

GOA STATE INFORMATION COMMISSION

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

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 250/2021/SIC

Clementina D'Souza ,
402, Divine Paradise,
Cross Road No. 2, I.C. Colony,
Borivili, (West), Mumbai 400 103.
v/s

..... Appellant

1. Mr. Peter Martins,
Secretary, Village Panchayat Taleigao,
The Village Panchayat Taleigao,
Basement of Taleigao Community Centre,
Near Football Ground Taleigao,
Taleigao, Tiswadi Goa 403002.

2. Shri Anil L. Dhumaskar,
Block Development Officer,
Tiswadi Block,
6th Floor, 4th Lift, Junta House,
Panaji - Goa.

..... Respondents

Filed on : 08/10/2021

Decided on : 08/04/2022

Relevant dates emerging from appeal:

RTI application filed on	: 09/07/2021
PIO replied on	: 30/07/2021
First appeal filed on	: 04/09/2021
FAA order passed on	: Nil
Second appeal received on	: 08/10/2021

ORDER

- 1) The brief facts of this appeal are that the appellant vide application dated 09/07/2021 filed under section 6(1) of the Right to Information Act, 2005 (for short, the Act) sought information on three points from Respondent no. 1, Public Information

- Officer(PIO). Appellant received a reply dated 30/07/2021 from the PIO, however since the desired information was not furnished, he preferred appeal dated 04/09/2021 before Respondent No. 2, First Appellate Authority (FAA). Being aggrieved, with no hearing given by the FAA, the appellant filed second appeal dated 08/10/2021 before the Commission.
- 2) Notice was issued to both the sides, pursuant to which Adv. Pranoy Kamat and Adv. Shilpa Kamat appeared on behalf of PIO, whereas FAA was represented by Shri. Vithal L. Gauns, under letter of authority. Appellant was represented by her husband Shri. Remedios Peter D'Souza. Appellant filed submission dated 17/11/2021, 04/01/2022 and 04/03/2022. PIO filed reply on 05/01/2022 and affidavit dated 07/03/2022.
 - 3) Appellant stated that the PIO has disclosed only part information and FAA has not given him hearing; he believes that the action of both the respondents is with malafide intention. Appellant further stated that he is seeking copy of the circular dated 06/09/2002 issued by the Director of Panchayats. The said circular has been quoted by the Block Development Officer, who is also the respondent no. 2 in the present matter, in his letter dated 02/07/2021 to the Sarpanch of Village Panchayat Taleigao. Hence the said circular has to be available in the office of the PIO and non furnishing of the same clearly shows that the respondents do not wish to disclose the said circular for some ulterior motives.
 - 4) PIO stated that he has furnished the available information vide letter dated 30/07/2021 and remaining information cannot be furnished since the same is not available in his office. Later, vide affidavit dated 07/03/2022, PIO affirmed that Action Taken Report and circular dated 06/09/2002 is not available in the records of

Panchayat, hence he is unable to furnish the said document, sought by the appellant.

- 5) Appellant argued on 05/01/2022 that the said circular is important document for him and the same has to be furnished, since it is in public domain.
- 6) The Commission has perused replies and other submissions of both the sides. It is seen that the appellant has sought information on five points, out of which copy of circular dated 06/09/2002 issued by the Director of Panchayats and action taken report on the letter dated 28/06/2021 by the appellant to Village Panchayat Taleigao is not furnished by the PIO. The PIO has consistently maintained that the said documents are not available in his office.
- 7) This being the case, the Commission directed PIO to file an affidavit if the said documents are not available. Accordingly, PIO filed affidavit on 07/03/2022 before the Commission. Upon perusal of the affidavit, it is observed that the PIO has clearly stated that "the documents such as Action Taken Report bearing reference no. RTI/TVP/109/2021 and Circular No. 15/77/DP/CIR/2000 dated 06/09/2002 is not available in the records of the Panchayat, hence I am not in a position to give the said documents". Pursuant to this Affidavit, the Commission holds that no such information exists in the records of the PIO and the same cannot be ordered to be furnished.
- 8) Since the said information is not available in records, the Commission cannot issue any directions to PIO to furnish non existing information. Needless to say that in case at any time the statements in the affidavit are found false, the person swearing the same would be liable for action for perjury.

- 9) Before closing, the Commission takes serious note of the non hearing of the appeal by the FAA. Section 19 (1) of the Act gives statutory right to the appellant to file appeal before FAA and the FAA under section 19 (6) is required to decide the appeal within a fixed timeframe. Non hearing of the appeal by FAA amounts to dereliction of duty.
- 10) In the light of above discussion and the records placed before the Commission, the present appeal is disposed with the following order:-
- (a) As the available information has been furnished and the remaining information sought by the appellant vide application dated 09/07/2021 is not available in PIO's office, the prayer for information becomes infructuous and no more intervention of the Commission is required in the matter.
 - (b) All other prayers are rejected.
 - (c) The FAA is directed to hear and decide the appeals received under section 19 (1) of the Act, within the mandatory period as provided in section 19 (6) of the Act.

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

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