

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

Appeal No. 101/2018/SIC-I

Suresh Gopal Vengurlekar,
R/o. Royal Plaza Building,
Ground Floor, Opp. Allahabad Bank,
Vasco da Gama, Goa-403 802.

.....Appellant

V/s

1. Ulka Bandekar, Asst. Registrar of
Co-operative Society/ PIO,
O/o. the Assistant Registrar of Cooperative Society,
South Zone, 3rd floor,
Gomant Vidhya Niketan Building,
Margao-Goa 403601

2. H. S. Gawade,
Asst. Registrar of Cooperative Society/
Public Information Officer (PIO),
O/o. the Asst. Registrar of Cooperative Society,
Govt. of Goa, South Zone, 3rd floor,
Gomant Vidhya Niketan Building,
Margao-Goa 403601.

3. Registrar of Cooperative Society/
First Appellate Authority (FAA),
O/o. the Registrar of Cooperative Society,
Govt. of Goa, Sahakar Sankul, 4th & 5th floor
EDC Complex, Panaji-Goa 403001

...Respondents

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

Filed on: 26/04/2018
Decided on: 12/12/2019

ORDER

1. The appellant Shri Suresh G. Vengulerkar, vide RTI Application dated 22/12/2017 and Application dated 5/1/2018, filed u/s 6(1) of the RTI Act, 2005 had requested respondent No. 1 PIO of the office of the Registrar, Cooperative housing society, South Zone at Margao-Goa for certain information as listed therein pertaining to Mahima Vaastu Cooperative housing society Limited (register No.HSG(b)480/South Goa/(4)situated at Alto Dabolim, Mormugao,

South Goa pertaining to the period from January 2004 till the date of application.

2. According to the appellant he received information comprising of 167 pages as a reply to both the applications under the same letter dated 10/1/2018 bearing No. 2-11/2007/ARSZ/EST/VOL./IV/2349 and on going through the said information he realised that he had not provide information which was sought by him. As such he preferred first appeal with respondent No.3 herein on 12/2/2018 and the Respondent no.3 first appellate authority after hearing both the parties passed common order on 9/3/2018 allowing his first appeal and the PIO was directed to furnish the information as sought by the appellant vide his application dated 22/12/2017 within 8 days and also to provide the information as sought by the appellant vide application dated 5/1/2018 within 3 day on payment of required fees .
3. According to the appellant the order of the first appellate authority was not complied within time as specified in the said order as such he approached the office of PIO on 13/3/2018 to collect the information and the office of PIO provided him a single page which according to him was irrelevant .
4. According to the appellant he received one more letter on 15/3/2018 intimating him to collect the information after payment of Rs. 44/- .
5. According to the appellant he collected the information after due payment of the required fees and which again according to him was incomplete.
6. Being not satisfied with the information provided to him, the present appeal came to be filed by the appellant on 26/4/2018 on the grounds raised in the memo of appeal. The appellant by this appeal has prayed for direction for furnishing him the required information as sought by him vide his above two application and also for invoking penal provisions.

7. After notifying the parties, the matter was listed on board and was taken up for hearing. In pursuant to which the appellant appeared in person. Respondent no. 1 Smt. Ulka Bandekar and Respondent No. 2 appeared in person. Respondent No. 3 opted to remain absent.
8. Reply filed by Respondent No.1 on 11/6/2018 and on 13/8/2018, and by Respondent No.2 on 11/6/2018, on 25/6/2018, on 13/8/2018 and on 31/1/2019 alongwith the information/annexure. The copies of the above replies alongwith information and annexure were furnished to the appellant.
9. Application were also filed on 11/7/2018 by appellant to which counter reply was filed by Respondent No. 2 on 13/8/2018
10. On behalf of appellant Shri Swapnil Vengulekar advanced arguments. Respondent no. 1 then PIO opted to remain absent after filing reply. Arguments were also advanced by Respondent no. 2 Shri H.S. Gawade. Respondent no.3 opted to remain absent.
11. It is the contention of the appellant that he has filed two applications one dated 22/12/2017 and other on 5/1/2018 which were commonly replied on 10/1/2018 by respondent No. 1 then PIO Ulka Bandekar. It is his further contention that the Respondent no. 1 Ulka Bandekar has given reply to his application dated 22/12/2017 and has stated that information (a), (b),(a)(b) is not available and the information provided to him at point(C)and(d) were incomplete. It is his contention that the copy of the byelaws and the correspondence dated 12/12/2017 was not furnished to him by Ulka Bandekar vide reply dated 10/1/2018 which was subsequently provided to him by present PIO Shri H.S.Gawade.
12. It is further contended that the information at point no.(a) and (b) which was furnished in a same reply in pursuant to his

application dated 5/1/2018 are the created documents by the Respondent No.1 PIO Smt. Ulka Bandekar.

13. It is his further contention that the information furnished by Respondent No.1 PIO Smt.Ulka Bandekar on 5/1/2018 at point No.3 is wrong information and misleading information as later on present PIO Gawade submitted one more letter dated 10/3/2018 where different names are figuring.
14. It is further contention that letter dated 10/3/2018 of the Respondent no.2 Shri H.S. Gawade does not mentioned designation as "Chairman" but said letter mentions as "Presidents".
15. It is a further contention of the appellant that Respondent No.2 Shri Gawade only submitted minutes of the meeting even after the order of first appellate authority and no complete correspondence was given to him. It is further contended that no separate information is provided before this commission to his RTI application dated 5/1/2018 by Respondent no.2.
16. It is further contended that letter No.23/234/2004/ADT/ARSZ/HSG/2048 dated 12/12/2017 was not given initially by Respondent No. 2 Shri Gawade even after the order of First appellate authority and the said is provided only on 25/6/2018.
17. It is further contended that first appellate authority by order dated 9/3/2018 had given clear instruction to respondent No.2 Shri Gawade to give information pertaining to his two RTI application and also fine of Rs.10/-was directed to be levied in case of his failure.
18. It is his further contention that first appellate authority has directed appellant to deposit fee in respect of his RTI application dated 5/1/2018 and in pursuant to the same he deposit the said on 13/3/2018 and in support of his said statement he relied upon

receipt of payment. It is his contention that despite of depositing the said amount no complete information was provided to him by Respondent no. 2. It is his case that the registration documents, correspondence with registrar and co-operative society, Minutes of the meetings of the Society was not furnished to him and only the letter dated 15/4/2008 was furnished to him.

19. It is his further contention that Societies letter dated 10/3/2018 does not specified the dates of meetings in its letter. However the Respondent no. 2 specified the dates in its forwarding letter dated 15/3/2018.
20. It is his further contention that though vide letter dated 15/3/2018 Respondent No.2 PIO has stated minutes of 6/1/2010 are available but not provided the same. As such it is his contention that even after the order of the Respondent No.3 First appellate authority the Respondent No.2 provided him incomplete information.
21. It is further contention of appellant that minutes at page C/56 which are provided to him are manipulated by Respondent no. 2.
22. It is his further contention that estimated cost for Xeroxing is still not submitted by PIO.
23. It was further contended that the statement of the PIO that the name of the managing committee is not available is false and misleading as on the copy of the letter notice (18/3/2008)from Michal D'Souza Chairman it reveals that he has signed as a Chairman .
24. It was further contended that the information containing in the letter 10/3/2018 by the Respondent no. 2 PIO and in letter dated 10/1/2018 by PIO Smt. Ulka Bandekar is contrary the information to each other.
25. It was further submitted that as per societies letter dated 10/4/2018 though it is stated that minutes of the meetings (Xerox

copies attached) but did not mentioned any dates or number of meetings held and the same are not in order as per section 111 of bye laws of Cooperative housing society Ltd and as per section 72 of section 7 of Goa Cooperative Societies Act, 2001 and rule 2003. It was further contended that the above minutes of the meeting were in loose individual sets which are no "serial" numbered on pages, some are hand written and some are typed as such it is not known which each meeting were scrutinised by AS/SZ Margao before forwarding same to appellant.

