

GOA STATE INFORMATION COMMISSION

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

Appeal No. 05/SCIC/2014

Menino Santana Fernandes,
H.No. 728/D, Sonum Township,
Nessai, Sao Jose de Areal,
Salcete Goa.403709

..... Appellant

V/s.

1, State Public Information Officer,(PIO)
Shri Shekhar Prabhudesai,
Superintendent of Police,
South Goa Margao.

2. The First Appellate Authority,(FAA)
Shri O.P. Mishra,
Dy. Inspector General Police,
Police Hq.,Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:13/01/2014
Decided on: 23/02/2017

O R D E R

1. By an application dated 14/10/13 the appellant Shri Minino Santana Fernandes sought from Respondent No. 1 Public Information Officer of , Superintendent of Police, South Goa, Margao information in respect of two crimes Registered by Maina Curtorim Police Station vide FIR No. 17/2013 and FIR No. 72/2013 on various points as stated therein in the said application.
2. By reply dated 1/11/2013, Respondent No. 1 rejected the request for information u/s 8(1) (h) of Right to information Act, 2005 as the same was under investigation would have impede the process of investigation or apprehension or prosecution of the offender .

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2. Aggrieved by the said reply of the PIO the appellant filed first appeal u/s 19(1) of Right to Information Act with the first appellate authority that is the Respondent No. 2 herein on 28/11/2013 and Respondent No. 2 first appellate authority by an order dated 12/12/2013 partly allowed the appeal and directed PIO to allow the inspection of Panchanama to the appellant in respect of crime No. 72/13 within 10 days of the receipt of the order and the other information was rejected by upholding the say of the PIO that there is a possibility of impeding process of investigation.
4. In compliance of the Order of First appellate authority the Respondent PIO, vide their letter dated 16/12/13 called upon the appellant to conduct the inspection of Panchanama in Maina Curtorim Police Station crime No. 72/2013.
5. Being not satisfied with the order of the Respondent No. 2 first appellate authority and being aggrieved by the action of both the Respondent, the present appeal came to be filed before this commission u/s 19(3) of Right to Information Act on 13/1/2014. In the said appeal before this commission the appellant has prayed for the direction for Respondent No. 1 PIO to furnish the correct and complete information, for penalty and for initiating disciplinary action against both the Respondents interms of service rules applicable to Respondents as provided section 20(2) of the Right to Information Act,2005 for malafidely denying/obstructing/hiding/refusing the information sought for by the appellant interms of RTI application dated 14/10/2013.
6. Notices were issued in pursuant to notice Respondent No. 1 filed reply.
7. While passing interim order dated 12/12/2014 this commission had come to the conclusion that exemption does not apply to query No. 1 (3)and to several other queries and as such had directed Respondent

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No. 1 PIO to reply to as many as queries where information does not effect investigation within 15 days.

8. The Respondent No. 1 PIO in compliance of the said order of this Commission vide their letter dated 23/12/14 furnished point wise information to the appellant alongwith the documents.
9. The appellant filed application dated 16/12/15 acknowledge of having received the information however prayed for imposition of compensation of Rs 250 per day from 15/11/13 until 15/12/14.

Written argument filed by the appellant on 10/8/16.

10. It is case of the appellant that the investigation will go on years to years so the information could be denied on that ground. It is his further case that FIR No. 70/13 that closure report was filed on 23/1/14 however they intimated the same during the other/subsequent RTI Application on 28/2/2014. It is also his case that in FIR No. 72/13 that the charge sheet was filed earlier. They have furnished him incorrect information. However nothing supporting the same have been placed on record by the appellant
11. It is further contention of appellant that in FIR No. 72/13 which was filed by him it is falsely recorded that the complaint was received at 20.20 hour however according to him he had filed it at Maina Curtorim Police Station at 10.17 hours. It is his further case that DYSP. Shri Mohan Naik had warned him to withdraw the complaint and then appellant lodged a written complaint to Shri S.P. Shekhar Prabhudesai highlighting the threats given by Mohan Naik to the appellant and that no action was taken against DYSP Mohan Naik . It is the further the case of the appellant since he refused to withdraw the complaint . 1. Shri Tenny Fernandes, filed a false and duplicated complaint against him as per the direction of Police and was registered as FIR NO. 70/13. It is further case that he had

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sought a certain information as he wanted to sue erring police and to take action against the accused in FIR No. 72/13.

It is his further case the information is only furnished to him after the interim order was passed by the commission.

