

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

Penalty Case No.31/2017

In

Appeal No.100/SIC/2015

Mr. Jerry Braganza,
Near St, Jeromes Church ,
Mapusa Goa.

...Appellant

V/s.

- 1 The Public Information Officer (PIO),
Administrator Comunidade North Zone ,
Mapusa Goa .
2. The First appellate Authority (FAA),
Office of the Collector North Goa.
Panaji Goa.

....Respondents

CORAM:

**Smt. Pratima K. Vernekar,
State Information Commissioner.**

Disposed on:- 10/10/2017

ORDER

1. While disposing the above Appeal, by order dated 10/05/2017, this Commission had issued notice under section 20(1), 20(2) and under section 19(8) (b) and also seeking reply from Respondent No. 1, then PIO (Public Information Officer), Administrator of Comunidade Mapusa to Showcause as to why penalty, compensation disciplinary action should not be imposed/initiated against him vide said order also directions were given to present PIO to furnish the information to appellant within 20 days from the receipt of order .

2. In view of said order the proceedings were converted into penalty proceedings.
3. In pursuant to the showcause notice then PIO Shri Dasharath Redkar appeared on 4/9/17 and filed his reply to showcause notice thereby enclosing the covering letter dated 24/7/2017 by which the information was furnished to the appellant. Appellant was also present in person. Copy of the reply of the PIO was furnished to the Appellant.
4. The appellant agreed of having received the information which was furnished to him to his satisfaction. After filing reply , the then PIO did not appear during the penalty proceedings to substantiate his case. Opportunities were granted to him to argue the matter. As he failed to appear commission decided to considered the records available in the file and also to hear the appellant.
5. The Appellant submitted that great hardship has been caused to him in pursuing this RTI Application and lots of his valuable time has been lost and wasted and as such the disciplinary proceeding has to be initiated against the Respondents and heavy cost to be imposed on him for dereliction of his duties.
6. The Respondent then PIO vide his reply dated 4/9/17 has admitted of having received the application of the appellant dated 25/9/14 . He has further admitted that appellant had approach PIO with regards to his application and that point of time Mrs. Baldomera was directed to process the said application and she failed to do so . He further admitted that first appellate authority vide order dated 6/2/2015 directed him to furnish the information

within the period of 15 days from the date of order . He further contended that the said information is furnished by the present PIO as such it is his contention that once the information is furnished to the appellant as directed by FAA, the question of imposing penalty does not arise. He further contended that delay in furnishing information was not intentional and deliberate and same need to be condoned .

7. I have scrutinize the records available in the file, considered the reply of the PIO and also submission made by the appellant.
8. On scrutiny of the application it is seen that the appellant has sought the information pertaining to the **Office of Comunidade North Zone itself** where the then PIO Shri Redkar was also officiating as Administrator. The Then PIO Shri Dashrath Redkar has tried to justify the delay by putting blame on dealing hand Mrs Baldina D'Souza . However the said statement of the PIO has not been supported by any affidavit or any records as such the said statement cannot be taken as gospel truth.
9. The order of the First appellate authority dated 6/7/2015 reveals that respondent were aware of the first appeal and they failed to file the appropriate reply despite of giving opportunity to them so also from the reply of the Respondent it could be also gathered that he was aware of the order passed by the first appellate authority and that he was directed to furnish the information. Despite of same he has not complied the order of FAA nor assigned any reasons for its non compliance.

10. The Respondent No. 1 then PIO is silent on the compliance of the order of FAA. The PIO has no respect to abide the orders passed by the Sr. Officer. After the First Appeal was filed, the Respondent PIO was directed to furnish the information within 15 days time from the date of passing of the Order. The appeal was thus for the purpose of furnishing the information which was refused by the PIO. The order of the FAA was mandatory in nature and required only compliance thereof. Once the order is passed by the higher authority what remains to be done by the PIO is only a compliance thereof. The reply which is filed to the Showcause notice, no explanation or reason is furnished by the PIO for not providing the information and for not complying the order of FAA. It is only during the hearing before this commission and as the Commission has directed to make available the information sought by the Appellant the steps were taken by the by the present PIO . The information came to be furnished to the Appellant on 24/07/2017 before this Commission. There is a delay of approximately about 3 years in furnishing the information in compliance with the order of FAA.

11. 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.

12. 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 (to the appellant) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal ”

The facts in the said case was that the information was not supplied within 30 days and it was supplied before the first appellate authority by including it in the reply of 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.

13. 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”.

14. The ratio laid down by above courts are squarely applicable to the facts of the present case .

15. It is hereby observed that Respondent No. 1 then PIO have not justified the delay in supplying the information to the Appellant. And also failed to show sufficient cause as to why action should not be taken against him. However since there is nothing brought on record by the appellant such an lapse on the part of the PIO is persistent a lenient view is taken in the present matter .

In the above given circumstances following order is passed

ORDER

a) The then PIO, Shri Dashrath Redkar shall pay penalty of sum of Rs. 3000/- (Rupees Three thousand Only).

b) The aforesaid total amount as penalty shall be deducted from the salary of the PIO in two equal installments and the penalty amount shall be credited to the Government Treasury. The deduction will start from the month of November 2017.

c) The present PIO is directed to serve the copy of the order to then PIO Shri Dashrath Redkar.

Copy of this order be sent to Director of Accounts, Panaji, 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

Ak/-

