

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa.

Complaint 41/2017/SIC-I

Shri Minguel Vaz,
H. No. 81, Vaddem,
Socorro, Bardez -Goa.

.....Complainant

V/s.

1. The Public Information Officer,
The Secretary, Village Panchayat
Of Penha De Franca,
Britona, Bardez -Goa.

2. The First Appellate Authority,
Block Development Officer,
Bardez Goa.

.....Respondent

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

Filed on:- 27/12/2017

Disposed on:-22/05/2018

ORDER

1. The brief facts leading to present complaint are that the Commission vide order dated 6/7/2016 disposed the appeal No. 134/SIC/2014 preferred by the public information officer against the order of first appellate authority dated 11/12/2014 . vide said order the commission had dismissed the appeal filed by the PIO being not maintainable and had directed Public Information Officer (PIO) to comply with the order of first appellate authority .
2. It is the contention of the complainant that since no information was furnished to him, he by letter dated 30/9/2016 requested PIO to give the information asked for and the PIO vide his letter dated 15/10/2016 requested for time to provide the information .
3. It is the contention of the complainant that he waited for one month, and as no information was provided to him he again

requested vide his letter dated 19/11/2016 for furnishing him information before 15/11/2016. However the PIO did not respond to the same .

4. It is the contention of the complainant that he had personally visiting the office of the respondent PIO for one year still no information have been provided to him on one or other pretext.
5. In this back ground the appellant approached this commission by the present complaint on the ground that the order of the first appellate authority and of this commission dated 6/7/2016 in second appeal No. 134/SIC/2014 have not been complied and disobeyed . In the complaint, complainant has sought for invoking penal provision u/s 20(1) and 20(2) of RTI Act as against Respondent PIO.
6. Notices were issued to the parties . In pursuant to which the present PIO Ekanath B. Talkar appeared and filed his say interalia submitting that he had taken charge of Secretary of Village Panchayat Penha the France, Bardez, on 10//4/2017 from his predecessor Shri Vipin Korgaonkar and that he was not officiating as PIO when the order is passed by the first appellate authority nor by the commission.
7. Then PIO Shri Vipin Korgaonkar filed his reply on 11/4/2018 interalia admitting that the complainant had inwards the copy of the order of this commission vide letter dated 30/9/2016 which was inwards vide No. 1893 and on receipt of the letter from complainant he has sought time to furnish the information as according to him the staff of village Panchayat who were aware of the records maintained in the Panchayat office were engaged by the AERO of Porvorim Constituency for election duty. As such it is his contention that it was not possible to him to gather information. It is also his case that he was also appointed for

election duty of legislature Assembly election, 2017 vide order dated 5/1/2017 and was relieved on 7/2/2017.

8. It was contended that he was also appointed enumerator for field work of Agriculture census .
9. It was also contended that after the search of the some of the files from the records, xerox copies of the some of the information sought by Complainant were made and signed by him but the same was not handed over to complainant as he wanted to give along with all information.
10. It is his further case that he was relieved from the office of village Panachayat Penha de franca by order dated 7/4/2017.
11. In the nutshell it is the case of PIO that not providing information to the complainant was neither intentional or not deliberate but due to the contingency of the duties that were assigned to him . He on that ground sought for a lenient view .
12. Arguments were advanced by the advocate for the complainant . Respondent submitted to consider his reply as his arguments.
13. It was submitted by the Advocate for the complainant that the PIO was also officiating as village Panchayat secretary and the records of Village panchayat was in his custody. It was further submitted that the period of agricultural census was not full time job and even during that time the PIO was officiating as village panchayat secretary. It was further submitted that sufficient time and opportunity was given to PIO to furnish the information despite of same no information came to be furnished to him . It was further submitted that the submission of PIO that he was on election duty cannot be believed to be a gasper truth as no documents are relied neither have informed the period, of his officiating on election duty and place of his posting . It was further submitted that the statement of PIO that he had kept some information ready but

wanted to sent it with other information is a false statement only to save his skin .

14. It is further submitted that because of not furnishing the information opportunity of taking legal recourse and exposing the illegalities committed by the Public authority concerned herein has been denied to him till date. It is further submitted that harassment has been caused to the complainant to get him disheartened and to prevent him for taking any legal action against him and public authority .
15. I have perused the records also considered the submissions of both the parties.
16. It could be gathered from the records of this commission that the order passed by this commission dated 6/7/2016 was forwarded to both the parties by the Registry of this Commission vide forwarding letter dated 22/7/2016 which was dispatched by post on 1/8/2016 vide outward No. 467 for their information and for taking necessary action .
17. Under section 19(7) of the RTI Act, the decision of the central information commission or state information commission as the case may be shall be binding, as such the PIO was duty bound to comply the same unless challenged it before appropriate forum . It appears that the order of this commission was not challenged by the PIO. The PIO is silent on this aspects .
18. From the records of this commission it could be presumed that the Office of the PIO was receipt of the order in the month of August 2016 itself. On perusal of the order dated 12/9/2016, for Agricultural census, relied by Respondent PIO himself, it could be gathered that there was training programme on 19/9/2016 and that enumeratous were directed to attend the enumeration work **on half time basis from 20/9/2016 to 20/10/2016** i.e only for a month periods that to half time basis. The PIO herein have not

