

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 152/2021/SIC

Shri. Jawaharlal T Shetye,
H.N. 35/A Ward No. 11,
Khorlim, Mapusa - Goa 403507.

-----Appellant

v/s

1. The Public Information Officer,
Mapusa Municipal Council,
Mapusa-Goa 403507.

2. The First Appellate Authority,
The Chief Officer (Clen Madeira),
Mapusa Municipal Council,
Mapusa-Goa 403507.

-----Respondents

Filed on: 08/07/2021
Decided on: 11/08/2022

Relevant dates emerging from appeal:

RTI application filed on	: 24/03/2021
PIO replied on	: Nil
First appeal filed on	: 29/04/2021
First Appellate authority order passed on	: Nil
Second appeal received on	: 08/07/2021

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), the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') filed second appeal before the Commission on 08/07/2021.
2. The brief facts of this appeal are that, the appellant vide application dated 24/03/2021 sought certain information from the PIO. The appellant did not receive any reply from the PIO within the stipulated period thus, filed appeal dated 29/04/2021 before the FAA. The said appeal was not heard by the FAA, hence the appellant approached the Commission by way of second appeal.
3. Pursuant to the notice, the appellant appeared and pressed for the information. Shri. Vyankatesh Sawant, Smt. Smita Fal Desai, Smt. Seema Velip and Shri. Abhay Rane appeared as PIOs during the proceeding. Shri. Vyankatesh Sawant filed reply dated 24/09/2021, Smt. Smita Fal Desai filed reply dated 24/09/2021 and 26/10/2021,

Smt. Seema Velip filed reply dated 30/11/2021 and submission dated 09/12/2021 and Shri. Abhay Rane filed submission dated 09/02/2022. FAA was not represented initially, however later Ms. Pallavi Dicholker appeared on behalf of FAA and filed reply on 11/07/2022.

4. Shri. Vyankatesh Sawant, the then PIO, Technical Section, stated that, Shri. Abhay Rane, the then PIO, had issued memorandum dated 26/03/2021 to Ms. Sonali Gadekar, Municipal Inspector to provide the information. Later, Shri. Abhay Rane was transferred and the matter was handed over to Smt. Smita Fal Desai, acting PIO.

Smt. Smita Fal Desai stated that, she was the acting PIO for a brief period and vide letter dated 23/09/2021, she had forwarded the notice of the Commission to Shri. Abhay Rane, the then PIO.

Smt. Seema Velip stated that, she took over from Smt. Smita Fal Desai as PIO of Taxation section and sought the help of Shri. Abhay Rane in order to furnish the information. However, she has been entrusted the election duty vide order dated 02/12/2021 issued by the Office of the Collector and District Election Officer, South Goa District, Margoa-Goa.

Shri. Abhay Rane submitted that, while working as Accounts and Taxation Officer in Margao Municipal Council, Margao vide letter dated 06/12/2021 and 04/02/2022 he had requested the Chief Officer of Mapusa Municipal Council to direct the present PIO to attend the said matter and furnish the information since it is not possible for him to do the same from Margao.

5. FAA stated that, during the pendency of the first appeal the FAA (Predecessor) was holding charge of multiple offices in addition to the responsibility of Chief Officer, Mapusa Municipal Council. Hence, he was not able to decide the appeal. The FAA further stated that, the appellant files many RTI applications and misuses the motive of the Act.
6. After careful perusal of the records, the Commission has observed that, the appellant has sought the information vide application dated 24/03/2021 and Shri. Abhay Rane was the designated PIO on the day of the application. He failed to furnish the information, later FAA did not hear the appeal, hence the appellant was compelled to file the second appeal.

7. The Commission further observes that, in the recent past, there have been frequent transfers of the officers designated as PIO of Taxation Section of Mapusa Municipal Council. Shri. Abhay Rane was temporarily succeeded by Smt. Smita Fal Desai, later Smt. Seema Velip took charge as PIO, but she was deputed on election duty. Finally it is seen that, Shri. Abhay Rane the then PIO, who was transferred to Margao Municipal Council is now back as PIO, Taxation Section, Mapusa Municipal Council. It is noted that these PIOs were posted for a brief period and most of them were having additional charge elsewhere and they could not process the application of the appellant.
8. Nevertheless, now that Shri. Abhay Rane had been posted as PIO of Taxation Section in Mapusa Municipal Council and that the application was received during his earlier tenure as PIO of the section in the same authority, Shri. Rane is required to own the responsibility of furnishing the information to the appellant. Thus, the Commission concludes that the mandate of furnishing the information is on the present PIO Shri. Abhay Rane.
9. It is observed that, the appellant has filed first appeal before the FAA on 29/04/2021. However, the appeal was not heard at all. It has been observed by the Commission while disposing the present appeal and some other appeals of similar nature that Shri. Clen Madeira, the former Chief Officer and FAA of Mapusa Municipal Council has repeatedly failed to dispose first appeals. Whatever may be the reason, under Section 19 (6) of the Act, the FAA is mandated to hear and dispose the appeal within the maximum period of 45 days. Non disposal of the appeal denies the PIO under section 19 (5) of the Act, the opportunity to prove that a refusal to furnish the information was justified and the same deprives the appellant of his statutory right to seek information under Section 6 (1) of the Act. Though the Act does not provide for any punishment to the FAA for non hearing of the appeal, the said failure of the FAA is considered as de-reliction of duty and repeated instances of de-reliction of duty should not go unpunished.
10. In the light of above discussion, the present appeal is disposed with the following order:-
 - a. PIO is directed to furnish the information sought by the appellant vide application dated 24/03/2021, within 30 days from the receipt of this order, free of cost.

- b. Director of Municipal Administration is directed to seek clarification from Shri. Abhay Rane for his failure in furnishing the information within the stipulated period and instruct the PIOs and APIOs of Mapusa Municipal Council to act in accordance with the provisions of the Act while dealing with applications received under Section 6 (1) of the Act. The Registry is directed to send a copy of this order to Director of Municipal Administration, Government of Goa.
- c. The Chief Secretary shall seek written explanation from Shri. Clen Madeira, the then FAA of Mapusa Municipal Council, for not deciding first appeals in conformity with Section 19 (6) of the Act. The Registry is directed to send a copy of this order to the Chief Secretary, Government of Goa.
- 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

