

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, PattoPanaji-Goa

**CORAM: Smt. Pratima K. Vernekar,
State Information Commissioner.****Penalty 09/2016
In Appeal No. 23/SIC/2014**

Shri Trajano D'Mello,
R/o. Opposite Peddem Sports Complex,
Mapusa, Bardez-GoaAppellant

V/s.

Administrator of Comunidades,
Public Information Officer (PIO),
North Zone,
Mapusa, Bardez-Goa Respondent

Decided on: 14/06/2017**ORDER**

1. While disposing the appeal by order dated 18/17/2016 this Commission directed Respondent Public Information Officer (PIO), Administrator of Comunidade Mapusa, Bardez-Goa to provide information free of cost as sought by the appellant vide his letter dated 11/10/2013 within 20 days from the receipt of order. In the same order this Commission also issued notice under section 20(1) of the Right To Information Act 2005 (RTI Act 2005) and also under section 19(8)(b) of the RTI Act, 2005 to the Respondent PIO.
2. Accordingly a notice was issued to the Respondent No. 1 PIO on 26/07/2017.
3. In pursuant to the said notice the Respondent PIO Shri Clen Medeira filed his reply on 22/08/2016. On the same day application also came to be inwards with the Registry of this Commission by the appellant inter alia intimating

that he has not received information nor any communication is received from the Office of Respondent No. 1 PIO despite of the orders from this Commission.

4. The appellant by his application dated 3/10/2016 gave the names of the Administrator of Comunidade, Mapusa from the year 2013 till date. Accordingly showcause notice issued to then PIO Chandrakant Shetkar, Vishant S. N. Gaunekar, Narayan M. Gad, Dashrat M. Redkar, Pundalik Khorjuekar and Clen Madeira on 13/10/2016 under section 20(1) and 20(2) seeking reply from PIO showing as to why the penalty and the Compensation as prayed for by the Appellant should not be granted.
5. In pursuant to the notice Shri Narayan M. Gad filed his reply on 3/01/2017. Shri Vishant S. Naik filed his reply on 18/01/2017. Shri Dashrath M. Redkar filed his reply on 18/01/2017 and Shri Pundalik Khorjuekar filed his reply on 16/02/2017. The documents in support of their contention were relied by Shri Vishant S. Naik Gaunekar and Narayan M. Gad. No reply came to be file on behalf of Chandrakant Shetkar.
6. It is case of the then PIO Shri Pundalik Khorjuekar, Shri Dashrath M. Redkar and of Narayan Gad that he was not officiating as PIO when the initial application under section 6(1) was made nor when the order was passed by the FAA nor when the matter was disposed by this Commission. They had given the specific dates of their resuming charges as Administrator of Comunidade, Mapusa, Bardez and date of relieving from the said charge. Supporting documents were annexed by Shri Narayan Gad.

Shri Vishant Gaunekar vide his reply dated 18/01/2017 had contended that he was holding additional post of charge of Administrator of Comunidade, North Zone, Mapusa on 16/05/2014 and his predecessor Mr. Chandrakant B. Shetkar have never told him anything about RTI application, so also there was no proper records maintained concerning RTI applications as such he tried to streamline the disposals of RTI application by their office

order dated 23/05/2014. He has further stated that he was relieved from the said charge by the order dated 1/09/2014. Supporting documents were also annexed to his reply.

In the reply dated 3/10/2016 filed by Shri Clein Madeira in penalty No. 08/2016 In appeal No. 22/SIC/2014 he has stated that he had taken charge of Administrator of Comunidade, North Zone, on 23/05/2016. It is seen from the records that notice was duly served on PIO Shri Clein Madeira and opportunity was granted to him to file his say in the appeal No. 22/SIC/2014. Despite of granting opportunity to file reply, no reply came to be filed as such the Commission had to pass an order based on the available records. The observation of the said facts have been reflected in the Commission's order dated 18/07/2016 at para 8 and 11. Further vide said order the Commission had directed the Respondent PIO to provide information free of cost as sought by the appellant. The Appellant have categorically informed this Commission that no order of this Commission have been complied by the PIO. The Respondent PIO Shri Clein Madeira had not assigned any reasons for not complying order of this Commission nor specified any steps taken in that directions.

It is pertinent to note that amended provisions of article 88(ii)(3) of the code Comunidade reads as "All the document and records of the Comunidade, shall be in the custody of Registrar who shall be responsible to the Administrator of Comunidade." Besides amended article 88(b) (I) of the code of Comunidade provided as under "Land dealings and transaction shall be kept open and shall be made available atleast for 10 years. The copies of such land dealings or any such important matters shall be sent to the Administrator of Comunidade for maintaining duplicate copies in his Office."

Inview of the above provision of code of Comunidade it is ample clear that the copies of records/matters pertaining to Comunidade should be available in the Office of Respondent PIO and further that Registrar of Comunidade being Custodian of the records of the

Comunidade is responsible to the Administrator of Comunidade. The Administrator being a controlling authority over the Comunidade and as Registrar is working under him, the Registrar is duly bound to obey the instruction given by the Administrator and the Administrator also can seek required information from the Registrar pertaining to the records of the particular/or any Comunidade. Contention of the Respondent PIO that since the Registrar of Comunidade have authority to give the required information and he is not required to furnish the information to the Appellant doesnot hold good sustained as the Administrator of Commmunicades also requires to maintain duplicate copies of the records as per the Code of Comunidade.