explained the steps taken by him for collecting the information and furnishing to the complainant from August till 19th September 2016. Further the requisite order dated 5/1/2017, it could be gathered that the PIO was required to attend election duties from 6/1/2017 and vide order dated 7/02/2017 he was relieved from elections duties. From the above one could learn that PIO was officiating as Village Panchayat Secretary and the other duties assigned to him was part time except the election duty for one month. The explanation given by the PIO is not convincing as the PIO failed to justify from August 2016 till January 2017 the reasons for not furnishing the information. Further the PIO have not justified what was the steps taken by him after he was relieved from election duties till he was transferred and was relieved in the month of April 2017.

Assuming for a while, that he had collected some of the information. However facts remains that despite of reminders from complainant, the same was not handed over or furnished to the complainant and till date no information has been received by complainant.

19. In the present case the PIO has shown disrespect towards the order passed by FAA and towards this Commission
20. The conduct of PIO herein is condemnable. PIO should always keep in mind that their services are taken by Government to help the people of state in particular and people of country at large and the objective and purpose for which the Act came into existence. Such conduct of PIO is obstructing transparency and accountability in public authorities appears to be suspicious and adamant vis a vis the intent of the Act. Such an attitude of PIOs no doubt requires stringent detriment action.
21. If the correct and timely information was provided to the Appellant it would have saved valuable time and the hardship caused to him

in pursuing the said Appeal before the different Authorities. It is quite obvious that the Appellant has suffered lot of harassment and mental torture and agony in seeking information under the RTI Act which is denied to him till this date. If the PIO had given prompt and correct information such harassment and detriment could have been avoided.

22. While dealing with a similar issue was raised and decided by the Hon'ble High Court of Andhra Pradesh at Hyderabad in ***writ petition No. 4109/2008 dated: 29-02-2008 (Md. Shafiquzzaman, V/s A.P. Information Commission.)***

In the said case PIO was directed by the information Commissioner to furnish the information as sought by petitioner. Despite receiving the said order the Respondent PIO failed to furnish the information and therefore petitioner was constrained to file writ petition. While allowing the same it was observed :

----- *" that lethargic attitude of the Officers concerned and the manner in which the Govt. is procrastinating the matter in providing the information as sought for by the Petitioner despite the orders of the Chief Information Commission, the Apex body under the Act, dealing with the grievance of the Public in securing information from the Government departments, gives rise to strong suspicion that the Government is disinclined to furnish the information as sought for by the Petitioner in the larger public interest. This conduct of the Government in not furnishing the information that too on the directions of the Chief Information Commission runs contrary to the provisions of the Act which was enacted to bring about transparency in the working of the Government, accordingly the Government was directed to furnish the information as sought for by this Petitioner within a period of two weeks."*

23. In another case while dealing with the scope of the commission in enforcement of the orders passed by it, the Hon'ble Apex court has incase of ***Sakiri Vasu v/s State of Uttar Pradesh and Other reported in AIR 2008 SC 907*** at para 18 and 19 has held ;

"It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation.

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein."

24. In yet another judgment of the Hon'ble High Court of Karnataka at Bangalore, Division Bench in ***contempt of the court case No. 525 of 2008; G. Basavaraju V/s Smt. Arundhati and another,*** while deciding a point for determination as to Whether, for disobedience of the order passed by the Karnataka Information Commission, in exercise of the powers and functions under Sections 18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, is maintainable, it is held:

*“ The powers of the Commission to entertain and decide the Complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. **In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated. ”***

25. By applying the ratio laid down by above Hon'ble Courts and considering the facts of the present case, I find that this is a fit case for imposing Penalty as provided under section 20(1) of the act. However as there is nothing on record showing that such lapses on the part of the PIO is persistent, a lenient view is taken in the present matter.
26. In the above given circumstances and considering the powers granted to this commission as held by the above orders, I pass following order;

ORDER

- a) The Respondent No. 1, then PIO Shri Vipin Korgaonkar shall pay a sum of Rs.5,000/- (Rupees Five Thousand Only) as penalty.
- b) The aforesaid total amount payable as penalty shall be deducted from the salary of the PIO in two equal installments and the penalty amount shall be credited to the Government Treasury. The deduction will start from the month of June 2018.

Copy of this order be sent to Director of Accounts, Panaji and Director of Panchayat, Panaji for information and implementation.

Complaint proceedings dispose off accordingly. 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/-

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

Ak/-