

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Appeal No. 50/2017

Anil Govind Naik,
2/G-3, Dukle Residency,
Tambadi-Mati,
Taleigao Goa.

.....Appellant

V/s.

1. Dy. Director of Education ,
First Appellate Authority,
Central Educational Zone,
Panaji Goa.
2. Public Information Officer,
Peoples Higher Secondary School,
Mala Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 28/4/2017

Decided on: 30/11/2017

ORDER

1. By this appeal the Appellant Shri Anil Govind Naik assails the order, dated Nil, passed by the Respondent No.1. first appellate authority in first appeal No. 1 of 2017 filed by the appellant herein.
2. The facts in brief arises in the present appeal are that Shri Anil Naik filed application dated 8/2/2017, sought information on 13 points. Also the inspection of the minutes book of staff meetings held from sep. 2014 was sought from Respondent no. 2 PIO of Peoples Higher Secondary School, Mala, Panaji, Goa . The said information was sought by the appellant in exercise of his right u/s 6(1) of the RTI Act 2005.
3. According to the appellant, vide the letter dated 7/3/2017 PIO provide him the inspection of documents which was carried out by him on 8/3/2017. And rest of the information except at item No. 5 relating to the minute of the DPC held for granting selection scale to Anil Govind Naik was provided to him.

4. Being not satisfied with the information provided to him he filed first appeal before the Director of Education on 23/3/2017 being first appellate authority who is the Respondent No. 1 herein and the Respondent No. 1 FAA disposed the said appeal by order dated nil with a direction to the PIO of Peoples Higher Secondary school to clarify the position to the appellant within 3 days on the subject of his DPC.
5. The respondent No. 2 PIO in compliance to the order of first appellate authority, vide letter dated 20/4/2017 informed the appellant that the information at point no. 5 is not in her possession/authority of PIO but with the management in an sealed enveloped. Vide said letter also he was advised to make appropriate request with management.
6. Being aggrieved by the action of both the Respondents, the present appeal is filed on 28/4/2017 with a prayer for directions for furnishing him information and for invoking penal provisions as against Respondent No.2 PIO as contemplated u/s 20(1)and(2) of RTI Act, 2005, and also compensation.
7. Notices of the appeal were given to the parties. In pursuant to which appellant appeared in person. Respondent No. 2 PIO was represented by Advocate Raunak Rao. Respondent No. 1 Shri D.R. Bhagat appeared during initial hearing and filed reply on 14/9/2107. Advocate for Respondent No. 2 submitted that he doesn't desire to file any reply and argue the matter verbally .
8. It is the contention of the appellant that the operative part of the order of FAA is not proper. It is his contention that FAA should allow the appeal or rejected the appeal therefore according to him the order of Respondent No. 1 is vague and is in violation of provision of RTI Act.
9. The appellant submitted that the DPC was due in month of June 2013 and despite of his request the DPC was not held by

management of said School. It was further submitted that the representative of Directorate of Education visited the school in January 2014 and the Management Committee refused to hold the DPC. It is his further contention that the Director of Education again visited the school in February and March 2014 and the chairmen of the said school declined to hold DPC on the ground that one Mr. Rahul Deshpande have made complaint against him . He further submitted that due to the conduct of chairman of the said school he was forced to file writ petition No. 647/15 and the Hon'ble High Court vide order dated 8/10/2015 has directed the chairman to call for DPC in order to consider the claim of petitioner for grant of selection scale and to keep the decision in sealed cover until the disciplinary proceedings stand disposed .

10. He further submitted that the PIO is a part of management committee of the school as such his reply dated 20/4/2017 at para 2 is not correct as she was aware of the outcome of said DPC Proceedings. It is his case that PIO failed to collect the said information from the authority as she had not made any letter to the management to secure the same .
11. He further submitted that as per the Hon'ble High Court order envelope should have been open immediately after the completion of the disciplinary proceedings . He further submitted that disciplinary proceedings concluded on 27/10/2016 and the appellant was reinstated on 13/2/2017,as such he had made a letter to the Chairman of the School on 13/2/2017 for furnishing him the said information still said was not furnished to him.
12. It is his further contention that even the envelop was opened on 10/7/2017 by the Management, the PIO has deliberately not provided him information with malafide intention nor made any attempts to secure the same. He further contended that PIO is in collusion with management of School and its an desperate attempt

to deny the information to him and on that ground he prayed for imposing penalty on Respondent No. 2.

