

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 159/2021/SIC

Shri. Nazareth Baretto,
H.No. 126, Borda,
Margao, Salcete Goa 403602.

-----Appellant

v/s

1. The Public Information Officer,
Block Development Officer,
Salcete Block,
Through Village Panchayat of Rumdamol-
Davorlim, P.O. Navelim,
Salcete-Goa 403602.

2. The Public Information Officer,
Office of the Village Panchayat of Rumdamol-
Davorlim, P.O. Navelim,
Salcete-Goa 403602.

-----Respondents

Relevant dates emerging from appeal:

| | |
|-------------------------------------------|--------------------------|
| RTI application filed on | : 07/12/2020 |
| Application transferred | : 04/01/2021 |
| PIO replied on | : 23/01/2021, 02/02/2021 |
| First appeal filed on | : 12/03/2021 |
| First Appellate Authority order passed on | : 12/04/2021 |
| Second appeal received on | : 23/07/2021 |
| Decided on | : 07/11/2022 |

ORDER

1. Being aggrieved by non furnishing of the complete information inspite of the direction by the appellate authority, appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') filed second appeal against Respondent No. 1, Public Information Officer (PIO), Block Development Officer, Salcete and Respondent No. 2, Public Information Officer (PIO), Village Panchayat of Rumdamol- Davorlim. The said appeal came before the Commission on 23/07/2021.
2. It is the contention of the appellant that, vide application dated 07/12/2020 he had sought information on three points from Respondent No.1, PIO. The application under Section 6 (3) of the Act was transferred to Respondent No. 2, PIO, Secretary, Village Panchayat Rumdamol- Davorlim. Information furnished by the PIO, Respondent No. 2, PIO was incomplete, hence he filed appeal before First Appellate Authority (FAA), Deputy Director of Panchayat, South,

Margao-Goa. FAA vide order dated 12/04/2021 directed PIO, Secretary, Village Panchayat Rumdamol- Davorlim to furnish the remaining information. However, the said order was not complied by the said PIO, hence appellant approached the Commission by way of second appeal.

3. Pursuant to the notice, appellant appeared alongwith Advocate Neha Mayenkar. Respondent No.1, PIO, B.D.O., was represented by authorised representative, filed reply dated 13/07/2022. Smt. Priscilla Niasso, Respondent No.2, PIO, Village Panchayat Rumdamol- Davorlim appeared alongwith Advocate Ashutosh Vicente Da Silva and filed reply on 13/07/2022. Appellant filed submission on 06/04/2022, 13/06/2022 and written argument on 19/09/2022.
4. Respondent No.1, PIO, B.D.O., Salcete-Goa stated that, the information requested was pertaining to Village Panchayat Rumdamol- Davorlim, hence he transferred the application to the Secretary /PIO of the said Village Panchayat. He further stated that the said application was transferred late due to oversight.
5. Respondent No.2, PIO, Village Panchayat Rumdamol- Davorlim contended that, she received the application late, yet replied within the period of thirty days stating that the information sought at point no. 1 and 3 does not fall within the meaning of information as defined under Section 2 (f) of the Act. PIO further contended that vide letter dated 23/01/2021 she had requested the appellant to come and collect the information on point no. 2 upon payment of necessary fees , yet the appellant failed to collect the information. Further, in compliance with the order of the FAA, the PIO has furnished the information on 24/04/2021, however, the appellant had not acknowledged on the receipt copy.
6. Appellant submitted that, information provided by the Respondent No.2, PIO is not complete. That the PIO has failed to furnish complete information inspite of the clear direction from the FAA and later, during the proceeding of the present matter, PIO did not provide appropriate records for the inspection, carried out by the appellant alongwith his advocate, as per the direction of the Commission. Hence, PIO has been evading the disclosure of the information for which he needs to be punished under Section 20 of the Act.
7. Advocate Ashutosh Vicente Da Silva, while arguing on behalf of Smt. Priscilla Niasso, respondent no.1, PIO stated that, the PIO has

already furnished the available information. Information on point no.1 was not furnished, however, information provided under point no. 2 includes information on point no.1. Also, under the Act, the appellant is not supposed to ask 'why', whereas, he has asked the reason by mentioning 'why' in point no.3, therefore information sought on point no. 3 is no information as per the definition of information under Section 2(f) of the Act. Advocate Da Silva further argued that the appellant was provided the inspection of the concerned files, still no documents were requested by the appellant after the inspection.

8. Advocate Neha Mayenkar, argued on behalf of the appellant stating that, the PIO failed to remain present during the inspection. The appellant was provided some files by the clerk present in the office of the PIO, however the files were not pertaining to the subject matter of the application. Also, the clerk present was not able to reply the queries raised by the appellant. It is evident from the action of the PIO that, she does not wish to furnish the correct and complete information.
9. Upon careful perusal of the records of the present appeal and after hearing the arguments of both the sides, it appears that originally, the information was sought on three points and the information on point no.2 has been furnished. The contention of the appellant that he is not provided information on point no. 1 and 3 appears to be valid.
10. Under point no. 1 of his application dated 07/12/2020, appellant had sought for copy of the action taken / remark on the letter dated 25/10/2016 filed by him before the Village Panchayat requesting for issuance of house number.

