

**BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.**

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

Appeal No.126/ SCIC/2015/

Peter Lobo ,
H.No. 134, Lobo Vaddo,
Parra, Bardez Goa.

.....Appellant.

V/s.

1. Sarpanch of Village Panchayat Parra,
Bardez Goa.
2. Public Information Officer/
Secretary of Village Panchayat,
Parra , Bardez Goa. ...Respondent

Filed on: 14/12/2015
Decided on: 9/03/2017

ORDER

1. The second appeal came to be filed by the Appellant Mr. Peter Lobo on 14/12/2015 against Respondent No. 1 Deliha Lobo, Sarpanch of Village Panchayat Parra Bardez Goa and as against Respondent No. 2 Shri Eknath Talkar, Public Information Officer (PIO), Village Panchayat Parra under section 3 of section 19 of Right To Information Act 2005 (herein after referred to as RTI Act).
2. The facts leading to the second appeal are that the Appellant vide his application dated 31/07/2015 had sought certain information at point no. 1 to 6 as stated there in the said application concerning the construction being carried out by one Narayan Chodankar in survey_No. 98/25.
3. The Respondent No. 2 PIO vide his letter dated 27/08/2015 supplied the information to the Appellant pertaining to survey No. 98/26.
4. That the appellant vide letter dated 31/08/2015 brought to the notice of the PIO that the information sought by him vide his reply dated 31/07/2015 was pertaining to survey no. 98/25 and that

they have given the information pertaining to survey No. 98/26. The Respondent No. 2 PIO vide his letter dated 14/09/2015 replied to the Appellant interalia submitting that the Panchayat has not issued any license to Narayan Chodankar in Survey No. 98/26 nor in Survey No. 98/25 in Parra Bardez.

5. The Appellant then approach the BDO at Mapusa being First Appellate authority (FAA) on 8/09/2015 under section 19(1) and the FAA has observed that the correct information was furnished to the appellant on 14/09/2015. The said order also reveals that the appellant has acknowledge the receipt of the application. However, he prayed to impose penalty and fine on the PIO for furnishing the information beyond the period of 30 days. The said was not granted by the FAA as they were not competent to award the same.
6. Being aggrieved by the said order of FAA, second appeal came to be filed with the prayer to pass any other order in the facts and circumstances of this case on 14/12/2015.
7. After notifying parties matter was listed on board and taken up for hearing.
8. During the hearing the appellant was present in person. Both the Respondents were duly represented by advocate Pankaj Pai Vernekar. A application dated 08/02/2016 submitting additional documents were also filed by the appellant thereby submitting that the penalty of Rs. 30,00,000/- has to be imposed also on Sarpanch and she should be held accountable for her persistently interference/ integration in causing serious hardship to him.
9. Reply came to be filed on behalf of Sarpanch on 22/06/2016 and affidavit in reply also came to be filed on behalf of Respondent NO. 2 PIO on 22/06/2016.
10. During the hearing on 12/10/2016 the appellant submitted that the information have been provided to him only after the order of FAA and he is satisfied with the information which is furnished to him belatedly after the period of 44 days and as such presses for Penal Provision.

