

GOA STATE INFORMATION COMMISSION

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Appeal No. 220/2020

Shri. Santana Piedade Afonso,
H.No. 263, Comba-Central,
P.O. Cuncolim,
Salcete-Goa.

.....Appellant

V/S

1. Public Information Officer,
Shri. Prabhakar Kamati,
Village Panchayat of Cana-Benaulim,
Benaulim, Salcete-Goa.

2. FAA, Shri. Amitesh Shirvoikar,
Block Development Officer,
2nd Floor, Mathany Saldanha Complex,
Margao-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 23/12/2020

Decided on: 23/03/2022

FACTS IN BRIEF

1. The Appellant, Santana Piedade Afonso, H.No. 263, Comba-Central, P.O. Cuncolim, Salcete-Goa by his application dated 29/07/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information on five points and inspection from the Public Information Officer (PIO) of the Village Panchayat Cana-Benaulim, Salcete-Goa.
2. Since the said application was not responded by the PIO within stipulated time, deeming the same as refusal, the Appellant preferred first appeal before the Block Development Officer-I, Margao Goa being the First Appellate Authority (FAA).
3. The FAA by its order dated 06/10/2020 allowed said first appeal and directed the PIO to furnish the information to the Appellant within 15 days.

4. Since the PIO failed and neglected to comply the order of FAA, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act.
5. Notice was issued to the parties, pursuant to which the PIO, Shri. Prabhakar Kamati appeared and filed his reply on 13/07/2021. FAA duly served, opted not to remain present and file his reply in the matter.
6. I have perused the pleadings, reply, written submissions and scrutinised the documents on record.
7. According to the Appellant, in the course of hearing before FAA, the PIO filed his reply on 15/09/2020 and furnished incomplete information and did not provide inspection of the documents as sought by the Appellant. Therefore, FAA fixed the date of joint inspection in the office of PIO on 30/09/2020 at 3:30 pm. Accordingly, on given date and time, Appellant remained present in the office of PIO at Cana-Benaulim, on seeing the Appellant the PIO become furious and threatened the Appellant, being so no inspection of file was held and accordingly on next date of hearing on 06/10/2020 he narrated the incident to the FAA. However, the PIO did not appear for hearing before the FAA on 06/10/2020.

Further according to the Appellant, the information was sought regarding the construction licence, occupancy certificate issued by the public authority and other information like, technical clearance, copy of House Assessment tax Record Book, specifically to the house bearing No. 1677, 1677/A, B, C which was newly constructed house/building/complex at Tambdi Mati, Benaulim, Salcete Goa.

Further according to him, said information was available with the public authority, however PIO wilfully withheld from disclosing the said information with malafide intention.

8. On the other hand, PIO through his additional reply dated 01/09/2021 contended that available information has been provided to the Appellant in the course of hearing before the FAA on 15/09/2020. After the order of FAA, once again he carried out the search of record, however, he could not locate said documents and alleged that the present appeal is filed only to harass him.
9. Records reveals that, the PIO also failed to give inspection of the file as fixed by the FAA on 30/09/2020 at 3:30 pm in the office of PIO at V.P. Cana-Benaulim nor rebutted the allegation of the Appellant that he was threatened.

Except for a mere general statement in his reply, the PIO also failed to substantiate as to what efforts he has taken to trace the file or any further action. PIO has significantly failed to prove that the information was not available in the office of V.P. Cana-Benaulim.

10. Section 7(1) of the Act requires the PIO to dispose the request of the information seeker within 30 days either by furnishing the information or rejecting the request. In the instant case, until the notice of the FAA was received by the PIO, he did not reply to the RTI application, which is against the intent and spirit of the Act.
11. On perusal of the order of the FAA dated 06/10/2020, the FAA directed the PIO to furnish the information within 15 days, however the PIO also failed and neglected to comply to the order of FAA.
12. In the course of hearing on 06/10/2021 in order to prove the contention of the PIO wrong, the Appellant produced on record two documents issued by the public authority.

- i. Copy of occupancy certificate issued by Village Panchayat Cana-Benaulim dated 30/11/2019 in respect of the residential house bearing No. 1677/C situated at Vasvaddo, Benaulim, Goa.
 - ii. Copy of construction licence issued by V.P. Cana-Benaulim dated 12/11/2015, which he claims to have obtained from his own source. On perusal of the above documents, I am of the opinion that the stand taken by PIO is fallacious and misleading.
13. Under the Act, furnishing the information is a rule unless exempted under section 8 or 9 of the Act. Under section 19(5) of the Act, the onus to prove that information is not available lies on the PIO. Considering the elements of the documents produced by the Appellant, the reply of the PIO based on fictitious narrative and cannot be relied. On seeing this conduct of PIO, I am unable to hold that the information cannot be furnished to the Appellant. I therefore find force in the submissions of the Appellant that PIO deliberately and intentionally withheld the information from disclosure.
14. After filing the additional reply on 02/09/2021, the PIO failed to appear before the Commission for hearing on 06/10/2021, 11/01/2022, 11/02/2022 and 23/03/2022 and has shown lack of concern to the process of the Commission.

On 10/11/2021, Adv. Lavina Costa appeared on behalf of PIO and undertook to file her wakalatanama on or before next date of hearing, similarly Adv. Anurag Raut appeared on his behalf on 25/11/2021 and undertook to file his wakalatnama on or before next date of hearing. However both of them failed to place on record their wakalatanama, I therefore cannot accept their appearance as valid appearance in the matter.

15. Considering the above fact, I am of the view that the information is required to be furnished and action as contemplated under section 20(1) and/ or section 20(2) of the Act is required to be initiated. I therefore find merit in the appeal and consequently the same has to be allowed, which I hereby do with following:-

ORDER

- The appeal is allowed.
- The PIO of Village Panchayat Cana-Benaulim, Salcete Goa shall furnish to the Appellant free of cost the entire information as sought by him vide his application dated 29/07/2020 within a period of **FIFTEEN DAYS** from the receipt of the order.
- The then PIO, Shri. Prabhakar Kamati is hereby directed to show cause as to why penalty 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 the show cause notice to be filed on **28/04/2022 at 10:30 am.**
- Appeal disposed accordingly.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner