

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

Penalty No. 33/2018
In
Appeal No. 92/2018/SIC-I

Shri Minguel Fernandes,
House No. 1524,
Vass-Vaddo, Benaullim,
Salcete Goa.

....Appellant

V/s

1) The Public Information Officer,
The Mamlatdar of Salcete, Taluka,
Mathany Saldhana Administrative Complex,
Margao Goa.

2) The Deputy Collector and Sub Divisional Officer,
First Appellate Authority,
South Goa District, Margao,
Mathany Saldhana Administrative Complex,
Margao Goa.

.....Respondents

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

Decided on: 05/09/2018

ORDER

1. This Commission , vide order dated 26/7/2018 , while disposing the above appeal, had directed the Respondent no.1 , PIO to comply with the order passed by the FAA dated 3/4/2018 and to provide the information as sought by him vide his application dated 15/1/2018 within 20 days from the date of the receipt of the order and vide same order had directed to issue Showcause to respondent PIO as to why no action as contemplated u/s 20(1) and /or 20(2) of the RTI Act, 2005 should not be initiated against him for contravention of section 7(1), for not complying the order of first appellate authority and for delay in furnishing the information.
2. In view of the said order passed by this commission, on 26/7/2018 the proceedings stood converted into penalty proceedings.
3. The present PIO vide application dated 13/8/2018 intimated/informed this commission that the applicant had collected

the required information on 10/8/2018. The Awal Karkun Shri Rohan Paise vide his application dated 13/8/2018 intimated this commission that Shri Vishal C. Kundaikar was officiating as PIO when the application was filed by the applicant on 15/1/2018 so also when the order was passed by the first appellate authority.

4. The showcause notice were issued to the then PIO on 13/8/2018. In pursuant to the showcause notice Shri Vishal C. Kundaikar appeared and submitted that he does not desire to file written reply and desire to orally argue the matter.
5. The then PIO submitted that he was relieved from post of PIO from the office Mamletdar, Salcete on 18/6/2018 and during the appeal proceedings he was promoted and transferred to Ponda holding additional charge of Mamlatdar of Salcete at Margao. Being so, it is his contention that due to the work load at both the places he could not pursue the appeal proceedings neither file reply for the same. He further submitted that the RTI Application filed by the appellant dated 15/1/2018, the first appeal filed before Respondent No. 2 and the appeal proceedings before this commission and the orders passed thereon were not brought to his notice by the dealing clerk/ APIO and he learnt about it only when the showcasue notice was received by him on 13/8/2018. It was further submitted that non compliance of section 7(1) of the RTI Act and the order passed by the FAA was not deliberate and intentional and due to the reasons mentioned above. He further submitted that it was not his fault and there was no malafide intention on his part in denying the information. He further submitted that on account of his transfer to Ponda, he could not seek explanation nor could direct the dealing clerk /APIO to give explanation for lapses on her part and could not issue memo to her to that effect seeking her explanation. He further submitted that he is unable to place on record her affidavit /explanation in support of his above contention as he is no more attached to the

said office and on above grounds he prayed for a lenient view in the present penalty proceedings.

6. I have considered the records available in the file and also considered the submission made by the Respondent PIO .
7. It is not disputed that the application of the applicant was not responded neither the order of FAA was complied by then PIO. The information came to be furnished to the appellant on 10/8/2018 that too in compliance of the order passed by this commission on 26/7/2018.
8. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 case of Umesh M. Patel V/s State of Gujarat has held at relevant para 8 and 9 .

“Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order the petitioner was duty bound to implement the same, whether it was a speaking order or whether the appellate authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty.”

9. Yet in another case the Hon'ble Delhi High Court in W.P. (C) 3845/2007; Mujibur Rehman versus central information commission while maintaining the order of commission of imposing penalty on PIO has held;

“Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of

information disclosure so necessary for a robust and functioning democracy.”

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.”

11. The facts of the records shows that there is a delay in furnishing the information. The appellant herein have been made to run from pillar to post in pursuing his RTI Application. If correct and timely information provide to the appellant it would have saved valuable time and hardship caused to the appellant. such harassments & Detriment caused to appellant could have been avoided.
12. It is observed by this commission in the most of the penalty cases the PIO comes with the stand that the dealing clerks / APIO don't bring to their notice the application filed u/s 7 and the first appeal filed. Such a issue has to be dealt sternly and cannot be taken lightly. The PIO, the staff of Public authority should always keep in mind that their services are taken by the Government to help the people in state in particular and people of country at large and the objective and the purpose for which the RTI Act came in to existence. Such a conduct on the part of officials of the public authority is obstructing transparency and accountability in public authorities appears to be suspicious and adamant vis-à-vis the intend of the act. Such an attitude of APIO/dealing clerk no doubt requires stringent and deterrent action, as such the present PIO is hereby directed to inquire into such issue and to give appropriate direction /instruction to the dealing clerk/APIO in order to avoid any

future hardship that would be caused to any of the information seekers henceforth.

13. In the above given circumstances and in view of the ratios laid down by above courts and as the contention of the PIO is not supported with cogent and sufficient evidence, the same cannot be taken as a gospel truth and as such I find this is a fit case for imposing penalty on PIO. However as there is nothing on record that lapses of part of PIO are persistent and considering this as a first lapse, a lenient view is hereby taken in the present proceedings and hence the following order is passed

ORDER

The Respondent then PIO Shri Vishal C. Kundaikar is hereby directed to pay a sum of Rs. 2000/- as penalty for a contravention of 7(1) of RTI Act, for not complying the order of FAA and for delay in furnishing the information and the penalty amount shall be credited to the Government Treasury at South Goa.

With the above directions the above penalty proceedings stands closed.

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