

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Complaint No. 03/SCIC/2015

Shri Subodh Vinzanekar,
D-33, Rayesh Chambers,
Marlem Borda,
Margao Goa.

..... Complainant

V/s.

1. Executive Engineer-XXV(Roads)
& Public Information Officer,
Works Division XXV,
PWD, Fatorda, Margao Goa.

..... Opponent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 21/1/2015

Decided on: 16/01/2018

ORDER

1. Facts in brief which arises in the present complaint are that the complainant Shri Subodh Vinzanekar by his application dated 18/9/14 sought certain information on three points as stated therein in the said application from the PIO of works division XXV (Roads), PWD, Fatorda , Margo Goa . The said application was filed u/s 6(1) of the right to information Act by the complainant .
2. The said application was responded by Respondent No.1 PIO on 24/9/14 thereby seeking clarification from complainant with respect to point no.1 and 3 and also requesting complainant to do the inspection of said records .
3. Being not satisfied with the reply of respondent PIO , complainant preferred 1st appeal on 30/9/14 before the superintend surveyor of works , PWD, Altinho-Panaji being first appellate authority and the first appellant authority by an order dated 30/10/14 directed opponents to issue the desired documents to the complainant within 7 days from the date of receipt of payment of Rs 328 towards prescribed charges under the RTI Act .

4. It is the case of the complainant on the receipt of the above order of FAA, he deposited the said amount of of Rs 328 on 13/11/14 vide receipt book no. 201 and receipt no.39 and despite of the same the opponent have not provided him the required information .
5. Being aggrieved by the action of opponent , the complainant have approached this commission on 21/1/15 with the present complaint filed u/s 18 of the RTI Act on the grounds raised in the complaint .
6. Though in the complaint he had prayed for the direction for furnishing him information , during hearing before this commission he waived for such prayer and only pressed for invoking penal sections against the opponent .
7. In pursuant to the notice of this commission , the present PIO shri Flaviano Miranda filed reply on 27/2/17 interalia submitting that he took the charge of PIO on 30/7/15 .
8. The then PIO Shri Agnelo Barros filed his reply on 29/3/17, contending that the appellant had sent a third party to make the payment towards the cost of information and the cashier Jennifer Borges handed over the copy of the letter dated 10/11/14 to the third party and the information despite of keeping it ready , could not be handed over to the said party as he had no letter of authority .It is his further contention that the complainant never visited the office of PIO , neither contacted the Head clerk of ADM section ,to whom, the complainants letter dated 13/9/14 was marked for necessary action u/s 5 (4) of the RTI Act. In brief he has submitted that no information was denied to the complainant and the complainant himself has caused the delay in receiving the same.
9. The complainant filed his submissions on 21/6/2017 disputing the averments made in the reply filed by the then PIO. It is his case that he had personally visited the office of the opponent and had made payments and the Cashier Jennifer Borges got confused and

took the help of other staff Shubhangi Nikkam and thereafter accepted the payment. He further contended that he was told to contact head clerk by said cashier and on contacting head clerk it was informed to him that once the information was ready he will be intimated in writing. It is his further case that despite of the telephonically contacting the head clerk, the said information was not furnished to him .

10. Advocate for the opponent Shri Agnelo D'costa also filed additional reply on behalf of the opponent on 7/7/2017 reiterating the facts mentioned by then PIO in his reply. vide additional reply, respondent have submitted that though the said letter is dated 10/11/14, it was actually sent to the appellant on 14/11/14 as the respondent PIO expected appellant/complainant who was earlier working in their office just prior to his transfer to other office to come and collect the documents after payments of fees made by him from PIO and since the complainant did not collect the information , the said letter was posted by them on 14/11/14. It is his further case that in the said letter it was clearly mentioned that information is kept ready and that complainant himself failed to comply with the requisition.
11. It is the further contention of the respondent that without waiting for the statutory period of 30 days to expired, the complainant preferred 1st appeal prematurely on 30/9/14 .
12. Appellant as well as respondents have relied upon documents in support of their submissions.
13. I have perused the records available in the file so also considered the submissions made on behalf of both the parties .
14. The controversy which arisen here is whether the then PIO is liable for action as contemplated u/s 20 (1) and (2) of the RTI Act,2005 .

