

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

Penalty No. 55/2017
In
Appeal No. 183/2016

Fr. Jacinto Rodrigues,
H.No. 242, Calvaddo,
Cavelossim, Salcete.

.....Appellant

V/s.

1 Public Information Officer (PIO),
The Secretary,
Village Panchayat, Cavelossim,
Cavelossim, Salcete Goa.

2 Then PIO Shri Shankar Naik,
Village Panchayat, Cavelossim,
Cavelossim,SalceteGoa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 27/2/2018

ORDER

1. This Commission while disposing the above Appeal vide order dated 22/11/2017 had directed to issue show cause notice to then PIO Shri Shankar Naik u/s 20(1) for not responding the application of the appellant within stipulated time. In the same order had also directed to issue Showcause notice to Village Panchayat Cavelosim through its Secretary to showcause as to why it should not be ordered to compensate the appellant as contemplated u/s 19(8)(b) of the Right to Information Act, 2005. The Public authority also directed to do inventory of all records within three months and to comply section 4 of the RTI Act. Vide said order the Director of Panchayat was directed to conduct an inquiry regarding the missing files/documents and to fix responsibility for missing of the said documents and to initiate action against the said responsible person.

2. In view of the said order, the proceedings should be converted into penalty proceedings.
3. Accordingly, Showcause notice was issued by this commission to PIO of Village Panchayat Cavelossim on 23/11/2017. In pursuance to the said Showcause notice the then PIO Shri Shankar Naik appeared and filed his reply on 18/12/2017. On behalf of Public Authority Mrs Sunita V. Desai appeared and filed Affidavit in Reply on 24/1/2018.
4. The copy of both the replies were furnished to the appellant.
5. Arguments were advanced by both the parties.
6. It is the contention of the appellant being a senior citizen he was made to run before different authorities. He further contended that he had sought said information to expose the illegalities and collusion of Respondent public authority with the wrongdoer. He further contended that he had sought such information in larger public interest in order to file it in the civil case filed against Brazino D'Souza. He further contended that he had incurred expenses on Lawyers who were representing him.
7. The then PIO Shri Shankar Naik has contended that since the information asked pertaining to years 1999 to 2004, he had to go through 17 to 18 years old records. It was his further contention that prior to the RTI Act 2005 coming into force, records were not preserved strictly and as such he was unable to trace the required information. It is further contended that he was a Gram Sevak who was officiating as Village Panchayat Secretary and being new he was not well versed with the functions and procedures. It is further contended that being village Panchayat Cavelosium is a

Coastal Panchayat many cases were pending at National Green Tribunal, Pune and he had to look after the same. It was further contended that during the hearing before the first appellate authority he furnished the information .

8. In the nutshell it is the contention of the then PIO that the delay in furnishing the information was not intentional and deliberate and the bonafied have been shown by him by furnishing the information before first appellate authority
9. Apparently there is an delay approximately about 3 months, in furnishing the information however the PIO has tried to justify the same.
10. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12 public authority V/s Yashwant Sawant which was decided on 08/05/2017 has held at para 6;

“ The imposition of such penalty is a blot upon the career of the officer at least to some extent, in any case the information ultimately furnished though after some marginal delay in such circumstances, therefore, no penalty ought to have been imposed upon the PIO”.

11. Yet in another decision high court of Punjab and Haryana at Chandigarh in civil w. p. No.6504 of 2009 ; state of Punjab v/s state information commissioner has held at para 3;

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and no hold up information which a person seeks to obtain. ***It is not every delay that should be visited with penalty. If there is a delay and it is explained the question will only revolve on whether the explanation is acceptable or not .*** if there had been a delay of a year and if there was a

superintendent, who was prodding the Public Information officer to act, that it self should be seen a circumstance where the Government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay.

The second respondents have got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified".

12. The Honble High court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5

“ The delay is not really substantial. The information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009. On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court in the case of A. A. Parulekar (supra) is applied , then it does appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. ”

13. The explanation given by the then PIO appears to be convincing and probable. Bonafides have been also shown by him in furnishing the information before first appellate authority, As such I am of the opinion the levy of penalty is not warranted in the facts of the present case. Never the less the records shows that the application of the appellant was not responded well within time as contemplated u/s 7(1) of RTI

Act, by considering this as a first lapse on the part of PIO a lenient view is taken and he is directed to be vigilant hence forth while dealing with the RTI matters.

14. Vide affidavit in reply the present PIO Mrs Sunita Desai have also contended that she made a possible attempt to search the said information from their office records but the same could not be found .She further contended that inquiry and inventory of the documents of Village Panchayat Cavelosium are in progress.
15. The appellant had sought for the said information somewhere in the year 2016 and till date it is reported by the public authority that the said file is not traced in the office records. Such lapse has resulted in appellants approaching several authorities including this Commission.
16. If the correct and timely information was provided to the appellant, it would have saved his valuable time and hardship caused to him in pursuing the said appeal before different authorities. It is quiet obvious that appellant has suffered lots of harassment and mental agony and torture in seeking information under RTI Act which is denied to him till date. If the public authority has preserved the records properly and if the PIO had taken prompt steps in providing the information, such an harassment and detriment could have been avoided. It appears that the public authority itself was not serious in preservation of records. If such an attitude of public authority if taken lightly would definitely frausted the very objective of the RTI Act itself and further obstruct in bringing transferecy in the affairs of the public authority .
17. Public authority must introspect that non furnishing the information lands the citizen / information seeker before first

appellate authority and also before this commission resulting into unnecessary harassment of a common man which is socially abhorring and legally impermissible , therefore some sought for compensation help in carrying the social grief as such I am of the opinion that this is an fit case where request of the appellant for compensation appears to be genuine.

18. The appellant herein have been made to run from Pillar to post in pursuant to his RTI Application. The said application was made in some where in the year 2016 and he is pursuing the same till date. He had sought the said information in the larger public interest and the same was required by him to produce before civil court and before other appropriate Government authorities. The Right of the appellant is violated due to the non furnishing the information by the public authority. However as no sufficient documents evidence placed on record by appellant about the loss suffered by him as such considering the principals of general damage, I find this is an fit case for awarding, compensation to the Appellant which, notionally quantify as Rs. 5,000/-

19. In the above circumstances, following order is passed:-

ORDER

a)Public Authority/Village Panchayat of Cavelosim - Goa is hereby directed to pay Compensation of Rs. 5,000/- to appellant within three weeks from the date of receipt of the Order and thereafter to file compliance report to this Commission.

b)The right of the appellant to seek same information from PIO free of cost is kept open after the said information is traced.

c) The then PIO Shri Shankar Naik is hereby directed to be vigilant hence forth while dealing with the RTI matters and any future lapses if any will be viewed seriously.

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