

# GOA STATE INFORMATION COMMISSION

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

## Appeal No. 118/2021/SIC

Shri. Prakash Pandurang Dhoke,  
Flat No. 13/336/8, H No. 366,  
Ground floor, Near Karimabad Coop.  
Housing Society Gate,  
Campal, Panaji - Goa 403001.

..... Appellant

v/s

1) The First Appellate Authority,  
Greater Panaji Planning and Development Authority,  
Govt of Goa, Office at NGPDA, 1<sup>st</sup> floor,  
Archdiocese building, Mala,  
Panaji - Goa. 403001.

2) The Public Information Officer,  
Greater Panaji Planning and Development Authority,  
Govt. of Goa, Office at NGPDA, 1<sup>st</sup> floor,  
Archdiocese building, Mala,  
Panaji - Goa. 403001.

..... Respondents

Filed on : 24/05/2021

Decided on : 28/01/2022

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

RTI application filed on	: 11/03/2021
PIO replied on	: Nil
First appeal filed on	: 15/04/2021
FAA order passed on	: Nil
Second appeal received on	: 24/05/2021

## **ORDER**

1) The brief facts of this appeal as contended by the appellant are that the appellant vide application dated 11/03/2021 sought information on some points from respondent no. 2, Public Information Officer (PIO). The appellant did not receive any reply from the PIO within the mandatory period of 30 days and hence filed appeal dated 15/04/2021 before respondent No. 1 First

Appellate Authority (FAA). Being aggrieved with no response from the FAA as well within the stipulated period, appellant preferred second appeal before the Commission.

- 2) The appeal was registered on 25/05/2021, notice was issued to the concerned parties and the matter was taken on board for hearing. Pursuant to the notice, appellant appeared in person, whereas both the respondents were represented by their legal representatives. Appellant filed written arguments on 29/10/2021 and reply to respondent's written arguments on 04/01/2022. Reply was filed on behalf of PIO and FAA on 30/09/2021 and later, arguments dated 23/12/2021 were filed by both respondents.
- 3) The respondents contended vide their reply that the application filed by the appellant is vague and cryptic. Law requires appellant to state specifically information sought by him. The PIO had requested the appellant to give details of the information required by him. However instead of providing any details, the appellant preferred appeal before the FAA and then before the Commission. Therefore, unless the application is properly filed in accordance with the law, the question of invoking provisions under the Right to Information Act, 2005 (hereinafter referred to as the Act) would not arise.

The respondents further stated that the appellant has urged very vague grounds in the present appeal. The appellant vide application dated 11.03.2021 sought information with respect to two application filed by two individuals before the public authority. However details like date, number are not provided. When a citizen asks for any information, he is required to provide exact details related to the said information. The present appeal is based on misconception of facts and misconception of law and the

information sought by the appellant is beyond the scope and purview of the Act.

- 4) On the other hand, the appellant stated that he sought information as defined under section 2(f) of the Act and being a citizen of India, he has every right to access the said information. The PIO has failed to reply within 30 days and therefore it amounts to deemed refusal, which is punishable under section 20(1) of the Act. The PIO has neither furnished the information nor informed the appellant that the application is rejected. Hence the burden of proving his bonafide is on the PIO.

Further, the appellant stated that the FAA did not hear the first appeal, nor passed any order. The FAA is required to decide the appeal within the purview of the Act, which he has failed to do. The information sought is not vague, rather very specific as mentioned at point 3(i), (ii), (iii) of the application dated 11/03/2021. If the said application was not in appropriate form or with specific details then the PIO either could have rejected the same citing the relevant provisions and/or should have guided the appellant to file the application in proper format, which was not done by him. Even during the proceeding before the Commission, the respondents nowhere have shown their willingness to furnish the information.

- 5) Later, on 23/12/2021 appellant while arguing his case alleged that the intention of PIO is very clear, that is not to provide the information. The PIO at no point sent any reply or information seeking clarification on the application, if he found the same is vague. On the contrary, the respondents are more interested in delaying the procedures in order to avoid the furnishing of the information.