15. For the purpose of considering such liability the Hon'ble High court of Bombay , Goa bench at panaji in writ petition 205/2007; Shri A.A. Parulekar v/s Goa State information commission has observed ;

“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 “

16. On perusal of the initial reply dated 24/9/14 given u/s 7 , the opponent have replied that information at point no.2 is not available in his office . Vide reply filed before the FAA (exhibit 'D') the opponent submitted that such information being personal was exempted u/s 8(1)(j) of RTI Act . However vide their letter dated 16/10/14 which was sent to the complainant during 1st appeal, it was informed that a information of Smt Ulbertina Noronha is available in their office and requested to pay cost for photocopies. The reply given u/s 7 of RTI Act and reply filed before FAA is not with conformity with each other . In the present case the PIO in initial reply have submitted that information AT POINT No.2 is not available, subsequently provided him one document. It is the duty of PIO to verify properly and to furnish the information which is available in their official records which are not exempted u/s 8 of RTI ACT. It appears in the present case that PIO might have not thoroughly checked the said information as such replied it as not available . The PIO is hence forth directed to thoroughly verify the records first and to reply correctly in accordance with law.
17. On perusal of the contents of the letter dated 10/11/14 which according to the opponent was sent/posted on 14/11/14 it is seen that the complainant was called upon to make the payment of Rs 328/- when infact the payment was already made by the complainant on 13/11/14. There is no other correspondence placed on record by the opponent of having intimated the complainant to collect the information after the due payments were made by the

Complainant. Nevertheless the opponent cannot be solely blamed for the same , as it is the case of complainant himself as stated by him in his submissions dated 21/6/2017 that, Head clerk had informed him that information is put up for signature of the PIO ,as such it was well within his knowledge that information is kept ready as such he could have contacted the PIO being he personally knew the PIO as he was earlier part of the same office. There is no sufficient evidence placed on record by the complainant that he had contacted the PIO and PIO have deliberately neglected and refused to provide him information despite of payment made by him .

18. Since there was controversy and dispute regarding who made the payment of fees for the required documents , the commission in order to arrive at proper findings and also in the interest of justice, decided to hold inquiry u/s 18(3) of the RTI Act since the complaint had claimed that despite of he personally visiting the office of PIO and depositing the money after the order of First appellate authority, the PIO deliberately and intentionally did not furnish him information as such the onus was on him to prove the same, as such the matter was fixed for filing of affidavit in evidence by complainant.
19. The complainant thereafter remained absent nor filed affidavit in evidence. Ample opportunities were granted to complainant to file the same, but he failed to do so, as such the commission felt it that complainant was not serious/or interested in leading evidence and proving his case and such decided to close inquiry.
20. The Delhi High Court writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide

the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

21. Honble high court of Punjab and Haryana at Chandigarh in civil w.p. No.6504 of 2009 ; state of Punjab v/s state information commissioner 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 no hold up information which a person seeks 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 on whether the explanation is acceptable or not".

22. In the above given circumstance, and by subscribing to the ratio laid down above by High Courts I hold that opponent cannot be solely blamed for the delay in furnishing the information, however there is an lapse on the part of PIO is for not verifying the records properly and for not replying properly intems of section 7 of RTI Act and also for not intimating and for not furnishing the information to the Complainant within 7 days from the receipt of the payment as

directed by the FAA, however considering this is an 1st lapse on part of PIO lenient view is taken in the matter. The opponent is hereby directed to be vigilant henceforth while dealing with the RTI Matter and any such lapses in future would be viewed seriously.

The matter disposed accordingly . 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/-