26. In a nutshell it is the case of the appellant that no complete information provided to him by the Respondents deliberately with malafide intention.
27. The Respondent no. 1 Smt. Ulka Bandekar vide her reply dated 11/6/2018 and on 13/8/2018 contended that with regards to point No.(a) of application dated 22/12/2017 it was inadvertentely mentioned "as not available"on a reply dated 10/1/2018 however, in fact it was furnished to the appellant to his queries at point (a) of applications dated 5/1/2018. She further contended that whatever information available on record have been provided to the appellant within stipulated time and she was diligent in her duties under the RTI Act.
28. It was further contended by Respondent No. 1 that fees were charged to the appellant as per the number of papers furnished to the appellant which includes copies of the plans of the project of building of society and land of society which were got Xerox from outside as the said facility were not available with Xerox machine at her office.
29. It was further contended by Respondent No. 1 PIO that appellant still wants any more information he may inspect respective files and claim the required information.

30. The respondent no. 1 vide her application dated 13/8/2018 placed on record order dated 23/7/2018 granting her voluntary retirement and relieving her from the office of Asst. Registrar Co-op. Societies South Zone, Margao with effect from 31/7/2018.
31. The respondent no. 2 vide his reply dated 31/1/2019 contended that vide order dated 5/2/2018 he was directed to look after the duties entrusted to Respondent No. 1 in her absence in addition to his own duties and that respondent no. 1 resumed the duties on 26/3/2018 and in support of his contention he relied upon the order dated 5/2/2018, joining report dated 26/3/2018 of Respondent no. 1 and order dated 16/4/2018.
32. Respondent no.2 Shri H.S. Gawade vide his reply dated 11/6/2018 before this Commission claimed that except the information at point "A" regarding the accounts from January 2004 till date of the application rest were furnished to the appellant vide his reply dated 15/3/2018. He further contended that the same could not be furnished to the appellant as the same was under auditing and finalisation.
33. Vide separate replies dated 25/6/2018, the Respondent No.2 again answered the queries sought by the appellant vide application dated 22/12/2017 and vide his application dated 5/1/2018 and the copies of the relevant documents were annexed in support of his case .
34. Vide reply dated 13/8/2018 Respondent No. 2 contended that he by acting on the order of First appellate authority dated 9/3/2018 made correspondence with the Chairman of the Society directing him to furnished the information sought by the appellant and in response to it Chairman of Mahima Vaastu Co-op. Housing Society Ltd. of Vasco, furnished him the details of office bearers since 2005 and July 2013 . It was further contended that he had made all efforts to make available all information to the appellant

received from the said society and their office has made several attempts and exchanged correspondence with the above society in Order to get his account audited and to furnish the copies audited reports to their office.

35. It was further submitted that he is not supposed to generate any information for the purpose of supplying the same to the appellant and is also not answerable to any question raised by the appellant.
36. In the nutshell, it is contended by Respondent No.1 and 2 that they were diligent in their duties under the RTI Acts and there was no any malafide intention on their part in denying the information and whatever information available on the records of the public authority concerned herein have been provided to the appellant.
37. Since Respondent no. 2 in his reply dated 31/1/2019 brought to the notice of this commission that Shri Rajesh Parwar is designated and officiating as PIO, he was summoned, who furnished the information alongwith the documents to the appellant on 7/3/2019 and on 30/5/2019 pertaining to his both RTI applications dated 22/12/2017 and dated 5/1/2018. The copy of the same was furnished to the appellant herein.
38. The appellant vide his application dated 11/9/2019 submitted that the information furnished to him by present PIO Shri Rajesh Pawar on 7/3/2019 is still incomplete and the order of registrar and the name of the Chartered Accountant appointed to audit the records of Mahama Vaastu Co-op. Housing Societies Ltd. has not been furnished to him and the said was required by him in order to produce before legal forum. He further submitted that the name of Managing Committee plays crucial role in the case filed u/s 83 and till today non of the PIOs given clarification to their effect and are trying hide the names of the managing committee of the said housing society..

