

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Penalty Case No. 04/2016

In

Appeal No. 51/SIC/2015

Nevil B. Furtado,
H. No. 51, Copelwado,
Sernabatim, Salcete-Goa

.....Appellant.

V/s.

1. Public Information Officer,
O/o. The Village Panchayat of Colva,
Salcete-Goa
 2. The First Appellate Authority,
O/o. the Block Development Officer,
2nd floor, Mathany Saldhana
Administrative Complex,
Margao-Goa
-Respondents

Disposed on:- 04/10/2016

ORDER

1. While disposing the above Appeal, by order dated 06/06/2016, this Commission has directed Respondent PIO (Public Information Officer), V.P. Colva, Salcete-Goa to furnish the information to the Appellant sought as per his application dated 13/02/2015. 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 on 13/06/2016, Smt. Sandhya Shirodkar appeared and filed reply to the Showcause notice and subsequent hearings, Respondent No. 1 PIO failed to appear.
3. During the hearing 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. 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 her duties. Accordingly the Appellant place on record his affidavit affirming the above fact.

4. I have perused the records. It is seen that to the application filed by Appellant u/s 6 (1) of the act the PIO has not bothered to reply the same, leave aside furnishing of the information. In first appeal filed before Respondent NO. 2 FAA (First Appellate Authority) the observation were made by it that inspite of notice, the PIO had remained absent and that Respondents are not interested in the matter. The said order also reveals that the Respondent No. 1 PIO also did not file reply before the First Appellate Authority in 1st Appeal and then said Appeal was decided on 29/04/2015 based on the averments made in Appeal.
5. The Respondent No. 1, PIO vide their reply dated 13/06/2016 have relied upon two letters one dated 04/05/2015 by which the information was furnished to the Appellant in compliance to the order of Respondent No. 2 FAA and second the application/reply filed before this Commission on 21/05/2016 in Appeal No. 51/SIC/2015.
6. In the Appeal No. 51/SIC/2015 this Commission after going through the information furnished by the PIO vis a vis application under section 6 it was observed that the PIO has failed to provide the information pertaining to the year 2014 as sought by the appellant and has provided the information pertaining to the year 2015 and as such these Commission came to the finding that the information furnished to the Appellant before this Commission is not in accordance with the RTI application as such by order dated 6/06/2016 directed the Respondent NO. 1 PIO to furnish the entire information as sought by the appellant by application dated 13/02/2015 free of cost within 15 days from the receipt of the order.
7. The written submission's of the Appellant filed on 04/07/2016 and the his affidavit filed in the present penalty proceedings reveals that the Respondent NO. 1, PIO has not furnished the information till date despite of the order of this Commission.
8. The reply filed by the Respondent No. 1, PIO dated 13/06/2016 to penalty proceeding has been filed in very casual manner. The Respondent No. 1, PIO is silent on the compliance of the order of this Commission. The document relied by them are prior to passing of the order by this Commission. As the Respondents were continuously absent no clarification could be obtained with regards to the compliance of order of this Commission. As such there is no hesitation for this Commission to accept the submission made on behalf of the appellant that the order of this Commission has not been executed by the Respondent No. 1 PIO and the information has not been provided till date.
9. Further it is observed that Respondent NO. 1 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 her.

10. 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 this Information Commissioners. The PIO has also shown no concern even to execute the orders passed by this Commission on 06/06/2016. Irresponsible attitude of the PIO is further evident from lack of participation in this Appeal inspite of service and then in Penalty proceedings as guest appearance. He has no explanation to be offered to his above conduct inspite of having opportunity to reply to Show Cause.
11. 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 this Commission and he deliberately failed to remain present before respective authorities despite of due service.
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. 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.”

14. 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.

15. 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. ”

16. Considering the above conduct, I find that the PIO has malafide and without any reasonable cause has failed to furnish the information within the time specifies under sub section(1) of section 7 of the act and has thus malafide denied the request for information. The Respondent No. 1, PIO also failed to comply with the order of this Commission. Thus I am convinced and is of the opinion that this is a fit case for imposing compensation on the PIO to be paid to Appellant as per section 19(8)(b).

I am also of the opinion that the PIO has without any reasonable cause persistently has not furnished the information within time provided and hence this is a fit case to recommend for a disciplinary action against the PIO under the service rules applicable to him in terms of section 20(2) of RTI Act.

17. 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 order:

ORDER

- a) The PIO, Respondent No. 1 shall pay to the Appellant a sum of Rs. 5000/- (Rupees five thousand Only) as compensation for causing him hardship and mental torture and agony in seeking the information.
- b) The aforesaid total amount payable as Compensation shall be deducted from the salary of the PIO shall be deposited in this Commission for onward payment to the Appellant.

Copies of this order be sent to 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,
Panjim-Goa