

# GOA STATE INFORMATION COMMISSION

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

## Appeal No. 26/2021/SIC

Shri. Stephen Coutinho,  
H. No. 70, Camarcazana,  
Mapusa, Bardez-Goa

....Appellant

V/s

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

.....Respondent

Filed on : 03/02/2021  
Decided on : 25/03/2022

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

|                           |              |
|---------------------------|--------------|
| RTI application filed on  | : 28/09/2020 |
| PIO replied on            | : Nil        |
| First appeal filed on     | : 09/11/2020 |
| FAA order passed on       | : 14/01/2021 |
| Second appeal received on | : 03/02/2021 |

## **ORDER**

1. The brief facts of this appeal are that the appellant vide application dated 28/09/2020 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act) sought certain information from respondent No. 1 Public Information Officer (PIO). Upon not receiving any reply within the stipulated period, he filed appeal dated 09/11/2020 before the first Appellate Authority. The FAA vide order dated 14/01/2021 disposed the appeal. Being aggrieved with the said order the appellant preferred second appeal with prayers such as direction to PIO to furnish the information, to impose penalty on the PIO, etc.
2. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, Advocate Shane Gomes Pereira appeared on behalf of the appellant and later filed written submission dated 11/10/2021. Shri. Vyankatesh Sawant, PIO appeared in person and filed reply on 12/08/2021. Later, on 08/12/2021 he undertook to file

additional reply, however subsequently never attended the proceeding, nor filed additional reply.

3. PIO stated vide his reply that he is in receipt of the application dated 28/09/2020 and also the order dated 14/01/2021 passed by the FAA. The FAA had passed an order to provide desired information to the appellant. Further, vide letter dated 04/05/2021 he requested appellant to provide specific details to enable PIO to furnish the information. Appellant did not provide details of the property like survey number, chalta number, P.T. Sheet number, name of the owner/construction license holder, construction license number and date, renewal licence number and date, occupancy certificate number and date etc. In absence of these details office of PIO was not able to trace the concerned file and hence the information could not be furnished to the appellant.
4. Appellant stated that the FAA instead of disposing first appeal himself, remanded the matter to PIO and directed him to dispose the matter expeditiously on merit and furnish the deserved information if available in records. The FAA is duty bound to decide whether the appellant is entitled to the information or not. The FAA does not have authority to remand the matter to PIO, rather under the provision of the Act the FAA is required to direct the PIO to furnish the information.
5. Appellant further stated that the PIO claims that he sought for a clarification and details of the said property from the appellant and the information could not be furnished since the appellant has not provided the details. However the letter relied by the PIO is dated 04/05/2021, which only goes to show that he issued the said letter only after filing of the second appeal by appellant. The above mentioned letter by PIO is merely a farce, so as to appear that he has performed his duty. The appellant also stated that he has already mentioned chalta number 1/11 of P.T. Sheet 33 in the application dated 28/09/2020 and inspite of that PIO has asked for details of the property. This goes to show dishonesty of the PIO who has not even gone through the contents of the application. Also, conduct of PIO of not responding to appellant within the stipulated period amount to dereliction of duty.

6. After careful perusal of all submissions of both the sides it is seen that the appellant vide application dated 28/09/2020 sought some information/documents pertaining to property survey under chalta number 1/11 of P. T. sheet 33 of Mapusa City survey. PIO neither furnished the information, nor denied the same. Hence under section 7(2) of the Act, inaction of PIO amounts to deemed refusal.

If specific details were required, then the PIO could have requested the appellant to provide relevant details. However, PIO did not seek any clarification from the appellant till the proceeding began before the Commission. During the proceeding before the Commission PIO wrote a letter to appellant seeking some details of the property including chalta number and P. T. Sheet number which are already mentioned in the application. This goes to show that the PIO is attempting to impress upon the Commission by hiding his inaction.

It is also noted that the PIO appeared in person on 08/12/2021 and undertook to file additional reply on the next date of hearing. Surprisingly that was his last appearance, subsequently he never attended the proceeding inspite of several opportunities provided. It is observed that the said PIO though abstained from this proceeding, was attending other matters regularly. Hence it is ascertained that he has evaded the responsibility of furnishing the information as well as not honoured his own undertaking before the Commission.

7. Advocate Shane Gomes Pereira, while arguing on behalf of the appellant stated that the information sought is very clear, and specific. However PIO has not furnished the same. The conduct of PIO is dishonest and it shows that he does not wish to furnish the information. The Commission agrees with the arguments of Advocate Shane Gomes Pereira and conclude that the PIO is guilty of not furnishing the information and his conduct is indeed dishonest. Such a conduct on the part of PIO is deplorable and the Commission in no way can subscribe to such irresponsible behaviour of the PIO.
8. The Honble High Court of Delhi in Writ Petition (C) 3845/2007; Mujibur Rehman V/s Central information Commission has held;

*"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."*

9. In yet another judgement, Hon'ble High Court of Himachal Pradesh, in L.P. A. No., 4009 of 2013; Sanjay Bhagwati V/s Ved Prakash and others has held that:-

*" If a person refuses to act, then his intention is absolutely clear and is a sufficient indicator of his lack of bonafides. After all malafide is nothing sort of lack of bonafides or good faith."*

10. Subscribing to the ratio laid down by the Hon'ble High Courts and the provision of the Act, the PIO is liable to be penalised as provided under section 20(1) and 20(2) of the Act. However, the Commission finds it appropriate to call explanation from him before imposing such penalty.
11. In the light of above discussion and considering the facts of the matter, the appeal is disposed with the following order:-
- a) The PIO is directed to furnish the information sought by the appellant vide application dated 28/09/2020, within 20 days from the receipt of this order, free of cost.
  - b) Issue notice to Shri. Vyankatesh Sawant, PIO, Mapusa Municipal Council, and the PIO is further directed to showcause as to why penalty under section 20(1) and/or 20(2) of the Act should not be imposed against him
  - c) In case Shri. Vyankatesh Sawant is transferred, the present PIO shall furnish the information as directed above and serve this order alongwith the notice to the then PIO Shri. Vyankatesh Sawant and produce the acknowledgement before the Commission on or

before the next date of hearing, alongwith the full name and present address of the then PIO.

- d) The then PIO is hereby directed to remain present before the Commission on 22/04/2022 at 10.30 a.m alongwith with reply to showcause notice. The Registry is directed to initiate penalty proceeding.

Proceeding of this appeal 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