

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 184/2021/SIC

Shri Jawaharlal T. Shetye,
H.No. 35/A, Ward No. 11, Khorlim,
Mapusa-Goa, 403507

..... Appellant

v/s

1. The Public Information Officer (PIO),
Mapusa Municipal Council,
Mapusa-Goa, 403507

2. The First Appellate Authority (FAA),
The Chief Officer,
Mapusa Municipal Council,
Mapusa-Goa, 403507

..... Respondents

Filed on: 10/08/2021
Decided on: 13/05/2022

Relevant dates emerging from appeal:

RTI application filed on	: 03/05/2021
PIO replied on	: Nil
First appeal filed on	: 07/06/2021
FAA order passed on	: Nil
Second appeal received on	: 10/08/2021

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), for not furnishing the information and not hearing the first appeal respectively, came before the Commission on 10/08/2021. Appellant prayed for complete information, penal action under section 20(1) and 20(2) of the Act and award of compensation.
2. The brief facts of this appeal are that the appellant vide application dated 03/05/2021 sought information on four points from PIO. Upon not receiving any reply within the stipulated period, he filed appeal dated 07/06/2021 before the FAA. The

said appeal was not heard by the FAA within the mandatory period, hence aggrieved appellant preferred the second appeal.

3. Pursuant to the notice, appellant appeared and pressed for the information and penal action against the respondents terming them habitual offenders of the Act. On the other side, Shri. Vyankatesh Sawant, PIO, Technical Section, appeared on 28/09/2021 and stated that the present matter concerns with PIO, Accounts cum Administration Officer. On 28/10/2021 Smt. Smita Fal Desai, Acting PIO appeared and filed reply, and filed additional submissions dated 26/10/2021, 8/11/2021 and 16/11/2021.
4. Smt. Smita Fal Desai, Acting PIO stated that Shri. Bhanudas Naik was the PIO at the time of RTI application dated 03/05/2021. Subsequently Shri. Bhanudas Naik, PIO of Administration section retired from service on superannuation and later Shri. Sarvottam Satardekar was holding the charge. That vide letter dated 14/10/2021 she informed the PIO and APIO to appear before the Commission on 28/10/2021 at 10.30 a.m. alongwith the reply. However APIO returned the notice stating that Shri. Sarvottam Satardekar, Accounts cum Administrative Officer /PIO did not accept the said notice.
5. Appellant submitted that the PIOs and APIOs as well as deemed PIOs in Mapusa Municipal Council have often failed to furnish information on his earlier applications. In the present matter, the then PIO did not furnish the information, subsequently the FAA failed to hear the appeal. Hence he is aggrieved and urged for the information as well as penal action against the concerned PIOs.
6. After going through the records of this matter it is seen that neither the application of the appellant was answered by the PIO, nor the appeal was heard by the FAA. PIO and FAA are senior officers of the Mapusa Municipal Council, governed by the Department of Urban Development (Municipal Administration) and they are mandated to respect the provisions of the Act. PIO, under section 7(1) of the Act is required to entertain the application within the stipulated period of 30 days and FAA, under section 19(6) of the Act is required to hear and decide the appeal within maximum period of 45 days. However both the officers failed to comply with the duty and responsibility bestowed upon them under the Act.

7. Further, the Commission notes that except initial appearance of Shri. Vyankatesh Sawant, PIO, Technical Section and Smt. Smita Fal Desai, Acting PIO, neither the then PIO, nor the present PIO presented themselves before the Commission. Similarly, no reply was filed by these officers. It is seen from the records that Smt. Smita Fal Desai Acting PIO, vide notice dated 14/10/2021 had intimated Shri. Sarvottam Satardekar, PIO/Accounts cum Administrative Officer to appear before the Commission on 28/10/2021 at 10.30 a.m. Subsequently, the Commission issued notice dated 01/11/2021 for appearance on 06/12/2021 at 10.30 a.m., yet Shri. Sarvottam Satardekar decided not to appear before the Commission.

It is also noted that Smt. Smita Fal Desai, Acting PIO vide notice dated 10/11/2021 had informed Shri. Shubraj Kanekar PIO/Account cum Administrative Officer to appear before the Commission on 06/12/2021 at 10.30 a.m. Subsequently, the Commission issued notice dated 07/12/2021 for appearance on 03/01/2022 at 10.30 a.m. Yet Shri. Shubraj Kanekar decided not appear before the Commission.

8. From the above mentioned developments, there appears to be systematic efforts and collective decision by all the PIOs of Accounts cum Administrative Section of Mapusa Municipal Council to not to furnish information to the appellant and not to honour the direction of the Commission to appear for hearing. Even more serious are these systematic efforts supported by the FAA by not hearing the first appeal and not issuing any directions to the PIOs

9. The approach of PIOs towards the Act and towards the authorities constituted under the Act is worrisome and hence deplorable. These officers have denied the statutory right of the appellant to seek information available in public domain and not exempted under section 8 and/or section 9 of the Act. Similarly, the FAA, being a senior officer, instead of setting an example by honouring the Act, decided to join the bandwagon of the violators of the Act. Such an irresponsible behaviour of these senior officers deserves punishment as provided by the Act.

10. The Commission finds the concerned PIOs and the FAA guilty of not honouring the provisions of the Act and more so, the PIOs for not respecting directions of the Commission. Hence

the Commission finds it necessary to invoke section 20 of the Act against the guilty PIOs. However, the Act does not provide for any punishment to the FAA. This being so, stern warning is required to be issued to the FAA to hear and decide the appeals received under section 19(1) of the Act.

11. Before closing, it is noted that Shri. Bhanudas Naik, the then PIO has retired from the service on superannuation. This being the case, his retirement benefits are beyond the scope of attachment. Similarly, disciplinary action under section 20(2) of the Act can be initiated only during the period of service, and not after retirement, hence section 20 of the Act cannot be invoked against Shri. Bhanudas Naik, the then PIO.
12. In the light of above discussion, the appeal is disposed with the following order:-
 - a) PIO, Accounts cum Administrative Officer, Mapusa Municipal Council is directed to furnish the information sought vide application dated 03/05/2021, within 30 days from the date of receipt of this order, free of cost.
 - b) Issue notice to Shri. Sarvottam Satardekar, former PIO and Shri. Shubraj Kanekar, present PIO and the PIOs are 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 them.
 - c) The former PIO and the present PIO are hereby directed to remain present on 24/06/2022 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceeding.
 - d) The Registry is further directed to send a copy of this order to the Director, Department of Urban Development (Municipal Administration), Panaji-Goa, for appropriate action in the said matter.
 - e) The Chief Secretary shall issue a memorandum warning the then FAA to adhere to the provisions of the Right to Information Act, 2005. The Registry is directed to send a copy of this order to the Chief Secretary, Government of Goa.

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