12. The Respondent No. 1 filed reply cum written submission on 5/10/16. The respondent No.1 tried to justify denial of information at initial stage. It is their contention that after filing the charge sheet in the court pertaining to above two crimes information was duly furnished to him. It is further case of the Respondent No.1PIO that he vide letter dated 13/4/2014 brought to the notice of the appellate that the information which is sought is ready and requested him to collect the same on any working days after depositing the amount of Rs. 184 to the account section. It is contented by Respondent No. 1 PIO that the details of the investigation could not be given at first point of time as the offences were registered under acrouties of scheduled Cast and schedule tribes act, which were considered to be grave crimes.
13. It is the further case of the Respondent that the appellant failed/did not carry out the inspection in pursuant to their letter dated 16/12/2013.
14. By the second appeal, the appellant had placed certain grievances against the Respondents as stated therein at para 5 to 8 of his written arguments filed on 10/8/16 . It appears that the appellant trying to mix-up the jurisdiction conferred on this Commission under the Right to information Act and the Jurisdiction of the other authorities constituted under the other Acts . This commission has got not Jurisdiction to entertained such issue raised by the appellant and it is beyond the scope of this commission to entertain and settle such grievances such a grievances can be agitated by the appellant before competent forum .

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15. With regards to his prayer which are in nature of penal provisions, it is seen that the application u/s 6 was relied within 30 days there by denying information u/s 8(1)(h) of the RTI Act which according to appellant, the refusal is contrary to the provision of the RTI Act . It is pertinent to note section 8(1) (h) which is under Section “ exemptions from disclosure of information nothing not with standing anything contain in the said there shall be no obligation to give any citizen---

h- Information which would impede the process of investigation or apprehension or prosecution of offenders

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16. Section 8(1) of the RTI Act begins with or non obstant clause and stipulate stands notwithstanding any other provision under the RTI Act, Information need not be furnished when any of the clause (a) to (j) apply . To put in a nutshell the RTI Act is subject to exemption or exclusion stated in section 8(1) (a) to (j) of the RTI Act.

17. Since both the criminal case were under investigation at that particular point of time, when application was made u/s 6(1) of RTI Act . I find no fault in the reply of the Respondent rejecting the application u/s 8(1) (h) as the offenses under atrocities’ under schedule tribe and schedule case are considered to be graver crime and if the information was parted during investigation stage, would have impleaded the process of investigation.

18. The records also shows that the letter was made by the Respondent PIO on 16/12/13 offering appellant inspection of Panchanama which he failed to do so. In pursuant to the interim order of this Commission the appellant have been also furnished information and relevant documents which was sought by him. The Respondent had shown the bonafied at every stage and had volunteering to

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furnish the information once the investigation is completed. Respondent No. 1 PIO have also tried to comply with the order of First appellate authority. In the circumstances I do not find any illegality and/or irregularity in the conduct of PIO.

19. The grant of penalty is akin to conviction in criminal proceedings and hence the element of the criminal trial should be available for grant of penalty these observation are based on ratio laid 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 .

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 intentional or deliberate.

20. It is the contention of the appellant that there is a deliberate delay caused by the PIO and PIO had not provided him correct information and on that basis of such allegation the appellant has sought penalty. Being so the burden to prove that there is malafied in delaying the information lies on the appellant .

There is no evidence on record to show that non furnishing of the information was intentional and deliberate on the contrary from the records it appears that appellant have also contributed in delay in doing the inspection

21. With regards to prayer of conducting inquiry the RTI does not conferred any power on information commission for conducting inquiry **in appeal** . The commission can direct inquiry only in Complaint cases u/s 18 of the RTI Act. And as such prayer of appellant for inquiry cannot be looked into.
22. The appellant herein also failed to substantiate his claim the matter was mechanical decided by the FAA without making any analyses or

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the issue involved in order to protect PIO . In fact it is observed that the order is partly allowed in favour of appellant and matter has been disposed by the First appellate authority on merits .

23. it is pertinent to note that as per the provision of RTI Act only the PIO can be penalize u/s 20(1) and not the First appellate authority. As such relief sought by the appellant as against First Appellate Authority cannot be also granted.
24. In the above background this commission observed that PIO has shown his willingness in furnishing the information and that there is no intentional or deliberate attempt or malafide intention in complying with FAA or that of this commission. As such this commission concludes that levy of penalty, disciplinary proceedings and compensation on the Respondents PIO is not warranted in the proceedings.

In the above given circumstances the following order is passed.

Appeal stands dismissed.

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