

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 170/2023/SIC

Sushant P. Nagvenkar,
H. No. C-312, Fonduvem,
Ribandar-Goa.

-----Appellant

v/s

1. The Public Information Officer,
Goa Tourism Development Corporation,
Panaji-Goa.

2. The First Appellate Authority,
Goa Tourism Development Corporation,
Panaji-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 20/02/2023
PIO replied on	: Nil
First appeal filed on	: 23/03/2023
First Appellate Authority order passed on	: Nil
Second appeal received on	: 17/05/2023
Decided on	: 21/12/2023

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 No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), came before the Commission on 17/05/2023.
2. The brief facts of the appeal, as contended by the appellant are that, his application, filed under Section 6 (1) of the Act before the PIO, received no response within the stipulated period. Hence, he filed first appeal before the FAA. It is the contention of the appellant that the appeal was not heard by the FAA. Being aggrieved by the acts of the PIO and the FAA, he preferred second appeal before the Commission.
3. Notice was issued to the concerned parties, pursuant to which Shri. S. K. Narvekar, PIO appeared in person and filed reply in the registry on 04/07/2023. Appellant appeared and filed submission on 02/08/2023 and counter reply dated 09/10/2023, to the reply of the FAA. Reply on behalf of the FAA was received in the entry registry on

07/08/2023. Subsequently, Advocate Praneeta Gawandi appeared on behalf of the PIO and filed additional reply dated 05/12/2023.

4. PIO stated that, he had forwarded the application to the General Manager (Admin), GTDC and upon informed by the said General Manager that the relevant file is available, vide reply dated 10/05/2023 he requested the appellant to inspect the file. That, he never denied the information/ inspection and the delay in acting on the application is not deliberate. Also, that, the appellant vide application dated 22/04/2022 had requested for inspection/ information with respect to the same file and the same was provided and the relevant appeal (Appeal No. 204/2022/SIC) was disposed by the Commission vide order dated 24/04/2023.
5. FAA stated that, first appeal was received by him on 23/03/2023 and he had issued notice dated 18/05/2023 to the appellant to appear on 26/05/2023 for hearing. However, the appellant failed to appear. Another notice was issued for hearing on 23/06/2023, yet the appellant did not appear. That, due to negligence of the appellant, he could not conduct hearing and pass an order.
6. Appellant submitted that, his application was not replied within the stipulated period by the PIO. Further, first appeal was not decided within the mandatory period by the FAA. Both these officers have shown scant respect to the provisions of the Act and disregard to the authorities constituted under the Act. Therefore, both the respondents deserves to be admonished for abusing powers conferred by the Act. Appellant also submitted that the authority in the instant matter has been a chronic defaulter in administration of the Act.
7. The Commission has perused records of the present matter and heard both the sides. Upon careful perusal, it is seen that, the appellant vide application dated 20/02/2023 had requested for inspection and information of file with respect to the processing of "Fraud and Forgery by retired employee Netty Almeida, Room Cleaner". The appellant waited till the expiry of the stipulated period and upon not receiving any response from the PIO, filed first appeal. Further, the appellant received no communication from FAA with respect to the hearing of first appeal, within the mandatory period. Being aggrieved by the conduct of PIO and FAA the appellant was compelled to appear before the Commission by way of second appeal.

8. PIO's contention that, he had forwarded the application to the General Manager and the delay in response was due to late response by the General Manager and his busy schedule while discharging duties for G 20 assignment cannot be accepted for two reasons. Firstly, the application was not transferred under Section 6 (3) of the Act by PIO to the General Manager. Thus, it was the duty of the PIO to get expeditious response from the General Manager and inform accordingly to the appellant within the stipulated period of 30 days, in which the PIO failed completely.
9. Secondly, the General Manager vide letter dated 12/04/2023 informed the PIO that, the file is available and PIO, after about a month, issued letter dated 10/05/2023 to the appellant requesting him to inspect the file on 15/05/2023. By that time, the appellant had already filed first appeal and was in the process of filing second appeal since the first appeal was not heard. With this, it is amply clear that, the PIO has completely disregarded the mandate of the act. No response within the stipulated period under Section 7 (2) of the Act amounts to deemed denial of the request, and the Commission finds PIO guilty of such contravention.
10. When PIO fails to discharge his duty under the Act, the FAA, being senior in rank, is required to intervene through an appropriate order to meet the ends of justice. Strangely, in the present matter, FAA's conduct was no better than the PIO. The Act has given statutory right to the applicant to file appeal under Section 19 (1) of the Act before the FAA and the FAA under Section 19 (6) of the Act is required to hear and dispose the appeal within maximum of 45 days from the date of receipt of the appeal. Contrary to this provision, FAA did not dispose the appeal. The PIO and the FAA are the officers appointed under the Act to dispense and facilitate the information. However, both of the senior officers miserably failed to honour provisions of law.
11. Further, more surprisingly, FAA, vide his reply, has blamed the appellant for non-disposal of the first appeal. Rule 7 (2) of the Goa State Information Commission (Appeal Procedure) Rules, 2006 allow the appellant not to be present at the time of hearing of his appeal and in such a case, it is the responsibility of the FAA to dispose the matter within the mandatory period by passing an appropriate order, on merit. The FAA, in the instant matter, has utterly failed to do justice to the appellant as provided by law.

12. Here, the FAA showed no concern to the appeal filed by the appellant. More surprisingly, the clarification offered by the FAA showed only ignorance with respect to the provisions of this beneficial Act. However, unlike the PIO, though the Act do not hold the FAA personally liable for penal action, the Commission mentions that the conduct of the FAA in the present matter is completely non cooperative and non transparent, which is least of all that is expected from senior officer in the Government administration.
13. The Commission endorses the contention of the appellant that the said public authority and the respondents have been chronic defaulters in administration of the Act. The repetitive failure of the PIO while dealing with the applications received under Section 6 (1) of the Act is not acceptable. Further, the Commission in this matter is of the opinion that the PIO is guilty of contravention of Section 7 (1) of the Act and such failure amounts to penal action under Section 20 (1) of the Act. However, before imposing such penalty, PIO will be given an opportunity to be heard, wherein he will be required to justify his action.
14. In the light of above discussion, the present appeal is disposed with the following order:-
 - a) Appellant, if desires, may undertake inspection of the file, sought vide application dated 20/02/2023, within 10 days from receipt of this order, with prior intimation to the PIO.
 - b) PIO is directed to provide inspection as mentioned above and furnish the information identified by the appellant, within 02 days from the date of inspection, free of cost.
 - c) Issue show cause notice to Shri. S. K. Narvekar, PIO, Goa Tourism Development Corporation, Panaji 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.
 - d) Shri. S. K. Narvekar, PIO is hereby directed to remain present before the Commission on 22/01/2024 at 10.30 a.m. alongwith the reply to the show cause notice.
 - e) Registry is directed to initiate penalty proceeding against Shri. S. K. Narvekar, PIO, Goa Tourism Development Corporation, Panaji.

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.