

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 15/2021/SIC

Shri. Maria Rodrigues,
H. No. 136, Gauncar Waddo,
Curca Bambolim,
Tiswadi-Goa, 403108

..... Complainant

v/s

The Public Information Officer (PIO),
The Administrator, North Zone,
Office of the Administrator of
Comunidades,
Mapusa-Goa

.....Opponent

Filed on : 08/10/2021

Decided on: 13/05/2022

Relevant dates emerging from Complaint:

RTI application filed on	: 12/04/2021
PIO replied on	: 30/07/2021
First appeal filed on	: 21/07/2021
FAA order passed on	: 08/09/2021
Complaint received on	: 08/10/2021

ORDER

1. The brief facts of this complaint are that the Complainant vide application dated 12/04/2021 sought information on two points from opponent Public Information Officer (PIO). Upon receiving no reply from the PIO within the stipulated period, she filed appeal before the First Appellate Authority (FAA), Additional Collector III Mapusa and the FAA vide order dated 8/09/2021 directed PIO to furnish the information. Yet PIO did not furnish the information. Being aggrieved, the complainant approached the Commission by way of Complaint under section 18(1)(b) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act').
2. Notice was issued to the concerned parties, pursuant to which complainant appeared alongwith Shri. Savio Fernandes and filed submission dated 25/11/2021, 12/01/2022, 17/02/2022 and later, argued on 05/04/2022. Advocate Sanjeev Sawant appeared on behalf of PIO and filed reply cum written arguments dated 15/03/2022.

3. Complainant stated that the PIO, inspite of receipt of the application, never bothered to reply within the stipulated period. Upon filing the first appeal, the opponent PIO hurriedly sent reply dated 30/07/2021 stating that the information sought is not available in his office. Complainant further stated that the PIO displayed his adamant approach by not attending the hearing of first appeal, hence the PIO be directed to furnish the information and penal action be initiated against him.
4. PIO vide reply dated 15/03/2022 stated that, vide letter dated 30/07/2021, he had intimated the complainant that the information sought by her is not available. Later, during the proceeding of first appeal he orally requested the Clerk, Escrivao of the Comunidade of Mapusa to provide the said information, however the Clerk refused to give any information and took stand that being a private organisation, the Comunidade of Mapusa is not bound to provide any information. Hence, the PIO is unable to furnish the said information.
5. Smt. Maria Rodrigues, complainant while arguing on 05/04/2022 contended that, the Comunidade is a public authority as per section 2(h) of the Act. Earlier order referred by the PIO dated 10/02/2020 passed by the Commission, in which it was held that the Comunidade is not public authority is not binding in this matter since the said order was passed as per the records of that particular case. Complainant further argued that the Administrator of Comunidade/PIO is a public servant, his salary is paid from Government treasury. Hence he is required to furnish the information sought by her.
6. PIO has relied on an order passed by the Commission on 10/02/2020 in Appeal No. 34/SCIC/2012. The said order has held that the Commission is unable to issue directions to the PIO, Administrator of Comunidade or to the Registrar/Attorney, Comunidade of Mapusa to comply with the order passed by the FAA and furnish information. However, the facts and circumstances in the said matter are different than the present matter, hence the Commission cannot consider the contention as the PIO, which is based on the said order.
7. It is seen from the records that the PIO initially did not reply to the complainant, which under section 7(2) of the Act amounts to deemed refusal of the request. PIO, during the hearing of the first appeal issued a reply to the complainant stating the information is

not available. Later, during the proceeding of the second appeal, PIO took a stand that he had orally, sought the information which the Clerk/Escrivao of the Comunidade refused to disclose. However, PIO has not brought on record any evidence to substantiate his contention. On the contrary, it is noted that the PIO did not raise this point before the FAA, rather he preferred to remain absent during the hearing of the first appeal. Therefore, the contention of the PIO that he orally requested Clerk/Escrivao to furnish the information and the same was denied by the clerk/Escrivao cannot be accepted.

8. It is pertinent to note what FAA has held in his order dated 08/09/2021. FAA has stated in para 6 of the said order that the information sought by the appellant is with respect to Comunidade within the jurisdiction of the respondent and as per the Act, the respondent is duty bound to furnish the same.

Further in para 7 the FAA has observed that, whatever be the difficulties, unless the information is exempt from disclosure, the public authority is bound to disclose the same, otherwise the object and spirit of the Act will be totally defeated.

9. The Commission is in total agreement with the FAA on this matter and finds that the PIO has erred in not complying with the order of the FAA and not furnishing the information to the complainant. What is even more serious is the fact that the PIO did not make any attempt to get the information from the Clerk/Escrivao of the Comunidade of Mapusa in order to furnish the same to the complainant. PIO has shown complete disregard to the provisions of the Act and disrespect to the authorities designated under the Act. Hence the PIO is held guilty for not complying with section 7(1) of the Act and also for not adhering to the direction of the FAA. Such a lapse is punishable under section 20(1) and/or 20(2) of the Act.

10. However, it is seen from the records that the PIO, Shri. Ulhas Kadam has retired from the service on superannuation and section 11 of the Pension Act, 1871, grants immunity to the pension holder against its attachment. Similarly section 60(1)(g) of Civil Procedure Code bars attachment of pension benefits. In the present case, Shri. Ulhas Kadam, the then PIO, though guilty of not furnishing the information, has retired from service and his retirement benefits are beyond the scope of attachment. Similarly, disciplinary action under section 20(2) of the Act can be initiated during the period of service and not after the retirement.

11. In a similar matter, the Hon'ble Supreme Court, in Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra (Appeal Civil 1874 of 1999) has held:-

"This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands...."

12. The Commission also observes that the present matter is a complaint filed under section 18(1) of the Act and not second appeal under section 19(3) of the Act. The present matter being a complaint, the Commission has no jurisdiction to direct the present PIO of the Comunidade of Mapusa to furnish the information under section 18 of the Act to the complainant, which is also the ratio laid down by the Hon'ble Supreme Court in Civil Appeal Nos. 10787-10788 of 2011, in Chief Information Commissioner and another V/s State of Manipur and another.

13. Considering the above mentioned ratio and observations recorded in para 10 and 12, the Commission is of the view that no relief can be granted to the complainant. Hence all prayers are rejected and the complaint is disposed accordingly.

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