

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 104/2021/SIC

Shri Nitin Y. Patekar,
Oshalbag, Dhargal, P.O.Colvale,
Pernem-Goa
v/s

...Appellant

1. Public Information Officer,
Office of the Dy. Collector and SDO,
Pernem-Goa 403512

2. First Appellate Authority,
The Dy. Collector and SDO, Pernem,
Pernem-Goa

...Respondents

Filed on : 27/04/2021

Decided on : 28/01/2022

Relevant dates emerging from appeal:

| | |
|---------------------------|--------------|
| RTI application filed on | : 04/02/2021 |
| PIO replied on | : 16/02/2021 |
| First appeal filed on | : 03/03/2021 |
| FAA order passed on | : Nil |
| Second appeal received on | : 27/04/2021 |

ORDER

1. The brief facts of this appeal are that the appellant vide application dated 04/02/2021 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act) sought information on three points from Respondent No. 1 Public Information Officer (PIO). The PIO vide reply dated 16/02/2021 furnished part information. Being aggrieved, the appellant filed appeal dated 03/03/2021 before Respondent No. 2 First Appellate Authority (FAA). However, upon receiving no response from the FAA within the mandatory period, the appellant preferred second appeal before the Commission with prayers such as correct information and disciplinary action against the FAA.

2. The concerned parties were notified and the matter was taken up on board for hearing. Pursuant to the notice, the appellant appeared in person. Shri. Aditya Kamat, Awal Karkun appeared on behalf of PIO and FAA under authority letter. On a later date, Shri. Nateshwar Parab, Talathi represented the PIO and the FAA and filed reply dated 2/09/2021 on behalf of the PIO as well as the FAA. Smt. Shanti Poke, PIO remained present in person on 19/10/2021 and filed another submission.
3. The FAA stated vide reply dated 02/09/2021 that the notice was served on the appellant twice, to remain present for the hearing dated 08/04/2021 and 16/04/2021. However, he failed to appear and hence the appeal was dismissed.
4. The PIO stated that the information which is available and existing and held by the public authority can be supplied under the Act, no separate information or explanation is required to be provided. The PIO further contended that she is not required to furnish information which requires drawing of inference and /or making of assumption. That the Act does not require the PIO to deduce some conclusion from the 'material' and supply the conclusion to the appellant. By stating this, the PIO submitted that she has furnished the information sought by the appellant, and the appeal is filed without proper application of mind.
5. The appellant stated that he has received information under point No. 1 and 3 of his application, nonetheless, he is not satisfied with the reply given by the PIO with respect to point No. 2. The appellant further stated that he has sought copy of the Guidelines /Notification as the power and duty of the Deputy Collector regarding illegal land cutting/low lying and filling. The appellant argued on 30/09/2021 for

the said information, pressing for the copy of guidelines, which the PIO has not furnished.

6. Upon perusal of the available records, the Commission has arrived at following findings:-

The information sought by the appellant under point No. 1 and 3 is already furnished by the PIO within the stipulated period and the appellant has no grievance on the same. However, under point No. 2, the appellant has clearly sought copy of guidelines/notification pertaining to powers and duties of Deputy Collector regarding illegal land cutting etc. PIO's reply to this question is, 'Guidelines/Notification as the powers conferred as per LRC 1968'

The said reply does not provide the information sought by the appellant and therefore, the PIO is required to furnish the copy of guidelines/notification to the appellant.

7. It is the contention of the appellant that the FAA did not decide the first appeal. Going by the records available, it is seen that the appellant filed first appeal before the FAA on 03/03/2021. Filing appeal under section 19(1) of the Act is a statutory right of the applicant, who is aggrieved by a decision of the PIO. Section 19(6) mandates FAA to dispose the said appeal within forty five days from the date of filing thereof. In this matter, the appellant claims that he never received any order on his appeal. At the same time, FAA vide reply dated 02/09/2021 claims that he sent notice to the appellant to remain present for hearing on 08/04/2021 and again on 16/04/2021, however appellant failed to remain present and hence he dismissed the appeal. The FAA has attached copy of registered AD of the notice, however the copy of the order is not attached. The Commission observes that none of the parties in the appeal have brought on record the copy of FAA's order and more particularly not

even FAA and therefore the claim of the FAA of disposing the appeal remains in question.

8. Also, the FAA must be aware of the provision of Rule 7(2) of the Goa State Information Commission (Appeal Procedure) Rules, 2006, framed by the Government of Goa under section 27 of the Act. The said rule allows the appellant to opt not to be present for the hearing on his appeal, and in the case where the appellant opts not to be present, the appellate authority is required to decide the appeal on merit. In the present matter it appears that the dismissal of the appeal was not as per the merit of the case, but due to the absence of the appellant, as stated by the FAA in his submission and this cannot be accepted. However, the Commission takes a lenient view since this is first matter against the FAA, before the Commission of such violation. The Commission expects the FAA to henceforth hear and decide first appeals, strictly in accordance with the law.

9. In the light of above discussion, the appeal is disposed with the following order:-

a) The PIO is directed to furnish information sought by the appellant under point No. 2 of his application dated 04/02/2021, within 15 days from the receipt of this order, free of cost.

b) The FAA is directed to hear and decide the appeals in accordance with the provisions of the Act.

c) All other prayers are rejected.

Proceeding 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