39. It was further contended by appellant that there was inordinate delay in providing the information during which period he had to run from pillar to post to obtain requested information.
40. Since the appellant has raised queries with respect to non furnishing of information as stated by him at para 39, considering the intent of RTI Act and purpose for which it is sought, I am the opinion that the same needs to be furnished to the appellant.
41. With regards to other prayers which are in penal nature, in the present case undisputedly the then Respondent No. 1 Smt. Ulka Bandekar has retired as such as per today she is entitle for pension. Section 11 of pension act 1871, and section 60 (1) (g) of Civil Procedure Court grant immunity to the pension holder against its attachment. The Apex court in case of Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999 and also in civil appeal No. 6440-41 of 2008, Radhe Shyam Gupta v/s Punjab National Bank, has also given finding that retired benefits such pension and gratuity etc. does not loose their character and continued to be covered by the proviso (g) of section 60(1) of the code of civil procedure. Under this circumstances the Commission even if some lapses are found on the part of Respondent No. 1 Smt. Ulka Bandekar, is neither empowered to order any deduction from her pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded. Hence, in this circumstances the relief of penal nature sought by the appellant with respect to Respondent No. 1 cannot be granted.
42. The records reveals that the Respondent no. 2 was officiating as PIO when the first appeal was filed and when the order was passed by the Respondent No. 3 First appellate authority on 9/3/2018. From the Roznama of first appellate authority it could be gathered that the Respondent No. 2 PIO was present during

the hearing before first appellate authority and the orders were passed after hearing both the parties. The respondent no. 3 vide his order dated 9/3/2018 has directed the Respondent No. 2 to furnish the information pertaining to RTI application dated 22/12/2017 by arranging the same by whichever agency within 8 days and PIO was also directed to supply the information to the appellant within 3 days pertaining to his other application dated 5/1/2018 on the payment of required fees /charges.

43. The receipt dated 13/3/2018 reveals that the fees of Rs.2/-were paid by the appellant. The said receipt was paid pertaining to RTI application dated 5/1/2018. The Respondent No. 2 PIO has not produced any records of having furnished the said information to him within 3 day on payment of required fees by the appellant. Once the order is passed by the superior officer it is for him to comply the same unless the same is challenged with a appropriate forum. The appellant is silent on the compliance of the order of the first appellate authority pertaining to said application.
44. From the information furnished to the appellant by the Respondent No. 2 vide his letter dated 15/3/2018 in compliance to the order of First appellant authority dated 9/3/2018, it is seen that the information at point no. (a) i.e the copies of accounts of Mahima Vastu Co-op. Societies Ltd. from January 2004 till date were not furnished and was answered that *"as soon as their office received the audited statement the same shall be provided to him."* The Respondent No.3 first appellate authority in his order dated 9/3/2018 is in agreement with the appellant that the said information sought ought to be available as per the provision as per the GCS Act 2001. The appellant despite of paying the required fees by receipt dated 29/3/2018 the said information was only furnished during the present proceedings. There is a delay in furnishing complete information pertaining to RTI application dated 22/12/2017. The Respondent

No. 2 PIO though he claimed that he made all efforts to secure the said information from the said society and their office had made several attempts and exchanged correspondence with the above society in order to get their account audited and to furnish the same, however no any correspondence is placed on records by the Respondent No.2 PIO. In absence of any supporting documents it is not appropriate on the part of this commission to accept the said contentions of Respondent No. 2.

45. The PIO must introspect that non furnishing of the correct and complete information lands the citizen before the first appellate authority and also before this commission resulting into unnecessary harassment of the Common man which is socially abhorring and legally impermissible.
46. From the above gesture of PIO, I prima facie find that the entire conduct of both the Respondents No.1 and 2 is not in consonance with the Act. Such an lapse on part of PIO is punishable u/s 20(1) and 20(2) of the RTI Act. However before imposing penalty, I find it appropriate to seek explanation from the Respondent No. 2 PIO as to why penalty should not been imposed on him, for non compliance of order of first appellate authority within stipulated time and for delaying the information.
47. In the facts and circumstances of the case I find, the ends of justice will meet with order as under:-

Order

Appeal allowed.

- a) The present PIO is hereby directed to furnish the name of the chartered Accountant appointed to do audit of account of Mahima Vastu Co-op. Housing Societies Ltd and to furnish the copy of the order issued to the said chartered Accountant by the public authority concerned herein to conduct the said audit. The respondent PIO is also directed to give the names

of the Managing Committee of the said society or clarification to that effect as available on the records of the public authority within 20 days from the date of receipt of this order by him.

- b) Issue notice to respondent No.2 PIO Shri Harishchandra Gawade to Showcause 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 not complying the order of First Appellate Authority in toto and for delay in furnishing the information.
- c) In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter alongwith full name and present address of the then PIO.
- d) Respondent No.2 PIO, is hereby directed to remain present before this commission on 27/12/2019 at 10.30 am alongwith written submission showing cause why penalty should not be imposed on him/her.

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