- 6) Adv. Samiksha Vaigankar argued on 04/01/2022 for both the respondents. Adv. Vaigankar stated that the records are not maintained as per house number and survey number. Appellant was called by the PIO to get specific details of the information he has sought vide RTI application, however the appellant did not come to PIO's office. The PIO once again contacted the appellant on phonecall and asked him to provide details, yet no details were provided by him. The PIO is willing to furnish the information if the required details pertaining to the information are provided by the appellant.
- 7) The Commission has perused the appeal memo and all the submissions of both the parties, and have heard argument of the appellant as well as legal representative of the respondents. It is noted that the appellant has sought information at point no. 3 under the heading 'Particulars of information Required'. The information is sought under 3 (i), 3 (ii) and 3 (iii). The Commission agrees with the contention of the PIO that the specific details pertaining to the information sought are not mentioned by the applicant. In such a case the PIO was required to write to the appellant seeking specific details. There is no correspondence at all from the PIO's end within the mandatory period of 30 days.

Section 7(2) of the Act states :-

7. Disposal of request - (2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub section (i), the Central Public Information Officer or State Public Information Officer or State Information Officer, as the case may be, shall be deemed to have refused the request.

Considering the provision to the Act mentioned above, the Commission is of the opinion that the inaction of the PIO amounts to deemed refusal of the request for information .

- 8) Although it appears that the specific details required by the PIO to identify the information are not mentioned in the application and the content under point no. 3 (i) , 3 (ii), 3 (iii) is indistinct, the appellant has specifically sought inspection under 3 (i) of the application. Hence the PIO at least was required to communicate with the appellant regarding the inspection, which is not done by the PIO. There are grounds to believe that the appellant would have identified the information during the inspection which would have helped the PIO to furnish the information desired by the appellant.
- 9) As a consequence, the Commission finds PIO guilty on two counts- i.e. (i) not replying the appellant within 30 days from the receipt of the request, and (ii) not providing the inspection to the appellant. The law goes to an extent of making PIO personally and financially liable for not adhering to this provision.
- 10) Further, it is noted that the appellant, after the expiry of mandatory period of 30 days, upon not getting any reply from the PIO, filed first appeal before the FAA. The FAA was required to hear and decide the appeal.

Section 19 (6) of the Act states:-

An appeal under sub-section(1) or sub-section(2) shall be disposed of within thirty days of the receipt of the 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.

Going by the provisions mentioned above, the FAA has erred in not deciding the appeal. The Act has given statutory right to the appellant to file appeal against the rejection/deemed refusal of the information by the PIO before the FAA under Section 19(1)of the Act and the FAA is required to dispose the appeal as mentioned above.

- 11) The PIO and the FAA are the officers appointed under the Act to dispense and facilitate the information. However, here, neither the PIO, nor the FAA has shown any concern to the application and appeal filed by the appellant. Such an act on the part of the said officers is deplorable and therefore, the Commission in no way can subscribe to such inaction of public authorities.
- 12) The Commission finds that the conduct of the PIO is not in consonance with the Act and smells malafide. Such a lapse is punishable under section 20 of the Act. However, before imposing penalty the Commission finds it appropriate to seek explanation from the PIO as to why the penalty should not be imposed on him for contravention of section 7(1) of the Act.
- 13) Similarly the FAA did not pass order on the first appeal, when the Act mandates to pass the order within specific period. This is least of all that is expected from senior officers in any government authority. As per the provision of the Act only the PIO can be penalized under section 20, however there is no any provision conferring power to the Commission to impose penalty or initiate disciplinary proceeding against the FAA.
- 14) In the circumstances mentioned here and in the light of above discussion the appeal is disposed with the following order:-
  - a) The appeal is partly allowed.
  - b) The PIO is directed to provide the inspection to the appellant pertaining to the information sought by him vide application dated 11/03/2021, within 10 days from the receipt of this order and the PIO is shall furnish the information identified by the appellant with respect to his application, within 4 days from the day of inspection free of cost.

- c) Issue notice to the PIO and the PIO is further directed to show cause as to why penalty as provided under section 20 (1) and /or 20 (2) of the Act should not be imposed against him.
- d) The PIO is hereby directed to remain present before the Commission on 28/02/2022 at 10.30 a.m. alongwith the reply to the show cause notice. The registry is directed to initiate penalty proceedings.
- e) The FAA is directed to entertain and decide the appeals filed before him in accordance with the law.

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

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