

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 07/SCIC/2015

Shri Nishant Sawant,
Mahalaxmi Bandora,
H.No 1188,
Ponda Goa.

..... Appellant

V/s.

1. The Public Information Officer,
The executive Engineer,
Works Div.XVIII(Roads) PWD,
Ponda Goa.

2.First Appellate Authority,
SSW, PWD Altinho,
Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:09/01/2015

Decided on:07/03/2017

ORDER

1. The appellant Shri Nishant Sawant by his application dated 8/7/2014 filed u/s 6(1) of the RTI Act 2005 (Act) sought certain information from the Respondent No. 1 PIO of W.D. XVIII (Roads) Ponda, Goa under several points therein.
2. The said application was replied on 07/08/2014 thereby answering all his queries. However according to appellant since the information was sought was not furnished to him he filed first appeal to Respondent No. 2 for herein.
3. Respondent No. 2 The First appellate authority by order dated 12/9/2014 partly allowed the said appeal and directed Respondent NO. 1 PIO to allow the inspection of the file to appellant and issue documents if available after payment of prescribed charges within 15 days .

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4. Being aggrieved by the order of Respondent No. 2 First appellate authority, the appellant have therefore approached this commission in the second appeal u/s 19(3) of the act.
5. Notices were issued to the parties pursuant to which they appeared the PIO on 14/3/2016 filed reply to the appeal .
6. Advocate Aatish Mandrekar appearing on behalf of Respondent No. 1 PIO submitted that reply filed in the present appeal be treated as their arguments. Even though appellant had undertaken to file his written argument failed to do so inspite of giving him several opportunities as such I had no any other option to dispose this appeal based on the records available in the file.
7. It is the case of the appellant that after the order was passed by the first appeal authority he had visited to the office of Respondent No. 1 PIO on several date despite of same no information was furnished to him. It is also his case that several letters were made by him to Respondent No. 1 PIO to furnish the said information.
8. The Respondent No. 1 PIO vide his reply contended that the complete information in respect of all three point were provided to appellant vide their letter dated 07/08/2014. It is their further contention that the appellant instead of making any attempts do inspection filed letter dated 31/10/2014 with false allegation whisked away after taking the endorsement of the inward clerk with mere intention of causing harassment to Respondent No. 1PIO. It is their further case that vide then letter dated 03/11/2014 again requested appellant to inspect the available documents and collect the copy of the selected document after the payment of Xerox charges, the appellant instead of inspecting, selecting the documents inwarded several letters dated 07/11/2014 and 11/11/2014 by making false allegations. It is the case of the Respondent No. 1 that vide their letter dated 12/11/2014

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they had requested the appellant to refrain himself from such an act and to collect the information. It is also further case of the R. No1 PIO the appellant is a Chronic litigent and he is a filing piles of RTI Application just to cause harassment with ulterior motive to increase the workload of the office.

9. From of the above letters, relied by the Respondent PIO it could be gathered that the PIO had shown his willingness at every stage to furnish the required documents to the appellant. The para 14 of the reply dated 14/03/2016 also reveals that they are still willing and ready to furnish the information till date only if the appellant makes payment toward the information .
10. On perusal of the records it is seen that there was absolutely no delay caused on the part of the Respondent No. 1 PIO in replying and furnishing the information to the appellant. Respondent No. 1 PIO has promptly responded to the application of the appellant. From the entire conduct of the Respondent No. 1 PIO it is seen that there is no any intention either to hold any information or deny such information to the appellant. The records shows that PIO answered all his queries vide their reply dated 07/08/2014. No allegation made by the appellant that false information have been furnished to him. Only grievance of the appellant that though he was ready to collect the same he was never called for .

Such allegation are rebutted by the Respondent No. 1 PIO. The letter dated 03/11/2014 made to the appellant shows that he was called for inspection and was requested collect the copy of selected document after the payment of charges. The letter dated 12/11/2014 also shows that the Respondent PIO had called upon the appellant to do the inspection of various documents in various cases and collect the same after making the payment. In the said letter a reference regarding orders of the first appellant authority is made and a

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references of letters made by them to the appellant are also made.

11. Based on the above records it is observed that the Respondent PIO is very diligent in his duty under the RTI Act and it appears that the appellant has purposely avoided receiving the information when offered.
12. Coming to the other prayer which are the penal of action . the grant of penalty is akin to conviction in criminal proceedings and hence the element of the criminal trail should be available for grant of penalty these observation are based on ratio raised on by Hon'ble High Court of Bombay at Goa in writ petition No. 205/2007, Shri A.A. parulekar V/s Goa State information Commissioner and others .

"11.The order of penalty for failure is akin to action under criminal law it is necessary to ensure that the failure to supply the information is either intential or deliberate."

Proving certain facts raised/ alleged by appellant always rests on him. Under no circumstances burden shifts on the opposite party. In other wards the onus is on the appellant to substantiate his case the inspite of the visiting no information furnished to him. Appellant also had not filed any affidavit in support of his above contention. As such the averments made in the memo of appeal cannot be taken as gaspal truth.

13. By continuous absent of the appellant and failure to produce any evidence, the appellant has miserably failed to discharge his burden. It appears that he is not interested in the present proceedings as such not made himself available before this commission to substantiate his case. On the contrary the respondent No.1 PIO have showed his bonafide by furnishing the information at first point of time and then again before the First Appellate Authority .

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In the above circumstances following order is passed .

ORDER

1. Since the information is already furnished to the appellant as sought by him by his application dated 08/07/2014 no intervention of this commission is required . However liberty is granted to the appellant seek any additional information with regards to same subject matter.
2. The appellant if so desire can approach the respondent No. 1 PIO for inspection of the document and Respondent No. 1 is hereby directed to allow the inspection of the file to the appellant and then to issue the desire documents if available to the appellant within 15 days after payment of prescribed charge prescribe under the Right to information Act 2005 by the appellant.
3. The prayer for penalty of compensation is not granted.

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.

