

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 70/2023/SIC

Evelyn Mascarenhas,
C2, Acron Niama Valley Apartments,
Kadamba Depot Road,
Salvador do Mundo,
Betim, Bardez Goa 403101.

-----Appellant

v/s

1. The Public Information Officer,
Office of Town & Country Planning,
Government Complex, Mapusa, Bardez.

2. The First Appellate Authority,
Office of the Senior Town Planner,
Town & Country Planning,
Government Complex, Mapusa, Bardez

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 20/09/2022
PIO replied on	: 12/10/2022
First appeal filed on	: 27/10/2022
First Appellate Authority order passed on	: Nil
Second appeal received on	: 20/02/2023
Decided on	: 24/04/2023

ORDER

1. Appellant, aggrieved by non furnishing of the information and non hearing of the first appeal, filed under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') second appeal against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), which came before the Commission on 20/02/2023.
2. It is the contention of the appellant that, she was not provided the inspection and information sought under Section 6 (1) of the Act. The reply received from the PIO was after the stipulated period of 30 days and after the first appeal was filed before the FAA, yet she visited PIO's office, however, no inspection was provided to her by the PIO. Appellant further contended that the appeal filed under Section 19 (1) of the Act was not heard by the FAA within the mandatory period. That, the PIO and the FAA has unreasonably ignored and delayed the matter, hence being aggrieved she has appeared before the Commission by way of second appeal.

3. The concerned parties were notified and the matter was taken up for hearing. Appellant appeared in person and prayed for the information and penal action against the respondents for not honouring the spirit and provisions of the Act. On the other hand, Shri. Shivprasad Murari, the then PIO, inspite of serving of notice, preferred to remain absent for the proceeding, neither deputed any representative, nor filed any reply. Shri. Zaidev Aldonkar, present PIO appeared on 24/04/2023 alongwith Advocate Atish P. Mandrekar and filed reply.
4. Shri. Zaidev Aldonkar, the present PIO stated that, the then PIO had sent reply within the stipulated period and had requested the appellant to inspect the files and collect the information after making the requisite payment. The appellant has approached the Commission with unclear hands and wants the information free of cost, hence, the appeal is devoid of merit and is liable to be dismissed.
5. Appellant argued stating that, she visited on number of occasion the office of the PIO as well as the FAA to enquire the status of the application and the first appeal. Similarly, she had telephonic conversation with some officers of the authority. After continuous follow up, finally on 13/12/2022 inspection of the concerned file was provided by the staff of the authority and upon inspection, the list of documents required was handed over to one of the staff of the authority, yet no information has been furnished.
6. Appellant further stated that she received PIO's reply after the stipulated period, she had already filed first appeal, hence repeatedly queried the matter with PIO as well as FAA via phonecalls and personal visits to the office of the authority, on many occasion. In spite of all these efforts she received no satisfactory reply from the PIO and no response from the FAA. Thus, she prays for the information alongwith penal and appropriate action against the PIO and the FAA.
7. Upon perusal of the records it is seen that the appellant vide application dated 20/09/2022 had sought for inspection of a specific file as mentioned in the said application and subsequent to the inspection, identified documents from the said file. It is seen from the records of the present matter that the then PIO issued reply dated 12/10/2022, within the stipulated period, requesting the appellant to visit his office for inspection of file and collect the identified information after paying necessary charges. Though it appears that the said reply is dated 12/10/2022, the postal stamp on

the envelop displays the date as 18/11/2022, meaning the reply was posted by the office of the PIO on 18/11/2022, much after the stipulated period. Also, appellant contends that no pin code was mentioned on the envelop and she received the said reply on 01/12/2022 by ordinary post, whereas, she had filed first appeal before FAA on 27/10/2022.

8. As mentioned by the appellant it is clear that after filing the application as well as the first appeal she repeatedly visited office of the PIO seeking the information, and office of FAA hoping to hear from him/ her on the appeal, however, all these efforts were proved futile since the appellant neither received any information, nor got any relief from the FAA.
9. Being senior officer PIO should be aware of the provision of Section 7 (1) of the Act, wherein he /she is required to respond to the application within the stipulated period of 30 days and no response is considered under Section 7 (2) of the Act as deemed refusal of the request. Contravention of Section 7 (1) of the Act invites penal action under Section 20 of the Act against the PIO. In the present case, though the then PIO issued reply dated 12/10/2022, which is within the stipulated period, the said letter was actually posted on 18/11/2022, much after the stipulated period. Hence, in the eyes of the Commission the action of the then PIO amounts to deemed refusal of the request for information. Also, the then PIO has not filed any explanation / justification for his said failure.
10. First appeal filed under Section 19 (1) of the Act against deemed refusal of request by the PIO, was required to be heard and disposed within maximum of 45 days. Surprisingly, the FAA failed to honour Section 19 (6) of the Act by not disposing the appeal. Right to file first appeal is a statutory right and seeker cannot be deprived of the same. Such practice of refusal to entertain the first appeal is not in conformity with the provisions and spirit of the Act. Actions of PIO and FAA compelled the appellant to appear before the Commission to get the desired information.
11. It is noted from the records that upon receiving the second appeal on 20/02/2023, the Commission had issued notice dated 06/03/2023 for hearing on 28/03/2023. PIO and FAA received the said notice on 13/03/2023, later on 15/03/2023 representative of PIO and FAA collected appeal memo from the Registry of Commission, yet none of the respondents appeared before the Commission, nor filed any reply. It was only on the day of final arguments, Shri. Zaidev

Aldonkar, the present PIO appeared alongwith Advocate Atish P. Mandrekar and filed reply with a request to dismiss the appeal. Ironically, Shri. Shivprasad Murari, who was primarily responsible for compliance of Section 7 (1) made no efforts to prove that his action was justified.

12. The Hon'ble High Court of Delhi in Writ Petition (c) 3845/2007; Mujibur Rehman V/s. Central Information Commission, while mentioning the order of Commission of imposing penalty on PIO has held:-

"Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limit have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

13. Considering the ratio laid down by the Hon'ble High Court of Delhi and on the background of the findings of the Commission, the PIO is held guilty of contravention of Section 7 (1) of the Act, by not furnishing the information sought by the appellant. The Commission cannot subscribe to such adamant, deplorable conduct of the PIO and concludes that the same is liable for penal action under Section 20 of the Act. However, though the Act mandates FAA to decide the appeal within maximum of 45 days, it does not provide for any punishment for non compliance of Section 19 (6) of the Act. This being the case, the FAA is directed hereafter, to honour provisions and spirit of the Act, by deciding the appeals received under Section 19 (1) of the Act, as provided.

14. In the light of above discussion, the present appeal is disposed with the following order:-

- a) The present PIO is directed to furnish information sought by the appellant vide application dated 20/09/2022, within 10 days from receipt of this order, free of cost.
- b) Issue show cause notice to Shri. Shivprasad Murari, PIO, Town and Country Planning Department, Mapusa Goa and the PIO is further directed to show cause as to why penalty as provided under Section 20 (1) of the Act, should not be imposed against him.

- c) In case the PIO to whom the show cause notice is issued 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 the present address of the then PIO.
- d) Shri. Shivprasad Murari, PIO is hereby directed to remain present before the Commission on 22/05/2023 at 10.30 a.m. alongwith the reply to the showcause notice.
- e) The Registry is directed to initiate penalty proceeding against Shri. Shivprasad Murari, the then PIO.

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.