

GOA STATE INFORMATION COMMISSION

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

Appeal No. 23/SCIC/2015

Shri Gajanan G.S.Dhumatkar,
Office at Hill top Apts.,
Teen Building Alto Betim,
Bardez Goa.

..... Appellant

V/s.

1. Public Information Officer
Civil Registrar Cum Registrar (HQ),
Registration Dept. 7th floor,
ShramShakti Bhavan Patto, Panajim.

2. First Appellate Authority,
State Regiastar Cum Head of Notary Services,
7th floor, Shramshakti Bhawan, Patto,
Panajim Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 18/02/2015

Decided on: 27/07/2017

ORDER

1. The appellant Shri Gajanan Dhumatkar by his application dated 4/9/14 sought from Respondent No. 1 PIO of District registrar cum Head of the Notary services, Panajm certain information on 15 point as stated therein in the said application . The said application was filed by the applicant under Right to Information ACT, 2005 .
2. The Respondent No.1 by their letter dated 30/9/14 denied the said information to the appellant u/s 8(1) (h), as it would impede the process of investigation.
3. Being not satisfied with above reply given by Respondent NO. 1 PIO the appellant preferred Appeal u/s 19(1) on 28/10/14 before Respondent No. 2 herein and the Respondent No. 2, FAA by an order dated 20/1/15 partly allowed the said appeal and Respondent No. 1 PIO was directed to furnish the information to the appellant

with regards to the point 1,10 and 11 within 10 days from the receipt of the order . vide said order also the appellant was directed to remain present before the PIO of Law Department for inspection of records pertaining to point NO.8 and 9 of his application . Rest information was rejected by upholding the say of PIO .

4. Being aggrieved by the decision of the respondent No. 2 First appellate authority dated 20./1/15 the appellant then approached this commission by way of second appeal on 19/2/15 on the grounds as set out in the memo of appeal .In the present Appeal , the appellant has prayed for quashing and setting aside the impugned order 20/1/15 passed by respondent No. 2 FAA , for directions for providing him required information as sought by him vide his application dated 4/09/14 and for invoking penal provisions.
5. In pursuant to the notice of this commission the appellant appeared only once and thereafter his son Advocate Nikhil Dhumatkar was present on his behalf. Respondent No. 1 PIO Ms. Shubha Dessai was present Advocate Harsha Naik appeared on behalf of both the Respondent and filed memo of appearance on 21/2/17.
6. The Respondent no. 1 PIO offered to provide information to the appellant and accordingly vide forwarding letter dated 29/7/16 the same was sent to the appellant by Registered A.D. by the PIO. The Advocate for the appellant on the subsequent date of hearing confirmed of having received the same however insisted and pressed for the other relief which are in penal nature as against respondent PIO on the ground of delay in furnishing the same .
7. The appellant filed his written argument on 29/11/16. The copy of the same was furnished to the Respondent.
8. Argument were advanced by Advocate Harsha Naik on behalf of both the respondents .

9. I have perused entire records available in the file and also considered the submission of both the parties.
10. Since the information is now furnished to the appellants on all point and as the appellant has not come up with any grievances against the information furnished to him, the commission holds that the appellant is satisfied with the information furnished to him, and that no intervention of this Commission is required at payer (C).
11. With regards to the other prayers which are in nature of penal action , it is the contention of the appellant that the respondent were duty bound to specify the details of the information. It is his further case that the authority withholding the information must show the satisfactory reason as to why the release of investigation would hamper the investigation process and such reasons should be based on some material. It is his further contention that process of investigation as referred to in section 8(1) (h) of the RTI Act 2005, is meant to include such investigation of matters pertaining to criminal acts and that the Respondents failed to correctly appreciate and apply most basic rule of interpretation of statutes and thus came to the wrong conclusion in giving "process of investigation" as as reason for refusing the information to the appellant . He has relied upon number of decisions of the Apex court on the the interpretation and meaning of expression of term " Ejusdem generies "
12. It is his further contention that respondent failed to consider section 10 of Right to information act before coming to impugned decision.
13. In the nutshell it is a case of the appellant that the respondent wrongly refused the information to him on a false ground , thereby completely negating the scope and purview of the RTI Act 2005.
14. Respondent No.1 filed reply on 7/7/17 . Advocate Harsha Naik on behalf of both respondent submitted that the application of the appellant was promptly responded by PIO under subsection (1) of

section 7 well within 30 days as contemplated under the act and said reply was given as per collective decision taken by the higher authorities ,It was further contended that there was no any malafides intentions on the part of PIO in refusing him the information as the process of inquiry was on . Vide said reply PIO has also prayed for taking lenient view against her .

15. On perusal of the application of the appellant filed u/s 6 (1) of RTI Act Viza viz the reply of the PIO dated 30/9/14 , it is observed that the PIO has given the said reply in very casual manner .The Respondent PIO vide her reply dated 7/7/17 filed before this Commission have submitted that the inquiry of the appellant had commenced on 20/12/13 which concluded on 10/9/2014 ,from the said statement it is ample clear that when the reply given by the PIOU/s 7 (1) on 30/9/14, there was no any inquiry pending against applicant . As such the reply of the PIO dated 30/9/14 appears to have not been given correctly in accordance with law .
16. The contention of the Respondent PIO that said reply dated 30//9/2014 u/s 7(1) of RTI Act was given as per the collective decision taken by the Higher authorities is also is in contravention with the RTI Act . The RTI act mandates that PIO should act independently and perform their duties fearlessly in accordance with law . PIO should take into account that the responsibility of providing correct information rests on her and she is held accountable for the furnishing incomplete and incorrect information to the information seeker and hence liable for imposition of Penalty .
17. In the present case the information came to be supplied to the appellant only on 29/7/16 that too during the proceedings before this commission. If the correct and timely information was provided to the Appellant , it would have saved his valuable time and hardship caused to him in pursuing the application before different authorities. It is quite obvious that the appellant has suffered lot of harassment and mental torture and agony in seeking the said information which

was denied to him . If the PIO had given correct reply / information in the inception itself such harassment and detriment could have been avoided .

18. For the purpose of considering penal liability, the Hon!ble High court of 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 akin 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 office against whom order of penalty for failure to be sought to be levied and has occasion to complied 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”.

The Respondent No. 1 PIO herein has tried to justify her stand . It is her case that there was no intentional refusal on her part and reply was given as per collective decision of Higher authorities, even though this commission is fully not convinced with justification given by PIO that the said reply was given by PIO as per collective decision of higher ups the said possibility cannot be ruled out as such PIO solely cannot be blamed for not giving not correct reply. Alenient view is also taken the matter, as there is no cogent and conving evidence brought on record that the lapses on the part of the PIO is persistent .PIO is hereby admonished and hence forth directed to be vigilant and act independently while dealing with RTI Matter. Any such lapses on her part in future will be viewed seriously

Appeal disposed accordingly, proceedings stand 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.

Pronounced in the open court.

Sd/-

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

Ak/-