GOA STATE INFORMATION COMMISSION
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Appeal No. 207/2021/SCIC

Shri. Arjun Devu Harmalkar,
R/o. H.No. 77, Piquen Ponxem,
Tivim, Bardez-Goa. 403502. .....Appellant

V/S

1. The Public Information Officer,
The Village Panchayat of Tivim,
Tivim, Bardez-Goa. 403502.

2. The First Appellate Authority,
Block Development Officer-I,
Bardez, Mapusa-Goa. .....Respondents

Shri. Vishwas R. Satarkar State Chief Information Commissioner

Filed on: 24/08/2021
Decided on: 16/03/2022

FACTS IN BRIEF

1. The Appellant, Shri. Arjun Devu Harmalkar, r/o. H.No. 77, Piquen, Ponxem, Tivim, Bardez Goa by his application dated 21/01/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) of Village Panchayat Tivim, Bardez, Goa:-

> "Kindly issue me certified copies of all the documents of entire file towards the above referred construction file No. 27/77 in the name of Devu Vassu Harmalkar."

2. The said application was replied by PIO on 20/02/2021 in the following manner:-

> "With reference to your application dated 21/01/2021, I am to inform you that the information sought by you is not available with the records of this Panchayat."

3. Not satisfied with the reply of the PIO, the Appellant filed first appeal before Block Development Officer-I, Mapusa, Bardez, Goa being the First Appellate Authority (FAA).

4. The FAA by its order dated 08/06/2021 allowed the said first appeal and directed the PIO to conduct the thorough search and furnish the information to the Appellant within 15 days.

5. Since the PIO failed and neglected to comply the order of FAA, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.

6. Notice was issued to the parties, PIO and FAA was duly served however, did not appear for hearing before the Commission on 04/10/2021.

7. Even though opportunities were granted to the PIO and FAA i.e on 02/11/2021, 24/11/2021, 23/12/2021, 01/02/2022 and 16/03/2022 they failed to appear and file the reply in the matter, therefore I dispose this appeal on the basis of available records.

8. I have perused the pleadings, scrutinised the documents on records and heard the submissions of the advocate for Appellant.

9. According to the Appellant, the information is refused by the PIO on false ground that information is non-available in records. Further according to him, he enclosed a copy of Panchayat Resolution which mentioned granting construction licence to the Devu Vassu Harmalkar on file No. 27/77 and alleged that PIO deliberately and intentionally denied to furnish the purported information. Appellant thus requested for a direction to furnish the information and also for appropriate action for non-furnishing of information.

10. Under the Act furnishing of information is a rule unless exempted under section 8 or 9 of the Act. Under section 19(5) the

burden to prove that the information is not available or traceable is on PIO. However in the present case, the Respondent No. 1, PIO has not even rebutted the contention of the Appellant by filing any reply. The PIO has also not disclosed as to what efforts he has taken to trace the file or any further action if any undertaken by him. Considering the conduct of the PIO and the fact that there is no material to substantiate that the information is not available, I am unable to hold that the information cannot be furnished to the Appellant. I find force in the submission of the Appellant that the information is denied / avoided on the false plea of non-availability of information.

11. Considering the above facts and circumstances, I find that the PIO has deliberately failed to comply the order of FAA and with malafide intention withheld the information from being dispensed to the Appellant. Such an act requires that the information is ordered to be furnished and also impose penalty on the PIO as provided under section 20(1) and/or 20(2) of the Act. I therefore find merit in the appeal and consequently the same has to be allowed, which I hereby do with the following:-

O R D E R

- The PIO, Shri. Dhiraj Govekar, Village Panchayat Secretary of Village Panchayat Tivim, Bardez-Goa shall furnish to the Appellant free of cost, the entire information as sought by him vide his application dated 21/01/2021, within a period of **FIFTEEN DAYS** from the receipt of the order.

- The PIO is hereby directed to show cause as to why penalty of Rs. 250/- per day for the delayed period should not be imposed on him in terms of section 20(1) and/or recommend disciplinary proceeding against him in terms of section 20(2) of the Act.

- The reply to this show cause notice to be filed on **19/04/2022 at 10:30 am**.
- Appeal disposed off accordingly.
- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner