

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 366/2023/SIC

Mr. Joseph S. Carneiro,
H. No. 1675, Journalist Colony, Alto-Betim,
Porvorim, Bardez-Goa 403521.

-----Appellant

v/s

1. Shri. Prathamesh Shankardas,
The First Appellate Authority,
The Block Development Officer of Bardez at Mapusa,
2nd Floor, Mamlatdar Building,
Mapusa, Bardez-Goa.

2. Shri. Akhil Mahalker,
Public Information Officer,
Village Panchayat of Siolim-Sodiem,
Siolim, Bardez-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 15/07/2023
PIO replied on	: 11/08/2023
First appeal filed on	: 18/08/2023
First Appellate Authority order passed on	: 18/09/2023
Second appeal received on	: 10/10/2023
Decided on	: 19/01/2024

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. 2, Public Information Officer (PIO) certain information. Being aggrieved by non-receipt of the information within the stipulated period, he filed first appeal before Respondent No. 1, First Appellate Authority (FAA). The said appeal was disposed by the FAA with direction to the PIO to provide inspection of relevant documents and furnish the information requested by the appellant.
2. It is the contention of the appellant that the direction issued by the FAA was not complied by the PIO, hence, he was compelled to prefer second appeal, in order to get complete information.
3. The concerned parties were notified, pursuant to which, appellant appeared and prayed for the desired information. Respondent PIO,

Shri. Akhil Mahalker appeared on 07/12/2023 and requested for time to file reply. However, subsequently failed to appear or file any reply.

4. Appellant stated that, the PIO had refused the request by stating 'information is not available'. Further, during the proceeding of first appeal, PIO did not appear even once inspite of five hearings. FAA, while disposing the appeal, had directed the PIO to provide inspection of records and furnish information as per the request of the appellant. However, there was no communication from the PIO, thus, he prays before the Commission for complete information and penal action against the PIO.
5. While perusing the records of the case, the Commission notes that, the information sought by the appellant was not furnished by the PIO. 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 no information was furnished by the PIO, appears to be true, which means the PIO has not acted in the conformity with the provisions of the Act.
6. The PIO, under Section 7 (1) of the Act, was required to furnish the information within the stipulated period of 30 days. While stating that the information is not available, the PIO has not given any reason or explanation for unavailability of the information.
7. 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. No such action was taken by the PIO. The Commission notes that the PIO has failed completely to comply with the duty and responsibility bestowed upon him, under the Act.
8. Further, it is seen that the PIO upon receipt of the notice, appeared before the Commission on 07/12/2023 and requested for time to file reply. Time was granted to the PIO, yet neither any reply was filed, nor information was furnished to the appellant. Under Section 19 (5) of the Act, the onus to prove that denial of request was justified, was on PIO. The Commission notes that, the PIO had failed to justify his action before the FAA, similarly, he again failed to do so, before the Commission.

9. From the developments as mentioned above, it appears that, the approach of the PIO towards the Act and 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.
10. From the conduct of the PIO, it can be clearly inferred that he 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 of 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.
11. In the light of above discussion, the present appeal is disposed with the following order:-
 - a. PIO, Secretary of Village Panchayat of Siolim-Sodiem is directed to furnish the information sought by the appellant vide application dated 15/07/2023, within 15 days from the receipt of this order, free of cost.
 - b. Issue Show Cause Notice to Shri. Akhil Mahalker, PIO, Village Panchayat Siolim-Sodiem, and the PIO is further directed to showcause as to why penalty as provided under Section 20 (1) of the Act, should not be imposed against him.
 - c. In case Shri. Akhil Mahalker is transferred, then 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. Shri. Akhil Mahalker, PIO is directed to remain present on **12/02/2024 at 10.30 a.m.** alongwith reply to the Show Cause Notice.
 - e. The Registry is directed to initiate penalty proceeding against the PIO.

Proceeding of the present appeal 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.