Respondent PIO, Shri Clen Madeira being the Controlling authority ought to have obtained the required information from the Registrar of Comunidade and furnish the same to the Appellant, which the Respondent PIO in the present case have failed to do so. The same could have been also obtained by PIO by resorting to provision 2(f) of RTI Act also nothing is placed on record by PIO, Shri Clen Madeira who was officiating as PIO when the order was passed by this Commission, of having complied the order dated 18/07/2016. In absence of any documents/compliance report of PIO, this Commissions has no any other option to believe the statement of appellant that he has still not received information.

7. A similar issue was raised and decided by the Hon'ble High Court of Andhra Pradesh at Hyderabad in ***writ petition No. 4109/2008 dated: 29-02-2008 (Md. Shafiquzzaman, V/s A.P. Information Commission.)***

In the said case PIO was directed by the information Commissioner to furnish the information as sought by petitioner. Despite receiving the said order the Respondent PIO failed to furnish the information and therefore petitioner was constrained to file writ petition. While allowing the same it was observed :

----- "that lethargic attitude of the Officers concerned and the manner in which the Govt. is procrastinating the matter in providing the information as sought for by the Petitioner despite the orders of the Chief Information Commission, the Apex body under the Act, dealing with the grievance of the Public in securing information from the Government departments, gives rise to strong suspicion that the Government is disinclined to furnish the information as sought for by the Petitioner in the larger public interest. This conduct of the Government in not furnishing the information that too on the directions of the Chief Information Commission runs contrary to the provisions of the Act which was enacted to bring about transparency in the working of the Government, accordingly the Government was directed to furnish the information as sought for by this Petitioner within a period of two weeks."

8. In another case while dealing with the scope of the commission in enforcement of the orders passed by it, the Hon'ble Apex court has in case of ***Sakiri Vasu v/s State of Uttar Pradesh and Other reported in AIR 2008 SC 907*** at para 18 and 19 has held ;

"It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all

such acts or employ such means as are essentially necessary to its execution.

The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edition, Page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission. 20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

9. In yet another judgment of the Hon'ble High Court of Karnataka at Bangalore, Division Bench in ***contempt of the court case No. 525 of 2008; G. Basavaraju V/s Smt. Arundhati and another***, while deciding a point for determination as to Whether, for disobedience of the order passed by the Karnataka Information Commission, in exercise of the powers and functions under Sections 18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, is maintainable, it is held:

“ The powers of the Commission to entertain and decide the Complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying

object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated. "

10. Shri Clein Madeira has admitted by this reply that he was PIO when the matter was heard and disposed by this Commission. Shri Clein Madeira has filed reply to the Showcause notice in very casual manner. He is silent on complying with the directions of this commission. He also didnot bother to remain present before this Commission in pursuant to the Showcause notice. The reply was placed on record through his Advocate Bhosle thereafter Advocate Bhosle also didnot appeared, as such no clarification could be sought/obtained from them. Since averments made by the appellant in his application dated 22/08/2016 are not categorily disputed by Shri Clein Madeira I have no hesitation in holding that till date no information is furnished to the Appellant.

11. The then PIO Shri Chandrakant B. Shetkar was Officiating as PIO when the Order was passed by the FAA. The record shows that he has failed to comply with directions given by the FAA who is his Superior Officer.

The conduct on the part of the above 2 PIOs appears to be suspicious and adamant. Apart from one letter dated 22/10/2013 made by then APIO to the Office of Comunidade of Serula nothing is placed on record to show that they have taken sufficient effort to secure the said information from the said Serula Comunidade after the order of 1st Appellate Authority or after the order of this Commission.

The PIO should fearlessly perform their duty and obligation under RTI Act, within 4 corners of law, as the

very intent of RTI Act, is to bring transparency in the affairs of Public authorities

12. If the correct and timely information was provided to the Appellant, it would have saved valuable time and the hardship caused to him in pursuing the said Appeal before the different Authorities. It is quite obvious that the Appellant has suffered lot of harassment and mental torture and agony in seeking information under the RTI Act which is denied to him till this date. If the PIO had given prompt and correct information such harassment and detriment could have been avoided.
13. Considering the above conduct I find that PIO Shri Clen Madeira has malafides and without any reasonable cause have persistently not furnish the information to the Appellant
14. As nothing has been placed on record by the appellant that lapses on the part of Shri Chandrakant Shetkar are persistent, this Commission takes lenient view against him.
15. I find that this is fit case for imposing penalty as provided under section 20(1) of the Act against Clen Madeira.
16. Considering the powers accorded to this Commission as held by the honourable Supreme Court in the above rulings the following order is passed.

ORDER

- a) The present PIO is hereby directed to comply with the directions given by this Commission at para 13(a) of the order dated 18/07/2016.
- b) The Then PIO Chandrakant B. Shetkar is hereby directed to be vigilant henceforth while dealing with the RTI matters and any such lapses in his part in future will be viewed seriously.

- c) PIO, Shri Clen Madeiira shall also pay Rs. 3000/- as penalty for not taking any effective steps in complying the order of this Commission and for not furnishing the information to the appellant despite of order of this Commission.
- d) Aforesaid total amount as penalty shall be deducted from the Salary of PIO in two equal instalment and penalty shall be credited to the Government Treasury. The Deduction shall start from the month of July.
- e) Copy of the order be sent to Director of Accounts Panjim and to Collector North Goa Panjim for information and implementation.

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 under the Right to Information Act 2005.

Pronounced in open proceedings.

Sd/-

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

Kk/-