

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Penalty Case No. 29 /2016

In

Appeal No. 26/SCIC/2014

Shri Vishwanath B. Solienkar,
S-1 Artic Apts, Behind Don Bosco Engineering
College, Fatorda, Margao-GoaAppellant

V/s

1. The Public Information Officer (PIO),
Village Panchayat of Curtorim,
Salcete-Goa
2. The First Appellate Authority (FAA),
Block Development Officer of Salcete,
Margao-GoaRespondents

Disposed on:- 26/10/2016

ORDER

1. While disposing the above Appeal, by order dated 22/08/2016, this Commission had directed Respondent PIO (Public Information Officer), V.P. Curtorim-Goa to furnish the complete and correct information as sought by the Appellant by his application dated 26/10/2013 free of cost within 3 weeks from the date of the receipt of this order and then to file compliance report to this Commission alongwith acknowledgment of the Appellant to this Commission within 10 days thereafter. In the same order this Commission also issued notice under section 20(1) Right to Information Act 2005 (for short The Act) and also seeking reply from PIO to show cause as to why the Penalty and compensation as prayed for by the Appellant should not be granted.
2. Despite of the due service of the notice, as the PIO did not appear, Sr. Steno of this Commission contacted the Office of the PIO telephonically on 12/10/2016 in morning and informed the Office of PIO regarding date of hearing which was fixed on 12/10/2016 at 3.30. p.m. Despite of due intimation PIO failed to appear before this Commission neither filed reply to

the showcause notice as such this Commission presumed that he is not interested in contesting the present proceedings and substantiating his stand. Even in appeal proceedings they were not very keen in putting forth their case and clarifying the certain facts which was alleged by the Appellant. It was brought to the notice of the Advocate for the Respondent No. 1 PIO by this Commission that the letter dated 16/05/2013 enclosed to the reply was much before the filing of the Application. The application was made under section 6 (1) of RTI ACT on 26/10/2013. The Appellant has also disputed his signature on the said letter, this commission directed to clarify on the above two points. However no clarification to that effect was given by the Respondents.

3. During the hearing Appellant appeared in person, who submitted that Respondent have miserably failed to comply with the order of this Commission and that no information has been received by him till date. The Appellant further submitted that disciplinary proceedings has to be initiated against the Respondent and heavy cost to be imposed on him for dereliction of her duties. Accordingly the Appellant place on record his affidavit affirming the above fact.
4. I have perused the records. It is seen that to the application filed by Appellant u/s 6 (1) of the act the PIO has not bothered to reply the same, leave aside furnishing of the information. In first appeal filed before Respondent NO. 2 FAA (First Appellate Authority), the FAA had passed order dated 10/01/2014, directing the Respondent PIO to furnish the correct information to the Appellant within 7 days from the date of passing of the order. And since no information was furnished to him despite of the order of FAA Appellant sent reminder on 17/01/2014 thereby also enclosing copy of the order passed by the FAA. Second reminder was also sent by Appellant to Respondent No. 1 on 22/01/2014. Despite of that the Respondent PIO was adamant in not furnishing the required information. The information which was furnished to the Appellant on 01/07/2016 was given in very casual manner. The Appellant during the hearing pointed out visa vis documents and submitted that Respondent No. 1, PIO had withheld correct and complete information. This Commission after being convinced by and order dated 22/08/2016 directed the Respondent to provide complete and correct information to the Appellant.
5. The affidavit of the Appellant in affirming the facts that order dated 22/08/2016 of Commission have not been complied and the Respondent No. 1, PIO have failed to provide the information as directed. Since no reply came to be filed on behalf of Respondent No. 1 PIO to the Show cause Notice, this Commission presumed that the Respondent No. 1 PIO has no

explanation to offer, as such has got no hesitation in believing the Appellant that the order of the Commission have not been complied. Further the Respondent was directed vide said order to report compliance of the order of this Commission alongwith acknowledgment of the Appellant. Since the Respondent No. 1 PIO is silent on the compliance of the order of this Commission it is also presumed that the awarement made by the Appellant are true and genuine. The document relied by the Respondent No. 1. PIO/the information furnished are prior to the passing of the order by this Commission. As Respondents were continuously absent no clarification could be obtained with regards to the compliance of the order of this Commission. As such there is no hesitation for this Commission to accept the submission on behalf of the Appellant that the order of the commission has not been executed by Respondent No. 1, PIO and the information is not provided till date.

6. Further it is observed that Respondent No. 1 PIO have not justified the delay in supplying the information to the Appellant. And also failed to show sufficient cause as to why action should not be taken against him.
7. From the conduct of the PIO, it can be clearly inferred that the PIO has no concern to his obligations under the RTI Act. The PIO has also shown no concern even to execute the orders passed by this Commission on 22/08/2016. Irresponsible attitude of the PIO is further evident from lack of participation in this Appeal inspite of service and then in Penalty proceedings as guest appearance.
8. The conduct of PIO herein is condemnable. PIO should always keep in mind that their services are taken by Government to help the people of state in particular and people of country at large and the objective and purpose for which the Act came into existence. Such conduct of PIO is obstructing transparency and accountability in public authorities appears to be suspicious and adamant visa vis the intent of the Act. Such an attitude of PIOs no doubt requires stringent deterrent action. In the present case the PIO has shown disrespect towards the order passed by this Commission and he deliberately failed to remain present before respective authorities despite of due service.
9. If the correct and timely information was provided to the Appellant, it would have saved valuable time and the hardship caused to him in pursuing the said Appeal before the different Authorities. It is quite obvious that the Appellant has suffered lot of harassment and mental torture and agony in seeking information under the RTI Act which is denied to him till this date.

If the PIO had given prompt and correct information such harassment and detriment could have been avoided.

10. While dealing with a similar issue was raised and decided by the Hon'ble High Court of Andhra Pradesh at Hyderabad in **writ petition No. 4109/2008 dated: 29-02-2008 (Md. Shafiquzzaman, V/s A.P. Information Commission.)**

In the said case PIO was directed by the information Commissioner to furnish the information as sought by petitioner. Despite receiving the said order the Respondent PIO failed to furnish the information and therefore petitioner was constrained to file writ petition. While allowing the same it was observed :

----- *“that lethargic attitude of the Officers concerned and the manner in which the Govt. is procrastinating the matter in providing the information as sought for by the Petitioner despite the orders of the Chief Information Commission, the Apex body under the Act, dealing with the grievance of the Public in securing information from the Government departments, gives rise to strong suspicion that the Government is disinclined to furnish the information as sought for by the Petitioner in the larger public interest. This conduct of the Government in not furnishing the information that too on the directions of the Chief Information Commission runs contrary to the provisions of the Act which was enacted to bring about transparency in the working of the Government, accordingly the Government was directed to furnish the information as sought for by this Petitioner within a period of two weeks.”*

11. In another case while dealing with the scope of the commission in enforcement of the orders passed by it, the Hon'ble Apex court has in case of **Sakiri Vasu v/s State of Uttar Pradesh and Other reported in AIR 2008 SC 907** at para 18 and 19 has held ;

“It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from

legislation. As Crawford observes in his *Statutory Construction* (3rd Edition, Page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission. 20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

12. In yet another judgment of the Hon'ble High Court of Karnataka at Bangalore, Division Bench in ***contempt of the court case No. 525 of 2008; G. Basavaraju V/s Smt. Arundhati and another***, while deciding a point for determination as to Whether, for disobedience of the order passed by the Karnataka Information Commission, in exercise of the powers and functions under Sections 18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, is maintainable, it is held:

“The powers of the Commission to entertain and decide the Complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated. ”

13. Considering the above conduct, I find that the PIO has malafide and without any reasonable cause has failed to furnish the information within the time specifies under sub section(1) of section 7 of the Act and has thus malafidely denied the request for information. The Respondent No. 1, PIO also failed to comply with the order of this Commission. Thus I am convinced and is of the opinion that this is a fit case for imposing compensation on the PIO to be paid to Appellant as per section 19(8)(b)

14. In the result, considering the powers granted to this commission as held by the Hon'ble Supreme court in the case of *Sakiri Vasu* (supra) , I order:

ORDER

- a) The PIO, Respondent No. 1 shall pay to the Appellant a sum of Rs. 5000/- (Rupees five thousand Only) as compensation for causing him hardship and mental torture and agony in seeking the information
- b) The aforesaid total amount payable as compensation shall be deposited in this Commission for onward payment to the Appellant.
- c) Considering the fact that this is 1st of the lapse on part of Respondent No. 1-PIO, he is hereby given admonition and hence forth directed to be vigilant in the performance of his duties

Copies of this order be sent to Director of Panchayat, Panaji for information and implementation.

Penalty proceedings dispose off accordingly. Pronounced in open proceedings. 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/-

(Ms. Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panjim-Goa