

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 164/2023/SIC

Shri. Narayan Datta Naik,
H. No. 278/1 (3),
Savorfond, Sancoale,
403710.

-----Appellant

v/s

Mr. Orville C. Vales,
Public Information Officer,
Village Panchayat Sancoale,
Pin Code No. 403710

-----Respondent

Relevant dates emerging from appeal:

RTI application filed on	: 20/02/2023
PIO replied on	: Nil
First appeal filed on	: 27/03/2023
First Appellate Authority order passed on	: 25/04/2023
Second appeal received on	: 15/05/2023
Decided on	: 02/11/2023

ORDER

1. The second appeal filed by the appellant under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') against Respondent Shri. Orville C. Vales, Public Information Officer (PIO), Village Panchayat Sancoale, came before the Commission on 15/05/2023.
2. The brief facts of this appeal, as contended by the appellant are that, he had sought certain information from the PIO. Being aggrieved by no response within the stipulated period, the appellant filed first appeal before the FAA. The first appeal was disposed by the FAA by directing the PIO to furnish the requested information. It is the contention of the appellant that the said order was not complied by the PIO, thus, he has preferred second appeal against the PIO, before the Commission.
3. Notice was issued to the concerned parties, pursuant to which appellant appeared in person pressing for complete information and appropriate action against the PIO. Advocate Zeller C. de Souza appeared on behalf of the PIO and filed reply dated 08/09/2023, submissions dated 11/09/2023 and 20/10/2023. Arguments of Advocate Zeller C. de Souza were heard on 09/10/2023.

4. PIO, vide reply and submissions stated that, as per the provision of Section 19 (3) of the Act, the appellant can file second appeal only against the decision of the FAA, meaning appellant to file second appeal has got to be aggrieved by the decision of the FAA. However, there is nothing in the appeal to suggest that the appellant is aggrieved by the decision of the FAA. PIO further stated that, the appellant appears to be aggrieved by the action of the PIO, of not furnishing information as sought by him and as directed by the FAA. Thus, the appellant cannot seek recourse to the provisions of Section 19 (3) of the Act and file a second appeal if the PIO does not furnish the information as directed by the FAA.
5. Appellant submitted that, the information was denied to him by Smt. Asha S. Mesta, the then PIO and later, Shri. Orville C. Vales the present PIO failed to comply with the direction issued by the FAA to furnish the information. The conduct of both the PIOs is against the spirit and intention of the Act. Appellant further submitted that, he is seeking the information in public interest, in order to expose corrupt practises and wrong procedures prevailing in the office of Village Panchayat Sancoale.
6. Advocate Zeller C. de Souza while arguing on behalf the present PIO Shri. Orville C. Vales stressed on the maintainability of the present appeal. Advocate Zeller C. de Souza contended that, the appellant is not aggrieved by the order of the FAA, he is aggrieved by the action of the PIO of not furnishing the information inspite of the direction by the FAA. That, parameters of second appeal under Section 19 (3) are limited only to the extent that the appellant can file such an appeal under Section 19 (3) of the Act only if aggrieved by the decision of the FAA. Advocate Zeller C. de Souza further contended that, the appellant has not brought on record any grievance against the order of the FAA and has limited the appeal only to the action of the PIO, which is not applicable under Section 19 (3) of the Act, hence, he request the Commission to dismiss the appeal as not maintainable.
7. Upon perusal of the available records it is seen that, the appellant vide application dated 20/02/2023 had sought information on eight points. Smt. Asha S. Mesta was holding charge as PIO on the date of the application and subsequently upon her transfer Shri. Orville C. Vales took over as PIO of Village Panchayat Sancoale. None of the PIOs responded to the appellant within the stipulated period. However, the Commission has no detailed information as to the period of duty as PIO, with respect to both the PIOs. Thus, the Commission is unable to put onus of responding to the application and furnishing the information, on any of the PIO. Further, the

appellant was aggrieved by no response and filed first appeal before the FAA. FAA after due hearing directed the PIO to furnish the information as available in records. It is seen that, the first appeal was filed against Smt. Asha S. Mesta, the then PIO and Shri. Orville C. Vales, the present PIO. Shri. Orville C. Vales attended the proceeding of the first appeal through Advocate Zeller C. de Souza, his authorised representative.

