

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

Appeal No. 214/2017

Vishnu A. Priolkar,
H.No. C/5/55,
Mala Panaji Goa.

.....Appellant

V/s.

1.The Public Information Officer (PIO),
Principal, Sanjay School,
Porvorim Goa.

2.First Appellate authority ,
Member Secretary,
Sanjay School,
Porvorim Goa .

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 06/12/2017

Decided on: 09/03/2018

ORDER

1. The Facts in brief which arises in the present appeal are that the appellant Shri. Vishnu A. Priolkar by his application dated 5/9/2017 filed u/s 6 (1) of Right to Information Act, 2005, sought from Respondent no. 1 PIO of Sanjay School Porvorim, Goa, certain information on 8 points as stated therein in the said application.
2. It is the contention of the appellant that the Respondent No. 1 PIO vide his letter dated 26/9/2017 returned his original application with direction to file application in a format as per the circular of department of Information and Publicity.
3. Being aggrieved by a such a response of Respondent PIO , the appellant preferred first appeal on 26/10/2017 before the Member Secretary of Sanjay School, Porvorim being First Appellate Authority (FAA) who is the respondent NO. 2 herein.
4. According to the appellant the part of the information at point NO. 1,3,5and 8 was finished to him by Respondent No. 2 First appellate

authority on 25/11/2017 before deciding his first appeal by Respondent No. 2

5. It is contention of the Appellant that the Respondent No. 2 FAA did not dispose the First Appeal as such he was forced to approach this Commission by way of second appeal filed under section 19(3) of the RTI Act, 2005 on 6/12/2017. In the second appeal he had sought for the direction as against respondent PIO to furnish him correct and complete information at point No. 3,4,5,and 8 before this commission free of cost and for invoking penal provisions.
6. Notice were issued to both the parties. In pursuant to which appellant was represented by his brother Shri Uday Priolkar. Respondent PIO Shri Tatu Kudalkar was present . Respondent No. 2 first appellate authority Mrs Olga Menezes was present.
7. During the hearing the PIO submitted that the information alongwith the document were furnished to the appellant by Ex-member Secretary who was holding the charge of Administrative section. Since the Appellant was not satisfied with the information at point No. 3,4,5,and 8, he showed his willingness once again to provide him the information pertaining to above points.
8. Respondent No. 1 PIO filed his reply on 7/2/2018 there by enclosing the copies of available information and Respondent no. 2 filed his reply on 7/2/2018 alongwith enclosures. The copy of the letters dated 23/11/2017, 27/1/2018, 16/2/2017 and 21/2/2018 was also relied in support of his contention that the information have been furnished to the appellant .
9. The copies of the reply and above documents were furnished to the brother of the appellant . On 21/2/2018 the brother of the appellant appeared and submitted that he has received the information from the Respondent No. 1 PIO and he has no further grievance in respect of information furnished to him. However he submitted that the PIO ought to be penalized for not

furnishing information within 30 days. He further contended that he has approached the office of PIO on 27/9/2017 after the PIO resume back his duties and that PIO has agreed to furnish him the same but failed to do so . It is his contention that the respondent delayed to finish information to cover-up irregularities committed by him and to protect himself and his close relative who has been illegally appointed for the post of Dance teacher in the Sanjay School violating the recruitment rules issued by the Government. The appellant relied upon following citations

- a. Writ petition No. 11034 of 2008 decided on 24/10/2008 ;Shri H.S. Satish Babu Public information officer. V/s Shri K.L.Srinivasan and the State Information Commissioner (High Court of Karnataka),.reported in 2009(1) RTI -435.
 - b. Writ petition No. 3262(MB) of 2008 decision dated 1/7/2008The (High Court of Allahabad Lucknow) Bench.- Public Information V/s State information Commissioner U.P.
 - c. Ramesh Sharma and another V/s the State Commission and others. (in the High Court of Punjab & Haryana) decided on 8/2/2008.
 - d. Writ petition No. (c)6864/2010 decided on 7/10/2010) Union of India V/s Tayyab Khan (High Court of Delhi).
 - e. Complaint No. 10/A/2006/MMC Ankush Naik V/s PIO Mapusa Municipality (Goa State information Commission).
 - f. Complaint No. CIC/WB/A/2007/01011 (Central Information Commission) Dinesh Negi V/s Ministry of Personnel Public Grievances
10. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005, The Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed

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

11. In the back ground of above ratio is laid down by the Hon'ble High Court, the point arises for my determination is
 - a) Whether the delay in furnishing information was deliberate and intentionally?
12. I have perused the records available in the file so also considered the submissions made by both the parties.
13. The PIO vide his reply have contended that he was not the Administrative Head as such he sought the assistance of the Member Secretary of Sanjay center for Special Education School vide his note dated 12/9/2017. He contended that vide said note he request to furnish the information at serial No. 1 to 8 and the said Administrative head returned the application of appellant back vide his office note 14/9/2017 with a instruction to PIO to inform the appellant that his application is not according to the prescribed format as required under circular No. DI/INF/RTI/2013/3786 dated 30/10/2013 of Department of Information and Publicity. It is his further contention that in pursuant to the above instruction of member secretary vide letter dated 26/9/2017, he brought said fact to the notice of the appellant and the application in original was returned to the appellant. It is his further contention that he was on earned leave from 15/9/2017 to 23/9/2017. It is his further contention that he once again vide his note dated 26/10/2017 requested Member Secretary to furnish him the information since the Member Secretary is a Administrative head and was holding the said information. It is his contention that the Member Secretary has furnished the information to the appellant on all points vide letter dated 23/11/2017. It is his further contention that he vide letter dated 25/1/2018 again invited appellant to collect the information at point No.3,4,5 and 8 but appellant did not collect the

same . The above reply of PIO was supported by documentary evidence.

