

GOA STATE INFORMATION COMMISSION

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Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Appeal No. 15/2022/SCIC

Shri. Chandrashekar Vast,
R/o. Kalavati Niwas, H.No. 187,
Behind Corporation Bank,
Vasco-Goa.

.....Appellant

V/S

1. Shri. Sachin Desai,
Deputy Collector / SDO &
The Public Information Officer,
Mormugao, Vasco-Goa.

2. Shri. Surendra F. Naik,
The First Appellate Authority,
The Additional Collector-I of South Goa,
Margao-Goa. 403601.

.....Respondents

Complaint No. 01/2022/SCIC

Shri. Chandrashekar Vast,
R/o. Kalavati Niwas, H.No. 187,
Behind Corporation Bank,
Vasco-Goa.

.....Complainant

V/S

1. Shri. Sachin Desai,
Deputy Collector / SDO &
The Public Information Officer,
Mormugao, Vasco-Goa.

2. Shri. Surendra F. Naik,
The First Appellate Authority,
The Additional Collector-I of South Goa,
Margao-Goa. 403601.

.....Opponents

Both Filed on: 11/01/2022
Both Decided on: 21/07/2022

ORDER

1. Both the above proceedings are result of a common RTI application dated 29/04/2021 filed by the Appellant/ Complainant and between the same parties and therefore are disposed by this common order.
2. The facts in brief which arises are that, the Appellant/ Complainant, Shri. Chandrashekar Vast, r/o. Kalavati Niwas, H.No. 187, Behind Corporation Bank, Vasco-Goa by his application dated 29/04/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought information of CCTV footage of the strong room in which Ballot Box were kept at MPT Hall, Vasco-Goa from the Public Information Officer (PIO), Returning Officer, Mormugao Municipal Council Election, Mormugao-Goa.
3. The said application was responded by the PIO on 17/06/2021 in the following manner:-

"With reference to your application dated 29/04/2021 under Right to Information Act, 2005, it is informed that the information sought by you is not available."

4. Feeling aggrieved and dissatisfied, the Appellant/ Complainant filed first appeal before the Additional Collector-I on 28/06/2021 under section 19(1) of the Act being the First Appellate Authority (FAA).
5. The FAA by its order dated 06/08/2021 allowed the first appeal and directed the PIO to furnish proper information within 15 days from the date of receipt of the order.
6. Since the PIO failed and neglected to comply the order of the FAA, the Appellant/ Complainant preferred this second appeal before the Commission under section 19(3) and also the complaint under section 20(1) and (2) of the Act, with the prayer to direct the PIO to furnish the information, to impose penalty, recommend to

initiate disciplinary action against the PIO and also to compensate him for the loss and detriment suffered.

7. Notice was issued to the parties. In spite of valid service of notice, none appeared before the Commission on behalf of the PIO and the FAA. I therefore dispose the appeal/complaint on the basis of available records and upon hearing the submissions of the Appellant/ Complainant.
8. On perusal of the RTI application dated 29/04/2021, it is revealed that, the Appellant/ Complainant has sought information with regards to the CCTV footage of the strong room in which the Ballot Box in respect to Municipal election held in the year 2021 where been kept at MPT Hall, Vasco from 23/04/2021 at 7:00 pm till 26/04/2021 at 5:00 am.
9. According to the Appellant/ Complainant, the PIO was duty bound to furnish the information within the stipulated period of 30 days, however, the PIO deliberately did not provide the information and therefore the said amounts to be deemed refusal.

Further according to him, the PIO by letter dated 17/06/2021, rejected his application with mere blanket statement without giving any reasonable cause. Further according to the Appellant/ Complainant, the PIO also failed and neglected to comply the order of the FAA and therefore liable for imposition of penalty.

