

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 120/2021/SIC

Shri. Longuinhos Fernandes,
H. No. 10/325, Desterro Waddo,
El-Monte, Vasco-da-Gama,
Goa 403802

....Appellant

V/s

1. The Public Information Officer,
Mormugao Municipal Council,
Vasco-da-Gama, Goa

2. The First Appellate Authority,
The Chief Officer,

Mormugao Municipal Council,
Vasco-da-Gama, Goa

....Respondent

Filed on: 11/06/2021

Decided on: 30/06/2022

Relevant dates emerging from appeal:

RTI application filed on	: 20/01/2021
PIO replied on	: 19/02/2021
First appeal filed on	: 08/03/2021
FAA order passed on	: 30/03/2021
Second appeal received on	: 11/06/2021

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 11/06/2021.
2. The brief facts of this appeal, as contended by the appellant are that he vide application dated 20/01/2022 requested for some information. PIO vide letter dated 19/02/2021 asked appellant to pay Rs. 862 and collect the information. Aggrieved by the

information furnished, appellant filed appeal dated 08/03/2021 before the FAA. However, the appellant did not receive copy of order passed by the FAA and preferred second appeal before the Commission.

3. Pursuant to the notice, Advocate Snehal Fernandes appeared on behalf of the appellant and filed written arguments dated 23/02/2022 and filed an affidavit on 31/03/2022. PIO was represented by Advocate V. V. Pednekar. Advocate Pednekar filed reply dated 08/11/2021, additional reply dated 10/01/2022, amendment to the additional reply dated 31/01/2022. Smt. Riya G. Naik, PIO filed affidavit on 19/05/2022 and Adv. V. V. Pednekar filed written arguments of PIO on 10/06/2022.
4. Appellant submitted that the reply sent by the PIO was not within the statutory period, and incomplete information has been furnished by the PIO, inspite of charging Rs. 862 for the information. PIO has not disputed that she has sent the reply after the stipulated period. PIO was under duty to furnish information within 30 days, which she has failed. Such an action of the PIO is violation of section 7(1) of the Act. The said action raises doubt as to the genuineness of the actions of the PIO, hence penalty should be imposed against her, by invoking section 20 of the Act.
5. PIO stated that the complete information was not traceable, hence the available information was furnished to the appellant. Total 431 pages were furnished after charging Rs. 862. The PIO further asked the dealing record keeper to trace the remaining records, however after lot of efforts the concerned files were not traceable. Some information related to the subject matter was found and the same was furnished to the appellant free of cost

on 30/03/2021 before the FAA and the FAA disposed the first appeal on the same day. PIO further stated that every effort is being made to trace the remaining records and if any staff is found responsible for the misplacement of records then action as per service rules will be initiated against the concerned staff.

6. Adv. Snehal Fernandes, arguing on behalf of the appellant, stated that appellant was charged Rs. 862, yet only 150 pages were furnished by the PIO, and later 85 pages were furnished. Hence the PIO is guilty of furnishing incomplete information, charging extra amount, furnishing the information after the expiry of the statutory period and not maintaining the complete records as required by the Act.
7. Advocate V. V. Pednekar, while arguing on behalf of the PIO, contended that the PIO has furnished 431 pages of information, accordingly payment of Rs. 864 was received from the appellant. PIO has issued the reply within the statutory period. PIO and other officers of the Public authority have been obediently trying to search the remaining records, hence no malafide can be attributed to the actions of the PIO.
8. After careful perusal of all the submissions and hearing the arguments of both the sides, the Commission has arrived at following findings:-
 - a) Appellant vide application dated 20/01/2021 had sought information pertaining to documents in the files of 93 trade licences issued by Mormugao Municipal Council, PIO vide reply dated 19/02/2021 requested the appellant to pay Rs. 862 and collect information requested under

serial No. 1, 4, 31, 45, 63, 80, 85, 88, 89, 92 and stated that information on other serial numbers is not available.

- b) The said reply of the PIO is dated 19/02/2021, the same was received by the appellant on 26/02/2021, after the stipulated period. However the delay is marginal and the same is condonable.
- c) The contention of the PIO is that she has furnished 431 pages of information after charging Rs. 862. On the other hand the appellant contends that only 150 and 85 pages were provided by the PIO. However, the information furnished is not numbered and the PIO has not produced any evidence/acknowledgment which shows that she has provided 431 pages to the appellant. Similarly, the appellant, probably did not count the number of pages while receiving from the PIO, hence has no record to prove that the information received is less than 431 pages.
- d) In the absence of sufficient evidence of malafide intentions of the PIO, the Commission cannot revoke section 20 of the Act to impose penalty against the PIO.
- e) Since the PIO has not produced any record to prove that she has actually furnished 431 pages of information, and since she was not able to clear the ambiguity on the date of issuance of the reply, which seems to be after the expiry of the stipulated period, though the delay is marginal, the PIO is required to refund the amount of Rs. 862 to the appellant.

f) Appellant had requested for information pertaining to documents in the files of 93 trade licences, however information except under serial numbers 1, 4, 31, 45, 63, 80, 85, 88, 89, 92 is still not traceable, hence the Commission cannot direct the PIO to furnish the remaining information. However, the PIO has undertaken to search the records further, hence the Commission assumes that the PIO shall intimate the appellant as and when the remaining records are traced.

g) PIO contends that the information on serial numbers 1, 4, 31, 45, 63, 80, 85, 88, 99, 92 has been furnished, which amounts to 431 pages, yet appellant has registered a grievance stating 431 pages are not received by him. However, both the sides were unable to substantiate their claims with documental evidence/acknowledgement, hence the Commission cannot arrive at any conclusion on this aspect. In view of this, the Commission is of the opinion that the amount of Rs. 862 collected by the PIO from the appellant is required to be refunded.

9. In the light of above discussion, the present appeal is disposed with the following order:-

a) PIO is directed to refund Rs. 862 charged from the appellant with respect to the information furnished, within 10 days from the receipt of this order.

b) PIO is directed to undertake detail search in order to trace the remaining information sought by the appellant vide application dated 20/01/2021 and intimate the appellant if any of the records are traced.

c) 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