

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

Penalty Case No.44/2014
In
Appeal No. 07/SIC/2014

Shri Peter Paul D'Souza,
R/o H.No. 63/2, Mainath Bhatti Vaddo,
Arpora, Bardez Goa.

...Appellant

V/s.

1. Shri Rui Cardozo,
The Public Information Officer,
Village Panchayat Secretary(Arpora),
Panchayat of Arpora-Nagoa,
Arpora Bardez Goa.

....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner.

Disposed on:- 25/04/2017

ORDER

1. While disposing the above Appeal, by order dated 07/2/2017, this Commission directed Respondent PIO (Public Information Officer), V.P. Arpora to furnish the information to the Appellant sought as per his application dated 12/8/13 free of cost with in three weeks from the receipt of order and to report compliance of the order along with acknowledgment of the appellant. In the same order this Commission also issued notice under section 20(1) Right to Information Act 2005 (The Act) and also seeking reply from PIO to show cause as to why the Penalty and compensation as prayed for by the Appellant should not be granted.
2. In pursuance to the show cause notice, the Respondent PIO despite of due service of notice dated 28/02/2017 did not bother to appear nor filed his reply. Opportunity was granted to the Respondent to file his say.

3. In the course of the penalty proceedings the Appellant appeared in person , who submitted that Respondent have miserably failed to comply with the order of this Commission and that no information has been received by him till date. Advocate for the Appellant further submitted that disciplinary proceedings has to be initiated against the Respondent and heavy cost to be imposed on him for dereliction of his duties. Accordingly he placed on record affidavit affirming the above fact.
4. I have perused the records.
5. The order dated 2/12/2013 passed by the FAA was not complied by the Respondent No.1, PIO.

The Roznama dated 7/11/14 of this commission recorded in appeal no.7/SIC/2014 reveals that the Respondent PIO has orally confirmed before by predecessor that he did not bother to take any step after receiving the direction from the First Appellate Authority as such separate penalty case was initiated against Respondent PIO . In the said appeal Respondent PIO filed reply on 4/01/2017. After hearing the arguments of both the parties this Commission decided the matter on 7/2/2017. The order of this commission have not also been complied by Respondent PIO as no compliance report is filed by Respondent PIO.

6. It is evident from the records that the order dated 2/12/13 passed by FAA authority was not complied by the PIO. The PIO has also showed no concern even to execute the orders passed by this Commission on 07/02/2016. The said order was pronounced by this commission in the presence of appellant and Advocate for respondent No. 1 as such the Respondent No. 1 PIO was aware of the direction issued by the commission while passing the order. A separate showcause dated 28/2/17 was also served on PIO. From the conduct of the PIO it can be clearly inferred that the PIO has no concern to his obligations under the RTI Act. It is also clear that the PIO has no respect to abide the orders passed by his

Senior Officer and also by this Information Commissioners. Irresponsive attitude of the PIO is further evident from lack of participation in this proceedings inspite of service. He has no explanation to be offered to his above conduct inspite of having opportunity to reply to Show Cause

7. The conduct of PIO herein is condemnable. PIO should always keep in mind that their services are taken by Government to help the people of state in particular and people of country at large and the objective and purpose for which the Act came into existence. Such conduct of PIO is obstructing transparency and accountability in public authorities appears to be suspicious and adamant vis a vis the intent of the Act. Such an attitude of PIOs no doubt requires stringent deterrent action. In the present case the PIO has shown disrespect towards the order passed by FAA and towards this Commission as he failed to remain present before this commission despite of due service.
8. 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.
9. While dealing with 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.”

10. 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 incase 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 (3^d 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.

10. 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. "

11. The appellant by way of affidavit have category stated that a said information in till date is not furnished to him.
12. In spite of Specific notice, the opponent did not show cause why the penalty should be imposed on him under section 20 of RTI Act. if such irresponsible behavior of the opponent is not firmly dealt with, it will set a bad example for all the Public Officer in Goa. I therefore, no alternative except to impose penalty on PIO Shri Rui Cardozo,

In the result, considering the powers granted to this commission as held by the Hon'ble Supreme court in the case of *Sakiri Vasu* (supra), I passed the following order:

ORDER

- a) The PIO, i.e. the Respondent No. 1 Shri Rui Cardozo herein shall pay Rs.5,000/- (five Thousand Only) as penalty.
- b) The aforesaid total amount payable 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 July 2017.

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

