

GOA STATE INFORMATION COMMISSION

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

Complaint No. 31/2018/SIC-I

Shri Jawaharlal T. Shetye,
H.No. 35/A, Ward No. 11,
Khorlim,
Mapusa- Goa.

.....Complainant

V/s.

1. Public Information Officer (PIO),
Mamlatdar of Bardez,
Mapusa, Bardez-Goa.
2. First Appellate Authority (FAA),
The Dy. Collector & SDO-Bardez,
Mapusa, Bardez-Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 12/06/2018
Decided on: 16/08/2018

ORDER

1. This Order disposes the present Complaint filed by the Complainant Shri Jawaharlal T. Shetye u/s 18 (1) of the Right To Information Act, 2005. The brief facts of the present complaint are as under;
2. The complainant herein Shri Jawaharlal T. Shetye by his application dated 26/2/18 filed u/s 6(1) of the RTI act 2005 sought certain information from Respondent no. 1 Public Information Officer (PIO) of the Office of Mamlatdar of Bardez at Mapusa as stated therein in the said application.
3. It is the contention of Complainant that the said application was not responded by Respondent PIO within time as contemplated RTI act as such deeming the same as refusal the Complainant filed 1st appeal before the Respondent No. 2 on 9/04/2018 and

the Respondent No. 2 First Appellate Authority (FAA) by an order dated 29/05/2018 directed the Respondent PIO to issue the information free of cost within four days.

4. It is the contention of the Complainant that he received the required information from the respondent PIO on 29/05/2018 after a delay of 60 days period. It is also his contention that he is not satisfied with reply furnished to him to his query at serial No. 2 by Respondent PIO.
5. In this background the complainant has approached this commission in this present complaint on 12/06/2018 thereby seeking penal relief as against respondent PIO on the ground that there was delay of 60 days in furnishing him the information by the respondent PIO and also sought for compensation for the harassment caused to him and the detriment suffered by him.
6. In pursuant to the notice issued by this commission, the Complainant opted to remain absent . Respondent PIO Shri Dasharat Gawas was represented by Awal Karkun Shri Kirti Kumar Bandhodkar who filed reply on 9/08/2018. Affidavit of Shri Dattaprasad Khakatkar was also placed on record on 16/08/2018. The copy of the same could not be furnished to the complainant on account of his absence.
7. Since Complainant did not show any interest and as sufficient time has lapsed the commission felt it appropriate to hear the arguments of the respondent PIO. The representative of PIO submitted to consider the reply of PIO and affidavit of Shri Dattaprasad Khakatkar as their submissions.

8. The Respondent PIO vide his reply contended that the information in respect to point no. 1 to 3 was ready within the stipulated time and the appellant was informed accordingly by the concerned dealing staff but he did not collect the same. It is further contended that the order of the FAA was complied on the day of the order itself as the information was ready and which was also collected on the same day by the appellant. It was further contended that there was no any molise and/or wrongful intension in not providing the information to the appellant on his part. The reply of the respondent PIO was also supported by the affidavit of the dealing Clerk Shri Dattaprasad Khakatkar.
9. I have scrutinized the records and also considered submission available in the file.
10. While dealing with such a issue which are in penal nature 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. As such the point from my determination was whether the delay in furnishing the information was intentional and deliberate?
12. In the present case the complainant opted to remain absent and did not show any interest in the present proceedings and has not produced any cogent and convincing documentary evidence on record substantiating his case. On the contrary the

reply filed by respondent PIO appears to be probable and convincing as it is supported by the affidavit of dealing clerk. Moreover the averments made in the reply of PIO and affidavit of Shri Dattaprasad Khakatkar is also not rebutted by the Complainant herein. In the Complaint, proceedings the onus lies on the complainant to prove the facts averred by him but in present case the Complainant by remaining absent has failed to discharge his burden.

13. Be that as it may 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 at least 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”.

14. Yet in another decision the Hon'ble 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.”

15. In view of the ratios laid down by the above courts, and for want of cogent and convincing evidence, I am of the opinion that this is not the fit case warranting the levy of penalty and initiating disciplinary proceedings against PIO as such the penal relief sought by the complainant against the PIO's cannot be granted.

16. In the circumstances and facts of the present case and in view above discussion I find that present complaint is not maintainable and liable to be dismissed which I hereby do.

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