11. The appellant also filed rejoinder.
12. **Arguments of the Appellant:-** It is contention of the appellant that both the Respondent deliberately given vague reply to him and the replies furnished by both the Respondent was intentionally meant to harass him and to cause loss of his property. He further submitted that there are some malafides at some level in not supplying the information. He further submitted that there are deliberate and intentional delay tactics adopted in RTI matters by the Village Panchayat of Parra it is contention that the correct information only came to be furnished to him after he approach BDO. It is his further case that such harassment was meted out to him as he had filed cases against Respondent No. 1 for illegal construction in High Court. It is further case that both the Respondent by delaying reply to his application allowed the illegal construction to carry out and complete within 44 days of his application there by putting him into loss of property.
13. It is contention of the Respondent No. 1 Surpanch of Village Panchayat Parra that the Respondent being Surpanch of Village Panchayat is not the necessary party for the determination of present appeal and that he doesnot have any role, rights, powers, duties to be performed under the RTI Act 2005 and the powers/duties etc have been casted only on PIO. Therefore the Sarpanch should be completely out of purview of RTI Act in so far as supply of information is concerned. It is further contention that the Village Panchayat of Parra has already passed an demolition order dated 14/01/2016 against the said Narayan Chodankar in respect of illegal extension of House by the said person in Survey No. 98/25 in Village Panchayat Parra. It is further contention that Panchayat has discharged its duty to take action against illegal construction as stipulated under the Goa Panchayat Act 1994. Respondent No. 1 prayed therefore for deletion/dropping of this Respondent as party in the present Appeal.
14. It is case of the Respondent No. 2 PIO that the application dated 31/07/2015 filed by the Appellant was replied by him on 27/08/2015 and his other application dated 31/08/2015 was duly replied by him on 14/09/2015. It is their case that the both the replies were given within 30 days as contemplated under the Act. As such it is their contention that there was no violation of Mandate of RTI Act. It is further their contention that vide their

letter dated 14/09/2015 they have provided clear and complete information in respect of both the survey that is 98/26 and 98/25. It is further submission that section 21 of the RTI Act would be applicable to them as said section specifically provide that no suit, prosecution or other legal proceedings shall lie against any person for any thing which is good faith in lawful discharge of his duty.

It is submissions of both the Respondents that Appellant is chronic Litigant and has filed several false and frivolous case against them as Appellant has personal/Political enmity against Respondent No. 1.. They have further submitted that present appeal is one of proceedings filed with an intention of abusing the present process of law and harassing the Public Servant and as such the said grounds itself the present appeal deserves to be dismissed.

- 15.** First point for my determination is:- 1) whether the Respondent No. 1 Surpanch can be penalized under the RTI Act.
- 16.** On perusal of the Records it is seen that the Respondent No. 1 Surpanch was not made party before the FAA. Judgment and Order of FAA reveals that Appellant has only prayed before the FAA to impose penalty/ fine on PIO for not furnishing the information.
- 17.** It is pertinent to note that as per the provision of the RTI Act only PIO who are notified under the act can only be penalize under section 20(1) and not any other authority including FAA. Judgment and Order of FAA reveals that Appellant has only prayed before the FAA to impose penalty fine on PIO for not furnishing the information.
- 18.** The provision of RTI Act it indicates entire Responsibility in providing information sought rest on PIO and non compliance of mandate makes PIO liable for punitive action thus I hold that no any action can be initiated against the Surpanch under the RTI Act.
- 19.** The grant of Penalty is akin to conviction in criminal proceeding and level of the element of Criminal trial should be available for grant of Penalty. This observation of mine are based on the ratio laid down by Hon'ble Court of Bombay at Goa in *writ*

petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others wherein it is held;

" 11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."

20. The High Court of Punjab and Haryana at Chandigarh in writ petition No. 6504 of 2009; State of Punjab and others V/s State Information Commission Punjab has held at para 3

" The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person sees to obtain. It is not every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve in whether the explanation is acceptable or not. If there had been a delay of a year and if there was a superintendent , who was prodding the public information officer to act, that it self should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified."

21. It is contention of appellant that there was deliberate delay of 44 days caused by PIO and on the basis of that Appellant has sought penalty, being so the burden to prove that there is malafide in denying the information lies on appellant. It is not disputed that the RTI application was responded by the PIO within time. When it is brought to the notice of PIO by Appellant that information pertaining to Survey No. 98/26 was furnished to him and what he had sought for was in respect of survey No. 98/25, the PIO without any further delay furnished complete information in respect of both the survey number. There is no evidence on record to show that the non furnishing the information was intentional or deliberate. In the above background that this Commissioner has observed that PIO has shown his willingness in furnishing the information and that there is no intentional or deliberate attempt or malafide intention in not supplying the same as such this Commissioner concludes that levie of Penalty and disciplinary proceeding and

compensation is not warranted in the proceedings. With this observation and the proceedings in Appeal stands closed.

Order to be communicated to the parties.

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/-

(Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa

