

# GOA STATE INFORMATION COMMISSION

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

## **Appeal No. 120/2022/SIC**

Mr. Leo Alvares

R/o. H. No. 86/A, Anus,

Nuvem, Salcete-Goa, 403713

...Appellant

V/s

1. Public Information Officer,  
Office of the Mamlatdar of Salcete,  
Mathany Saldanha Complex,  
Margao, Salcete-Goa 403601

2. The First Appellate Authority,  
Office of the Deputy Collector,  
Mathany Saldanha Complex,  
Margao, Salcete-Goa 403601

...Respondents

Filed on : 29/04/2022

Decided on : 29/07/2022

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

RTI application filed on : 29/12/2021

PIO replied on : Nil

First appeal filed on : 22/02/2022

FAA order passed on : 30/03/2022

Second appeal received on : 29/04/2022

## **ORDER**

1. Aggrieved by non furnishing of the information by Respondent No. 1, Public Information Officer (PIO) and by the order of Respondent No. 2, First Appellate Authority (FAA) the appellant under section 19(3) of the Right to Information Act, 2005 (for short, the 'Act') filed second appeal before the Commission, praying for the direction to the Respondents to furnish the information.

2. The brief facts of this appeal, as contended by the appellant are that vide application dated 29/12/2021 he sought certain information from the PIO. Upon not receiving the said information within the stipulated period, he filed appeal dated 22/02/2022 before the FAA. Being aggrieved with the proceeding and the order of the FAA, he filed second appeal before the Commission.
3. Pursuant to the notice, appellant appeared alongwith Advocate C. Vas, praying for the information. Shri. Abhishek A. Naik, Awal Karkun appeared for the FAA under authority letter and filed reply dated 8/06/2022 alongwith the enclosures, on behalf of the FAA. PIO filed reply on 8/06/2022.
4. PIO stated that vide reply dated 18/01/2022 he had informed the appellant that the concerned file is in the Vigilance Officer-II, Directorate of Vigilance, Government of Goa, Altinho Panaji-Goa. PIO contended that the question of appeal does not arise in view of the above mentioned fact and prayed for dismissal of the appeal.
5. FAA submitted that on receipt of the first appeal, notice dated 24/02/2022 was issued to the appellant for hearing on 2/03/2022. However, the said notice was unclaimed by the appellant, despite of the intimation given by the Post Office on 26/02/2022 and 1/03/2022. FAA further stated that the case was dismissed for default in appearance and non prosecution.
6. Advocate C. Vas while arguing on behalf of the appellant stated that the appellant never received any reply from the PIO, nor any notice from the FAA. The information sought does not come under the purview of section 8 of the Act for exemption and section 9 of the Act for rejection and hence the PIO is obliged to furnish the said information. Advocate vas further argued that the FAA did not give

any opportunity to appellant to appear and passed the order for default in appearance of the appellant. The proceeding has caused injustice on the appellant.

7. Upon careful perusal of the records of this appeal, it is seen that the PIO has not claimed exemption under section 8, of the Act, nor rejected under section 9 of the Act, the information sought by the appellant. PIO while stating that he had sent reply dated 18/01/2022 to the appellant, has not produced the copy of the said reply, nor substantiated his claim by producing evidence of dispatch of the said letter. Similarly, though the PIO contends that the relevant file is in the Directorate of Vigilance, he has not produced any evidence to show that the file is in the Directorate of Vigilance and not in his custody. Hence, the Commission concludes that the PIO owns the responsibility of furnishing the information to the appellant.
8. PIO was given an opportunity vide notice dated 01/07/2022 to appear before the Commission on 19/07/2022 in order to produce documental evidence and prove his contention. However, PIO decided not to appear before the Commission inspite of receipt of the said notice.
9. The Commission has noted the submission of FAA wherein he has contended that the first appeal was dismissed for default in appearance on the part of the appellant. The Goa State Information Commission ( Appeal Procedure) Rules, framed by the Government of Goa under section 27 of the Act, Rule 7 (2) allows the appellant to opt not to be present before the authority. However, section 19(6) of the Act mandates FAA to dispose the first appeal on merit. The said provision makes it amply clear that the FAA is required to hear and decide the appeal on merit even in the absence of the appellant, and not dismiss the appeal for default in appearance.

10. With these observations, the Commission concludes that the information sought by the appellant is in public domain and the PIO has failed to show that the concerned file is not in his records. It is the statutory right of the appellant to seek the information under the Act. Hence under section 7(1) of the Act the PIO is required to furnish the said information to the appellant.
11. In the light of the above discussion the present appeal is disposed with the following order:-

The PIO is directed to furnish the information sought by the appellant vide application dated 29/12/2021, within 20 days from the receipt of this order, free of cost.

Proceeding 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