

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 286/2021/SIC

Juliet Lobo D'Souza,
H. No. E/181, 'Casa LeaO'
Cobravaddo, Calangute,
Bardez-Goa 403516

..... Appellant

v/s

1. The Mamlatdar of Bardez,
Public Information Officer (PIO),
Mapusa, Bardez, Goa 403507

2. The Dy. Collector of Bardez,
First Appellate Authority (FAA),
Mapusa, Bardez-Goa 403507

..... Respondent

Filed on : 17/11/2021

Decided on : 09/03/2022

Relevant dates emerging from appeal:

RTI application filed on	: 16/08/2021
PIO replied on	: Nil
First appeal filed on	: 20/09/2021
FAA order passed on	: Nil
Second appeal received on	: 17/11/2021

ORDER

1. The Appellant Mrs. Juliet Lobo D'Souza, aggrieved by non furnishing of the information by respondent No. 1 Public Information Officer (PIO) and non hearing of the appeal by respondent No. 2 First Appellate Authority (FAA) within the stipulated period, as mandated by the Right to Information Act, 2005 (for short, the Act), filed second appeal under section 19(3) of the Act. The appeal came before the Commission on 17/11/2021.

2. The brief facts of this appeal, as contended by the appellant are that vide application dated 16/08/2021, she had requested for information as mentioned in the application. She did not receive any reply from PIO within the stipulated period of 30 days and hence filed appeal dated 20/09/2021 before the FAA. However the FAA did not hear the appeal within the mandatory period. Being aggrieved, the appellant preferred second appeal.
3. The appeal was registered, notice was issued, pursuant to which Advocate Sweta S. Shetgaonkar appeared on behalf of the appellant and filed wakalatnama. However both the respondents remained absent through out. In spite of repeated opportunities given by the Commission, the PIO and the FAA neither appeared, nor deputed any representative before the Commission. Both the respondents have not filed any submission either.
4. Appellant stated that she had requested for information in respect of the Form No. 1 & XIV of the property bearing Survey No. 177, sub Division No. 1 (Survey No. 177/1) of Village Calangute, Bardez, Goa, of which she is one of the occupant. Originally there were five names of occupants in the revenue record Form No. 1 and XIV and while converting the manual Form No. I and XIV into computerised Form No. I and XIV of the said property, five names were broken into seven names giving serial numbers to them, when in the original document there were no serial numbers given to five names. The change has caused mental agony and hardship to the occupants of the property, including the appellant.
5. Appellant further stated that she has requested for the information pertaining to the above-mentioned property and she is aggrieved for the reason that the PIO has not furnished the information and also the FAA has not heard the appeal.
6. Advocate Shweta S. Shetgaonkar, while arguing on behalf of the appellant on 16/02/2022 stated that the appellant is seeking the information pertaining to the property of which she is a co-occupant. The said information is available with the authority, however not furnished. This being the case, relief may be granted to the appellant.
7. Section 7(1) of the Act states that:-

Subject to the proviso to sub section (2) of section 5 or the proviso to sub section (3) of section 6, the PIO, 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 section 8 and 9.

Section 7(2) of the Act states that:-

If the PIO fails to give decision on the request for information within the period specified under sub section (1), the PIO shall be deemed to have refused the request.

Section 7(8) of the Act states that:-

Where a request has been rejected under sub section (1), the PIO shall communicate to the person making the request (i) the reason for such rejection, (ii) the period within which an appeal against such rejection may be preferred, (iii) the particulars of the appellant authority.

8. It is seen from the records that the PIO did not give any reply to the application; nor provided information. Therefore the inaction of PIO amounts to deemed refusal. PIO did not seek exemption under section 8, nor rejected the application under section 9 of the Act. Later, PIO did not appear even once, before the Commission, nor sent representative. This infelicitous act of PIO is completely against the provisions and spirit of the Right to Information Act.

9. Section 19(1) states that :-

Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7 or is aggrieved by a decision of the PIO may be within thirty days from the expiry of such period or from the receipt of such decision, prefer an appeal to such officer who is senior in rank to the PIO.

Section 19(6) states that:-

An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of 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.

10. Contrary to this provision, the FAA neither heard the first appeal which was filed before him by the Appellant, nor passed any order on the appeal within the stipulated period. Being the officer senior in rank, the FAA is expected to be duty bound to

dispose the appeal and if required to give directions to the PIO, instead he neither asked PIO to honour provisions of the Act, nor represented before the Commission during the proceeding of this appeal. This obstinate determination from the FAA to neglect the Act cannot be accepted by the Commission.

11. PIO and FAA are the responsible and senior officers designated for dispensing the information under the Act. However, conduct of both the officers is found to be contrary to the requirement of the Act, in this case. Neither the PIO, nor the FAA has shown any concern to the application filed by citizen under the Act. Such practice of the Mamlatdar of Bardez and Deputy Collector of Bardez does not confirm with the provisions and spirit of the Act. Hence, such and conduct on the part of the PIO and FAA is deplorable and the Commission in no way can subscribe to such in action of the authorities.

12. Hon'ble Delhi High Court, in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission has held:-

"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction of filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

PIO herein has failed to honor the provision of the Act. There is no response of the PIO at all, which is not acceptable. The FAA has also neither stepped in during first appeal nor shown any responsible action during second appeal.

13. Subscribing to the ratio laid down by the Hon'ble Delhi High Court, and the provision of the Act the PIO is liable to be penalised as provided under section 20(1) and 20 (2) of the Act. However, the Commission finds it appropriate to call explanation from him before imposing such penalty. In the case of the FAA, he did not hear the appeal and has also not filed reply before the Commission. Such a lapse on the part of FAA is certainly dereliction in his duties and the same needs to be viewed very seriously.

However, the Act does not provide for imposition of any penalty on the FAA.

14. In the light of the above discussion, the Commission issues stern warning to the FAA to hear appeals as per the provisions of the Act and decide within the time frame provided under the Act.
15. Considering the facts and analysis observed herein above, the appeal is disposed with the following order:-
 - a) The PIO is directed to furnish the information sought by the appellant vide application dated 16/08/2021, within 15 days from the receipt of this order, free of cost.
 - b) Issue notice to the PIO, and the PIO is further directed to show cause as to why penalty under section 20(1) and/or 20(2) of the Act should not be imposed against him/her.
 - c) In case the then PIO is transferred, the present PIO shall furnish the information as directed above and serve this order alongwith the notice to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing, along with full name and present address of the then PIO.
 - d) The then PIO is hereby directed to remain present before the Commission on 06/04/2022 at 10.30 a.m. alongwith the reply to showcause notice. The Registry is directed to initiate penalty proceedings.

Proceeding of this 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