

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 226/2021/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 : 02/09/2021

Decided on: 11/04/2022

Relevant dates emerging from appeal:

RTI application filed on	: 02/06/2021
PIO replied on	: Nil
First appeal filed on	: 06/07/2021
FAA order passed on	: Nil
Second appeal received on	: 02/09/2021

ORDER

1. Aggrieved with the non furnishing of information and non hearing of the appeal by respondent No. 1 Public Information Officer (PIO) and respondent No. 2 First Appellate Authority (FAA) respectively, appellant filed second appeal under section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as the Act).
2. The brief facts of this appeal are that the appellant vide application dated 02/06/2021 sought certain information from the PIO. As there was no response from the PIO within the stipulated period, appellant filed appeal dated 06/07/2021 before the FAA. The said

appeal was not heard by FAA within the mandatory period. Being aggrieved, he preferred second appeal against PIO and FAA.

3. Notice was issued to the concerned parties and the matter was taken up for hearing. PIO appeared before the Commission and filed submission dated 29/11/2021. Appellant, though was absent initially, later appeared and prayed for the information.
4. Upon perusal of the records of this appeal it is seen that the appellant has sought information on five points. However, the application was not replied by the PIO, nor the FAA heard the appeal. Appellant waited for completion of the mandatory period of 45 days, provided to FAA to decide the appeal and then filed second appeal.
5. It is also seen that Shri. Vyankatesh Sawant, PIO, Engineering Department of Mapusa Municipal Council vide submission dated 29/11/2021 has pointed out that the said matter pertains to the PIO, Accounts cum Administrative Officer of Mapusa Municipal Council and vide letter dated 26/11/2021 he has intimated the said PIO of the present matter being heard before the Commission.
6. Section 7(1) mandates PIO to furnish the information within thirty days on payment of prescribed fees and if he fails to give decision within this stipulated period, then the inaction of PIO is considered as deemed refusal, as defined in section 7(2) of the Act. Also, section 19(1) provides for appeal before the FAA against non receipt of any decision or information from the PIO. Accordingly, the appellant in the present case filed appeal dated 06/07/2021 before the FAA and under section 19(6) FAA was required to decide the appeal within 45 days. However, FAA failed to decide the appeal. Also, section 19(5) puts the onus on PIO to prove that a denial of a request was justified. In other words, section 19(5) provides an opportunity to PIO to justify before the FAA, his decision of denying the request received from Appellant. By non hearing of the appeal, by the FAA, the PIO was robbed of an opportunity to justify his decision and at the same time FAA could have utilised the provision to direct the PIO to furnish the information.
7. PIO and FAA are reminded of the fact that the object of the Act is to ensure maximum disclosure of information and minimum exemptions from disclosure. This will promote transparency and accountability in the working of the public authority. Thus PIO and

FAA are required to respect the provisions of the Act and accordingly deal with applications and appeals respectively, filed under the Act.

8. In view of the facts of the case and the observations noted above, the Commission is of the opinion that the interest of the appellant needs to be protected, and at the same time opportunity needs to be given to the PI O to justify deemed denial of the information. Hence the Commission concludes that the present matter is required to be heard by the FAA and appropriate directions, if required, needs to be issued to PIO. In order to decide the matter in accordance with the law and procedure set out in the appellate structure, matter is required to be remanded to the FAA.

9. Accordingly, the appeal is disposed with the following order:-

- a) Matter is remanded to the First Appellate Authority (FAA), Chief Officer, Mapusa Municipal Council and the FAA is directed to decide the same in accordance with the law.
- b) The right of appellant to file second appeal, in case he is aggrieved by the order of the FAA, is kept open.

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