14. The respondent No. 2 First appellate authority have contended that he had directed Mr. Tatu Kudalkar PIO of Sanjay Center for special education to inform the appellant to submit the application in prescribed format. It was further contended that he had furnished information to the appellant, vide letter dated 23/11/2017 by Registered A.D. He apologized for not passing an order on his first appeal.
15. The Member Secretary has erred in directing the PIO to return the application to the appellant . As per section 6 (b) it was incumbent on PIO to render reasonable assistance. As such the act on the part of both the Respondent was not with conformity with the provision of RTI Act.
16. The Member Secretary who was the administrative head of the said institution was holding the said information . As such it was incumbent on him to render all assistance to the PIO interms of sub section (4) and (5) of section 5. In the present case the PIO have again and again requested him to provide the said information to him for onward submission to the appellant. The letters/Notes are placed on record by the PIO seeking assistance from Member Secretary for providing the said information. Apparently the PIO was not holding the said information and the Administrative head was the Member Secretary in whose custody the said information was as such I hold that the PIO was diligent in his duties under the RTI Act and as such, he cannot be made scapegoat for the fault of some other person .
17. In case of Shri H.S. Satish Babu (supra), the facts were different then the present case. In the said case the conduct of the PIO was observed and inspite of giving sufficient opportunities to PIO, he has not mend his attitude nor made any serious efforts to appear

personally, but consistently failed to assist the directions issued by the Commission and has compelled the commissioner to invoke section 20(1) of RTI Act.

However in the present case the PIO have promptly appeared in pursuant of notice and filed his reply and since the appellant was not satisfied with the information furnished to him at point 3,4,5,and 8 he again provide the information on 27/1/2018 and the clarification on 16/2/2017 and on 21/2/2018. The PIO time and again have assisted and complied the direction issued by this commission.

18. The citation relied by the appellant in case of Guinder Kaul Gill v/s state ; CCP 612/2007 , the Honble Delhi High Court has held that information can be furnished even in a complaint case . It has also discussed the object of RTI Act. The said authority also speaks about the Locus standi of person is of no avail and that citizen can ask for any information, which is not protected under relevant clause of exemption . But in the present case initially the information was provided by member secretary and then by PIO. There was no denial of information.
19. In case of Ramesh sharma (supra) Honble High court panjab and Haryana has held " if the information is not furnished within the time specified by sub section (1) of section 7 of the Act then under sub section(1) of section 20, Public authority failing in furnishing the requisite information could be penalised . ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases where there is simple delay the commission had been clothed with adequate Powers "***

Hence according to the said judgment penalty u/s (1) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that to without any

reasonable cause . In the present case PIO have tried to justify the reasons for not responding or not providing the information within 30 days time .

20. The case of Union of India (Supra) is also not applicable the facts of the present case as in the said case the information was not existed and the PIO failed to inform the said thing to the appellant but in the present case the information was received by the appellant during the first appeal itself but of course with an marginal delay.

21. The ratios laid down in above cases are not applicable to the facts of the present case for the reasons discussed above. The other citation relied by the appellant are not taken into consideration as it does not have binding effect on this commission .

22. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant has held that at para 6;

“ the imposition of such penalty is a blot upon the career of the officer atlist to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances , therefore, no penalty ought to have been imposed upon the PIO”.

23. The Honble High court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5

“The delay is not really substantial . the information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009. On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court

in the case of A A Parulekar (supra) is applied , then it does appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. "

24. Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another.

"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 seeks to obtain. It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not. I there had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself 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.

25. The ratio laid down in above cases are squarely applicable to the facts of the present case. In the present case the information was sought on 5/9/2017, the PIO was not holding the said information The appellant was supposed to receive the information by 5/10/2017 which has been furnished to him on 23/11/2017 by the first appellate authority during the first appeal itself. There is a marginal delay in furnishing the information.

26. The explanation given by the PIO appears to be convincing and probable as the same is supported by the documents I am of the opinion that the levy of penalty is not warranted in the facts of the present case.

27. The appellant also did not bring cogent and convincing evidence on records showing what was the loss and detriment suffered by him as such the prayer of compensation cannot be granted
28. Since the information is already furnished to the appellant the prayer (I)become infructuas and I hold that no intervention of this Commission is required there to.

Proceedings stands closed.

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.

Pronounced in the open court.

Sd/-

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

Ak/-