

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 07/2017
In
Appeal No. 160/SIC/2012

Dr. (Ms)Kalpana V.Kamat,
Aldeira Arcade, 1st floor,
Bhute Bhat, Mestawado,
Vasco-Da-Gama,Goa.

.....Appellant

V/s.

1. Public Information Officer
Mormugao Municipal Council.
Vasco-Da-Gama, Goa.

2. The First Appellate Authority,
Director of Municipal Administration,
Panaji Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 14/11/2017

ORDER

1. This commission Vide order dated 25/01/2017, while disposing the above appeal directed Respondent No. 1 PIO to furnish the complete information at query No. 1,3,4,5(c),(f),(g),(h),(i),(j),(k),(m),(o),(p),(r),(s), 10,11,,13,14,15,16 to the appellant as sought by her by her application dated 14/05/2012. The commission also directed to then PIO to showcause as to why penal action as contemplated u/s 20(1) of the Right to Information act 2005 should not be initiated against him and why he should not be made to compensate appellant in terms of section 19(8)(b).
2. In view of said order passed by this commission on 25/1/2017, the proceedings should converted into penalty proceedings .

3. In pursuant to the said order, showcause notice was issued to then PIO on 7/2/2017 .
4. The present PIO Shri Manjo B. Arsekar appeared along with Advocate V. Pednekar and filed application dated 17/2/2017 thereby informing the name of then PIO as Shri Agnelo A.J.Fernandes . The Chief officer Smt. Deepali D. Naik also submitted an letter in the registry of this commission enclosing thereby the acknowledgment copies of the notices served upon then PIO Shri Agnelo A.G Fernandes .
5. A reply also filed by the present PIo Shri Manoj Arsekar on 21/3/2017 and also affidavit on 4/7/2017 affirming that information as directed by this commission have been furnished to the appellant vide letter dated 9/3/2017 based on the information available as per the records maintained by the Mormugao municipal council. A copy of the said letter alongwith the Xerox copy of RPAD was enclosed to the said reply. The Advocate for Respondent also submitted that the inspection of the files also given to the appellant on 25/5/2017 .
6. The roznama dated 4/11/14 reveals that this commission directed Mr. Parab to furnish the certified copies of the entire file of Chamundi Archade in chalta No. 227/228 of P.T. Sheet No. 152 and of Naik Building situated in chalta No. 77/ P.T. Sheet 153 of Baina, Vasco, Mormugao Taluka to the appellant and was directed to file compliance report with regards to the number of pages in information have been supplied.
7. Though the advocate Shri V. Pednekar sought time on number of occasion to file reply of then PIO Shri Agnelo Fernandez and Shri Meghnath parab , failed to do so. Last and final opportunity was granted to both the then PIO on 30/10/2017 to file written synopsis within 8 days. As parties did not show any further interest in the said matter and as substantial time has since elapsed , the commission

felt it appropriate to dispose this penalty proceedings on the material available in the records.

8. The Advocate for the Respondent vide reply dated 22/9/2016 have submitted that then PIO Shri Meghnath Parab had tried to comply the direction issued by this commission on 4/11/14. Vide letter dated 26/11/2014 he had called upon appellant to visit their office on 1/12/2014 at 4.00p.m. to collect the documents and also provided copies of documents vide letter dated 24/7/2014. The copies of forwarding letter dated 24/7/2014 and the Xerox copy of RPAD dated 25/7/2014 was also enclosed in support of his contention.
9. However there is nothing placed on records by then PIO Shri Agnelo Fernandes to show that order of the First appellate authority was complied within stipulated time of 7 days from the date of order. The then PIO Shri Agnelo Fernandes have also not assigned any reasons for not complying the orders of Respondent no. 2 FAA.
10. The Hon'ble Bombay High Court Goa bench in writ petition No.304/2011 Johnson V. Fernandes V/s Goa State information commission ;AIR 2012 Bombay 56 has observed , at para 6

“ Nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal . In fact , if the petition is intended to furnish the information to Respondent (information seeker) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal ”

In the said case information was supplied for the first time before the first appellate authority The Hon'ble High Court dismissed the appeal of the PIO by upholding the order of this commission wherein the penalty of Rs. 2000/- was awarded for failure to supply information in accordance with the provisions.

11. Yet in another decision reported in AIR 2013 Calcutta 128 in writ petition (c) No. 18653(w) of 2009 Madhab Kumar Bandhopadaya V/s State information Commission at relevant para 22 has held;-

“ I am unable to accept that once the petitioner complied with the order of the Commission dated January 9,2009, through belatedly, penalty under S. 20(1) of the Right to Information Act, 2005 could not be imposed on him, Nor do I see any reason to accept the argument that in each and every case the Commission is not supposed to impose Rs. 250 penalty per day”.

12. The ration laid down by above courts are fairly applicable to the facts of the present case. The first appellate authority passed an order on 27/07/12 and the information came to be furnished to the appellant during the present proceedings on 24/7/2014 by Shri Meghnath Parab. There is delay in furnishing the information. It appears from the records that the then PIO Shri Agnelo Fernandes has not complied the order of first appellate authority.

13. The Appellant have been made to run from pillar to post only to get information. Public Authority must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this Commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible.

14. It is observed that Respondent No. 1 then PIO have not justified the delay in supplying the complete information to the Appellant and also failed to show sufficient cause as to why action should not be taken against him. As such I find that this is a fit case for imposing penalty to then PIO Shri Agnel Fernandes . However since there is nothing brought on record by the appellant that such an lapse on the part of the PIO is persistent, a lenient view is taken in the present matter .

15. In the above given circumstances following order is passed

ORDER

- a) The then PIO, Shri Agnelo Fernandes is hereby directed to pay a sum of Rupees 2000/- (Rupees Two Thousand only) as penalty for not complying the order of the First appellate authority within stipulated time.
- b) The aforesaid total amount as penalty shall be deducted from the salary of then PIO Shri Agnelo Fernandes and the penalty amount shall be credited to the Government Treasury.

Copy of this order be sent to Director of Accounts, Margao, for information and implementation.

Penalty proceedings dispose off accordingly. Pronounced in open proceedings. 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.

Sd/-

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