

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 224/2021/SIC

Smt. Nimisha Naik,
Hill Crest Apt. Co-op Society,
Altinho Mapusa-Goa

..... Appellant

v/s

1.The Public Information Officer
(PIO),
North Goa Planning and
Development Authority,
Archdiocese Building, 1st floor,
Mala Link Road,
Mala, Panaji-Goa

2.The First Appellate Authority
(FAA),
The Member Secretary,
North Goa Planning and
Development Authority, Mala Link
Road, Mala, Panaji-Goa

..... Respondents

Filed on : 25/08/2021

Decided on : 17/03/2022

Relevant dates emerging from appeal:

RTI application filed on	: 29/03/2021
PIO replied on	: Nil
First appeal filed on	: 03/06/2021
FAA order passed on	: Nil
Second appeal received on	: 25/08/2021

ORDER

1. Aggrieved by non furnishing of the information by respondent No. 1 Public Information Officer (PIO) and non hearing of the appeal by respondents no. 2 First Appellate Authority (FAA), appellant Smt. Nimisha Naik filed this second appeal under section 19(3) of

the Right to Information Act, 2005 (for short, the Act) before the Commission.

2. The brief facts of the appeal are that the appellant vide application dated 29/03/2021 sought information on five points from the PIO. Aggrieved by no response from the PIO within the stipulated period, appellant preferred appeal dated 03/06/2021 before the FAA. However the FAA did not dispose the matter within the mandatory period of 45 days, as required under section 19(6). Therefore appellant filed second appeal.
3. Notice was issued to the concerned parties and matter was taken up for hearing. Pursuant to the notice, Advocate Kiran S. More appeared on behalf of PIO and filed wakalatnama. Advocate More filed reply dated 13/12/2021 and another submission on 06/01/2022. FAA did not appear even once. Shri. Jawaharlal T. Shetye appeared on 13/12/2021 as a representative of appellant, however neither filed letter of authority, nor any submission. Appellant chose to remain absent for the entire proceeding.
4. PIO stated vide his reply that the appellant, vide her application dated 29/03/2021 wanted to know as to what action the authority has taken on the representation dated 29/09/2020. The appellant wanted information on the action taken by the authority including daily/monthly progress on the said representation. PIO further stated that vide the said representation the appellant has requested the authority to revoke the completion certificate of one housing complex, i.e. Hill Crest Height. However, the PIO submitted that once the completion certificate is issued by the authority, if any subsequent issue arises, it is for the local authority to take appropriate action, and not the authority of the PIO. Hence no action is taken by the authority and therefore no information is

available as defined under section 2(j) of the Act, in the records of the PIO.

5. PIO also stated that his authority vide letter dated 02/11/2021 has rejected the complaint/representation dated 29/09/2020, submitted by the members of the Hill Crest Apartment against Hill Crest Height. Considering these development, the appellant is seeking information which is not in existence, therefore such information cannot be provided.
6. It is seen from the records that the appellant has applied for information pertaining to action taken by the authority on a representation dated 29/09/2020 signed and submitted by the members of Hill Crest Apartment. The said representation requests the authority to revoke the completion certificate issued to Hill Crest Height.
7. Here, the issue required to be decided is whether any information as requested by appellant vide application dated 29/03/2021 exist with PIO and whether the PIO has acted as per the provisions of the Act, mainly, whether he disposed the application as provided under section 7 of the Act.
8. Section 7 (1) of the Act states:-

7. Disposal of request:-

(1) subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9.

Records indicate that the application for information was filed on 29/03/2021, hence under section 7(1) of the Act, PIO was required to reply on or before 28/04/2021, or under section 6(3) of the Act transfer the application to the concerned authority within 5 days. In spite of these provisions, PIO did not take any action. Therefore under section 7(2), the action of PIO amounts to deemed refusal.

9. After the expiry of the stipulated period, appellant filed appeal dated 03/06/2021 before FAA under section 19(1).

Section 19(6) states:-

19. Appeal (6): An appeal under sub-section(1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

Contrary to the above mentioned provision, FAA did not decide the appeal and that being so, the appellant was compelled to file second appeal.

10. However it is noted from the records that 'information', as defined in section 2(f), was not existing in the office of PIO, although appellant assumed that the same is available. Information pertaining to action taken on the representation/complaint filed by members of Hill Crest Apartment was not existing since there was no action taken by the authority.

11. In such situation, though PIO is guilty of not replying to the appellant within the stipulated period, the Commission takes a lenient view due to the fact that no information vis-a-vis RTI application dated 29/03/2021 existed with the authority. Also, it is observed that the appellant neither attended the proceeding even once, nor filed any submission. The Act and rules framed thereunder allow appellant not to remain present. Thus it appears

that the appellant is aware that the information does not exist with the authority.

12. In the light of above discussion and findings of the Commission, the appeal needs to be disposed appropriately. Accordingly, PIO is hereby directed to reply to the applicant within seven days from the receipt of this order informing the status of representation. The 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

Kk/-