

GOA STATE INFORMATION COMMISSION

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CORAM: Shri Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 50/2022/SIC

Shri Vishwanth B. Solienkar,
S1 Artic Apartment,
Behind Don Bosco Engineering College,
Fatorda, Margao – Goa 403602.

-----Appellant

v/s

1. The Public Information Officer,
Office of the Town Planner,
Town & Country Planning Department,
Margao – Goa.
2. First Appellate Authority,
Senior Town Planner,
Town & Country Planning Department (South),
Margao – Goa.

-----Respondents

Filed on:-17/02/2022
Decided on: 29/07/2022

Relevant dates emerging from appeal:

RTI application filed on	: 22/11/2021
PIO replied on	: Nil
First appeal filed on	: 23/12/2021
First Appellate authority order passed on	: Nil
Second appeal received on	: 17/02/2022

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), appellant filed second appeal against both the respondents, which came before the Commission on 17/02/2022.
2. The brief facts of this appeal, as contended by the appellant are that vide application dated 22/11/2021 he had sought certain information from PIO. Appellant, upon not receiving information within the stipulated period, filed appeal dated 23/12/2021 before the FAA, and preferred second appeal dated 17/02/2022 before the Commission.
3. Pursuant to the notice, appellant appeared, filed arguments dated 04/05/2022, submission of preliminary objection dated 08/06/2022 and clarification dated 27/06/2022. Shri. Vinod Kumar Chandra, PIO appeared alongwith Advocate Atish P. Mandrekar and filed reply

alongwith enclosures on 04/05/2022 and submission dated 11/07/2022.

4. Appellant stated that he had sought information on four points, however the PIO has provided the information only on point no. 1, the information provided on point no. 3 is incomplete and the information on point no. 2 and 4 has been denied. PIO, during the hearing before the Commission on 04/05/2022 had undertaken to furnish the remaining information, yet has not complied with the undertaking, hence the appellant presses for imposing penalty on PIO alongwith directions to the PIO to furnish the complete information.
5. PIO submitted that after making through search of the office records the requested information was sent vide letter dated 22/03/2022 to the appellant. PIO further stated that his dealing hand was posted on election duty from 01/01/2022 to 31/03/2022, as such PIO was unable to gather and compile the information. Also, PIO and his family tested Covid positive and was quarantined, hence he was unable to respond within the time limit to the appellant. That, delay to provide reply and the information is caused only because of unavoidable situation.
6. PIO also submitted that the requested information by the appellant pertaining to BPAMS was not readily available as the download option in the software was not provided as such, after resolving the technical issue the requested information was furnished to the appellant.
7. Advocate Atish P. Mandrekar while arguing on behalf of the PIO stated that the information as available has been furnished to the appellant and the delay may be condoned since various reasons responsible for the delay are already on record. That, the PIO has not intentionally denied the information, on the contrary, has furnished the information as and when available. Advocate Mandrekar further argued that the PIO did not get an opportunity to justify his action before the FAA since the first appeal was not heard.
8. Appellant, while delivering arguments, stated that the PIO is guilty of not furnishing the information within the stipulated period and also furnishing incomplete information during the current proceeding. That the information furnished on point no. 2 is misleading, information furnished on point no. 3 is incomplete and no information is furnished on point no. 4 of his application.

