

GOA STATE INFORMATION COMMISSION

“Kamat Towers” 7th Floor, Patto Plaza, Panaji, Goa – 403 001

Tel: 0832 2437880 E-mail: spio-gsic.goa@nic.in Website: www.scic.goa.gov.in

Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 40/2022/SIC

Michael Mascarenhas,
6/23A, “Lily Villa, Sonar Bhat”,
Saligao, Bardez-Goa 403511.

-----Complainant

v/s

1. The First Appellate Authority,
The Block Development Officer I & II,
Mapusa, Bardez-Goa.

2. The Public Information Officer,
Village Panchayat Secretary,
Village Panchayat of Anjuna-Caisua,
Bardez-Goa.

-----Opponents

Relevant dates emerging from the proceeding:

RTI application filed on	: 13/06/2022
PIO replied on	: 26/07/2022
First appeal filed on	: 30/07/2022
First Appellate authority order passed on	: 12/01/2023
Complaint received on	: 01/12/2022
Decided on	: 22/05/2023

ORDER

1. Aggrieved by the conduct of the opponent Public Information Officer (PIO) of not furnishing the requested information, complainant Shri. Michael Mascarenhas under Section 18 of the Act preferred this complaint against Opponent No. 1, First Appellate Authority (FAA) and Opponent No. 2, Public Information Officer (PIO), which came before the Commission on 01/12/2022.
2. The brief facts of this complaint are that the complainant had sought certain information from the PIO, which was denied by the PIO by replying to the application after the expiry of stipulated period. Though the complainant had filed first appeal, the same was not decided by the FAA within the mandatory period. Being aggrieved, complainant preferred the present complaint against Opponent No. 1, First Appellate Authority (FAA) and Opponent No. 2, Public Information Officer (PIO).
3. Pursuant to the notice complainant appeared in person and prayed for the information and penal action against the PIO. Shri. Umesh A. Shetgaonkar appeared on behalf of the FAA and filed reply dated 07/02/2023. Advocate Mossifa Shaikh, holding for Advocate Kapil D. Kerkar appeared on behalf of the PIO on 17/01/2023 and undertook

to file reply, however, no reply was filed on behalf of the PIO inspite of sufficient opportunities provided, nor the PIO appeared in person.

4. Complainant stated that, rampant encroachment and illegal construction activities are going on in the plot bearing Survey No. 291/2 of Baman Vado, Anjuna Bardez and a road is being constructed without permission from authorities and without the knowledge of the owner of the said plot. The said work is going on inspite of the stop work notice issued by the Block Development Officer, Mapusa, Bardez. Complainant further stated that he had sought information with respect to the said notice and the same is denied by the PIO by saying that the information is 'Nil'.
5. Upon perusal of the records it is seen that, the PIO had not replied to the application within the stipulated period, which amounts to deemed refusal of the request under Section 7 (2) of the Act. Later, PIO vide letter dated 26/07/2022 informed the complainant that the information sought on point no. 1 to 5 is 'Nil'. In the meanwhile, complainant had approached the FAA by way of the first appeal. FAA under Section 19 (6) of the Act was required to decide the appeal within maximum of 45 days. Upon FAA's failure to comply with the above mentioned provision, complainant appeared before the Commission by way of the present complaint.
6. It is observed by the Commission that, the PIO denied the information to the complainant and the FAA refused to hear the appeal within the stipulated period. PIO and FAA are senior officers of the administration and both are expected to be aware of the provisions of the Act and are required to abide by these provisions.
7. It appears from the reply of the FAA that he took up the first appeal for hearing after noticing that the complainant has approached the Commission vide complaint dated 01/12/2022, and disposed the first appeal vide order dated 12/01/2023 with direction to the PIO to furnish the information. The said action of the FAA of deciding first appeal after more than five months is only an eyewash and the same is not in tune with the spirit and provisions of the Act.
8. With respect of the action of the PIO, the Commission takes serious note of the fact that he neither responded to the complainant within the stipulated period, nor furnished any information at a later stage. Further, the Commission finds that the PIO did not attend the present proceeding even when he was directed vide notice dated 21/12/2022 to remain present and file his reply. Legal representative

of the PIO appeared on 17/01/2022 and undertook to file reply, however, no reply was filed.

9. It appears that the information sought by the appellant, is not exempted from disclosure under section 8 and/ or 9, hence the same is required to be furnished to the appellant. However, the PIO with his adamant attitude has denied the information. In such a case, under section 19(5) of the Act, the onus to prove that a denial was justified, was on the PIO, yet he evaded appearance before the Commission.
10. The Commission in no way can subscribe to such arrogant conduct of the PIO. The PIO is duty bound to furnish the information as available and as exists in his records. In the present matter the Commission concludes that the PIO has not only failed to adhere to the provisions of the Act, but has also shown complete disrespect to the Act. It can be clearly inferred from the conduct of the PIO that he has no concern to his obligations under the Act, and has no respect to obey the directions of the authorities. Such a conduct of the PIO is obstructing transparency and accountability and appears to be suspicious vis - a - vis the intent of the Act. Thus, such a lapse on the part of the PIO is punishable under section 20 of the Act.
11. The complainant has prayed for penal action against the PIO as well as the information as sought vide application dated 13/06/2022. The present matter being complaint filed under Section 18 of the Act, the Commission has no jurisdiction to direct PIO to furnish the information. However, the Commission is of the firm opinion that the PIO is required to be punished under Section 20 (1) of the Act for his malafide intention in denying the information and defying the provisions of the Act and the authorities.
12. In the light of the above discussion, the appeal is disposed with the following order:-
 - a) PIO is directed to furnish information to the appellant sought vide application dated 13/06/2022, within 15 days from the receipt of this order, free of cost.
 - b) Issue show cause notice to Shri. Dharmendra Govekar, PIO, Secretary, Village Panchayat of Anjuna-Caisua and the PIO is further directed to showcause as to why penalty as provided under section 20(1) and /or 20(2) of the Act should not be imposed against him.

- c) In case the then PIO 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 full name and present address of the then PIO.
- d) Shri. Dharmendra Govekar, the then PIO, Secretary, Village Panchayat of Anjuna-Caisua is hereby directed to remain present before the Commission on 26/06/2023 at 10.30 a.m. alongwith the reply to the showcause notice. The Registry is directed to initiate penalty proceeding.
- e) All other prayers are rejected.

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