

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 49/2023/SCIC

Mr. Pramod alias Sachin D. Kalokhe,
R/o. H.No. 268, Manshe Bhatt,
Haliwada, Britona, Penha-de-Franca,
Bardez-Goa 403101.

.....Appellant

V/S

1. The Public Information Officer (PIO),
Village Panchyata at Penha-de-Franca,
403101.

2. Block Development Officer-Bardez,
First Appellate Authority,
Government of Goa,
Mapusa, Badrez-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 31/01/2023

Decided on: 18/05/2023

ORDER

1. The Appellant, Mr. Pramod alias Sachin D. Kalokhe r/o. H.No. 268, Manshe Bhatt, Haliwada, Britona, Penha-de-Franca, Bardez-Goa vide his application dated 28/09/2022 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO), Village Panchayat Penha-de-Franca, Bardez-Goa:-

1) The Address of Residence/ Residential Address of Shri. Francis A. D'Souza, the panch member of Ward No. 3 of the Village Panchayat of Penha-de-Franca.

2) The Survey No. & Sub. Div. No. of the Village Penha-de-Franca, Taluka Bardez, wherein the said house is located/ situated & of the boundaries thereof.

3) The certified copy of conversion sanad, approved plans, construction licence, occupancy certificate, No

Objection Certificate (NOC) and/or of any other permissions and documents issued by the competent authorities pertaining to the said property & the said house.

4) The certified copy of the last receipt with respect to the House Tax, the Garbage Tax and/or any other receipts pertaining to the said property & the said house issued by the Village Panchayat of Penha-de-Franca.

2. The said application was responded by the PIO on 11/10/2022, in the following manner:-

- *As per Para 1 – Information is not available.*
- *As per Para 2 - Information is not available.*
- *As per Para 3 - Information is not available.*
- *As per Para 4 - Information is not available.*

3. Aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Block Development Officer-II, Bardez, Mapusa-Goa being the First Appellate Authority (FAA).

4. The FAA vide its order dated 17/11/2022, directed the PIO to furnish the information to the Appellant before 23/11/2022.

5. Upon the receipt of the order of the FAA dated 17/11/2022, the then PIO Mr. Sachin P. Naik who was Secretary for short intervening period had complied the order of the FAA and furnished the available information to the Appellant on 25/11/2022, which was duly endorsed by the Appellant.

6. Being aggrieved and dissatisfied with the order of the FAA dated 17/11/2022, the Appellant landed before the Commission with this second appeal under Section 19(3) of the Act, with the prayer to impose penalty, to recommend for disciplinary action against the

main PIO, Shri. Suresh Fadte and to compensate the Appellant for causing hardship and mental tension.

7. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 13/03/2023, the PIO, Suresh Fadte appeared on 13/03/2023 and collected the copy of appeal memo. The representative of the FAA, Shri. Umesh Shetgaonkar appeared, however, chose not to file any reply in the matter. Adv. Gokuldas Naik appeared on behalf of the PIO on 27/04/2023 and placed on record the reply of the PIO.
8. Perused the pleadings, reply and scrutinised the documents on record.
9. It is the contention of the Appellant that, the PIO Mr. Suresh S. Fadte with malafide intention has given incorrect and misleading information while dealing his RTI application and therefore, he has abdicated his statutory functions and hence liable for disciplinary action under the service rules.

As against this the PIO through his reply submitted that, upon the receipt of the order of the FAA dated 17/11/2022, the then PIO, Shri. Sachin P. Naik complied with the order and provided the available information to the Appellant on 25/11/2022.

10. Every statute acts and operates within its scope and ambit. Section 19 of the Act provides every information seeker a mechanism with which he can seek redressal of grievance of non-disclosure of information. In the instant case, the Appellant not satisfied with the reply of the PIO, preferred first appeal. The FAA upon considering the merit of the case allowed the first appeal and directed the PIO to furnish the information within a week. The PIO complied the order of the FAA and furnished the purported information to the Appellant on 25/11/2022 and the delay caused is of marginal delay of 2 days.

11. The High Court of Bombay, Goa Bench at Panaji in case **Public Authority Officer of Chief Engineer, Panaji v/s Shri. Teshwant Tolio Sawant (W.P. No. 704/2012)** while considering the issue of marginal delay has held as under:-

"6. The question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."

12. The High Court of Punjab in the case **State of Punjab & Ors. v/s State Information Commissioner & Ors. (LNIND 2010 PNH 2809)** has observed as under:-

"The delay was not inordinate and there was no contumacious misconduct on the part of the officer to supply to the petitioner the information. The penalty provisions under Section 20 of the RTI Act are only to sensitize the public authorities that they should act with all due alacrity and not hold up the information which a person seek to obtain. It is not every delay that should be visited with penalty."

13. The High Court of Bombay at Goa in the case **A.A. Parulekar v/s Goa State Information Commission & Anrs. (2010 (1) Mh.L.J.12)** has observed as under:-

"11. 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."

14. Considering the nature of relief that has been sought by the Appellant in the present proceeding, it appears that the Appellant wants this Commission to recommend disciplinary action against the PIO. Therefore, it would be appropriate to cite the observation of the Hon'ble Supreme Court in the case **Manohar Manikrao Anchule v/s State of Maharashtra & Anrs. (2013 (1) ALL MR 420(SC))** has held as under:-

"28..... If one examines the provisions of Section 20(2) in their entirety then it becomes obvious that every default on the part of the concerned officer may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. 'Negligence' per se is not a ground on which proceedings under Section 20(2) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause.

30..... It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts. "

In view of the above, it is clear that for attracting consequences of Section 20(2) the default of the PIO should be repeated and persistent.

15. The Appellant also prayed that, the PIO be directed to pay compensation for causing harassment, mental tension and agony. However, the Appellant did not make out any specific plea for amount of loss or shown quantum of actual damage caused to him. Such a relief cannot be granted to the Appellant being irrational and unfounded. The Hon'ble High Court of Bombay, Goa Bench in recent judgement in the case **Santana Nazareth v/s State of Goa & Ors. (2022 (6) ALL MR 102)** paragraph 4 of the said judgement being relevant is quoted below:-

"4..... compensation as in Section 19(8)(b) is intended to be provided to the information seeker by the public authority on proof of loss or sufferance of detriment by the former because of negligence, carelessness or recalcitrance of the later. Merely because the petitioner was found to have suffered hardship did not entitle her to payment of compensation unless a case of loss or sufferance of detriment was specifically set up in the appeal."

Therefore, I am not inclined to grant the relief at prayer (A) of the appeal.

16. In the given case, the RTI application dated 28/09/2022 was initially replied on 11/10/2022. In the said reply the PIO mechanically informed the Appellant that "Information is not available". In the said reply, the PIO neither cited exact provision of the Act to reject the request nor gave any reasoning as to why said information is not available. The word 'not available' is vague in as much as it does not suggest what efforts the PIO made to

locate the information. It appears that the PIO without any reasonable verification replied the RTI application as "information not available". Such a vague reply cannot be accepted as a response under Section 7(1) of the Act. The PIO has committed irregularity and not followed the provision prescribed by the Act, therefore, I find it appropriate to warn the PIO, Shri. Suresh S. Fadte that he should deal with the RTI applications with due sanctity. However, this being the first lapse as is noted by the Commission, a lenient approach is adopted. The PIO shall be diligent henceforth and deal with the application under the Act with caution and with the spirit and intent with which the Act is promulgated. With the above observation, appeal stands dismissed.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner