

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 330/2023/SIC

Gaurav Bakshi,
B-402, Martins Palm Fringe,
Cardozo Waddo,
Taleigao-Goa 403002.

-----Appellant

v/s

1. The Public Information Officer,
Village Panchayat Aldona,
Aldona, Bardez-Goa.

2. The First Appellate Authority,
Office of Block Development Officer,
Mapusa-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 14/06/2023
PIO replied on	: Nil
First appeal filed on	: 20/07/2023
First Appellate Authority order passed on	: 28/08/2023
Second appeal received on	: 13/09/2023
Decided on	: 29/01/2024

ORDER

1. The appellant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought from Respondent No. 1, Public Information Officer (PIO) certain information. It is the contention of the appellant that his application was not responded by the PIO within stipulated period, thus, he filed first appeal before Respondent No. 2, First Appellate Authority (FAA). The FAA, while disposing the said appeal, directed PIO to furnish the information within 10 days.
2. The appellant further contends that the PIO never attended the proceeding of first appeal, also did not comply with the order of the FAA. Being aggrieved, he has preferred second appeal before the Commission.
3. The concerned parties were notified and the matter was taken up on board for hearing. Advocate M. Valadares appeared stating that he represents the PIO, however, no wakalatnama or authority letter was submitted by him, nor any submission was filed. Shri. Akash Naik,

Village Panchayat Secretary (HQ) appeared on behalf of FAA, under letter of authority. Appellant did not attend the proceeding initially, nonetheless, appeared on 15/01/2024 and prayed for information as well as appropriate action against the PIO. Reply from Smt. Navanya Goltekar, PIO was received in the entry registry on 23/01/2024.

4. PIO stated that, the application was placed before her by office Clerk and she, in turn, instructed the Peon to keep ready the requested information. However, the concerned Peon never submitted the information either to the PIO or to the Clerk, for processing the application filed by the appellant. That, the PIO on account of other duties, did not realise that the application was not processed. PIO further stated that, she was facing problem from her staff i.e. Panchayat Clerk and Peon and due to their non-cooperation, she could not furnish the information to the appellant and could not comply with the direction of the FAA.
5. PIO submitted that, memorandums were issued multiple times to the concerned staff, with a copy of the same to the B.D.O. Yet, the concerned staff did not reply and continued with their same behaviour. Similarly, she had directed her staff to forward the notice of the Commission to the advocate on record, in order to enable the advocate to attend the hearing. However, she later realised that the staff had failed to forward the matter to the advocate of the Village Panchayat. PIO further contended that, because of non co-operation from the Clerk and the Peon, she could not furnish the information, could not comply with the direction of the FAA and could not file reply in time, before the Commission.
6. After careful perusal of records of the present matter, it is seen that, the appellant is primarily aggrieved as his application was not replied within the stipulated period of 30 days by the PIO. Further, FAA, while disposing the first appeal, directed PIO to furnish the information within 10 days, yet the direction was not complied by the PIO. Being aggrieved by the inaction of the PIO, the appellant has appeared before the Commission.
7. Section 7 (1) of the Act mandates PIO to respond to the application and furnish the information within the stipulated period of 30 days from receipt of the request. Failure to give any decision within the stipulated period amounts to contravention of Section 7 (1) and the same under Section 7 (2) is treated as deemed refusal of the request. Thus, PIO, in the present matter, is guilty of contravention of Section 7 (1) of the Act. Further, PIO had an opportunity to

compensate for her failure, by furnishing the information, as directed by the FAA. However, PIO, at this stage, again failed and that compelled the appellant to seek justice before the Commission.

8. PIO, in her detail reply, has produced various reasons, in an attempt to justify her failure to furnish the information. However, none of the reasons are convincing. PIO has tried to put the onus of her failure on the Clerk and Peon of her office, the said explanation is not at all acceptable to the Commission. The Act recognises only PIO as a responsible officer to furnish the information to the applicant. Section 5 (3) of the Act requires PIO to deal with request from the applicant and Section 5 (4) of the Act provides PIO assistance of any officer /staff, whenever necessary. If PIO was busy in some important work or was over burdened, meaning needed any help, she could have invoked Section 5 (4) of the Act and bring the concerned staff under the purview of the Act, which was not done by the PIO.
9. Hon'ble High Court of Delhi in W.P. (c) 900/2021 and CM APPL 2395/2021, in Rakesh Kumar Gupta (Erstwhile CPIO) Union Bank of India & Ors v/s Central Information Commission & Anr. has held in para 16:-

"16. Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and 'render reasonable assistance' to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the 'proper discharge' of their duties, as per Section 5(4). Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5). CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, nonarbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs."

10. In J.P. Agrawal v/s Union of India & Ors, W.P. (c) 7232/2009, decided on 4th August 2011, the Hon'ble High Court of Delhi has held:-

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities

to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the petitioner would contend. The expression "deal with", in Karen Lambert Vs. London Borough of Southwark (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act."

11. Hon'ble High Court of Delhi, in the same matter further stated:-

"9. This Court in Mujibur Rehman Vs. Central Information Commission held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO. This Court in Vivek Mittal Vs. B.P. Srivastava held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically. The Supreme Court as far back as in Secretary, Haila Kandi Bar Association Vs. State of Assam 1995 Supp. (3) SCC 736 reminded the high ranking officers generally, not to mechanically forward the information collected through subordinates. The RTI Act has placed confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically forwards the report of his subordinates, he betrays a casual approach shaking the confidence placed in him and duties the probative value of his position and the report."

12. Considering the position as held by the Hon'ble High Court of Delhi, as mentioned above, the Commission holds that the PIO is solely responsible for furnishing the information desired by the appellant and the PIO is provided with adequate provisions to get assistance from her/ his staff, in order to furnish the information. Thus, PIO, in the present matter, was required to furnish complete information to the appellant. However, considering the fact that the information sought by the appellant is of bulky nature and that the PIO did not get any assistance from her staff, as stated by her, the Commission concludes that though the direction needs to be issued to the PIO to furnish the information, there is no need to invoke Section 20 of the Act for penal action against the PIO.
13. It is seen that the PIO alongwith her reply received in the entry registry dated 23/01/2024, has also submitted enclosures of information. However, the said information has to be furnished to the appellant and compliance report has to be filed before the Commission by the PIO.
14. In the light of above discussion, the present appeal is disposed with following order:-
 - a) PIO is directed to furnish the information sought by the appellant vide application dated 14/06/2023, within 07 days from receipt of this order, free of cost.
 - b) PIO is directed to file compliance report before the Commission and send copy of the said report to the appellant, within 10 days from receipt of this order.
 - c) Smt. Navanya Goltekar, PIO is directed hereafter to deal with the applications filed before her, under Section 6 (1) of the Act, by the citizens, strictly as provided by law.
 - d) Block Development Officer, FAA is directed to issue memorandum to the staff of Village Panchayat Aldona, with instructions to provide required co-operation to the PIO and ensure transparent and efficient implementation of the Right to Information Act, 2005.

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.