

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 11/2018

In

Appeal No. 233/2017

Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Near Sateri Temple,
Mapusa-Goa.

.....Appellant

V/s.

1. Public Information Officer
Mapusa Municipal Council,
Mapusa – Goa.
2. The First Appellate Authority,
Chief Officer, Mapusa Municipal Council,
Mapusa Goa

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 26/03/2018

ORDER

1. This Commission Vide order dated 21/02/2018, while disposing the above appeal directed to then Public Information Officer Smt. Nazeera Sayed to Showcause as to why penal action as contemplated u/s 20(1) of the Right to Information Act, 2005 should not be initiated against her for contravention of section 7(1) of RTI Act, 2005 and for delay in furnishing the information .
2. In view of said order passed by this commission on 21/2/2018, the proceedings should converted into penalty proceedings .
3. In pursuant to the said order showcase notice was issued to then PIO on 22/2/2018.
4. The Then PIO Smt. Nazeera Sayed appeared and filed her reply on 16/3/2018.

5. Arguments were advanced by both the parties.
6. It is contention of the appellant that the PIO Smt Nazeera Sayed during her tenure has not responded each and every application filed by him within time specified interms of section 7(1) of the RTI Act and earlier also penalties are imposed on her in other penalty proceedings. On that ground he prayed to deal the PIO with an iron hand and prayed to impose maximum penalties.
7. Vide reply, PIO Smt. Nazeera Sayed have admitted that she was officiating as PIO when the said application u/s 6 (1) of RTI Act 2005 came to be filed by Appellant. She also contended that the available information at serial no. 3, 4 and 5 have been already provided by present PIO Venketesh Sawant to the appellant vide letter dated 9/02/2018 and with respect to other points the said is transferred by present PIO vide letter dated 9/02/2018 to the PIO of the Water Resource Department, Mapusa.

She further contended that the said RTI application was marked to Mrs. Anuradha Natekar, LDC dealing with RTI applications vide memorandum No. RTI/787/2017 dated 13/06/2017 seeking her assistance u/s 5(4) under RTI Act 2005. However no any documents/information was furnished by said Anuradha Natekar for onwards transmission to the appellant.

It was also contended she had to do work as Head Clerk and also had other charge of Sr. Steno and as such she remained busy carrying out the work of writing and maintaining of council minutes and besides the above duties, various functions such as celebration of 15th August, Gandhi Jayanti, 26th January had to be organized by her and due to

lack of time she could not compile the information within time limit. It is her contention that the delay was not intentional and deliberate.

8. I have gone through the records, the appellant has filed application u/s 6(1) of RTI Act on 12/06/2017. Under section 7(1) of the RTI Act, PIO is required to respond the same on or before 30th day. In the present case, it is found that the PIO has not responded to the application of the Appellant within the said stipulated period either by furnishing the said information or rejecting the request. It is also not the case of PIO that the information has been furnished to the Appellant or that she has responded to his application. From the records it is found that the first time the part of the information furnished to the appellant on 09/02/2018 by the present PIO Shri Venkatesh Sawant during the present proceedings. There is a delay in furnishing the information of about 7 months.

9. The PIO has tried to justify the delay. However the same is not supported by any documentary evidence. Though she claimed that the application was marked to Anuradha Natekar vide memorandum No. RTI/787/2017 dated 13/06/2017, she did not place on record the copy of the said memorandum nor affidavit of Mrs. Anuradha Natekar, as such it appears that the above stand taken by the PIO appears to have been taken after thought.

Secondly, the PIO ought to have transferred said application within 5 days under section 6(3) of RTI to the concerned PIO of the Public authority. In this present case the PIO has failed to transfer the said application within stipulated time as contemplated under section 6(3) of RTI Act 2005.

10. The Hon'ble Bombay High Court Goa Bench in writ petition No.304/2011 Johnson V. Fernandes V/s Goa State information commission ;AIR 2012 Bombay 56 has observed , at para 6

“ nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal . in fact , if the petition is intended to furnish the information to Respondent (information seeker) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal ”.

The facts in the said case information was supplied for the first time before the first appellate authority The Hon'ble High Court dismissed the appeal of the PIO by upholding the order of this commission wherein the penalty of Rs. 2000/- was awarded for failure to supply information in accordance with the provisions.

11. Yet in another decision reported in AIR 2013 Calcutta 128 in writ petition (c) No. 18653(w) of 2009 Madhab Kumar Bandhopadaya V/s State information Commission at relevant para 22 has held;-

“ I am unable to accept that once the petitioner complied with the order of the Commission dated January 9,2009, through belatedly, penalty under S. 20(1) of the Right to Information Act, 2005 could not be imposed on him, Nor do I see any reason to accept the argument that in each and every case the Commission is not supposed to impose Rs. 250 penalty per day”.

12. The ratio laid down by above courts are fairly applicable to the facts of the present case. The information came to be

furnished to the appellant after the stipulated period as contemplated u/s 7(1) of the Act. The part of the information was furnished during the proceedings of present appeal.

13. The PIO should always keep in mind that the objective and the purpose for which the said RTI Act, came into existence. The main object of RTI Act is to bring transparency and accountability in the public authority and the PIO are duty bound to act in true spirit. If the correct information was furnished to the appellant in the inception he would have saved valuable time and hardship in pursuing the said appeal. Public Authority/PIO must introspect that non furnishing of the correct or incomplete information lands the citizen before FAA and also before this Commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible
14. The reply filed by then PIO is not convincing as it is not supported by any convincing evidence and hence I am of the opinion that PIO has failed to show sufficient cause as to why action should not be taken against her. Earlier also the PIO have been penalized in penalty proceeding No. 4/2018 and Penalty No. 5/2018 for not responding the application in terms of section 7(1) and for delaying the information as such I find some substance in the contention of the appellant that she is acting in contravention to the RTI Act. As such I find that this is a fit case for imposing penalty to then PIO Smt. Nazeera Sayed.

15. In the above given circumstances following order is passed

ORDER

- a. The then PIO, Smt. Nazeera Sayed is hereby directed to pay a sum of Rupees 3000/- (Rupees Three Thousand only) as penalty for delaying the information .
- b. The aforesaid total amount as penalty shall be deducted from the salary of then PIO Smt. Nazeera Sayed and the penalty amount shall be credited to the Government Treasury.

Copy of this order is to be sent to Director of Municipal Administration, Panaji-Goa for information and implementation.

Penalty 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

Kk/-