

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 178/2021/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,
Mapusa Municipal Council,
Mapusa-Goa 403507.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 26/04/2021
PIO replied on	: Nil
First appeal filed on	: 31/05/2021
First Appellate authority order passed on	: Nil
Second appeal received on	: 05/08/2021
Decided on	: 12/09/2022

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), 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 05/08/2021.
2. The brief facts of this appeal are that, the appellant vide application dated 26/04/2021 sought certain information from the PIO. The appellant did not receive any reply from the PIO within the stipulated period. Thus, filed appeal dated 31/05/2021 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 and Shri. Subraj Kanekar appeared as PIOs during the proceeding. Smt. Smita Fal Desai filed reply dated 28/10/2021 and a submission was received in the entry registry on 16/11/2021. Shri. Vyankatesh Sawant filed reply dated 06/12/2021. FAA was represented initially by

Shri. Vinay Agarwadekar, APIO and later Ms. Pallavi Dicholker appeared on behalf of FAA and filed reply on 28/07/2022.

4. Smt. Smita Fal Desai, PIO stated that, Shri. Bhanudas Naik was the PIO of Administration Section at the time of RTI application dated 29/03/2021 and that Shri. Bhanudas Naik has retired from service. Later, Shri. Bhanudas Naik was appointed on contract basis as Accounts Cum Administrative Officer for a period of 06 months w.e.f. 01/01/2021, hence he is no more in the service of the public authority.
5. Shri. Vyankatesh Sawant, PIO stated that, he had sent a letter dated 06/12/2021 to submit copies of complaints mentioned in the application. The information sought is voluminous and pertains to various complaints filed before the Department of Urban Development and Mapusa Municipal Council. However, the appellant has not responded, hence the information could not be identified and there is no deliberate delay in furnishing the same.
6. Upon perusal of records of the present appeal it is seen that, Shri. Bhanudas Naik was the designated PIO on the date of the application and he has not furnished the information within the stipulated period. Further, the first appeal filed by the appellant was not heard by the FAA, hence the appellant was compelled to file the second appeal.
7. The Commission further observes that, after the retirement of Shri. Bhanudas Naik there have been frequent transfers of the officers designated as PIO of Administrative Section of Mapusa Municipal Council. Shri. Bhanudas Naik was succeeded by Shri. Vyankatesh Sawant, later Shri. Vyankatesh Sawant was temporarily succeeded by Smt. Smita Fal Desai. Then Shri. Sarvottam Satardekar was designated as PIO for a brief period and finally Shri. Subraj Kanekar was posted on deputation. 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. The Commission also notes that, during the present proceeding of the second appeal, Shri. Vyankatesh Sawant, the then PIO had made attempts to furnish the information, however his efforts could not bear fruits since the appellant did not respond to his request.
9. It is observed that, the appellant has filed first appeal before the FAA on 03/05/2021. 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, 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. 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. It is the statutory right of the appellant to seek information under the Act and the PIO is mandated to furnish the information sought by the appellant. Non compliance of the provision of the Act, by the PIO invite penal action against PIO under Section 20 (1) and 20 (2). However, it is seen that Shri. Bhanudas Naik, the then PIO, responsible for furnishing information within the stipulated period has retired. Section 11 of the Pension Act, 1871 grants immunity to pension holder against its attachment, similarly Section 60 (1) (g) of Civil Procedure Code bars the attachment of pension benefits. Accordingly, since Shri. Bhanudas Naik has retired from service his retirement benefits are beyond the scope of attachment. Similarly, disciplinary action under Section 20 (2) of the Act, cannot be initiated against him.
11. In the background of facts mentioned above, the Commission concludes that the present PIO is required to furnish the information. However, Since the information is voluminous and pertaining to various complaints filed by the appellant himself, he has to visit PIO's office and identify the information requested by him, in order to enable the PIO to furnish the same.
12. In the light of above discussion, the present appeal is disposed with the following order:-
 - a. Appellant, if desires, may visit PIO's office with prior intimation, and identify the documents sought vide application dated 26/04/2021, within 10 days from the receipts of this order.
 - b. PIO is directed to provide for inspection of relevant records to the appellant as mentioned in para (a) above, and furnish the

information identified by the appellant within five days from the last day of inspection.

- c. The Chief Secretary shall seek written explanation from Shri. Clen Madeira, the then FAA of Mapusa Municipal Council, for not deciding first appeal 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