the Appellant that he received no reply from PIO within the stipulated period of 30 days and therefore he filed appeal dated 16/03/2021 before Respondent No. 2, First Appellate Authority (FAA), the Director of Municipal Administration. That the Appellant filed reminder dated 28/04/2021 to the FAA. However the Appellant received no reply from Respondent and the appeal was not even heard by the FAA. Being aggrieved, the Appellant filed second appeal dated 03/05/2021 before this Commission praying for correct information free of cost, inspection of the relevant file, penalty be imposed under section 20(1) of the Act, compensation to the Appellant and disciplinary proceedings be initiated.
3. The second appeal was registered, notice was issued to the concerned parties, Appellant appeared before the Commission in person, however respondent remained absent through out. Fresh notice dated 08/09/2021 was issued to PIO and FAA asking them to remain present on 07/10/2021 alongwith their say if any. It was also intimated to the Respondent that in case of their failure to attend the hearing, the matter shall be heard in their absence and the orders passed by the Commission shall be binding and executable against them.
4. In spite of repeated notices and opportunities given by the Commission, the PIO and FAA have neither appeared, nor deputed any representative before the Commission. Both the Respondent have not filed any submission either.
5. The Appellant vide written submission received in the registry dated 11/10/2021 has mentioned the chronology of the events and stated that the information sought pertains to his own case which is filed by him and refusal to give information is travesty. The Appellant has prayed for relief as early as possible, stating that he requires the said information for the purpose of record.
6. Section 7(1) of the Act states that

the PIO, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt and the request, either provide the information on payment of such fee as may be

prescribed or reject the request for any of the reasons specified in section 8 and 9.

Section 7(2) of the Act states that if the PIO fails to give decision on the request for information within the period specified under sub section (1), the PIO shall be deemed to have refused the request.

Section 7(8) of the Act states that where a request has been rejected under sub section (1), the PIO shall communicate to the person making the request (i) the reason for such rejection, (ii) the period within which an appeal against such rejection may be preferred, (iii) the particulars of the appellant authority.

7. It is seen from the records that the PIO did not give any reply to the application; nor provided information. Therefore the inaction of PIO amounts to deemed refusal. The PIO did not seek exemption under section 8, nor rejected the application under section 9 of the Act. Later, the PIO did not appear even once, nor sent representative before the Commission, this infelicitous act of PIO is completely against the provisions and spirit of the Right to Information Act.

8. Section 19(1)

allows a person who does not receive a decision within the time specified, or is aggrieved by the decision of the PIO, to prefer an appeal, within thirty days from the expiry of such period or from the receipt of such decision, to such officer who is senior in rank to the PIO.

Section 19(6) states that an appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of appeal or within such extended period not exceeding a total of forty five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

9. Contrary to these provision, the FAA neither heard the first appeal which was filed before him by the Appellant, nor passed any order on the appeal within the stipulated period. Being the Officer senior in rank, the FAA is expected to be duty bound to dispose the Appeal and if required to give directions to the PIO, instead he neither asked PIO to honour provisions of the Act, nor represented before the Commission during the proceeding of this appeal. This obstinate determination from the FAA to neglect the Act cannot be accepted by the Commission.

10. Conduct of the PIO and the FAA which are the officer's for dispensing the information under the Act, is found to be contrary to the requirement of the Act, in this case. Neither the PIO, nor the FAA has any concern to the application filed by citizen under the Act. Such

practice of Directorate of Municipal Administration, now known as Department of Urban Development through its officers designated under the Act does not conform with the provisions or spirit of the Act. Hence such an act on the part of PIO and FAA is deplorable and the Commission in no way can subscribe to such inaction of the authorities.

11. Hon'ble Delhi High Court, in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission has held:-

"Information seekers are to be furnished what they ask for, unless the Act prohibit disclosure; they are not to be driven away through sheer inaction of filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

PIO herein has failed to honor the provision of the Act at all the three levels, during application stage, First Appellate stage and also at the stage of second appeal. There is no response of the PIO at any stage, which is not acceptable. The FAA has also neither stepped in during first appeal nor shown any responsible action during second appeal.

12. Subscribing to the ratio laid down by the Hon'ble Delhi High Court, and the provision of the Act the PIO is liable to be penalised as provided under section 20(1) and 20 (2) of the Act. However, the Commission finds it appropriate to call explanation from him before imposing such penalty. In the case of the FAA, he did not hear the appeal and has also not filed reply before the Commission. Such a lapse on the part of FAA is certainly dereliction in his duties and the same needs to be viewed very seriously. However, the Act does not provide for imposition of any penalty on the FAA.

13. In the light of the above discussion the Commission issues stern warning to the FAA to hear appeals as per the provision of the Act and decide within the time frame provided under the Act. Hence the Appeal is disposed with the following order:-

- (a) The PIO is directed to furnish information sought by the Appellant vide application dated 15/02/2021, within 10 days from the receipt of this order, free of cost.

- (b) Issue notice to the PIO, and the PIO is further directed to show cause as to why penalty under section 20(1) and or section 20(2) of the Act should not be imposed against him.
- (c) In case the then PIO is transferred, the present PIO shall serve this order alongwith the notice to the then PIO and produce the acknowledgements before the Commission on or before the next date of hearing, along with full name and present address of the then PIO.
- (d) The PIO is hereby directed to remain present before this Commission on 25/11/2021 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceedings.
- (e) All other prayers are rejected.

Proceeding stand closed.

Pronounced in the open hearing.

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