

# GOA STATE INFORMATION COMMISSION

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**Shri. Sanjay N. Dhavalikar**, State Information Commissioner

**Complaint No. : 07/2020**

Shri. Nitin Patekar,  
Oshalbag, Dhargal,  
P. O. Colvale Goa, 403513

.....Complainant

v/s

1. Public Information Officer (PIO),  
Flying Squad Section, Dy. Collector (DRO),  
Collectorate , North Goa, Panaji-Goa
2. First Appellate Authority (FAA),  
Additional Collector-II,  
Collectorate, North Goa, Panaji-Goa ..... Respondents/Opponent

Filed on : 06/02/2020

Decided on : 26/07/2020

## **Relevant dates emerging from appeal:**

RTI application filed on	: 23/09/2019
PIO replied on	: Nil
First appeal filed on	: 28/10/2019
FAA order passed on	: Nil
Complaint received on	: 06/02/2020

## **ORDER**

1. The Complainant Nitin Y. Patekar vide his application dated 23/09/2019 under the Right to Information Act, (RTI Act, 2005) sought from the Opponent No. 1 Public Information Officer (PIO), Office of Flying Squad Section, Deputy Collector (DRO), Collectorate North Goa, Panaji, information on the following five points:-
  - a) Furnish the Inward Book Register copies from 30/05/2019 to 30/06/2019 in Office of Flying Squad.

- b) Inspection of the Inward Book Register from 30/05/2019 to till date in Office of Flying Squad.
- c) Under section 17-A for cutting of land up to 75 metres distance from central line of Road is applicable/not applicable? If applicable, give details.
- d) Furnish the Showcause notice copy dated 30/06/2019, reference No. Nil under section No. 280/1-A-1 in Village Dhargalim.
- e) Inspection of the file of inspection report dated 30/06/2019, reference No. Nil, Village Dhargalim, under section No. 280/1-A-1.

2. It is contention of the Complainant that the Opponent No. 1 Public Information Officer (PIO) did not reply to his RTI application. Therefore the Complainant filed first Appeal before Opponent No. 2 the First Appellate Authority. It is also the contention of the Complainant that FAA neither heard the matter, nor passed any Order.
3. Complainant being aggrieved due to inaction of both the Opponents filed this/Complaint before Information Commission on 06/02/2020.
4. The matter was taken up on board by the Commission and notices were issued to the concerned parties and was listed for hearing. Pursuant to the notice issued by the Commission, the Complainant chose to remain absent throughout the proceedings. Where as, Opponent No. 1 the then PIO Shri. Sagar Gaude and the present PIO Ms. Veera V. Nayak were represented by Ms. Sangeeta Kankonkar, under authority letter.
5. Opponent No. 1 PIO filed reply on 06/04/2021 alongwith enclosures. PIO submitted that information has been provided with respect to point No. 1, 2, and 3 of the RTI application of the Complainant. The

PIO also submitted that the documents with respect to point No. 4 and 5 are kept ready in the Office of the Opponent for inspection and the Complainant may undertake inspection between 9.30 to 12.00 and 2.00 to 4.00 on a working day. The Commission suggested that the opponent may furnish copy of entire available information for the Complainant.

6. Accordingly, the opponent PIO deposited a set of documents with respect to point No. 1, 2 and 3 of the RTI application of the Complainant. However, the Complainant could not collect the documents because of his non appearance.

7. Rule 7(2) framed by Government of Goa under section 27 of RTI Act, 2005 states :-

Rule 7(2):- " 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."

In accordance with the rules and the spirit of the RTI Act, the Complaint is heard by the Commission. The present proceedings being a Complaint, this Commission has no jurisdiction to direct furnishing of the information u/s 18 of the RTI Act, which is also the ratio laid down by the Hon'ble Supreme Court in Civil Appeal Nos. 10787-10788 of 2011 (Chief Information Commissioner and another V/s State of Manipur and another). Nevertheless, the available information has been furnished on his own initiative by the PIO, in the Commission Office.

8. Considering grievances of the Complainant, the points which arise for the determination of the Commission under section 18 are :-

a) Whether the PIO has acted malafide while dealing with the application of the Complainant under section 6(1).

b) Whether the FAA was justified in not entertaining the First Appeal of the Complainant.

9. In respect of point (a) above, the PIO has made attempts to compile and furnish information, though beyond the stipulated period. If the circumstances considered cumulatively and the law laid down by the Hon'ble Supreme Court in the case of A. A. Parulekar V/s Goa State Information Commission is applied, then it does appear that there is no malafide on the part of the PIO and there is no justification for imposing penalty u/s 20(1), 20(2) upon the PIO.

10. With reference to the point (b) as per the Appeal copy produced by the Complainant duly acknowledged in the Office of FAA the appeal was filed. However, there is no further record to state that the Appeal was taken to its logical conclusion therefore it appears that the FAA failed to entertain the first Appeal when tendered by the Complainant. It is observed from records that in spite of notice of this Complaint, the FAA has not filed any say disputing the said issue raised by the Complainant. Section 19 (1) of the RTI Act provides filing of the first Appeal before the FAA. In the present case, according to the Complainant he had filed first Appeal before the FAA as per the provisions of RTI Act Rights to file first appeal are statutory and seeker cannot be deprived of the same. Practice of refusal to entertain the first Appeal is not in conformity with the provisions and spirit of the RTI Act.

11. However, as per the provisions of the RTI Act, only the PIO can be penalised under section 20. There is no any provision under the Act conferring powers to Commission to impose penalty or initiating disciplinary proceedings against the First Appellate Authority.

12. In the facts and circumstances of the case mentioned above and in view of the discussion above, the Complaint proceedings are closed with the following:-

a) The Complainant may collect the information deposited in the Commission within 15 days of the receipt of this Order.

b) The Opponent No. 1 PIO and Opponent No. 2 FAA are directed to be more vigilant and transparent while dealing with RTI matters and to deal and dispose the matters in accordance with the law.

13. Complaint 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