

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 05/2021/SIC

Mr. Saluzinho Soares,
H. No. 1537, Orda,
Candolim,
Bardez-Goa

...Complainant

V/s

The State Public Information Officer,
The Secretary of Village Panchayat,
Candolim,
Candolim, Bardez-Goa

....Opponent

Filed on : 26/03/2021

Decided on : 06/07/2022

Relevant dates emerging from Complaint:

RTI application filed on	: 08/12/2020
PIO replied on	: 05/01/2021
First appeal filed on	: 11/01/2021
FAA order passed on	: 23/02/2021
Complaint received on	: 26/03/2021

ORDER

1. The brief facts of this complaint filed under section 18 of the Right to Information Act, 2005 (hereinunder referred to as the 'Act') are that the complainant had sought certain information which was denied by the Opponent, Public Information Officer (PIO) inspite of direction from the First Appellate Authority (FAA). Being aggrieved, the complainant filed this complaint before the Commission.
2. The notice was issued to the concerned parties, pursuant to which complainant alongwith Adv. Shankar M. Phadte and Advocate Medard De Souza appeared before the Commission. Complainant filed a submission on 16/06/2022 alongwith the enclosures. Advocate

Siddesh Prabhudesai appeared on behalf of the opponent PIO and filed reply dated 01/11/2021.

3. Opponent stated that, the information requested by the complainant vide application dated 08/12/2020 was regarding construction of house of Shri. Pedrito Misquita. Subsequently Shri. Misquita objected to the disclosure of the information, hence the request was rejected. Further, FAA directed PIO/APIO to furnish the said information, however the said order could not be complied since the information sought is vague and also due to the worsening of Covid -19 Pandemic situation.
4. Opponent further contended that, Shri. Pedrito Misquita filed appeal before the Commission challenging the order of the FAA and the said appeal, registered under case No. 74/2021/SIC, is sub-judice before the Commission. That the Opponent has not deliberately concealed or refused the information, on the contrary, the information is not issued since the matter is sub-judice before the Commission.
5. Complainant contended that he had submitted the order of the FAA to the PIO vide letter dated 02/03/2021, yet the PIO did not comply with the order and avoided the furnishing of the information. Later, complainant made several requests to the PIO for the information, however the PIO did not furnish the same and overlooked the proceeding of the present complaint. With this the complainant prayed for suitable action against the PIO and direction to comply with the order of the FAA.
6. The Commission has carefully perused the records of the present complaint matter. It is seen that the complainant has sought the information from the PIO pertaining to the construction of house by Shri. Pedrito Misquita. The PIO initially refused the information with

respect to the objection filed by Shri. Pedrito Misquita, third party. However, the FAA directed the PIO to furnish the information, yet PIO did not comply with the order of the FAA.

7. PIO/Opponent's first defence is that the information sought is vague and also due to Covid-19 situation he could not engage his staff to search the information. The Commission finds that the information sought by the complainant is clear and insipite of the Covid-19 situation the PIO could have furnished the same at least during the present proceeding to prove his bonafide, which he failed to do.
8. Second defense of the PIO/Opponent is that Shri. Pedrito Misquita, third party had filed appeal before the Commission against the order of the FAA and the matter was sub-judice, hence he did not furnish the information. Here, it is noted that the said appeal referred by the opponent PIO (Appeal No. 74/2021/SIC) has been dismissed by the Commission vide order dated 11/03/2022, and in the said order it is held that the information sought by the complainant cannot be held back by the PIO and the same is required to be disclosed as per the directions of the FAA. Subsequent to the dismissal of the said appeal, the PIO was required to comply with directions of the FAA.
9. During the proceeding of this complaint, Shri. Pedrito Misquita filed an application dated 07/12/2021 for intervention in the matter. Shri. Pedrito Misquita was allowed to file his say. However, Shri. Misquita, in his submission has only defended the action of the PIO and raised some other issues which are not before the Commission and also, not within the jurisdiction of the Commission. Hence his prayer is beyond consideration. At the same time, the Commission observes that the appeal filed by Shri. Misquita against the order of the FAA has been dismissed by the Commission vide order dated 11/03/2022.

10. In the background of the facts mentioned above, the Commission partially allows the present complaint and holds that the PIO is required to ensure the compliance of the order of the FAA. However, the Commission is of the opinion that there is no need to initiate penal and/or disciplinary action against the PIO since his decision to hold back the information was with reference to the proceeding of Appeal 74/2021/SIC.

11. Hon'ble High Court of Bombay at Goa, in Writ Petition No. 205/2007, Shri. A. A. Parulekar V/s. Goa State Information Commission, has held that:-

"The order of penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

12. Subscribing to the ratio laid down by the Hon'ble High Court and the findings of the Commission, there is no need to invoke Section 20 of the Act against the PIO. In the light of the above discussion the present complaint is disposed with the following order:-

a) PIO is directed to ensure compliance of the order dated 23/02/2021 passed by the FAA, within 30 days from the receipt of this order.

b) 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