

GOA STATE INFORMATION COMMISSION

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Appeal No. 75/2022/SCIC

Mr. Dean D'Cruz,
Mozaic, 1 Design Valley,
Alto, Porvorim, Bardez-Goa, 403521.

.....Appellant

V/S

1. The Public Information Officer/ V.P. Secretary,
Village Panchayat Saligao,
Saligao, Bardez-Goa, 403511.

2. The First Appellate Authority,
Block Development Officer-I Bardez, Mapusa,
Office of the Block Development Officer-I,
Mapusa, Bardez-Goa, 403507.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 07/03/2022

Decided on: 20/07/2022

ORDER

1. The Appellant, Mr. Dean D'Cruz, r/o. Mozaic, 1 Design Valley, Alto, Porvorim, Bardez-Goa by his application dated 19/11/2021, 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 Saligao:-

"I the undersigned hereby require the following particulars of information.

a. Subject matter: Construction on sy no. 305/1 & 305/7 of Saligao Village.

b. The period to which information relates: from 2010 till date.

c. Information Description: Provide copies of building licences/permissions with plans on survey. No. 305/1 and 305/7 of Saligao Village."

2. The said application was not responded by the PIO, hence deeming the same as refusal, the Appellant preferred first appeal before the Block Development Officer-I, Bardez, Mapusa-Goa being the First Appellate Authority (FAA) on 23/12/2021.
3. The FAA by its order dated 25/01/2022 allowed the first appeal and directed the PIO to furnish the complete information within 15 days from the date of the order.
4. According to the Appellant, despite the order of the FAA, the PIO failed and neglected to furnish the information. Therefore, he brought this fact to the notice of the FAA, to which by letter dated 03/03/2022, the FAA directed the Appellant to prefer the second appeal before the Commission. Therefore he landed before the Commission with this second appeal under sec 19(3) of the Act, with prayer to direct the PIO to furnish the information and to initiate appropriate action on the PIO.
5. Notice was issued to the parties, pursuant to which the PIO, Ms. Pravisha Bhonsle appeared and filed her reply on 12/04/2022, and on 24/05/2022. The FAA duly served opted not to appear and file his say in the matter.
6. According to Appellant, the large scale illegal construction is going on in the property surveyed under survey No. 305/1 and 305/7 of Saligao village and therefore through his RTI application, he sought information from the Village Panchayat Saligao with regards to copy of building licence/permission with plans issued by Village Panchayat Saligao, Bardez-Goa.

The Appellant further alleged that, the PIO intentionally refused to reply to his RTI application and disobeyed the order of the FAA only to protect the illegalities of the Panchayat member, who is involved in large scale construction in survey No. 305/1 and 305/7 of Saligao village.

He further alleged that, the act of the PIO was intentional and with a predetermined mind as she also even did not respond the call from the Block Development Officer and therefore prayed that appropriate action be taken against the PIO.

7. Through her reply, the PIO contended that upon receiving the RTI application on 19/11/2021, she replied the same on 23/12/2021 and to substantiate her claim, she produced on record the copy of letter dated 23/12/2021, however without any cogent proof that she has delivered the said reply to the Appellant.

She further submitted that, she did not receive the copy of order passed by the FAA dated 25/01/2022 and that she is unaware of the order of the FAA.

She further contended that due to Covid Virus, she was unable to deal with the work properly or that due to lack of resources and overburdened workload, she could not resolve the issue.

8. I have perused the pleadings, reply and scrutinised the documents on record.
9. This is a classic case, where the principles of natural justice have been thrown in the air. The PIO claims that she responded the RTI application, however did not dispatch the information to the seeker. The FAA heard the matter in absence of the PIO, dispose the first appeal in favour of the Appellant and claims that he directed the PIO to furnish the information within 15 days, however he did not communicate his order to the PIO and now the PIO is furnishing the information in this second appeal informing the Appellant that no construction licence/permission has been issued to carry out construction in survey No. 305/1 and 305/7 of Saligao Village, thus giving considerable time to complete said alleged

illegal construction within the jurisdiction of Village Panchayat Saligao, which appears to be inappropriate and smacks of malafide.

10. On meticulous perusal of proceeding of the first appeal, it is revealed that the PIO has also failed and neglected to appear before the FAA on several hearings or thereafter, take the follow up in the matter although she was the party to the proceedings and against whom the relief was claimed. It was her bounden duty to appear before the FAA or atleast to follow the track of the hearing. The reason put forth by the PIO that she is not aware about the order passed by the FAA, cannot exonerate the PIO from her legal obligation.

The PIO is a designated person and representative of public authority who is responsible to ensure compliance with the RTI Act and facilitate the seeker in obtaining the information. The PIO is the information provider. Under Section 19(5) of the Act, the onus to prove that the information is not available lies on the PIO. Here in this case there is gross negligence on the part of the PIO.

11. In spite of a valid service of notice, the FAA has failed and neglected to appear before the Commission. The FAA thus fail to show that the order of the FAA has been formally communicated to the PIO. Therefore the allegation that order of the FAA dated 25/01/2022 was not conveyed to the PIO has gone unchallenged.

Deciding the first appeal under the Act, is a quasi judicial function and it is necessary that the FAA ought to have decided the appeal with speaking order giving justification for the decision arrived at and should have conveyed the decision to the effected parties as envisaged in section 4(1)(d) of the Act. The approach of the FAA in dealing with the first appeal appears to be causal and not in consonance with the provisions of law. The Government of India, Ministry of Personnel, Public Grievance and

Pensions, Department of Personnel and Training, vide circular No. 10/12/2007/IR dated 09/07/2007, issued certain guidelines to dispose the first appeal under RTI Act, the para No. 3 of the said memo reads as under:-

“Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.”

Deciding the appeal by the quasi judicial authority, however not communicating its order to the affected parties, amounts to gross violation of the justice. The Commission warns the FAA that he shall be diligent henceforth, and deal with the first appeal with caution and with spirit and intent of law.

12. Through her additional reply dated 24/05/2022, the PIO contented that, due to lack of resources as two of her regular staff was deputed for election duty for BLO (Booth Level Officer) and which continued till the election were completed on 14/02/2022 therefore, she could not deal with the RTI application. Had one to accept this as a ground for delaying information, the entire spirit and intent of the Act of furnishing the information in time would be frustrated. In such circumstances, such a version cannot be held as probable cause for delay. Hon'ble Supreme Court has fortified this view in the case of **The Institute of Chartered Accountant of India v/s Shaunak H. Satya & Ors. (Civil Appeal No. 7571/2011) :-**

“Public authorities should realize that in an era of transparency, previous practices of unwarranted

*secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furnishing information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the Civil Society and the Parliament. In its wisdom, the Parliament has chosen to exempt only certain categories of information from disclosure and certain organizations from the applicability of the Act. As the examining bodies have not been exempted, and as the examination processes of examining bodies have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the RTI Act. **Additional workload is not a defence.** If there are practical insurmountable difficulties, it is open to the examining bodies to bring them to the notice of the government for consideration so that any changes to the Act can be deliberated upon."*

The purpose of the Act is that information should not only be provided, but it should be provided within time bound manner. If the PIO is overburdened to carry out her duties, she should write to her Controlling Officer for redressal of grievance.

13. Under section 7(1) of the Act, the PIO is required to dispose the request of the seeker within 30 days. Disposal of request may result in furnishing of information on payment of fees or rejection of request on ground as mentioned in section 8 and/or section 9 of the Act.

In the present case, the RTI application was filed on 19/11/2021, which is duly endorsed by the office of public

authority on same day. Therefore it was bounden duty of the PIO to furnish the information /reply on or before 18/12/2021, however the PIO has miserably failed to respond to the RTI application within stipulated time and not discharged her burden that she has acted diligently and reasonably. The PIO also failed and neglected to comply the order of the FAA dated 25/01/2022.

14. Section 20 of the Act, clearly lays down that in case the information has not been furnished within the time specified under section 7(1) of the Act, then the Commission shall impose penalty.

15. No doubt, the PIO by a subsequent reply dated 24/05/2022 submit an unconditional apology for the delay in submitting the information, however no convincing evidence is produced on record to substantiate her claim, her defence is seemed as an afterthought and suffers from want of bonafide. The High Court of Delhi in the case **Mujibur Rehman v/s Central Information Commission (2009 SCC onLineDel. 1149)** has held that:-

"The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. 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."

16. The High Court of Bombay, Goa bench in case of **Johnson B. Fernandes v/s The Goa State Information Commission & Another (2012 (1) ALL MR 186)** has held that, law contemplates supply of information by PIO to party who seek it, within the stipulated time, therefore where the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.

In an another judgement of **Calcutta High Court in Madhab Kumar Bandopadhyay v/s Chief Information Commissioner (AIR 2013 Cal. 128)**, it has been held that, belated supply of the information by the PIO cannot absolve him of the penal consequences.

17. Considering the ratio laid down by the various High Courts, the Commission comes to the conclusion that this is a fit case for imposing penalty under section 20 of the Act against the PIO, Ms. Pravisha Bhonsle. However before any penalty is imposed, the principle of natural justice demands that an explanation be called for from the concerned PIO, as to why she failed to discharge the duty cast upon her as per the RTI Act. I, therefore pass the following:-

ORDER

- The appeal is allowed.
- The PIO, Ms. Pravisha Bhonsle, Secretary of Village Panchayat Saligao, Bardez, Goa is hereby directed to show cause as to why penalty should not be imposed on her in term of sec 20(1) and/or recommend disciplinary proceeding against her in terms of sec 20(2) of the Act.
- The reply to the show cause notice is to be filed on **09/09/2022 at 10:30 am.**

- The appeal disposed accordingly.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner