

GOA STATE INFORMATION COMMISSION

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

Complaint No. 29/SIC/2014

Shri Naresh V.S. Nagvekar,
Labouratory Technician,
Sub-Health Centre,
Calangute, Bardez Goa

..... Appellant

V/s.

1. Public Information Officer
Deputy Director, HIB,
Directorate of Health Services,
Campal Panaji Goa.

2. The deputy Director, NVBDCP,
Directorate of Health Services,
Campal Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 20/08/2014

Decided on: 14/07/2017

ORDER

1. The brief facts leading to the present complaint are that the complainant by an application dated 26/5/2014 sought certified copies of the documents as stated therein in the said application from the PIO of the director of health services , Campal ,Panaji –Goa who is the Respondent No.1 herein . The said application was filed under the right to information act ,2005.
2. The Respondent No1 sought the assistance of Respondent No.2 u/s 5 (5) of the RTI act, 2005 and then vide their letter dated 30/6 /14 forwarded the letter dated 24/6/14 received from the Respondent No.2 to the complainant .The Respondent No.2 vide said letter has informed that the information at point No.1 was not traceable despite of search and point No. 2 was rejected on technical ground.

3. Being not satisfied with the reply of the respondents , the complainant preferred first appeal on 9/7/14 before the director of health services , being first appellate authority . During the hearing before the first appellate authority , the complainant dropped his request for information in respect of point No. 2 and the first appellate authority after hearing both the parties ,by an order dated 21/7/2014 disposed the said appeal by directing Respondent No.2 to try his level best to trace the document and furnish the copy of the same to the complainant within 10 days from the receipt of the order .
4. After the order of the first appellate Authority ,the Respondent No. 2 by an letter dated 1/8/ 14 informed the complainant that despite of through search the document of due and drawn statement towards arrears as per order No.DHS/NVBDCP/TBPS/08-09 /947dated 7/10/08 is not traceble and as such the police complaint has been filed . A copy of the certificate issued by the panaji police was also enclosed to the said reply.
5. Being aggrieved by the action of both the Respondents , the complainant approached this commission by was of complaint u/s 18 of the RTI Act on 20/8/14on the grounds that 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. It is also his contention that the documents which were sought by him is of the year 2008 and only the documents which is the part of arrears of pay bill are missing from the file concerned when the others bills are intact .It is further contention that some one in the office of the Respondent No.2 has played mischief to deny the information to the complainant .

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 at point No.1 of his application dated 26/5/14

6. During the hearing the complainant was represented by Advocate Shirodkar . Respondent NO.1 shriAnil kumar was present along with Adv A. Talaulikar and then by Adv Atish mandrekar . Respondent No.2 Dr chandrakant Porob was present .
7. Reply filed by Respondent No.1 on 21/7/16. Abd Respondent No.2 on 31/1/17.
8. In the course of the hearing on 21/7/16 the Respondent No.2 Dr Chandrakant Porob submitted that he being also head of the division ,has searched the said files/documents and the information which was sought by the complainant was not available / was not traceable in their office records . He further submitted that there are parallel records available in the directorate of Accounts and also in the service book and he showed his desire to reconstruct the file and to provide the information to the complainant being he was their employee . Even though the same was not permissible in view of rulings of the Apex court given in Civil appeal No. 10787-10788 of 2011 chief Information commission V/s State of Manipur , the same was allowed to be furnished to the complainant as it would facilitate complainant to redress his grievances with an appropriate forum .
9. Written arguments filed by the complainant on 28/4/17 and by respondents on 18/5/17 . Rejoinder to the arguments were also filed by the complainant .
10. It is the case of the respondent No.1 that FAA had directed Respondent No.2 who is the custodian of the information to provide the said information to the complainant as such no action can be initiated against him for any violation or non compliance of the order passed by the first appellate authority
11. It is the case of Respondent No.2 that in compliance with the order of FAA, he had carried out through search of the available records but was not able to trace the missing records as such he has filed police complaint which is pending investigation .

12. In the nutshell it is the case of the both the respondents that they have acted bonafidely and even provided the complainant the information at point No1 by reconstuting the file based on the records available with the office and copy of GFR 8 in the books of the Accounts
- 13 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.
14. Section 2 (f) of the Act only refers to such material available in the records of the public authority . while requiring PIO to furnish the information ,he cannot be called upon to creat information for being furnished .

The Apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya has held at para 35

“At this juncture, it is necessary to clear some misconception about the RTI Act . The RTI Act provides access to all information that is available and existing . This is clear from the combined reading of section 3 and the definition of “information ” and “right to information ”under clause (f) and (j) of section 2 of the Act . If the public authority has any information in the form of data or anaylised data or abstracts or statistics , an applicant may access such information ,subject to the exemptions in section 8 of the Act .”

15. The Respondent No. 2 the then APIO Dr. Sachin Govekar from the inception have informed the appellant that the information at point No. 1 is not available with them. So also after the order of the First appellate authority the Respondent again informed that those documents are not traceable an due complaint has filed to the Police.

The present APIO Dr. Chandrakant Porob also affirmed the said fact and furnished the information after reconstituting the said file based on the other parallel records The fact of present

PIO furnishing the information after the reconstituting the file is also not denied and rebutted by the appellant . The fact that present PIO also could only furnish the information to the appellant as per his requirement only after reconstituting the file clearly shows that the said information was not available in the office records as such the reply of PIO given u/s (1) of section 7 and also reply given after the order of first appellate authority cannot be faulted.

16. It is also the case of the complainant as setout at para 6 of his rejoinder dated 20/9/2016 that the statement is actually in the possession of respondent No. 2 and they have deliberately denied the same. The above contention have not been also supported by the complainant with any supporting documents ,

Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para 7 has held**

“ The commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the Point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the commission has come to this conclusion. This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner page1241 Information Officer had access and yet she said Not available. In such circumstances it would have been possible to uphold the observation of the commission that the petitioner provided false information in stating initially that the seniority list is not available.

In absence of any supporting evidence/document it is not proper on part commission to arrive at conclusion that said was

available with Respondent No. 2 and they have deliberately not furnished the same.

17. In the present case the APIO has responded within 30 days . It appears that there is a negligible delay on the part of Respondent No. 1 PIO in replying, to the complainant however it appears to have been caused due to the administrative procedure and as the information was not in custody of Respondent No. 1 PIO/nor available with respondent No. 1 PIO, he cannot be held responsible for the same .

18. 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.”

19. The Hon'ble High Court at Bombay at Goa Bench at Panaji 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 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".

20 The complainant himself has suspected that some one in the office of the Respondent No. 2 might have played mischief to deny the information to him. The complainant have not specifically made any allegations against Respondent No. 2. In the aforesaid said circumstance, the Respondent No. 2 cannot be blamed for non availability of said documents in their official records and for no fault of his he cannot be made an scape goat.

In view of above I do not find any cogent and convincing evidence brought on record by complainant against the Respondent No. 2 PIO that he had deliberately and intentionally not provide him incomplete information or refused him information. As such the levy of penalty is not warranted in the facts of the present case. Since the complete information 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

