

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 300/2023/SIC

Mr. Vincent Mascarenhas,
H. No. 55, Khalachawada Arambol,
Pernem-Goa 403524.

-----Appellant

v/s

1. The Public Information Officer,
Goa Tourism Department,
Government of Goa,
Panaji-Goa 403001.

2. The First Appellate Authority,
Goa Tourism Department,
Government of Goa,
Panaji-Goa 403001.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 25/04/2023
PIO replied on	: Nil
First appeal filed on	: 29/05/2023
First Appellate Authority order passed on	: Nil
Second appeal received on	: 03/10/2023
Decided on	: 18/12/2023

ORDER

1. The brief facts of this second appeal are that the appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought information on 24 points from Respondent No. 1, Public Information Officer (PIO), Department of Tourism. Appellant received no response from the PIO within the stipulated period, thus, filed first appeal before Respondent No. 2, First Appellate Authority (FAA), Department of Tourism. Being aggrieved by no response from PIO and FAA, appellant approached the Commission by way of the present second appeal.
2. Notice was issued to the concerned parties, pursuant to which appellant appeared in person praying for the information and action against the respondents, as provided under the Act. On the other hand, PIO and FAA neither appeared, nor filed any reply / submission.
3. While perusing the records of the case, the Commission notes that, the information sought by the appellant is eligible as information

under Section 2 (f) of the Act. The PIO has neither claimed exemption from disclosure under Section 8, nor rejected the information under Section 9 of the Act. Hence, under Section 7 (1) of the Act PIO was mandated to furnish the said information. The contention of the appellant that his application was not responded at all by the PIO appears to be true which means the PIO has not acted in the conformity with the provisions of the Act.

4. The PIO under Section 7 (1) of the Act was required to respond to the application within the stipulated period of 30 days. Also, if the requested information or part information is not part of the records of the PIO, then under Section 6 (3) of the Act he was mandated to transfer the application to the concerned authority, within five days of receipt of the request. The Commission notes that the PIO has failed completely to comply with the duty and responsibility bestowed upon him under the Act. Further, it is seen that the PIO did not appear before the Commission, inspite of receipt of the notice issued on 29/09/2023. Representative of the PIO had collected appeal memo on 12/10/2023 and the PIO was directed to appear and file reply before the Commission on 17/10/2023. Another opportunity was provided to the PIO to appear and file reply on 21/11/2023. However, PIO failed to appear. Under Section 19 (5) of the Act, the onus to prove that denial of request was justified, is on the PIO, yet, he failed to justify his action.
5. From the developments as mentioned above it appears that the approach of the PIO towards the Act and towards the authorities constituted under the Act is worrisome, hence, deplorable. The PIO has denied the statutory right of the appellant to seek the information, available in the public domain.
6. Other aspect of the present matter is regarding non disposal of the first appeal. The first appeal was filed under Section 19 (1) of the Act by the appellant on 29/05/2023. The Right to Information Act, 2005 has given statutory right to the appellant to file appeal against the rejection/deemed denial of the information by the PIO, before the First Appellate Authority under section 19 (1) and the FAA is required under section 19 (6) to dispose the first appeal within 30 days or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing. It appears that the FAA has totally neglected the provisions of the Act.

7. PIO and FAA must introspect their conduct of non furnishing of the information and non hearing of the first appeal, respectively. From the conduct of the FAA it is noted that the FAA has completely failed to comply with the provisions of the Act with respect to his duty and responsibility. Such an incautious behaviour is unbecoming of a senior administrative officer. However, the Act does not provide for any penal action against the FAA. This being the case, the Commission issues stern warning to the FAA to deal with the first appeal hereafter, as provided by law.
8. From the conduct of the PIO, it can be clearly inferred that the PIO has no concern to his obligation under the Act. Such a conduct of the PIO is an obstacle for transparency and accountability and appears suspicious and adamant vis-à-vis, the intent of the Act. Such a conduct is not in consonance with the Act and the said lapse on the part of the PIO is punishable under Section 20 (1) and 20 (2) of the Act. Hence, the Commission finds the PIO guilty for contravention of Section 7(1) of the Act. The Commission finds it necessary to invoke Section 20 against the guilty PIO, however, the PIO is required to be given an opportunity to be heard, before imposing such penalty.
9. In the light of above discussion, the present appeal is disposed with the following order:-
 - a. PIO, Department of Tourism is directed to furnish the information sought by the appellant vide application dated 25/04/2023, within 15 days from the receipt of this order, free of cost.
 - b. Issue notice to the PIO, to showcause as to why penalty provided under Section 20 (1) and/ or Section 20 (2) of the Act, should not be imposed against him/ her.
 - c. In case the PIO at the relevant time to whom the present 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 next date fixed in the matter, alongwith full name and present address of the then PIO.
 - d. Respondent PIO is directed to remain present on **15/01/2024 at 10.30 a.m.** alongwith written submissions /reply to the showcause notice.
 - e. The Registry is directed to initiate penalty proceeding against the 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.