8. Thus, the onus of complying with the said order was on Shri. Orville C. Vales, and the same is not denied by him before the Commission, during the present proceeding of the second appeal. The appellant primarily has appeared before the Commission under Section 19 (3) of the Act since the order of the FAA was not complied by the PIO, resulting into non furnishing of the complete/ remaining information.
9. Here, it is observed that Advocate Zeller C. de Souza who appeared and argued on behalf of the PIO, has stressed on the maintainability of the present appeal, although he agrees that the direction of the FAA was not complied by the PIO and the complete information was not furnished by the PIO. It is the contention of the PIO that the appellant can file second appeal under Section 19 (3) of the Act only if he is aggrieved by the decision of the FAA, and no second appeal can be filed under Section 19 (3) of the Act if the PIO does not furnish the information as directed by the FAA.
10. Thus, the Commission notes that two issues arises from this appeal, which needs to be decided.
These issues are:-
 - (i) Whether the information sought by the appellant is eligible as information and the PIO is required to furnish the same.
 - (ii) Whether the present second appeal filed under Section 19 (3) of the Act is maintainable.
11. With respect to point no. (i), it is noted that the appellant has sought information on myriad of subjects under the jurisdiction of Village Panchayat Sancoale. The Commission finds that the information sought is indeed bulky and voluminous. Nevertheless, the Act does not allow the PIO to deny any/ part information since the same is bulky. Also, the PIO has not claimed any exemption from disclosure under Section 8 or 9 of the Act. Thus, the information sought has to be available in the public domain and the PIO is mandated to furnish the same.

12. At the same times it is observed that the same appellant has been seeking all and sundry information, making indiscriminate requests to the PIO under the garb of exposing corrupt and illegal practices, however, the appellant nowhere has given any specific progress of unearthing corrupt practices or cases by the PIO or Sarpanch or any other officer of the said public authority. Appellant should have been more specific and clear while making his contention regarding corrupt and illegal practices which would have substantiated his contention. However, the appellant has not succeeded in bringing to the fore, the larger public interest in seeking such bulky and voluminous information.
13. Here, the Commission is of the view that the appellant, if is really serious about exposing the illegalities as claimed by him, should have requested the PIO to provide for inspection of the records, identified the information; such an action would have compelled the PIO to furnish the identified information. However, appellant chose to put entire burden of identifying and furnishing voluminous information on the PIO. Also, the information sought pertains to various subjects and many events and it is very difficult for the PIO to satisfy the appellant seeking such voluminous information.
14. The Hon'ble High Court of Rajasthan, in Writ Petition No. 10828/2012 in the matter as Hardev Arya V/s. Chief Manager (Public Information Officer) and Others has held :-

"12. It is true that Parliament has enacted the Right to Information Act, for transparency in administration, so also affairs of the state so as to strengthen the faith and trust of the people in the governance of the country. Therefore, the Act is a vital weapon in the hands of the citizens. At the same time, however, this may not be lost sight of that no law shall be allowed to be wielded unlawfully so as to put it to abuse or misuse. Every statute acts and operates within its scope and ambit, therefore, the duty rests with the Courts to discourage litigious obduracy."

15. Subscribing to the ratio laid down by the Hon'ble High Court and in the background of the findings of the Commission with respect to point (i) mentioned at Para 10, the Commission holds that, though the appellant has made indiscriminate requests for bulky information, the Act does not allow the PIO to evade disclosure on the said ground. Also, the PIO made no efforts to comply with the order of the FAA, nor he justified his action of not furnishing the information,

before the Commission. Considering the aim and objects behind enacting the Right to Information Act, 2005 and the spirit of the Act, the appellant has to be afforded an opportunity of identifying the information he has sought, by way of providing inspection of the relevant records.

