

GOA STATE INFORMATION COMMISSION

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CORAM: Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 204/2021/SIC

Mr. Vinod Mandrekar,
R/o. H.No. 547, Calizor Wada,
Moirá, Bardez, North Goa 403507.

-----Appellant

v/s

1. The State Public Information Officer,
Dy. Director (Admn),
Office of the Chief Electrical Engineer,
Vidyut Bhavan, 4th Floor, Panaji-Goa.

2. The First Appellate Authority,
Superintending Engineer- III (N),
Electricity Department,
Vidyut Bhavan, Panaji-Goa.

-----Respondents

Filed on:-23/08/2021
Decided on: 29/04/2022

Relevant dates emerging from appeal:

RTI application filed on	: 05/04/2021
Application transferred on	: 08/04/2021
PIO replied on	: 07/05/2021
First appeal filed on	: 24/05/2021
First Appellate authority order passed on	: Nil
Second appeal received on	: 23/08/2021

ORDER

1. The second appeal filed by the appellant under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the "Act") against Respondent No.1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA) came before the Commission on 23/08/2021.

2. The Brief facts of this appeal are as under:-

The appellant vide application dated 05/04/2021 sought certain information from Assistant Public Information Officer, Electricity Department. The said application was transferred vide letter dated 08/04/2021 to Respondent No. 1 Public Information Officer (PIO). PIO vide reply dated 07/05/2021 requested the applicant to pay Rs.

14/- and collect the information. However, appellant filed appeal dated 24/05/2021 before FAA. Notice was issued twice by the FAA for hearing, yet the matter was not decided within the mandatory period. Being aggrieved, appellant preferred second appeal before the Commission.

3. Pursuant to the notice, Advocate Deepa Shirgaonkar appeared on behalf of the appellant, argued on 10/01/2022 and presented additional argument on 16/02/2022. Shri. Prachodh P. Naik represented the PIO under authority letter and filed reply dated 28/01/2022. Opportunity was given to PIO to argue, however he preferred not to appear.
4. Appellant stated that he is aggrieved since the PIO has not furnished the information within the stipulated period and thereafter FAA did not decide the matter. FAA issued notice for the hearing on 22/07/2021, which was received by the appellant on 23/07/2021, hence he could not attend. Appellant received another notice on 05/08/2021 for hearing on 06/08/2021, which being less than 24 hours notice, he could not appear before the FAA. Further, FAA neither conducted hearing, nor decided the appeal. As a consequence, the information is not yet furnished.
5. PIO vide reply submitted that the application was transferred to him, which he received on 09/04/2021. Vide letter dated 07/05/2021, he requested the appellant to pay Rs. 14/- and collect the information. The reply was sent within the stipulated period, however the appellant failed to make payment and therefore the information could not be furnished. PIO further requested not to invoke section 20 of the Act since he has not denied the information and for the fact that the information was not collected by the appellant despite his letter.

6. Advocate Deepa Shirgaonkar, while arguing on behalf of the appellant stated that the reply dated 07/05/2021 referred by the PIO was never received by the appellant, thus he could not make the payment and collect the information. PIO has not produced any evidence to prove that the appellant had received the said reply. Advocate Deepa Shirgaonkar further argued stating it appears that the said reply is created later and never sent to the appellant. Also that the PIO has not produced the said reply before the FAA, and that the overwriting on the date of the reply indicate that the said letter is a forged document. On that account appellant presses for information as well as imposition of penalty on the PIO.
7. The Commission has carefully perused the records of the present matter. It is noted that the application dated 05/04/2021 was transferred to the respondent PIO on 08/04/2021 and he replied the same on 07/05/2021 requesting the appellant to make payment. Here appellant contends that he never received the said reply, similarly the PIO has also not furnished any evidence of dispatch and /or receipt of the letter. Nevertheless, the PIO has not denied the information and is willing to furnish the same.
8. The Commission has seen that the FAA issued the notice twice for hearing of first appeal, however the appellant could not attend the hearing since he did not receive the notice in advance. In spite of the fact that the appellant was not present, under section 19 (6), FAA was required to dispose the appeal within the maximum period of 45 days. The PIO would have got an opportunity to furnish the reply dated 07/05/2021 before the FAA and prove his bonafide had the FAA conducted the hearing. By not deciding the appeal, FAA has caused injustice to the appellant as well as to the PIO.
9. Appellant while pressing for imposing penalty on PIO, has relied on High Court of Delhi in W.P.(C) 900 (2021) and CM APPL. 2395/2021 and Calcutta High Court in W.P. 27355 (W) of 2012. However,

circumstances as mentioned in para 8 does not warrant penal action against the PIO, hence the Commission finds both the judgments relied by the appellant, out of context.

10. It appears that the appellant has sought information pertaining to service and leave records of two employees of Electricity Department. The Commission has observed a general tendency of PIOs to evade disclosure of such information seeking exemption under section 8 (1) (j) by terming the information as "personal information".

11. Hon'ble High Court of Bombay at Goa in Writ Petition No. 1 of 2009, Kashinath J. Shetye v/s Public Information Officer and others, has held that:-

"7. The first thing that needs to be taken into consideration is that the petitioner is a public servant. When one become a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/ misconduct of a public servant even in private, ceases to be private. When therefore, a member of a public , demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most , may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know."

"8. The next question is whether the applicant should be supplied the copies of the application at all. It was contended that the copies of the application should not be supplied for, they may contain the nature of the ailment and the applicant has no right to know about the ailment of the petitioner or his family. To my mind, what cannot be supplied is a medical

record maintained by the family physician or a private hospital. To that extent, it is his right of privacy, it certainly, cannot be invaded. The application for leave is not a medical record at all. It, at the most, may contain ground on which leave was sought. It was contended that under Section 8(1) (j), the information cannot be supplied. In this regards, it would be necessary to read proviso to that section. If the proviso is read, it is obvious that every citizen is entitled to have that information which the Parliament can have. It is not shown to me as to why the information as is sought, cannot be supplied to the Parliament. In fact, the Parliament has a right to know the ground for which a public servant had taken leave since his salary is paid from the public exchequer.”

12. Subscribing to the ratio laid down by the Hon'ble High Court of Bombay in the above mentioned judgment, the entire information sought by the appellant is required to be furnished, and as held in para 9, there is no need to invoke section 20 of the Act against the PIO.
13. In the light of above discussion, the appeal is disposed with the following order:-
 - a) PIO is directed to furnish the information as sought by the appellant vide application dated 05/04/2021, within 15 days from the receipt of the order, free of cost.
 - b) All other prayers are rejected.
 - c) FAA is directed to hear and dispose first appeals filed before him under section 19(1) of the Act within the mandatory period as mentioned 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