

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 148/2021/SIC

Mr. Nazareth Baretto,
R/o. H.No. 126, Borda,
Margao, Salcete-Goa 403602.

-----Appellant

v/s

The Public Information Officer,
The Administrator of Comunidades,
South Zone,
At Margao, Salcete-Goa.

-----Respondent

Filed on: 29/04/2021
Decided on: 18/08/2022

Relevant dates emerging from appeal:

RTI application filed on	: 21/10/2020
RTI application transferred on	: 29/10/2020
PIO replied on	: 17/12/2020
First appeal filed on	: 07/12/2020
First Appellate authority order passed on	: 26/02/2021
Second appeal received on	: 29/04/2021

ORDER

1. The brief facts of this second appeal are that, the appellant, under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), vide application dated 21/10/2020 had sought information on 13 points from Public Information Officer (PIO), office of the Collector, South Goa, Margao. The said application was transferred vide letter dated 29/10/2020 to Respondent No. 1, Public Information Officer (PIO). Aggrieved by the reply of the PIO, he filed appeal before the First Appellate Authority (FAA), Additional Collector-I, South Goa District, Margao-Goa. FAA disposed the said appeal vide order dated 26/02/2021. Being aggrieved by non compliance of the said order, appellant approached the Commission by way of second appeal.
2. Notice was issued to the concerned parties, pursuant to which appellant appeared alongwith Advocate Neha Mayenkar and filed written argument on 14/12/2021. PIO filed reply dated 27/09/2021 through his authorized representative.
3. Appellant stated that, the Comunidades are public bodies functioning under the Government in the State of Goa, hence they fall under the purview of public authority and Administrator of Comunidades is authorized to call for the records from the

Comunidades, as such cannot refuse the information under the Act. PIO has not furnished the information and the FAA had directed the PIO to furnish the information, yet the directions were not complied by the PIO.

4. PIO stated that, information sought by the appellant vide application dated 21/10/2020, as regards point nos. 1 to 13 was furnished vide letter dated 17/12/2020, and that the available information has been furnished.
5. Advocate Neha Mayenkar while arguing on behalf of the appellant stated that, the PIO /Administrator represents the public authority, similarly, FAA had directed the PIO to furnish the point wise information with respect to point no. 1 to 13, yet the information is not furnished. Advocate Mayenkar further argued that the PIO is duty bound to provide the complete information and non furnishing of the information amounts to contempt of the provisions of the Act, for which he should be penalised.
6. Upon perusal of the submissions and records, it is seen that the information was sought on 13 points, however, the PIO vide reply dated 17/12/2020, issued after the expiry of stipulated period and after the first appeal was filed, informed appellant that the information as regards point nos. 1 to 13 is nil. FAA, while disposing the first appeal held that the information should be available in the office of the PIO and directed the PIO to furnish the information within 15 days. However, PIO vide reply dated 27/09/2021 filed before the Commission stated that, he has furnished the reply to the appellant and requested the Commission to dispose the appeal accordingly. However, the Commission holds that the information sought by the appellant is required to be available in the office of the PIO and the same has to be furnished to the appellant. Reply of the PIO stating that the information sought by the appellant is nil is not acceptable to the Commission.
7. The appellant contends that the Office of the Administrator of Comunidades is a public authority under the Act and he is authorized to call for the records from the subordinate staff including Escrivao/Attorney/Clerk of the concerned Comunidades and as such cannot refuse the information.
8. The Commission, in the past has heard appeals under Section 19 (3) and complaints under Section 18 of the Act against the PIO / Administrator of Comunidades as respondent, wherein, it is seen that the Comunidades consider themselves as private body outside the purview of the Act and the Escrivao/Attorney/Clerk of the

Comunidades do not co-operate with the Administrator of Comunidades and in some cases do not comply Administrator's directions for furnishing the information related to their functioning, sought under the Act.

9. The Comunidades are regulated through the Code of Comunidades formulated and amended from time to time by the State Government. The Administrator of Comunidades is appointed by the Government, as provided in the said Code. Similarly, duties of Escrivao/Attorney/Clerk of Comunidades are defined under the Code. Thus, it appears that the Comunidade body falls under the purview of public authority under Section 2 (h) of the Act. However, as a matter of fact, Comunidade bodies have not been declared as public authority by the appropriate Government and as such they are reluctant to share the information with the PIO/ Administrator of Comunidades. Yet, referring to the present matter, Comunidade of Davorlim comes under the administrative control of the PIO/Administrator of Comunidades, South Zone and the PIO is authorised to collect the said information from the Comunidade of Davorlim. In such a situation, the Commission holds that PIO/ Administrator of Comunidades is required furnish the information as available in his office records and in addition to that, should collect the information from the Escrivao/Attorney/Clerk of the Comunidades and furnish the same to the appellant.
10. In the present matter it is seen that, the appellant is not provided the information sought vide application dated 21/10/2020. The PIO has not transferred the application under Section 6 (3) of the Act to any other authority, nor under Section 5 (4) sought assistance of any officer. Hence, the onus of furnishing complete information is on the PIO and he is required to furnish the information as provided in the Act.
11. It is also noted that the FAA had directed the PIO to furnish point wise information with respect to point no. 1 to 13 within 15 days. However, the PIO did not adhere to the direction of the FAA.
12. PIO was given sufficient opportunity to appear before the Commission and file reply explaining reasons for not furnishing the complete information. Notice dated 08/07/2021 and 22/02/2022 was issued to the PIO. In spite of the delivery of the notice, PIO did not appear, nor filed any reply explaining the reason for non furnishing of the information.
13. In the background of the facts and findings of the Commission as mentioned above, the Commission concludes that the PIO has failed

to comply with the provisions under Section 7 (1) of the Act. Such, a conduct is deplorable and the same should not go unpunished. Thus, the PIO is held guilty for contravention of Section 7 (1) of the Act, for not adhering to the directions of the FAA and the Commission. Hence, penal action under Section 20 of the Act is required to be initiated against the guilty PIO.

14. In the light of above discussion, the appeal is disposed with the following order:-
- a. The PIO is directed to furnish the information sought by the appellant vide application dated 21/10/2021, within 20 days from the receipt of this order, free of cost.
 - b. Issue show cause notice to the then PIO, Administrator of Comunidades, South Zone, Margao-Goa and the PIO is further directed to show cause as to why penalty as provided under Section 20 (1) of the Act should not be imposed against him.
 - c. In case the PIO at the relevant time, is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date fixed in the matter, alongwith name and the present address of the PIO.
 - d. PIO is hereby directed to remain present on **29/09/2022 at 10.30. a.m.** alongwith reply to the showcause notice.
 - e. The Registry is directed to initiate penalty proceeding against the PIO.

Proceeding of the present appeal 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

