

GOA STATE INFORMATION COMMISSION

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

Complaint No. 18/SIC/2014

Shri Dilip Natekar ,
C/o Mapusa Jana Jagruti Samiti,
H.No. 35, ward No. 11,
Khorlim Mapusa Goa.

..... Complainant

V/s.

1. Public Information Officer
Shri Raju Gawas,
The Chief Officer,
Mapusa Municipal Council,
Mapusa Goa.

..... Opponent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 23/05/2014

Decided on: 22/08/2017

ORDER

1. The brief facts leading to the present complaint are that the complainant Shri Dilip Natekar by an application dated 4/12/13 sought information on 22 points as stated therein in the said application from the PIO of Mapusa Municipal Council , Mapusa Goa. The said application was filed under the right to information act ,2005.
2. The said application was responded by the opponent on 7/1/14 thereby providing part of the information and the complainant was asked to collect the information after paying the requisite amount.
3. Being not satisfied with the reply of the respondents, the complainant preferred first appeal on 28/2/14 before the

Director of Urban Development , being first appellate authority . and the first appellate authority after hearing both the parties ,by an order dated 1/4/2014 disposed the said appeal by directing opponent to furnish the information to the complainant within 10 days .

4. After the order of the first appellate Authority ,the opponent informed vide letter dated 3/4/ 14 informed the complainant that he has appointed as Returning Officer from election duties and as such unable to furnish the information within 10 days.
5. Being aggrieved by the action of opponents , the complainant approached this commission by was of complaint u/s 18 of the RTI Act on 23/5/14 on the grounds that the Respondents have not complied with the orders of FAA and that the PIO has breached the mandade of the Act by denying information.

With the above grounds the complainant has prayed before this commission for action against Respondents u/s section 20 of RTI Act and also for directions for furnishing him information as sought by him vide his application dated 4/12/13.

6. During the hearing the complainant was represented by J.T. Shetye. The Opponent then PIO Shri Raju Gauns present. Present PIO was represented by Shri Vinay Agarwadekar who filed reply of present PIO on 22/12/16 furnishing the copies of information to the complainant .
7. The Opponent then PIO Shri Raju Gauns filed his reply on 24/3/17 and also additional reply on 6/7/17. The copies of the same as furnished to the representative of the complainant .
8. Affidavit filed by the complainant on 22/12/16 reaffirming the facts as stated by him in complaint.

9. The representative of the complainant submitted that affidavit of the complainant may be treated as argument. Opponent then PIO Shri Raju Gauns argued the matter orally.
10. It is the contention of the complainant that in respect of query No. 7 and 20 he had visited the office of Mapusa Municipal council on 13/1/14 and had clarified the above issues and that APIO Shri Husain Khan had promised to furnish the certified copies of the documents pertaining to his queries at serial No. 3,8,10, 12, 13, 14, 15 and 22. It is the further contention that despite of the order of the First appellate authority the opponent PIO is guilty of not furnishing the information. By disobeying the orders of the superior authority dated 1/4/14 makes opponent PIO Shri Raju Gauns liable for penalty action as contemplated u/s 20(1) and 20(2) of the RTI Act 2005.
11. It is the case of the opponent Shri Raju Gauns that the complainant had filed application on 4/12/13 seeking voluminous and lengthy information under 22 heads and as such there was two days delay in replying to the RTI application dated 4/12/13. The opponent PIO contended that he could not comply the order of FAA in time as he was designated the electoral Registration officer and returning officer of the Assembly constituency No. 5 Mapusa so also as a assistant returning officer of North Goa Parliamentary Constituency and he had relied about the notification in support of his such contention. It was further contended that beside above mentioned elections duties he was also assigned for the election of the Zilla Panchayat North and South Goa district on Magisterial duty. It is his further contention that the staff of Mapusa Municipal council is also engaged in election procedure

and process, as a result the PIO although wished to furnished the information in compliance to the order of FAA on time, couldn't dispense to the information to the complainant. It is further contended that once he resume his duty back the concerned dealing hand did not placed a file before him. He further contended that he was holding additional duty in a Mapusa Municipal Council as a Chief Officer besides also holding main Charge before the Directorate of Health Services . It was further contended that he was emotional distressed with the shock of sudden demise of his sister. He further contended that the information collected by the complainant is not used for any purpose thus proving his personal interest in a matter and not public interest. He further contend that the delay if any in providing information within the stipulated time is neither deliberate nor intentional but due to the factious as stated by him.

12. The controversy which has arisen here is whether the respondents are liable for the action as contemplated u/s 20(1) of the RTI Act, 2005 and whether the delay in furnishing information to the complainant was deliberate and intentional on the part of then PIO.
13. On perusal of the records it is seen that the entire defense of the PIO is resting on the contention that he was holding main charge before the Director of Health Services and that he was given additional charge of Mapusa Municipal Council which is the public authority concerned herein. It is his version the besides the above duties he was assigned the various elections duties and on resuming back the dealing hand did not brought to his notice to process the information in compliance .

14. In a present case the contention of then PIO that he was holding main charge before the Director of Health Services and that he had given additional charge of Mapusa Municipal Council this fact is not disputed by the complainant herein. Considering the above circumstances I find that as then PIO had charge of the public authority involved herein was in addition to his regular charge as Director of health services, as such he had no absolute control over the administration of the same and he had to also in part his duties as else where simultaneously.

15. In case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) has observed:

“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 intentional or deliberate.”

At para 11 further also held that:-

“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”.

16. Yet in another case The Delhi High Court 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."

17. The High Court of Judicature at Bombay Nagpur Branch in letters patents in appeal No. 276/12- State Information Commissioners V/s Tushar Manlekar has held

" it is really surprising that a thousands of documents are being sought by the Respondents from the authorities and non of the documents is brought into use . We are clearly of the view in the aforesaid backdrop that the application was filed with malafide intention and with a view to abuse the process of law ."

It is further held that " Since the part of the order in appeal has been already complied with and the appellant has supplied the necessary information free of cost , we set aside a order imposing the cost on the PIO.

“Considering the facts of the case I find the explanation given by the PIO is convincing and probable and I find no grounds to hold that delay in dispensing the information was intentional or deliberate .”

18. Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

“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.

19. 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. There is an marginal delay in responding the same. However bonafides have been shown by the PIO in furnishing point wise replies and even offered to furnish available information to the complainant after due payments are made by complainant . PIO has also specified the amount of fees required to be paid for the said information. There is nothing placed on record by complainant that he has paid the necessary fees and collected the information and that said was incorrect or incomplete or that PIO has refused to provide

him correct information despite of due payment. Secondly the PIO after the order of FAA had also intimated his inability to furnish the information within 10 days time and has also tried to justified further delay in providing information. I find the explanation given by PIO is convincing and probable.

20. The Complainant has also alleged that incomplete, incorrect and misleading information has been provided to him and that PIO had deliberately delayed in providing information with ulterior motive. In such a circumstance, the onus lies on the party who makes such averments to prove the same. There is no sufficient and cogent evidence placed on record by the complainant substantiating his such stands/contention. In absence of any cogent and sufficient evidence it will not be appropriate on the part of this commission to arrive at any such conclusions.

Further verification of the information which was provided by the present PIO vide letter dated 21/2/16 to the complainant vis-à-vis the incaution provided by then PIO vide letter dated 7/1/14, it is seen that the copies of the documents at point No. 3,8,,10,12,13,,14, 15,22 have been furnished to the appellant. The then PIO had also requested the complainant to collect the same after deposit the requisite fees as such the contention of the complainant that the then PIO had provided him incomplete and incorrect information does not hold good.

The delay in complying the order of FAA cannot be sole ground to penalize the PIO. It has to be further shown that the such lapses on the part of the PIO are persistent and done with malafides intention.

21. Since the complete information as available with the Public authority is now furnished to the appellant, the intervention of this commission is not required as far as the prayer of providing

the information. The other prayer which are in nature penal action are not granted for the reasons stated above.

The matter disposed accordingly . Proceedings stands 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/-

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