

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 272/2022/SIC

Mr. Govind Narayan Shet Natekar,
H.No. 5/90 (1), Umtawado,
Opp. Flora Residency,
Calangute, Bardez-Goa,
403516.

-----Appellant

v/s

1. Secretary /Sarpanch,
Village Panchayat Calangute,
Calangute, Bardez-Goa,
403516.

2. Block Development Officer- II,
Bardez-Block,
Mapusa, Bardez-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 06/07/2022
PIO replied on	: Nil
First appeal filed on	: 22/08/2022
First Appellate Authority order passed on	: 20/10/2022
Second appeal received on	: 20/10/2022
Decided on	: 21/02/2023

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), which came before the Commission on 20/10/2022.
2. The brief facts of this appeal are that, the appellant being aggrieved by no response from the PIO to his application seeking the information, filed appeal before the FAA. The said appeal was decided vide order dated 20/10/2022 with direction to the PIO to furnish the information to the appellant by Registered Post A.D. Not satisfied with the information furnished, appellant preferred second appeal before the Commission.
3. Matter was taken up on board and notice was issued to the concerned parties. Pursuant to the notice, appellant appeared in person and filed submission dated 20/12/2022 and 12/01/2023.

Advocate Swati Vishal Verlekar appeared on behalf of PIO, filed wakalatnama on 25/11/2022 and reply dated 20/12/2022.

4. Appellant submitted that, the PIO kept total silence on his application during the stipulated period, thus he was compelled to file the first appeal. Appellant further contended that, despite his presence before the FAA no order was passed within 45 days, as required under Section 19 (6) of the Act, by the FAA. That, he is aggrieved by the action of the PIO of not furnishing the information within 30 days and also by non disposal of the appeal by the FAA. Appellant further submitted that he had lodged a complaint before the Secretary / PIO of Village Panchayat Calangute against encroachment into his property by his neighbor, and vide application dated 06/07/2022 had sought information pertaining to the said complaint. However, the Secretary / PIO has neither taken any action, nor furnished complete information.
5. PIO stated that, appellant had sought for information on six points, out of which no information can be furnished on point nos. 2, 3 and 5 as the queries raised under the said points does not qualify as information under Section 2 (f) of the Act. Further, the appellant was given many opportunities by the FAA to come and collect information, during the proceeding of the first appeal, yet the appellant did not appear, hence, the information on point nos. 1 and 4 which was kept ready, could not be furnished. Later, as per the direction of the FAA, information on point no. 1 and 4 was sent to the appellant by Registered A.D. Post and postal receipt dated 09/11/2022 and the acknowledgement card was submitted before the FAA. Thus, the PIO has furnished the available information and complied with the order of the FAA.
6. Appellant while arguing on 12/01/2023 stated that, PIO has deliberately delayed submission of the information and FAA failed to pass order on his appeal within the mandatory period of 45 days, hence, he requests for appropriate action against the respondents.
7. Upon perusal the Commission observes that, the appellant had sought for information on six points, out of which point nos. 2, 3 and 5 does not qualify as information under Section 2 (f) of the Act. Appellant under these points had requested for information pertaining to action taken on his complaint, action taken report and reason for not taking action. As per the submission of the PIO, no action has been taken by him on the complaint lodged by the appellant, against his neighbor, regarding encroachment into his

property. Thus, the Commission holds that no information exists on point nos. 2, 3 and 5.

8. If the appellant is aggrieved by no action taken on his complaint, then he is required to approach appropriate authority for redressal of his grievance. The Commission has jurisdiction only to direct the PIO to furnish the available information and not to take action based on the complaint of citizen which is outside the purview of the Act.
9. Thus, the Commission holds that the PIO cannot be directed to furnish information on point no. 2, 3 and 5. It is noted that the PIO was required to furnish information on point no. 1 and 4 within the stipulated period, by not doing that he has failed to honour the provisions of Section 7 (1) of the Act. However, the PIO later, as directed by the FAA, furnished information on point no. 1 and 4 by Registered A.D Post and has filed copy of postal receipt as well as acknowledgement card, before the Commission. Hence, the Commission concludes that, though after marginal delay, the PIO has furnished the available information to the appellant.
10. The Hon'ble High Court of Bombay at Goa, in Writ Petition No. 704 of 2012, in Public Authority, office of the Chief Engineer and others v/s. Shri. Yeshwant Tolio Sawant, has held in Para 6:-

"6. However, in the present case, the learned Chief Information Commissioner has himself noted that the delay was marginal and further the PIO cannot be blamed for the same. The question, in such a situation, is really not about the quantum of penalty imposed, but imposition of such a penalty is a blot upon the career of the Officer, at least to some extent. In any case, the information was ultimately furnished, though after some marginal delay. In the facts and circumstances of the present case, the explanation for the marginal delay is required to be accepted and in fact, has been accepted by the learned Chief Information Commissioner. In such circumstances, therefore, no penalty ought to have been imposed upon the PIO."
11. Subscribing to the ratio laid down by the Hon'ble High Court as mentioned above and considering the findings of the Commission in the present matter, the Commission concludes that the information eligible under Section 2 (f) of the Act has been furnished to the appellant, though after marginal delay and the conduct of the PIO does not deserve invoking of Section 20 of the Act, hence, there is no need to penalise the PIO.

12. However, the PIO needs to be censured for the delay in furnishing the information. Information which was furnished after the disposal of the first appeal was available in the records of the PIO and he could have provided the same to the appellant within the stipulated period of 30 days. Similarly, FAA deserves to be excoriated for not disposing the first appeal as provided under Section 19 (6) of the Act. The said provision mandates FAA to dispose the appeal within 30 days or within maximum of 45 days by recording reasons in writing for the delay.
13. In the background of the facts as mentioned above, since the information has been furnished, no any relief is required to be granted to the appellant. Thus, the appeal is disposed with the following order:-
- a) PIO hereafter is directed to respond to the applications received under Section 6 (1) of the Act, strictly as provided by the law.
 - b) FAA hereafter is directed to hear and dispose the appeals received under Section 19 (1) of the Act strictly as provided under Section 19 (6) of the Act.

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

