

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

CORAM: Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 52/2022/SIC

Shri Vishwanth B. Solienkar,
S1 Artic Apartment,
Behind Don Bosco Engineering College,
Fatorda, Margao – Goa 403602.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Town Planner,
Town & Country Planning Department,
Margao – Goa.

2. First Appellate Authority,
Senior Town Planner,
Town & Country Planning Department,
Margao – Goa.

-----Respondents

Filed on:-17/02/2022
Decided on: 29/07/2022

Relevant dates emerging from appeal:

RTI application filed on	: 13/12/2021
PIO replied on	: Nil
First appeal filed on	: 12/01/2022
First Appellate authority order passed on	: Nil
Second appeal received on	: 17/02/2022

ORDER

1. Aggrieved by non furnishing of the information by Respondent No.1 Public Information Officer (PIO) and non hearing of the appeal by Respondent No.2 First Appellate Authority (FAA), appellant filed second appeal against both the respondents, which came before the Commission on 17/02/2022.
2. The brief facts of this appeal, as contended by the appellant are that vide application dated 13/12/2021 he had sought certain information from PIO. Appellant, upon not receiving information within the stipulated period, filed appeal dated 12/01/2022 before the FAA, and preferred second appeal dated 17/02/2022 before the Commission.
3. Notice was issued to the concerned parties, pursuant to which appellant appeared and filed reply dated 04/05/2022 and clarification dated 08/06/2022. Shri. Vinod Kumar Chandra, PIO appeared

alongwith Advocate Atish P. Mandrekar and filed reply alongwith enclosures on 04/05/2022 and submission dated 11/07/2022.

4. Appellant stated that the information he sought pertains to the refusal of technical clearance order in pursuance of his professional practice. Denial of the said information has caused him professional loss and due to this he is subjected to mental agony. PIO has not furnished any information, nor FAA heard the appeal, hence he is denied of his statutory right. Reply dated 22/03/2022 issued by the PIO is after filing of the second appeal, yet the said reply has not furnished the information.
5. PIO submitted that after making through search of the office records the requested information was sent vide letter dated 22/03/2022 to the appellant. PIO further stated that his dealing hand was posted on election duty from 01/01/2022 to 31/03/2022, as such PIO was unable to gather and compile the information. Also, PIO and his family tested Covid positive and was quarantined, hence he was unable to respond within the time limit to the appellant. That, delay to provide reply and the information is caused only because of unavoidable situation.
6. Advocate Atish P. Mandrekar, while arguing on behalf of the PIO stated that information as available has been furnished to the appellant and the delay may be condoned since various reasons responsible for the delay are already on record. As stated by the PIO, Regulation 4.3 (b) is a typographical error and the same shall be read as 4.2 (b). The office has already requested to correct the regulation number as 4.2 (b) instead of 4.3 (b) in BPAMS system. Advocate Mandrekar further stated that, the then PIO Shri. Vinod Kumar Chandra is transferred and the present PIO is required to place on record whether the said correction has been done in the records.
7. Appellant, while delivering arguments, stated that, the PIO is guilty of not furnishing the information within the stipulated period and also of furnishing incomplete information during the current proceeding. Information sought pertains to Goa Regulation 4.3 (b) mentioned as reason for refusal of Technical Clearance in refused certificate dated 01/12/2021, hence there has to be a document from the records of the authority stating that the change is made in the refused certificate and not the BPAMS system as claimed by the PIO. The PIO has not provided any document to substantiate his statement, nor any evidence to show that the correction has been effected. That the

appellant has sought information pertaining to Regulations which act to regulate the power of the authority, hence the same ought to be on record and the PIO is required to furnish the same.