16. Next comes the issue of maintainability (mentioned as issue (ii) at Para 10) of the present appeal. With respect to the said issue, it is the contention of the PIO that parameters of second appeal filed under Section 19 (3) of the Act are limited and the appellant can file second appeal under the said section only if he is aggrieved by the decision of the FAA and that, in the present matter since the appellant has not raised any grievance against the FAA's order, the appeal is not maintainable.
17. Thus, the core issue that requires to be decided here rests on the interpretation of Section 19 of the Act, and whether the present appeal is maintainable or not, under the said section. Hon'ble Supreme Court in the case of Chief Information Commissioner and Another v/s State of Manipur and Another (Civil Appeals Nos. 10787-88 of 2011), apart from discussing in details section 6, 7, 18, 19 and 20 has elaborated on advantages of availing remedy under Section 19 to person seeking information and in case of denial of information.
18. The Hon'ble Supreme Court in Chief Information Commissioner and Another v/s State of Manipur and Another (Supra) has held in Para 32 :-

"32. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act."

19. Further, the Apex Court observes in Para 35:-

"35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act. Whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought from can only seek redress in the manner provided in the statute, namely, by following the procedure under Section

19. This court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information."

20. While highlighting importance of right of appeal, the Hon'ble Supreme Court has stated in Para 43:-

"43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information.

21. Subscribing to the ratio as laid down by the Apex Court in the above mentioned judgement, the Commission holds that it is the Statutory right of the appellant to file second appeal under Section 19 (3) of the Act, if aggrieved by non receipt of the information inspite of the direction from the FAA. Nowhere the Act suggests that the appellant, if denied the information by the PIO, even after direction from the FAA, cannot file appeal under Section 19 of the Act.

22. Section 19 (1) and Section 19 (3) of the Act is set out below:-

"19. Appeal. (1) 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 Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority.

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission.

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

23. Section 19 (8) provides for specific powers to the Commission, as follows:-

19. (8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to_

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including____

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

24. With respect to the above mentioned provisions of Section 19 of the Act, it is clear that the applicant, if aggrieved by non receipt of the information has first remedy under Section 19 (1) and second remedy under Section 19 (3) of the Act. Also, Section 19 (5) mandates the PIO to prove that denial of information was justified. Above all, Section 19 (8) authorizes the Commission to take any such steps as may be necessary to secure compliance with the provisions of the Act, in order to ensure that the eligible information is furnished to the applicant.

25. Advocate Zeller C. de Souza, while arguing on behalf of the PIO raised the issue of maintainability of the present appeal on the ground that the appellant was not aggrieved by the order of the FAA. Here, with respect to the provisions of the Act and above discussion, the Commission reminds the PIO that the Right to Information Act, 2005 is a beneficial Act, as its Preamble shows, the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. The Parliament has enacted the Act keeping in mind the right of an informed citizenry in which transparency of

information is vital in making the Government and its machinery accountable.

26. Thus, the Commission cannot subscribe to the arguments of Advocate Zeller C. de Souza and holds that the present appeal has been filed within the provisions of the Act and the same has been heard before the Commission as provided under the Goa State Information Commission (Appeal Procedure) Rules, 2006.
27. The Commission is of the firm opinion that, beneficial provisions of the Act cannot be defeated and the right of information cannot be denied to a citizen of India. Hence, the issue of maintainability of the present appeal is laid to rest.
28. Before closing, the Commission reminds the PIO that Section 7 (1) of the Act mandates him to respond to the application filed under Section 6 (1) of the Act by any citizen, within thirty days of the request. Further, if the information is rejected then the PIO under Section 7 (8) of the Act is required to give reasons for such rejection. Also, the attention of the PIO is drawn towards Section 19 (5) of the Act, provisions of the said section states that in any appeal proceeding the onus to prove that a denial of a request was justified shall be on the PIO, who denied the request.
29. In the light of above discussions , the present appeal is disposed with the following order:-
 - a) The appeal is partially allowed.
 - b) The appellant if desires, may visit PIO's office in order to inspect the relevant records with respect to his application dated 20/02/2023, within 08 days from receipt of this order, with prior intimation to the PIO.
 - c) PIO is directed to provide such inspection as mentioned above and furnish the information identified by the appellant, after receipt of requisite charges towards the information, within 07 days from the date of inspection.
 - d) 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.