

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 108/2023/SIC

Nihar Milind Barve,
R/o. 3/S-3, Kamat Complex 1, Tonca,
Caranzalem, Tiswadi-Goa 403002.

-----Appellant

v/s

1. First Appellate Authority,
Corporation of the City of Panaji.
Panaji-Goa 403001.

2. The Public Information Officer,
Corporation of the City of Panaji.
Panaji-Goa 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 15/11/2022
PIO replied on	: Nil
First appeal filed on	: 24/02/2023
First Appellate Authority order passed on	: 16/03/2023
Second appeal received on	: 27/03/2023
Decided on	: 17/07/2023

ORDER

1. Appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought information on five points from Respondent No. 2, Public Information Officer (PIO). It is the contention of the appellant that, since the PIO failed to respond within the stipulated period, he filed first appeal before Respondent No. 1, First Appellate Authority (FAA). FAA vide order dated 16/03/2023 directed the PIO to furnish the information. Appellant further contends that the PIO furnished only partial information, hence, he has appeared before the Commission by way of second appeal against both the respondents.
2. Notice was issued to the concerned parties and the matter was taken up for hearing. Pursuant to the notice appellant appeared alongwith Advocate Raunaq Rao and prayed for penal action under Section 20 of the Act against the PIO and compensation towards the expenses incurred. Appellant on 21/06/2023 filed affidavit of expenses incurred by him. Shri. Dinesh D. Maralkar appeared on behalf of FAA under authority, whereas Shri. Sudesh K. Rivonkar remained present for the PIO. Shri. Siddesh B. Naik, PIO appeared on 21/06/2023 and undertook to file reply. Later, reply from the PIO was received in the registry on 03/07/2023.

3. Advocate Raunaq Rao while arguing on behalf of the appellant stated that, the information sought was available in the records of the PIO, yet the application was not responded within the stipulated period. Information was not supplied to him mischievously and the same was supplied only after the first appeal was disposed by the FAA, moreover only partial information has been furnished, that too after more than 100 days delay. Advocate Raunaq Rao further argued that, the FAA had recorded that the appellant was aggrieved by non furnishing of the information, thus, he prays for imposition of penalty under Section 20 of the Act against the PIO.
4. Advocate Raunaq Rao during the proceeding on 21/06/2023 filed an affidavit of expenses incurred by the appellant. Appellant stated in the affidavit that, on account of non supply of information by the PIO, he had to file first appeal and thereafter the second appeal, and he has incurred expenses amounting to Rs. 38,874/- (Rupees Thirty Eight Thousand Eight Hundred Seventy Four only), which needs to be compensated from the authority.
5. PIO submitted that he has furnished the information as available to the appellant and that the delay which was caused is not deliberate, nor intentional, and that the information was furnished free of cost. PIO further contended that, he has not committed any act which is liable for punishment under Section 20 of the Act. Also that, the expenses shown by the appellant under the affidavit cannot be considered as the said expenses are unnecessary expenditure.
6. Upon perusal of the records of the present matter it is seen that, the appellant had sought information on five points and was basically aggrieved since the PIO did not respond within the stipulated period. Failure of the PIO to give a decision on the request for information within the stipulated period of 30 days amounts to deemed refusal of the request. It is further seen that, the appellant, being aggrieved, filed first appeal and the FAA held that no information was furnished to the appellant and directed the PIO to furnish the information free of charge.
7. In compliance with the order of the FAA, PIO on 16/03/2023 furnished the information as available and was received by the appellant on the same day. Appellant contended during the present proceeding that only partial information was furnished to him. However, it is observed that the PIO has furnished the information as available and the PIO cannot be expected to provide any information which is not generated / not available in the records of the public authority. Thus, the

Commission finds no wrong in the information furnished vide letter dated 16/03/2023, by the PIO. Similarly, it is noted that the appellant while in the appeal before the Commission has not prayed for information / additional information / remaining information, rather appellant has prayed for penal action against the PIO and compensation from the authority. This being the case, no direction is required to be issued to the PIO, with respect to supply of information. However, the PIO is required to explain/ justify the delay in furnishing the information.