8. Upon careful perusal of the submission and arguments in the present matter, the Commission notes that the appellant had sought information vide application dated 13/12/2021 as under:-

"Information under the Right to Information Act 2005 in respect of Refusal of Technical Clearance by the Town Planner Salcete, South Goa, Dated 01/12/2021 for single dwelling structure proposed in property surveyed under no.245-1-K in Raia village under no- SOU/SAL/RAI/2021-OCT/0413 in pursuance of technical clearance order under Bpams system by the TCP and with respect to The Goa Land Development and Building Construction Regulations under the Goa (Regulation of Land Development and Building Construction) Act. Kindly provide certified information including certified copies in respect of Goa Regulation-4.3 (b) mentioned as reason for Refusal of Technical Clearance in refused certificate dated 01/12/2021."

Appellant received no reply from the PIO within the stipulated period, hence filed first appeal before the FAA, further filed second appeal since the FAA did not hear the first appeal. After the second appeal was filed, PIO issued a reply dated 22/03/2022, after more than three months from the date of application, without furnishing the complete information.

9. PIO has quoted two reasons for not being able to reply within the stipulated period. One – dealing hand was posted on election duty from 01/01/2022 to 31/03/2022, and Two – PIO was tested Covid positive and was quarantined. The Commission after examining the above mentioned reasons concludes as below:-

The application was submitted by the appellant on 13/12/2021 and dealing hand of PIO was deputed on election duty from 01/01/2022 which makes it clear that the dealing hand was available till 31/12/2021 and it was possible for the PIO to gather the information from the dealing hand before he was relieved for the election duty. Nevertheless, PIO gets period of 30 days within which he is required to furnish the information.

Similarly, as per the medical certificate attached alongwith the reply, it is noted that the PIO was tested positive for Covid-19 on 18/01/2022, which is after the stipulated period of 30 days from the date of the application. PIO was required to furnish the information /reply on or before 12/01/2022, which he failed to do.

10. There may be typographical error in the mention of the authority as 'reason for refusal of Technical Clearance in refused certificate dated 01/12/2021', as claimed by the PIO. However, typographical error in the records of the authority is no fault of the appellant and he cannot be deprived of the information due to the error on the part of the authority. It is the statutory right of the appellant to seek information from the public authority, which is available in the public domain. The Act does not provide for delaying or denying the information on account of any error or lapse on the part of the public authority. The information can be denied only if exempted under Section 8 or rejected under section 9 of the Act.
11. Appellant while praying for the complete information has pressed for imposing penalty on the PIO for not furnishing him the complete information. It is noted that though there is contravention of provision of the Act by the PIO, he cannot be solely held responsible as the non furnishing of the complete information is due to the typographical error in the BPAMS system. The PIO has undertaken to effect the correction and furnish the information. In the meanwhile, Shri. Vinod Kumar Chandra, the then PIO who has been transferred during the proceeding of this matter has updated the present PIO vide letter dated 05/07/2022 regarding the current proceeding. Hence, the Commission concludes that the present PIO is required to furnish the remaining information.
12. Hon'ble High Court of Bombay at Goa, in Writ Petition 205/2007, Shri. A.A. Parulekar V/s Goa State Information Commission has held:-
- "The order of penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."*
13. There is no convincing and sufficient evidence on record to conclude that the failure of the PIO in this matter to furnish the complete information is intentional. Further, PIO has undertaken to furnish the information once the correction is done in the records. Hence as per the findings of the Commission and subscribing to the ratio laid down by the Hon'ble High Court of Bombay, the Commission holds that there is no need to invoke section 20 for penal action against the PIO. However, it is the statutory right of the appellant to seek the information and the PIO is mandated to furnish the same.
14. It is noted that the FAA has not heard and disposed the first appeal. Section 19(6) mandates FAA to dispose the appeal filed under Section 19(1) of the Act, within maximum of 45 days. Hearing of first appeal provides an opportunity to the PIO to justify before the FAA his action

on the application. FAA, by not hearing and deciding the appeal has caused injustice to the appellant as well as the PIO. However, the Commission has no jurisdiction to penalise FAA for his failure to dispose the first appeal.

15. In the light of above discussion, the appeal is disposed with the following order:-

- a) PIO is directed to furnish the complete information sought by the appellant vide application dated 13/12/2021, within 15 days from the receipt of this order, free of cost.
- b) 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

