

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 328/2019/CIC

Judith Almeida,
257/1, 3rd Ward, Bagdem,
Colva- Salcete Goa. 403708.

.....Appellant

V/S

1. The Public Information Officer,
Office of Goa Coastal Zone Management Authority,
1st Floor, Pandit D.D.U. Bhavan,
Porvorim-Goa. 403521

2. First Appellate Authority,
Office of Goa Coastal Zone Management Authority,
1st Floor, Pandit D.D.U. Bhavan,
Porvorim-Goa. 403521.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 18/11/2019

Decided on: 15/03/2022

FACTS IN BRIEF

1. The Appellant, Ms. Judith Almeida, 257/1, 3rd Ward, Bagdem, Colva- Salcete Goa, by her application dated 16/08/2019 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Office of Goa Coastal Zone Management Authority, Porvorim-Goa.
2. Since the said application was not responded by the PIO within stipulated time, deeming the same as refusal, Appellant filed first appeal before the Member Secretary, Office of Goa Coastal Zone Management Authority (GCZMA), Porvorim Goa being the First Appellate Authority (FAA).
3. Since the FAA also failed to decide the first appeal, the Appellant preferred this second appeal before the Commission under section 19(3) of the Act.

4. Notice was issued to the parties, pursuant to which, the APIO, Shri. Bhaskar Shinde appeared and filed reply on behalf of PIO on 07/02/2020. Adv. V. Gracious appeared and filed reply on behalf of FAA on 07/02/2020.
5. Since, neither the Appellant, nor the PIO and FAA are appearing before the Commission since long, this appeal is disposed off on the basis of available records.
6. I have perused the pleadings, reply of the PIO, reply of the FAA, rejoinder, written submissions and considered the documents on record.
7. According to the Appellant, the information sought is being denied with malafide intention by the PIO as well as FAA only to protect illegal construction within 200m of High Tide Line and to cover up the lapses in violations of the Environmental Protection Act.
8. On the other hand, the PIO replied that due to the death of the mother of APIO, the information sought could not be furnished to the Appellant on time and this fact was conveyed to the Appellant and she was assured that the information will be provided free of cost. In spite of the same the Appellant preferred the first appeal on 16/09/2019.

Further according to the PIO, the available information was made available to the Appellant on 23/10/2019 and actual information was collected by the Appellant on 20/11/2019.
9. On perusal of rejoinder dated 18/03/2021, Appellant admitted that she received information from the PIO, however she claims that provided information is misleading and incomplete.
10. Except for this statement, the Appellant failed to produce any cogent evidence on record to show that the information provided to her is incomplete or misleading. There is no justification before

the Commission to hold as to how the same is incorrect and incomplete or misleading.

11. While considering the scope of information that could be dispensed under the Act, the Hon'ble Supreme Court in case of **Central Board of Secondary Education & Anrs v/s Aditya Bandopadhyay (C.A. No. 6454/2011)** has held that:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant."

In the present matter, the PIO has submitted that the available information is furnished to the Appellant. The PIO can only supply the material i.e the information in any form as held by public authority in terms of sec 2(f). The Act does not require the PIO to deduce some conclusion from the material and supply the conclusion so deduced to the Appellant.

12. The FAA has failed to hear the first appeal. It is observed that the approach of the FAA appears to be very casual. Right to file first appeal under sec 19(1) is a statutory right of the Appellant and he should not be deprived of the same. The Act grants no discretion to the FAA. Deciding the first appeal with priority as stipulated in the Act is part of duty of the FAA. Any lapse in performing such duty would amount to dereliction of duties by FAA as casted on him under the Act. Such approach to the RTI process is also not in conformity with the provisions and spirit of the RTI Act. However the Commission cannot impose any penalty on FAA, as there is no provision under the Act to impose penalty on FAA. The Commission warns FAA that he shall be diligent henceforth and deal with the first appeal with more caution and with the spirit and intent of Act.

13. The Appellant prayed for penalty against PIO for delay in furnishing the information. However in the present case application was filed on 16/08/2019 with the PIO. The information was therefore required to be furnished or rejected on or before 15/09/2019 being the 30th day. Record reveals that the available information was offered on 23/10/2019 i.e on 38th day and the same was collected by Appellant on 20/11/2019. The PIO has reasonably explained the delay with the justification that due to unavoidable circumstances on account of the death of the mother of APIO, he could not furnish the information within time. This fact is not disputed by the Appellant in her rejoinder. I therefore hold that delay is marginal and has been sufficiently justified.

High court of Bombay Goa bench at Panaji in **Writ petition No.704 of 2012 Public Authority, Office of Chief Engineer, Panaji v/s Shri Yeshwant Tolio Sawant** while considering the scope for imposing penalty has observed:-

"6. The question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such penalty is a blot upon the career of the Officer, at least to some extent. In any case the information was furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."

14. From the records it reveals that, available information has been furnished to the Appellant free of cost. The PIO also offered fresh inspection of the respective file, however Appellant declined to carry out inspection with the reason that no inspection of files has been sought for in her RTI application.
15. In the above circumstances and considering the facts involved herein, Commission finds no ground to impose penalty under section 20 of the Act. In the result, the relief as prayed for by the Appellant cannot be granted. The appeal is disposed accordingly with the following:-

ORDER

- The appeal stands dismissed.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

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