

GOA STATE INFORMATION COMMISSION

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

Complaint No. 42/SCIC/2014

Mr. Nishakant Narvekar,
R/o H.No. 309, Mardung waddo,
Assagao, Bardez Goa.

..... Complainant

V/s.

1. Public Information Officer,
Shri Deepak P. Vaingankar, B.D.O.,
Block Development Officer,
Mapusa, Bardez Goa.

..... Opponent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 17/11/2014

Decided on: 16/07/2018

ORDER

1. The present complaint has been filed by the complainant Mr. Nishakant Narvekar against Shri Deepak Vaingankar who was officiating as PIO in the office of Block Development Office of Mapusa, Badez- Goa. In the said complaint the complainant has sought for direction to PIO to comply the order dated 24/6/2014 passed by the First appellate authority and for invoking penalty.
2. The brief facts of the present complaint are that the complainant by his application dated 29/4/2014 sought from the PIO of Block development Department certain information on five points as stated therein in the said application .
3. According to the complainant he visited office of respondent on several occasion for collecting the information, however as the Respondent failed to provide any information, he filed first appeal before the Dy. Director of Panchayat at Panjim on 5/6/2014 and the FAA vide his order dated 24/6/2014 directed the Respondent to furnish the specific information point wise to the appellant within and period of 10 days .

4. According to the complainant , pursuant to the said order of the First appellate authority , the Respondent PIO vide their letter dated 1/7/2014 furnished the information to the appellant.
5. According to the complainant that the information furnished by the Respondent vide letter dated 1/7/2014 misleading, vague , incomplete and false information and cannot be considered as information .
6. In this background the complainant has approached this commission by way of present complaint .
7. Vide said complaint it is contended that the Respondent purposely evaded furnishing the required information sought by him and what is furnished to him vide letter dated 1/7/2014 is not an information. The complainant has contended the action of the Respondent in issuing the letter dated 1/7/2014 by giving misleading information to him is malafide, perverse , illegal ,unlawful and against the well established principle of Law .
8. In pursuant to the notice issued by this commission, the complainant was represented by Advocate H. Kankonkar Respondent PIO Shri Dipak Vaingankar appeared and filed his reply on 16/3/2017 ineralia submitting that the information sought by the complainant was furnished by BDO Shri Bhiku Gawas and the notice of this commission have been already served to Shri Bhiku Gawas.
9. The Then PIO Shri Bhiku Gawas filed his reply on 21/4/2017 interalia contending that he was handed over the charge as BDO , Bardez during the leave period of Shri Dipak Vainkankar and he after the order of FAA vide his reply dated 1/7/2014 has stated in clear terms that "with reference to point No.2,3,and 4 there was no any other notice other than memorandum dated 21/2/2014. It was further contended that he was provided the information purely based upon what was available in office. He has contended that he

was holding temporary charge for two weeks. He further contended that Shri Deepak Vaingankar, vide his reply dated 4/6/2014 has categorically stated that information not available. Vide said reply he further contended that the PIO is liable only to furnish the information which is available and he is not supposed to create information or to interpret the information or to solve the problem raised by the complainant as such it is his case that whatever available on records has been furnished to complainant and that no incomplete and misleading information is provided to the appellant.

10. I have scrutinize the records available in the file. and also considered the submission of both the parties . On verification of the application dated 29/4/2014 vis-à-vis the information furnished on 1/7/2014 it is seen that the point wise reply have given by Shri Bhiku Gawas who was then officiating as PIO.
11. The Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s. The Goa State Information Commission and another, reported in 2008(110)Bombay L.R.1238 at relevant para "7" has held:-**

"The Commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to uphold the observation of the

Commission that the petitioner provided false information in stating initially that the seniority list is not available.”

12. Since it is a specific case of complainant that misleading , vague, incomplete and false information has been provided by the Respondent PIO vide letter dated 1/7/2014, the onus was on the complainant to prove the same. the complainant has not produced any convincing evidence on records, of having furnished him incomplete and false information as such in absence of any such evidence it is not proper to draw or to arrive at any such conclusions. This observation of mine is based on ratio laid down by Hon'ble High Court in case of Celsa Pinto(Supra)
13. Be that as it may, in aforesaid proceedings the name of Shri Deepak Vaingankar has been shown in cause title as respondent and as such complainant has sought penalty as against PIO Shri Deepak Vaingankar on the ground that incomplete and false information is provided to him vide letter dated 1/7/2014. At the outset it is observed that the said letter dated 1/7/2014 was issued by Shri Bhiku Gawas and not by Shri Deepak Vaingankar as such he cannot be held responsible for the act which is not committed or done by him and on the sole ground the present complaint filed against Shri Deepak Vaingankar is not maintainable.
14. Never the less 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.”
15. In the present case the complainant has miserable failed to discharge his burden and has not produced any cogent and convincing documentary evidence on record substantiating his case that misleading, vague incomplete and false information has been intentionally and deliberately provided to him by either by Deepak Vaingankar or by Shri Bhiku Gawas .

16. In view of the ratios laid down by the above courts, and for want of cogent and convincing evidence, the penal relief sought by the complainant against the PIOs cannot be granted. Hence the following order.

Order

The complaint stands dismissed

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