

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 38/2019/SIC-II

Shri Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa, 403507
v/s

.....Complainant

Public Information Officer (PIO),
Mapusa Muncipal Council,
Mapusa-Goa 403507

..... Respondent/Opponent

Filed on : 08/05/2019

Decided on : 19/11/2021

Relevant dates emerging from appeal:

RTI application filed on	: 18/06/2018
PIO replied on	: 09/07/2018, 17/07/2018
First appeal filed on	: 12/11/2018
FAA order passed on	: 16/01/2019
Second appeal received on	: 08/05/2019

ORDER

1. The Complaint filed under section 18 of the Right to Information Act, 2005 (for short, the Act) by the Complainant Shri. Jawaharlal T. Shetye against Opponent Public Information Officer (PIO), Mapusa Municipal Council, Mapusa came before this Commission on 08/05/2019.
2. The brief facts of this Complaint, as contended by Complainant are that he had sought information under section 6(1) of the Act from PIO vide application dated 18/06/2018. The PIO furnished information vide two

letters dated 09/07/2018 and 17/07/2018. Information sought at point No. 5 was not furnished. The Complainant preferred appeal before First Appellate Authority (FAA), Chief Officer, Mapusa Municipal Council. FAA directed PIO to furnish remaining information within 15 days. PIO ignored FAA's order and therefore Complainant filed this Complaint dated 08/05/2019 before the Commission.

3. The concerned parties were notified and pursuant to the notice PIO appeared before the Commission. Subsequently Shri. Diniz C. T. De Mello, PIO was transferred and Shri. Vyankatesh Sawant was appointed as PIO in the place of Shri. De Mello. Shri. Sawant, present PIO filed reply dated 22/04/2021. Shri. Sawant stated in the reply that he has forwarded copy of notice in the said complaint to Shri. De Mello, the then PIO. Also that except point No. 5 entire information has been furnished to Complainant within the stipulated period and regarding point No. 5, Complainant was informed that the file of M/s Chamunda Developers pertaining to project Raturaj Residency was under search and the inspection of the same will be given to him once the file is found. Complainant was requested to furnish some details, of the property so that the file is searched and the inspection is provided to the Complainant. That in the absence of details the office was not able to trace the said file and hence inspection could not be given to Complainant.

4. Upon perusal of the records, it is seen that the Complainant Shri. Jawaharlal T. Shetye filed this Complaint on 08/05/2019. However he did not appear before the Commission, except once on 14/10/2021. The

Complainant, while remaining present on 14/10/2021 insisted upon inspection of the said file and pressed for penalty on the PIO.

5. It is also seen that Appellant had asked information on five points and PIO furnished information on four points within the stipulated period and fifth point of the application which sought inspection of the above mentioned file is not complied as the file is not traceable in PIO's office. Complainant has prayed for directions to PIO to file Police Complaint (F.I.R.) with Mapusa Police station in respect of the missing file.

6. The Hon'ble High Court of Bombay at Goa bench, while deciding the case of penalty (writ petition No. 205/2007) Shri. A. A. Parulekar V/s Goa State Information Commission has held:-

"The Order of Penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

7. It is seen from records that PIO has furnished available information to the Complainant and has never denied any information. Rather, PIO on record stated that he is willing to provide inspection of the said file to Complainant. Therefore considering the ratio laid down by Hon'ble Bombay High Court in above judgement, no malafide can be attributed to PIO and the Commission is of the opinion that the conduct of PIO does not warrant penalty under section 20(1) and 20(2) of the Act.

8. In the light of above discussion the Complaint is disposed with the following order:-

(a) The PIO is directed to register police Complaint regarding missing of the file of M/s. Chamunda Developers pertaining to the project Raturaj Residency, Mapusa, within 15 days from the receipt of this order.

(b) All other prayers are rejected.

9. Hence the appeal is disposed accordingly and proceeding stand closed.

10. 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