

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Mr. Arvinda D'sa,
H. No. 31, Nuvem,
Dongorim-Goa 403713

..... Appellant

V/s

1. The Deputy Collector,
First Appellate Authority (FAA)
Margao-Salcete, Mathany Saldhana
Administrative Complex, Margao,
South-Goa

2. The Joint Mamlatdar,
Public Information Officer (PIO),
Salcete-Margao, Mathany Saldhana
Administrative Complex, Margao,

..... Respondents

Appeal No. 10/2022/SIC along with **Appeal No. 24/2022/SIC**

Filed on: 10/01/2022

Decided on: 29/07/2022

Relevant dates emerging from appeal:

RTI application filed on	: 02/09/2021
PIO replied on	: 29/10/2021
First appeal filed on	: 22/10/2021
FAA order passed on	: Nil
Second appeal received on	: 10/01/2022

ORDER

1. Aforementioned two appeals, filed by the appellant under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') with identical factual matrix giving rise to similar issue and common question in law, with the consent of the concerned parties, have been combined to be heard together and are herein decided by a common order.

2. The brief facts of these appeals are that the appellant vide two applications dated 02/09/2021 had sought certain information, as mentioned in the respective application, from Respondent No. 1, Public Information Officer (PIO). Upon not receiving any reply within the stipulated period from the PIO, appellant filed appeal dated 22/10/2021 before Respondent No. 2, First Appellate Authority (FAA). Being aggrieved with failure of the FAA to dispose the appeal, appellant approached the Commission by way of second appeal against PIO and FAA.
3. Notice was issued to the concerned parties, pursuant to which appellant appeared in person praying for the information. Representatives of FAA and PIO appeared under authority letter, reply dated 18/02/2022 was filed on behalf of the FAA and reply dated 14/03/2022 was filed on behalf of the PIO.
4. Appellant stated that the PIO has failed to act within the stipulated period, which amounts to denial of information. PIO replied vide letter dated 29/10/2021, after the first appeal was filed, stating that the information sought is not available in records. Similarly, the FAA has failed to decide the appeal. Hence the appellant has appeared before the Commission seeking the information.
5. PIO submitted that the appellant vide letter dated 29/10/2021 was informed that the information sought by him is not available in the records of his office, as such the information could not be furnished, hence the appeal may be dropped/dismissed.
6. FAA stated that upon receiving the appeal dated 22/10/2021, notice dated 28/10/2021 was issued to appellant and PIO for hearing. The notice sent to the appellant was returned back by the Post Office as unclaimed. Hence the matter was dismissed for default in appearance and non prosecution.

7. Upon perusal of the record of the present appeal, it is seen that the appellant has sought information pertaining to some voters registered as per the Electoral Roll 2021 S05 Goa, Constituency 28-Nuvem, Part No. 18, showing House No. 31/2 and 31/1. PIO did not reply the said applications within the stipulated period, however sent a reply after first appeal was filed, stating that the information is not available in his records. It is observed that the PIO did not transfer the application to another authority. Section 6(3) of the Act provides for transfer of an application to other authority if the information is not held by his office. The fact that the PIO did not transfer the application to other authority, means the burden of furnishing the information has been accepted by the PIO.
8. Similarly, PIO has not claimed exemption from disclosure under section 8 of the Act, nor the said information is rejected under section 9 of the Act. Therefore, the PIO is bound to furnish the information to the appellant.
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. Firstly, the FAA has not produced the copy of this order passed while disposing the first appeal, and the appellant has stated that he has not received any order from the FAA. Secondly, Goa State Information Commission (Appeal Procedure) Rules, 2006 framed by the Government of Goa under section 27 of the Act, Rule 7(2) allows appellant to opt not to be present before the authority. However, section 19(6) of the Act mandates FAA to dispose the First appeal within the maximum of 45 days, on merit. These provisions makes it amply clear that the FAA is required to hear and decide the appeal within the mandatory period, on merit, even in the absence of the appellant.

10. With these findings mentioned in Para 7 and 8, the Commission concludes that the PIO is required to furnish the information to the appellant. In the light of above discussion, these two appeals are disposed with following order:-

- a) PIO is directed to furnish the information sought by the appellant vide application dated 02/09/2021, within 15 days from the receipt of this order, free of cost.
- b) PIO hereafter, is directed to deal with applications received under section 6(1) of the Act, strictly as provided by the law.
- c) FAA hereafter, is directed to hear and decide appeals received under section 19(1) of the Act, as mandated by the law.
- d) All other prayers are rejected.

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