9. The Commission has carefully perused the reply and other submissions and heard arguments of both the sides. Upon perusal of the records it is seen that the appellant vide application dated 22/11/2021 had sought information on four points. He received no reply from the PIO within the stipulated period, hence filed first appeal before the FAA, further filed second appeal since the FAA did not hear the first appeal. After the second appeal was filed, PIO issued a reply dated 22/03/2022, after more than three months from the date of application, without furnishing the complete information.
10. PIO has quoted three reasons for not being able to reply within the stipulated period. One- dealing hand was posted on election duty, Two- he was tested Covid positive and was quarantined, and Three- download option in BPAMS was not available. The Commission after examining the above mentioned reasons concludes as below:-
- The application was submitted by the appellant on 22/11/2021 and dealing hand of PIO was deputed on election duty from 01/01/2022 to 31/03/2022, which makes it clear that the dealing hand was available till 31/12/2021 and the stipulated period of 30 days expired on 21/12/2021, meaning that the dealing hand was available with the PIO for the entire period of 30 days, inspite of that PIO took no efforts to furnish the information.
- Regarding reason no. 2, as per the medical certificate attached along with the reply, it is noted that the PIO was tested positive for Covid-19 on 18/01/2022, which is after the stipulated period. PIO was required to furnish the information /reply on or before 21/12/2021, since the application was filed on 22/11/2021, which he failed to do. Hence, it appears that the information was not furnished intentionally.
- Regarding reason no. 3, the argument of the PIO that the download option in the software was not available and that caused the delay, cannot be accepted. The said issue is of technical nature, it is PIO's responsibility to get the fault rectified and furnish the information within the stipulated period. Public authority cannot deprive the appellant of the information for technical issue. It is the statutory right of the appellant to seek information from the public authority, which is available in public domain.
11. It is noted that the PIO vide reply dated 22/03/2022 under Section 7 (9) of the Act has denied the information on point no. 4. The PIO cannot deny the information under Section 7(9) of the Act, on the contrary the said section deals with the disposal of a request for information. PIO can deny only that information which is eligible for

exemption under Section 8 or for rejection under Section 9 of the Act.

12. In the context of Section 7 (9) of RTI Act 2005 Hon'ble High Court of Kerala in writ petition no. 6532 of 2006 in Treesa Irish Vs. The C.P.I.O. and others has observed and held:-

"In fact, there is no provision in the Act to deny information on the ground that the supply of the information would disproportionately divert the resources of the public authority."

13. In the present appeal being heard before this Commission, the Respondent PIO neither furnished complete information, nor sought more time to furnish the information. Rather the conduct of PIO is contrary to the requirements of the RTI Act. The PIO has shown no concern to the application filed by the appellant under the RTI Act. This Commission in no way can subscribe to such inaction of the authorities and their disrespect towards the provisions of the Act.
14. It is also noted that the FAA has not heard and disposed the first appeal. Section 19(6) mandates FAA to dispose the appeal filed under Section 19(1) of the Act, within maximum of 45 days. Hearing of first appeal provides an opportunity to the PIO the justify before the FAA his action on the application. FAA, by not hearing and deciding the appeal has caused injustice to the appellant as well as the PIO. However, the Commission has no jurisdiction to penalise FAA for his failure to dispose the first appeal.
15. In the background of the facts of this case and subscribing to the ratio laid down by the High Court of Kerala, the Commission concludes that the PIO is guilty of not furnishing the information to the appellant, which amounts to contravention of Section 7(1) of the Act. The said action of the PIO deserves penal action under Section 20 of the Act. However, the Commission feels it appropriate to give an opportunity to the PIO to be heard before imposing such penalty. Hence the Commission holds that show cause notice be issued to the PIO for contravention of Section 7(1) of the Act.
16. In the light of above discussion, the present appeal is disposed with the following order:-
- a) Present PIO is directed to furnish the information sought by the appellant on point no. 2, 3 and 4 of his application dated 22/11/2021, within 15 days from the receipt of this order, free of cost.

- b) Issue show cause notice to Shri. Vinod Kumar Chandra, Respondent No.1 PIO, Office of the Town Planner, Town and Country Planning Department, Margao-Goa, and the PIO is further directed to show cause as to why penalty as provided under Section 20 (1) and /or 20 (2) of the Act should not be imposed against him.
- c) In case Shri. Vinod Kumar Chandra, the then PIO is transferred, the present PIO shall serve the show cause notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing, alongwith the present address of the then PIO.
- d) Shri. Vinod Kumar Chandra, the then PIO is hereby directed to remain present before the Commission on 05/09/2022 at 10.30 a.m. alongwith reply to show cause notice.
- e) The Registry is directed to initiate penalty proceeding.

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