The information requested has to be available in the records of the Village Panchayat, unless no action was taken or no remark was recorded by the authority on the said letter. PIO has nowhere mentioned that there is no action / no remark recorded by the authority, hence the information on point no. 1 is required to be furnished, else the PIO has to state reason for non-availability of the said information, which PIO has not done.

11. Under point no.3 of his application, appellant has sought for copy of the remark as to why the file pertaining to the issue of registration and assessing of house tax and house number of the appellant is kept pending.

Advocate Da Silva , while arguing on behalf of Respondent no. 2, PIO, stated that, the appellant has asked 'why' means the appellant has asked the reason for which the file was kept pending and the PIO is not required to provide the answer to 'why' of the appellant.

It is observed by the Commission that, though the word 'why' is mentioned in the point no. 3 of the application, the appellant has not asked for the reason, rather reading of point no.3 makes it clear that, the appellant has requested for copy of the remark recorded on the file pertaining to the issue of registration and assessing of house tax and house number. PIO has not denied the receipt of the said letter dated 25/10/2016 from the appellant , hence the Commission assumes that the responsible public authority must have recorded some remark on the said application or might have denied the request for registration and assessing of house tax and house number. Also, the PIO has not said that, the said information is not available. Hence, the contention of the PIO regarding information on point no. 3 that the same does not fall within the meaning of information as defined under Section 2 (f) of the Act is not acceptable. Therefore, the PIO is mandated to furnish the said information i.e. copy of the remark, to the appellant.

12. The Commission observes that, Respondent no. 2, PIO was required to furnish the information on point no. 1 and 3 of the application dated 07/12/2020. He had opportunity to furnish the same at three stages, first – during the stipulated period of thirty days, second- after the order passed by the FAA and third- during the proceeding of the present matter before the Commission. However, PIO has failed to comply with the provisions at every stage mentioned above.
13. It is also noted that, the FAA vide order dated 12/04/2021 had directed Respondent no. 2, PIO to furnish the information within three days. PIO did not comply with the order as well as never challenged the said order of the FAA. Non compliance of the order of the higher authority by the PIO amounts to de-reliction of duty.

The Hon'ble High Court of Gujarat in Special Civil Application no. 8376 of 2010 in the case of Urmish M. Patel v/s. State of Gujarat has held that, the PIO is mandated to adhere to the appellate order and non adherence amounts to failure to discharge his duty and the said failure attracts penal action.

14. Further, during the hearing on 21/06/2022, PIO was directed by the Commission to file an affidavit stating the reason as to why the

information on point no. 1 and 3 cannot be furnished. The Goa State Information Commission (Appeal Procedure) Rules, 2006, Rule 5 (i) authorises the Commission to take oral or written evidence on oath or on affidavit from the concerned person. However, inspite of the said direction, Respondent no. 2, PIO did not file any affidavit. Such an adamant approach by a representative of a public authority is deplorable and worrisky, hence, cannot be subscribed.

15. The Hon'ble High Court of Himachal Pradesh , in L.P.A. No. 4009 of 2013, Sanjay Bhagwati v/s. Ved Prakash and Others has held that:-

“16. Bearing in mind the laudable object of the Act mere inaction or laid back attitude on behalf of the appellant cannot exonerate him of his culpability because higher is the post, not only more but greater are the responsibilities. Even after being put to notice by the petitioner that the information supplied to him is incorrect, yet the appellant took no steps whatsoever to ensure that the true, correct and not incorrect, incomplete or misleading information is supplied to Respondent No.1. If a person refuses to act, then his intention is absolutely clear and is a sufficient indicator of his lack of bonafides. After all malafide is nothing sort of lack of bonafides or good faith.”

16. Considering the findings of the Commission and subscribing to the ratio laid down in above mentioned judgment of Hon'ble High Court of Gujarat and Hon'ble High Court of Himachal Pradesh, the Commission holds Respondent no. 2, PIO, Village Panchayat Rumdamol- Davorlim guilty of contravention of Section 7 (1) of the Act. The conduct of the said PIO, described during the discussion above is not acceptable to the Commission and the same attracts penal action under Section 20 (1) and 20 (2) of the Act. However, before imposing such penalty the Commission shall give an opportunity to the PIO to furnish her clarification /explanation.

17. In the background of the facts mentioned above, the present appeal is disposed with the following order:-

a) Respondent no. 2, PIO, Village Panchayat Rumdamol- Davorlim is directed to furnish information on point no. 1 and 3 sought by the appellant vide application dated 07/12/2020, within 10 days from the receipt of this order, free of cost.

b) Issue notice to Smt. Priscilla Niasso, PIO, and the PIO is further directed to showcause as to why penalty as provided under Section 20 (1) and/ or 20 (2) of the Act should not be imposed against her.

- c) In case the then PIO 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 of hearing, alongwith the present address of the then PIO.
- d) Smt. Priscilla Niasso, the then PIO is hereby directed to remain present before this Commission on 05/12/2022 at 10.30 a.m. alongwith the reply to the showcause notice.
- e) The Registry is directed to initiate penalty proceeding against Smt. Priscilla Niasso, PIO, Village Panchayat Rumdamol-Davorlim.

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