8. Thus, the Commission shall consider the present matter insofar the two prayers of the appellant. With respect to the prayer to impose penalty against the PIO, it is seen that the PIO had failed to respond to the application within the stipulated period of thirty days, as required under Section 7 (1) of the Act. Nevertheless, the information was furnished by the PIO on the day of disposal of the first appeal.
9. However, the Act mandates PIO to appear before the Commission and submit his/her say to prove that he/she acted reasonably and diligently. In the present matter notice dated 11/04/2023 was issued to the PIO and the same was delivered to his office on 17/04/2023. PIO initially deputed his authorised representative, later on 21/06/2023 appeared in person, and requested for time to file reply. Upon his request PIO was given time till 28/06/2023 to file reply. However, PIO failed to file reply within the given period, and later on 03/07/2023 a reply from the PIO was received in the registry and the same has been considered by the Commission in tune with the principle of natural justice. Nevertheless, the PIO has provided no convincing justification for the delay and his failure to furnish the information within thirty day. Hence, the Commission does not endorse the submission of the PIO.
10. The Commission in a similar matter (Appeal No. 322/2022/SIC) vide order dated 24/04/2023 had warned the same PIO for his negligent conduct and failure to comply with Section 7 (1) of the Act and had held that any further violation by the said PIO will be viewed strictly as per the provisions of the Act. The said PIO, in spite of the warning has not shown any willingness to comply with Section 7 (1) of the Act. It appears that it is the modus operandi of the said PIO not to respond to the application within thirty days and compel the appellant to approach appellate authorities and furnish the information only when directed by the authority to do so. This causes harassment and financial loss to the appellant. Consequently, the Commission cannot subscribe to such arrogant conduct and holds that the PIO is liable for

penal action under Section 20 (1) of the Act. However, he will be given an opportunity to be heard before arriving at any decision regarding imposition of penalty.

11. With respect to the second prayer of the appellant, seeking compensation from the authority, it is seen that, the appellant vide an affidavit has provided details of expenses incurred by him to get the information. Section 19 (8) (b) empowers the Commission to direct the public authority to pay appropriate compensation to the appellant for any loss or other detriment. Appellant has stated that altogether he has incurred expenses of Rs. 874/- towards petrol cost, parking fees, printing cost etc., Rs. 8,000/- towards loss of salary and Rs. 30,000/- towards legal consultation. These expenses includes Rs. 1,082/- incurred on the day of filing application dated 15/11/2022. It was the desire of the appellant to seek the information, accordingly, he filed application before PIO on 15/11/2022, thus, he cannot expect compensation against expenses incurred on that day. Similarly, appellant was not mandated to engage legal consultation services, it was his decision to get legal consultation services, financial implication of which has to be borne by the appellant. Thus, the Commission shall not grant compensation to the appellant towards legal consultation services availed by him.
12. Thus, the Commission holds that appellant may be granted compensation of Rs. 7,000/- towards loss of salary and Rs. 792/- towards petrol cost, parking fees and printing expenses only. It is reiterated the said compensation does not include any expenses incurred on the date of filing of the application and expenses incurred on legal consultation services.
13. In the background of the facts and the findings as mentioned above the Commission concludes that, explanation has to be sought from the PIO as to why penalty as provided under Section 20 (1) of the Act should not be imposed against him for contravention of Section 7 (1) of the Act. Also, the Commission concludes that the appropriate direction have to be issued to the public authority to compensate the appellant for expenses he had to incur due to the mischievous delay caused by the PIO in furnishing the information.
14. In the light of above discussion, the present appeal is disposed with the following order:-
 - a) The appeal is allowed.

- b) The Public authority represented by Shri. Siddesh B. Naik, PIO Corporation of the City of Panaji is directed to pay the appellant compensation of Rs. 7,000/- towards loss of pay and Rs. 792/- towards expenses incurred on petrol cost, parking fees and printing cost, within 15 days from the receipt of this order.
- c) Issue show cause notice to Shri. Siddesh B. Naik, PIO, Corporation of the City of Panaji and the PIO is further directed to showcause as to why penalty as provided under section 20(1) of the Act should not be imposed against him.
- d) Shri. Siddesh B. Naik, PIO, Corporation of the City of Panaji is hereby directed to remain present before the Commission on 21/08/2023 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceeding.
- e) In case the then PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgement before the Commission on or before the next date of hearing , alongwith full name and present address of the then PIO.

Proceeding of the present 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.