13. The Advocate for the Respondent submitted that the information except the information at point No. 5, the rest was furnished to the appellant vide forwarding letter 8/3/2017. He further submitted that as there was complaint filed against appellant on 25/2/2014 he was placed under suspension by Director of Education and the inquiry was started. Inquiry officer gave the report to School managing committee on 27/10/15 where in the appellant found guilty against the charges and minor penalty of withholding three increments were given by the Director of the Education. It was further submitted that the management of the School filed a writ petition 926/16 for directions for converting minor penalty to major penalty. It was further submitted the appellant also filed writ petition 533/17 challenging the suspension and disciplinary proceedings which were disposed on 14/7/2017.
14. He further submitted that neither disciplinary proceedings were concluded on the date of the order of FAA nor the envelope carrying the information was opened by chairman. He further submitted that the order was passed by FAA some were in April 2017, the envelope was opened on 10/7/2017 and the disciplinary proceedings continued vide order dated 14/7/17 in writ petition No. 533/17 as such there was no denial of information with malafide intention.
15. In a nutshell, it is a defence of the Respondent No. 2 PIO that on the date of RTI application, date of order of FAA and when the second appeal was filed on 28/4/17 the disciplinary proceedings was not concluded as writs proceedings were pending before the Hon'ble High Court, Which was finally disposed vide order dated 14/7/2017. It is his contention even if the letter or application were filed by PIO to the Chairman of School no purpose would have been served since the High Court had directed to keep DPC

in sealed condition till the disciplinary proceedings were concluded.

16. It is further submitted that reinstatement of Appellant has no connection with the conclusion /disposal of disciplinary proceedings and an employee can be even reinstated pending inquiry as such it was submitted that even though he was reinstated on 13/2/2017, the Hon'ble High Court finally disposed writ filed by appellant (petition No.533/17) pertaining to the said inquiry only on 14/7/2017.
17. I have considered the submission made on behalf of both the parties also scrutinize the records available in the file.
18. Both the parties have given the different dates of conclusion of inquiry proceedings however none of the party placed on records any supporting documents in support of their above contention. Never the less considering the rival contentions of the party the points arises for my determination are:
 - i) Whether appellant is entitled for information at point No. 5 now?
 - ii) Whether the PIO is liable for action as contemplated u/s 20(1) and /or 20(2) of the Right to information Act 2005.
19. Coming to the first point, there is no dispute that the said envelop containing the minutes of the DPC held for granting selection scale to all teacher-I grade in Peoples Higher Secondary school is opened on 10/7/2017 as such the information at point No. 5 is now supposed to have been placed in an public domain as such I am of the opinion that the appellant is entitled for the same.
20. Coming to the second point for my determination for the purpose of considering such liability the Hon'ble High Court Bombay , Goa bench at Panaji in writ petition No.205/2007; Shri A. A. Parulekar v/s Goa State information commission has observed

“The order of penalty for failure to take action under the criminal law . It is necessary to ensure that the failure to supply information is either intentional or deliberate ”

“unless and until it is borne on record that any officer against whom order of penalty for failure to be sought to be levied and has occasion to comply with a order , and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied”.

21. It is not a case of appellant that entire information was denied to him on the contrary he has approached this commission for not furnishing information at point No. 5 and he seeking penalty against PIO on the above ground. The commission observes that the PIO has shown his bonafides by furnishing him rest of the information which was on public records. She has tried to justify the grounds for non furnishing of information at point no. 5. Accordingly to her as various writ petitions were filed by appellant pertains to his inquiry proceedings and the said last petition was finally disposed on 14/7/2017 as such it is her contention that under bonafide belief she did not make any letters to management as it would amount to defiance of High Court order.
22. On perusal of the records, it is seen that application of appellant dated 8/2/2017 was responded by the PIO on 7/3/2017 and information came to be furnished on 8/3/2017 well within stipulated time of 30 days, only the information at point No. 5 was denied to him on the ground that said information was with the management of said school in an sealed conditions as per the directions of Hon'ble High Court however rest of the information sought was granted by the PIO . The appellant has not disputed the said fact nor had any grievance with regards to information furnished to him. There is also no dispute that DPC was conducted in pursuant to the directions by the Hon'ble High Court given in writ petition No.

647/15 and the minutes of the said kept in sealed conditions and the said was opened on 10/7/2017 by the Management.

23. The duty cast on PIO to provide the information which is on record of the public authority. Apparently the information at point no. 5 was not in public domain on the date of the filing of the application by appellant nor when the order was passed by the First Appellate Authority and was with management in sealed conditions as such I do not find any irregularity in the reply of PIO .
24. The Delhi High Court in writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

25. In Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, it is held.

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not. If there had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.

26. In the present case, record shows that PIO was diligent in responding the application of the complainant as required u/s 7 of the RTI act. Bonafides have been shown by the PIO in furnishing available information to the appellant after due payments are made by appellant. PIO has also specified the amount of fees required to be paid for the said information. The PIO after the order of FAA had also intimated his inability to furnish the information and tried to justify the further delay in providing information.

27. Considering the facts of the case, I find that the explanation given by PIO is convincing and probable and that PIO cannot be penalized for not providing only one information when the bonafide have shown by PIO in providing rest information. The said information at point No. 5 is not in possession nor was in the public domain at the time when the application was made nor when

order was passed by First appellate authority and till date it is with Management of the said school and said fact is also not disputed by appellant .

28. In the above given circumstances, I feel ends of justice will meet with following order is passed.

ORDER

- i. Appeal partly allowed.
- ii. The PIO is hereby directed to call for the information at point No. 5 as sought by the appellant vide his application dated 8/2/2017 from the managing committee of the peoples Higher Secondary school and furnish the same to the appellant within 10 days from the receipt of the order.
- iii. Rest of the other prayer are not granted.

Proceedings closed.

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.

Pronounced in the open court.

Sd/-

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

Ak/-