10. On perusal of the reply dated 17/06/2021 filed by the PIO to the RTI application which is reproduced hereinabove at para No. 2, it reveals that the information replied as "Not available". In the given reply, neither he cited any provision of Act, nor gave any reasoning as why the said information is not available.
11. The whole purpose of the Act is to secure access of information under the control of public authorities in order to

promote transparency and accountability in the working of the every public authority. Section 3 of the Act is an Omnibus provision, in a sense it mandate that all citizens shall have right to information, subject to exemption provided under the Act. Information sought for can be denied only on the basis of exemption clause provided under section 8(1) or section 9 of the Act. However, the PIO has denied the information on a mere blanket statement not supported by any cogent material or reasoning. The PIO has not been able to provide satisfactory explanation for not supplying the said critical information to the Appellant. The word 'Not available' is vague in as much as it does not suggest any reasoning for denying the information such a vague reply cannot be accepted as a response under section 7(1) of the Act. The PIO cannot impose new set of non-existence exemption to deny the information. The reply should be specific so that the seeker can pursue his grievance properly.

12. Under section 19(5) and also with the second proviso of section 20(1) of the Act, the burden lies on the PIO to justify the denial of the information or that he acted reasonably which reads as under:-

"19(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request."

Above provision of law has been upheld by the High Court of Delhi in the case **State Bank of India v/s Mohd. Shahjahan (W.P. No. 9810/2009)** at para No. 22 as under:-

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and

accountable. For the purpose of RTI Act, all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the Public Authority to show why the information sought from it should not be disclosed."

13. The FAA by its order dated 06/08/2021 allowed the first appeal. The operative part of the said order reads as under:-

"ORDER

*The Appeal filed by the Appellant is allowed. The Respondent is directed to furnish the **proper information or speaking reply**, i.e he has to give proper reason as explained above, so that the appellant will have the opportunity to approach the competent forum for redressal of his grievance if any. The above action should be complied within 15 days from receipt of this order.*

Pronounced in the open court."

However from the available records it indicates that the PIO failed to comply the order of the FAA.

14. The High court of Gujarat in the case **Urmish M. Patel v/s State of Gujarat (LNIND 2010 Guj. 2222)** has held that penalty can be imposed if order of the FAA is not complied with. The relevant para No. 8 is reproduced herein:-

"8.....Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information even after the

order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order, the petitioner was duty bound to implement the same, whether it was a speaking order or the appellate authority was passing the same after following the procedure or whether there was legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty. ”

15. Section 7(1) of the Act, requires the PIO to dispose the request of the information seeker within 30 days, however the PIO also failed to reply the RTI application within stipulated period. The PIO also failed and neglected to comply the order of the FAA. Records reveals that, the PIO also failed and neglected to appear in the first appeal proceeding before the FAA. In spite of a valid service of notice, the PIO also failed to appear before the Commission for hearings on 24/02/2022, 04/04/2022, 06/05/2022, 28/06/2022 and 21/07/2022, thus shown lack of concern to the process of the Commission and failed to discharge his responsibility.
16. For the purpose of appeal bearing No. 15/2022/SCIC, the Commission holds that the PIO failed to furnish proper information as sought by the Appellant.
17. As far as complaint bearing No. 01/2022/SCIC is concerned, the Complainant sought for invoking section 20(1) and 20(2) of the Act for denying the information.
18. From the facts and circumstances of the case, it appears that there has been deliberate violation of the order of the FAA. The Commission is of the view that it is a case of wilful denial of information. Since Right to Information is a fundamental right to

citizens, the denial of information has to be backed by the strong and cogent reason.

19. Considering the above, the Commission is of the view that this is a fit case for imposing penalty under section 20(1) of the Act and also to recommend for disciplinary action under section 20(2) of the Act against the PIO, Shri. Sachin Desai. 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 he failed to discharge the duty cast upon him as per the RTI Act. I hereby pass the following:-

ORDER

- The appeal No. 15/2022/SCIC is allowed.
- The complaint No. 01/2022/SCIC is allowed.
- The PIO is directed to comply the order of the FAA dated 06/08/2021 and furnish the proper information to the Appellant within **FIFTEEN DAYS** from the date of receipt of the order.
- The PIO, Shri. Sachin Desai, Dy. Collector/ SDO, Mormugao, Vasco-Goa 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 for disciplinary proceeding against him in terms of section 20(2) of the Act.
- The reply to the show cause notice to be filed on **13/09/2022 at 10:30 am.**
- The appeal is disposed accordingly.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner