

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa.

Complaint 32(A)/SCIC/2014

Shri Joseph Carneiro,
R/o Plot No. 51, Journalist Colony,
Porvorn Bardez Goa.

..... Complainant

V/s

1. Assistant Registrar of Co-operative Societies,
Public Information Officer,
Central Zone, panaji Goa.
2. Registrar /First Appellate Authority,
O/o Registrar of Co-operative Societies,
Sahakar Sankul, 4th & 5th floor,
Patto Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Complaint filed on:22/09/2014
Decided on: 16/06/2017

ORDER

1. The brief facts leading to the present complaint are as under:-
In exercise of his right u/s 6(1) of the RTI Act , 2005, the complainant Shri Joseph Carneiro filed application on 2/5/14 to the PIO Chief Secretary, Government of Goa thereby seeking information on three points as stated therein in the said application in respect of his complaint dated 28/3/2014 filed against the illegal registration of Shangila apartment cooperative housing society, Miramar-Panaji Goa by him for the denotification and deregistration .
2. The PIO / Under Secretary to Chief Secretary by his letter dated 8/5/14 transferred the same to the PA to the Secretary (co-operation) with a request to furnish the information directly to the complainant. The PA to Secretary(co-operation) in turn transferred the said application u/s 6(3) of the RTI Act 2005 to respondent

No. 1 PIO the registrar of Cooperative Societies Government of Goa, Panaji Goa by letter dated 12/4/14.

3. The Respondent No. 2 Asst. Registrar of Co-operative society (HQ) by his letter dated 21/5/14 called upon the complainant to collect the information on payment of requisite fees of Rs. 90/- . and vide another letter even dated the Respondent No. 1 PIO furnished the information to the appellant on all three points .
4. Being not satisfied with reply dated 21/5/14, the complainant herein preferred the first appeal before the Registrar of cooperative society being first appellate authority on 13/8/14. And the FAA by judgment dated 11/9/2014 directed the respondent No. 1 PIO to procure the information from the Asst. Registrar of Co-operative. Society, Panaji and to provide the information to the appellant within 15 days.
5. In pursuant to the said order of the First appellate authority The respondent No. 1 PIO by his letter dated 15/9/14 provided him the information at point No. 1 and with regards to point No. 2 and 3 it was informed that the same would be provided to him as soon as further needful action taken by their office in the said matter. A copy of the letter dated 8/9/14 of the Ass. Registrar of Co operative was also enclosed.
6. Being aggrieved by the action of Respondent No. 1 PIO and respondent No. 2 Asst. Registrar of Co-operative Societies (HQ) the complainant approached this commission on 22/9/14 by way of complaint filed u/s 18 of RTI Act, 2005.
7. The matter was listed on board and was taken for hearing. In pursuant to the notice of this Commission, the complainant appeared in person. The then PIO Respondent No. 1 Shri Brijesh Manerkar and Respondent No. 2 Shri P.A. Parab were also present .

8. Reply came to be filed by Shri P.A. Parab on 24/6/15, by present PIO Shri P.J. Braganza on 14/9/16 and by then PIO Shri Brijesh Manerkar on 18/5/17. The copies of the same were furnished to the complainant .
9. Complainant also filed his counter replies / files rejoinders on 17/10/16, and on 25/5/17.
10. I have considered the reply and various correspondence placed on record by both the parties and also the submission made by them .

Complainant Submissions :-

11. It is the case of the complainant that the Respondent PIO has charged him and only provided him copy of the transfer of application and the copies of his complaint which was not sought by him . It is his contention that the fees of the Rs. 90 is collected by the Respondent PIO was un warranted and on that ground he sought for refund of the fees paid by him.
12. The records reveals that my predecessor has directed to refund the said amount of Rs. 88/- to the complainant and the same is reflected in the Roznama of 17/10/14.
13. It is further case of complainant that the reply dated 8/9/14 and 15/12/13 by the Respondent No. 2 ARCS Shri P.A. Parab were found completed contractory in nature and as such it is his case that P.A. Parab had committed serious fraud by furnishing false and misleading information by misrepresenting facts of vested interest and is done in connivance of the said management of Shangila housing society.
14. It is further case of complainant that the respondents failed to provide the requested information within the period specified under subsection (1) of section 7, and as such P.Io has deemed to have refused the request under subsection (2) of section 7. And therefore he had prayed for taking action under subsection

(1) and subsection(2) of section 20 of the RTI Act against its Respondents.

Respondent No. 2 P.A. Porob Submission:-

15. The respondent No. 2 Shri P.A. Parab vide his reply dated 24/6/15, at para 3 have contended that the practice of filing of returns was introduced after the enforcement of Goa Societies Act 2001 which came into effect on 26/1/2008. and as such all the co-operative housing societies were required to file returns every year with effect from year 2007 to 2008. It is his contention that in pursuant to his letter dated 15/12/2013, the society continued to file their return as such vide letter dated 8/9/14 he informed that said society is filing the regular returns as per section 81 Goa Co-Operative societies Act 2001.
16. Vide said reply Respondent NO. 2 further contended that the application was filed by the complaint u/s 6(1) of RTI Act on 2/5/14 and that time the said Shangri-La Co-operative society was very prompt in filing returns as such it is case that there is no misleading information provided to the complainant by him.

Submission Respondent No. 1 Brijesh Manerkar

17. The then PIO Shri Brijesh Manerkar have contended vide his reply dated 18/5/2017 that he has been very prompt in replying the application of the complainant . It is his contention that the said application was received by him somewhere after 12/5/14 and that he has furnished the information to the complainant on 21/5/14.

It is his further contention that as per the order of the First appellate authority vide his letter dated 15/9/14 furnished the copy of the clarification/comment dated 8/9/14 received from the Asst. Co-operative society in respect to the complaint dated 28/3/14 filed by the complainant and that since the inquiry was in progress in respect of the complaint filed by complainant the

information at point NO. 2 and 3 could not be furnished to him at that particular time..

He further contended that as per the direction of the commission in complaint NO. 7 of 14 their office has conducted inquiry into to registration of Shangila apartment cooperative housing society by appointing Shri Ekanath Kauthankar as inquiry officer and the said inquiry officer has submitted his report on 30/6/2015. It is his further contention that the said report was furnished to the complainant on 29/9/2015.

18. In short it is the contention of both of the Respondent that the y have acted bonafidely without any malafides and provided correct information to the complainant .

19. It is necessary to clear some misconceptions about the RTI Act . The RTI Act provides access to all information that is available and existing this is clear from a combined reading of section 3 and the definitions of 'information' and 'Right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analyzed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the Public authority, the Act does not cast an obligation upon the Public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing to inferences and /or making of assumption . it is also not required to provide 'Advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many

public authorities have, as a public relation exercise, provide 'advice' guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

20. On perusal of the application on the complainant dated 2/5/15, it is seen that he has sought information on three points with regards to his complaint dated 28/3/14. The complainant herein wanted to know the status of the complaint, action taken report and the compliance report. When the application u/s 6(1) of RTI was filed by the appellant on 2/5/14 the inquiry on the said complaint dated 28/3/2014 was in progress. The inquiry concluded and the report was submitted only on 30/6/15 by the inquiry officer. As such I do not find any fault in the reply given by the Respondent No. 1 PIO u/s 7(1) of RTI Act and also in compliance of the order of the first appellate authority.

21. Be as it may be

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."

22. At para 11 further also held that:-

"unless and until it is borne on record that any officer against whom order of penalty for failure to be sought to be levied and has occasion to comply with an 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".

23. As in another case reported in Delhi High Court 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, threat 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.”

24. The High court of Punjab and Haryana at Chandigarh in Writ Petition No. 6504 of 2009; State of Punjab and others V/s State Information Commission Punjab has held at para 3:-

“The penalty provisions under section 20 is only to sesitixe 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 a delay and it is explained, the question will only revolve whether the explanation is acceptable or not. If there had been a delay of a year and if there was superintendent, who was prodding the Public Information Officer to Act, that is self 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.

25. By applying the above ratio and considering the facts on record, I am satisfied with his justification given by both the PIOs and I do not find any cogent and convincing evidence as against Respondent PIOs to hold that there is delay caused in providing the information was either intentional or deliberate and that they have provided false and misleading information to the complainant. As such the relief sought by the complainant u/s(1) and (2) of section 20 of RTI Act, 2005 cannot be granted.

Vide reply dated 25/5/17, the complainant have come up with grievance that the report of Shri Shri Ekanath K. Asst. registrar of Co-operative Society is concocted story and appears to be nothing but a fars and attempt to cover up the deeds of the authority. The complainant disputes the contents of said inquiry report such grievances can be redressed by the complainant before appropriate forum as the same is beyond the scope of RTI Act and this commission is not empowered and have no jurisdiction to consider such grievances .

In view of above the complaint stands dismissed.

Proceedings 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

