

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 148/2022/SIC

Shri. Jawaharlal T Shetye,
H.N. 35/A Ward No. 11,
Khorlim, Mapusa - Goa 403507.

-----Appellant

v/s

1. Public Information Officer,
Administrator of Comunidades of North Zone,
Mapusa, Bardez-Goa.

2. The First Appellate Authority,
The Additional Collector -III,
Govt. Complex Building, 1st Floor,
Mapusa, Bardez-Goa 403507.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 15/03/2022
PIO replied on	: Nil
First appeal filed on	: 25/04/2022
First Appellate authority order passed on	: 11/05/2022
Second appeal received on	: 02/06/2022
Decided on	: 16/01/2023

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 02/06/2022.
2. The brief facts of the appeal are that the appellant vide application dated 15/03/2022 sought certain information from the PIO. The said application was not responded by the PIO within the stipulated period, therefore the appellant preferred appeal dated 25/04/2022 before the FAA. FAA vide order dated 11/05/2022 directed PIO to provide the information within 10 days. However, no information was furnished by the PIO. Being aggrieved, the appellant filed this second appeal.
3. The concerned parties were notified and the matter was taken up for hearing. Appellant appeared in person praying for the information, for imposing penalty under Section 20 (1) and for initiating disciplinary action under Section 20 (2) against the PIO for not honouring provisions of the Act. Advocate Sanjiv S. Sawant appeared

on behalf of the PIO, collected appeal memo and undertook to file reply, however filed no reply even after grant of additional time as per his request.

4. While perusing the records of the case, the Commission has noted 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.
5. PIO under Section 7 (1) of the Act is required to respond to the application within the stipulated period of 30 days, however, he failed to comply with the duty and responsibility bestowed upon him under the Act. PIO's failure to give any decision on the application within 30 days amounts to deemed refusal under Section 7 (2) of the Act, and in such a case, under Section 19 (5) of the Act, onus to prove that a denial was justified, lies on the PIO who denied the request. In the instant case, PIO has failed to furnish the information and has again failed to justify his denial.
6. Further, it is observed that, the PIO has not complied with the direction of the FAA wherein he was asked by the FAA to furnish complete information within 10 days. Not adhering to the direction of an officer who is superior in rank is considered as de-reliction of duty.
7. During the proceeding before the Commission, it is seen that initially PIO neither appeared, nor was represented. Later, Advocate Sanjiv S. Sawant appeared on behalf of the PIO. Advocate Sawant, on 23/08/2022 undertook to file reply, then requested for more time, and inspite of grant of additional time, filed no reply. Further, on 10/11/2022 Advocate Sanjiv S. Sawant stated that the information is kept ready, the Commission directed him to dispatch the information to the appellant by Registered A.D. Post and file a compliance report alongwith copy of the acknowledgement received from the appellant via post office. However, no such compliance report was submitted by Advocate Sawant or by the respondent PIO.
8. In the background of the above-mentioned facts, the Commission arrives at a conclusion that the requested information is not furnished by the PIO even after the direction of the Commission. Hence, PIO

has failed to honour the Act, on three occasions, first – within the stipulated period of 30 days from the receipt of the application, second –after the order passed by the FAA, and third– subsequent to the direction of the Commission during the present proceeding. From these developments, it appears that the approach of the PIO towards the Act is vexatious, hence, deplorable. PIO has denied the statutory right of the appellant to get the information, available in public domain.

9. PIO must introspect his conduct of non furnishing of the information which lands the citizen before the First Appellate Authority and non compliance of the order of the FAA compels the appellant to approach the Commission, resulting into unnecessary harassment of the applicant.
10. From the conduct of the PIO, it can be clearly inferred that the PIO has no concern to his obligation under the Act and has no respect to obey the order passed by the authority. The said 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 of the PIO is not in consonance with the Act and this 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, for non compliance of the direction of the FAA and for not honouring the direction of the Commission. 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.
11. In the light of above discussion, the present appeal is disposed with the following order:-
 - a) PIO, Administrator of Comunidades of North Zone, Mapusa, Bardez-Goa is directed to furnish the information sought by the appellant vide application dated 15/03/2022, 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 **20/02/2023 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