

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

CORAM: Shri Juino De Souza: State Information Commissioner

Complaint No.62/SCIC/2012

Mr. Vinayak Laxman Chodankar,
C/o. Mapusa Jana Jagruti Samiti,
H.No. 35, Ward No.11,
Khorlim,
Mapusa – Goa.

..... Complainant

v/s

1. Public Information Officer,
The Chief Officer,
Mapusa Municipal Council,
Mapusa – Goa.
2. First Appellate Authority
Dt. of Municipal Administration
& Urban Development,
Panaji – Goa.

..... Respondents

Relevant emerging dates:

Date of Hearing : 16-02-2018

Date of Decision : 16-02-2018

[

O R D E R

1. Brief facts of the case are that the Complainant filed an RTI application dated 22/11/2011 u/s 6(1) seeking information on 11 points. The information *inter alia* is with respect to What types/ Kind of Trade and Occupancy licences are issue by Mapusa Municipal Council for business purposes mentioning therein fees i.e tax for trade Licence incurred for each type of business activities; details of Trade and Establishment licences issued for kiosks, banca, stall; names and designation of officials who are supposed to check and report to Mapusa Municipal council who are doing business without trade licence; whether verbal complains are accepted by Mapusa Municipal council; occupancy certificates issued to builders from Jan 2011 till date and other related information.
2. The Respondent PIO vide reply no EST/RTI/7201/2011 dated 22/12/2011 as per 7(1) furnished the information Tabulation form on all Eleven points.

...2

3. The PIO in point No. 1 & 2 the PIO has informed 'We may call the applicant for clarification on any working day; in point No.3 it was informed that Trade licence is compulsory for any kind of business activities; in point No.4 to issue a Show Cause Notice if the reply is not satisfactory and the premises will be sealed; in point No. 5 it is informed that the Council has four municipal inspectors who are entrusted with the work for checking illegal business activities; in point No. 6 it was stated YES the persons obtaining licence to conduct business has to conduct the sme business for which the licence is obtained; in point No. 7 it was stated that Council does not accept verbal complaint; in point No. 8 it was informed that certificate copies may be collected on the payment of Rs.36/- and that ownership of the shop are in house no 10/88/1, 2,3,4 in the name of Shri Gerson de Belchior and other shop 10/88/5, 7 is in the name of Kamlakant Kashinath Tivrekar; in point No.9, 10 and 11 it was informed that this office has furnished information vide letter no MMC/ENGG/RTI/7154/2011 dated 20/12/2011.
4. Not satisfied with the reply of the PIO, the Complainant filed a First Appeal on 29/12/2011 and the First Appellate Authority (FAA) vide Order dated 20/01/2012 directed the Respondent PIO to furnish information at Sr. No. 1 & 2 to the Appellant free of cost.
5. Being aggrieved that the Order of the First Appellate Authority has not been complied, the Complainant thereafter filed a direct Complaint with the Commission on 27/03/2012 and has prayed to invoke penalty proceeding and for disciplinary action against the concerned Chief Officer, Mapusa Municipal council and for other such reliefs.
6. This matter has come up for hearing several occasions and the Complainant is absent. It appears that the Complainant is not interested in his Complaint case. The Respondent PIO is represented by Shri. Vinay Agarwadekar, UDC. The matter is taken up for final disposal.

7. Shri. Vinay Agarwadekar submits that information on all 11 points have been furnished to the Appellant vide reply dated 22/12/2011. Further, pursuant to the directions of the FAA the information at Sr. No.1 & 2 was also provided to the Appellant. It is also stated that the concerned PIO at the relevant period of time was one Mr. Hanumant Toraskar and who has since retired from Government service on 30/12/2013.
8. The Commission on perusal of the material on record and after hearing the submission indeed finds that information has been furnished to the Appellant on all 11 points and which details have been enumerated in para 3 above. Also pursuant to the directions of the FAA, the information at Sr. No. 1 & 2 is also provided. There is a detailed reply dated 28/04/2017 filed by the Advocate for the Respondent No.1 containing all relevant facts which is on record.
9. The Complainant has prayed for invoking penalty and for disciplinary action against the concerned Chief Officer, Mapusa Municipal Council and since it is informed that the concerned officer was Mr Hanumant Toraskar the said former PIO who has retired from government service on 30/12/2013 and which fact is confirmed as per the pension order No. GOA-A/118834 dated 31/01/2014, therefore penalty proceedings and disciplinary action cannot be enforced.
10. The Supreme Court in Gorakhpur University & others V/s Dr Shilpa Prasad Nagendra in appeal (civil) 1874 of 1999; Union of India vs. Radha Kissan Agarwalla AIR 1969 SC 762; Union of India vs. Jyoti Chit Fund and Finance & another AIR 1976 SC 1163 and Union of India and another vs. Wing Commander R.R. Hingorani (Retd.) AIR 1987 SC 808 have in its decisions held that pension cannot be attached in any proceedings whatsoever.

11. Further as per Circular No. F.7(28)E.V/53 dated August 25, 1985 issued by the Government of India, Ministry of Finance to that effect states that When a pensioner refuses to pay Government dues—The failure or refusal of a pensioner to pay any amount owed by him to the Government cannot be said to be misconduct within the meaning of Article 351 of the C.S.R. (Rule 8, C.C.S. (Pension) Rules, 1972).
12. Also as per provisions of section 60(1)(g) of CPC, the pension payable to pensioners are not liable for attachment in any proceeding. Section 11 of The Pension act 1871 exempts pension from attachment. In view of the above discussions it is clear that the pension amount received by a retiree on account of his past services cannot be attached in execution of any decree or order for realization of money, the Commission therefore comes to the conclusion that it is not possible to enforce any order of penalty under section 20(1) on a retired PIO.
13. In view that information has been furnished to the Complainant and further in view that the former PIO Hanumant Toraskar has retired from government service, nothing further survives in the Complaint case which accordingly stands disposed.

With these observations all proceedings in Complaint case also stand closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-
(Juino De Souza)
State Information Commissioner