

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

Complaint No: 33/2019/SIC-I

Freddie Diniz
H.No. Cima Carneiro,
h.No. 6, Zoribhat,
Chinchinim, Salcete Goa.

....Complainant

V/s

1) The Public Information Officer,
St. Joseph Vaz High School,
Sancoale , Cortalim Goa .

2) First Appellate Authority,
Dy. Directorate of Education,
South Education Zone,
Margao Goa.

..... Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:15/04/2019
Decided on: 06/05/2019

ORDER

1. This Order disposes the present complaint filed u/s 18(1) RTI Act, 2005 by the complainant herein. The brief facts leading to present complaint are as under:

(a) The complainant Shri Freddie Diniz by his three separate application dated 10/10/2018 filed u/s 6 (1)of the RTI Act, 2005 sought certain information from the PIO of Assistant Director of South Zone Education Department at Margao Goa.

(b) It is the contention of the complainant that his RTI applications dated 10/10/2018 was transferred to the Head Master of St. Joseph Vaz High School, Sancoal-Goa who is in Respondent no. 1 herein interms of section 6(3) of RTI Act, 2005.

- (c) It is the contention of the complainant that his above RTI application were not responded within stipulated time by the Respondent No.1 PIO as contemplated under the RTI act as such deeming the same as refusal, the complainant filed first appeal on 26/11/2018 before the Respondent No. 2 Director of Education, South Zone, Margao -Goa being First appellate authority.
- (d) It is the contention of the complainant that he received a letter dated 29/11/2018 from the Respondent no. 1 PIO informing him that the information sought by him is ready and to collect the same on payment of fees within 15 days from the date of receipt.
- (e) It is the contention of the complainant that the Respondent No. 2 first appellate authority by an order dated 15/01/2019 disposed the said appeal on the ground that complainant had agreed to collect the information from the Respondent.
- (f) It is contention of the complainant that despite of the order of Respondent No. 2 first appellate authority, no information was furnished to him despite of he visiting the office of PIO for collecting the information, as such he being aggrieved by the actions of Respondent No.1 PIO, had to approach this commission by way of the present complaint on 15/04/2019.
3. In the present complaint he has sought for direction as against respondent PIO for furnishing him the requested information as sought by him, free of cost, and for invoking penal provision as against both the respondents and compensation.
4. The matter was taken up on board and listed for hearing after intimation to both the parties. In pursuant to the notice of this

commission, Complainant was present in person. Respondent PIO Sr. Alvita Gurjao and Respondent No. 2 First appellate authority Dr. Uday Gaunker was present.

5. Reply filed by Respondent PIO on 6/5/2019. Copy of the same was furnished to the Complainant.
6. Arguments were advanced by both the parties.
7. It is the contention of the Complainant that the PIO have shown scant respect to the provisions of the RTI Act. He further submitted that great hardship has been caused to him in pursuing his said application and till date no any information has been furnished to him despite of order of first appellate authority and he prayed to grant reliefs as sought by him.
8. It is the contention of the Respondent PIO that the RTI application in the present case were received by her on 31/10/2018 and she has responded the same on 29/11/2018 well within 30 days, thereby informing complainant that the information sought is ready and to collect it within 15 days on payment of fees but the complainant failed to collect the same and preferred the appeal before the first appellate authority and the appellant agreed to collect the information from PIO during the first appeal. It was further contended that the complainant approached PIO in person on 25/2/2019 to collect the information but refused to pay the fees and left her office after passing some remarks. It was further contended that complainant is free to collect the information from the PIOs office as sought by him on payment of fees. It was further contended that she has performed her duty honestly and sincerely and the present complainant is being filed to tarnish her image.
9. I have perused the records available in the file so also considered the submission made on behalf of both the parties.

10. The complainant at prayer (I) has sought for the directions to the PIO for furnishing him correct and complete information as sought by him vide his application dated 10/10/2018 free of cost. However in view of the ratio laid down by the Hon'ble Apex Court in the case of (i)Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011) and (ii) Hon'ble High Court of Karnataka At Bangalore in writ Petition No.19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012(GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka, information Commission, *this Commission has no powers under section 18 of RTI Act to provide access to information which have been requested for or which have been denied to any information seeker and the remedy would be to file appeal as provided under section 19 of the RTI Act. Hence the relief sought by the complainant at prayer-(i) cannot be granted in a complaint proceedings.*
11. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI act.
12. In this contest, the Hon'ble High court of Bombay, Goa Bench at Panjim in writ petition no. 205/2007, Shri A. A. Parulekar V/s Goa State Information Commission has observed:-

*"11. The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either **intentional or deliberate.**"*

13. Yet in another decision, the Hon'ble Delhi High Court in writ petition No. (CO 5469/2008, Col. Rajendra Singh V/s Central Information Commissioner and another's has held;

“ Section 20 no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that **the delay occurred was without reasonable cause or that there the refusal to receive application or the request was denied**”.

14. Hence according to the Judgment penalty under subsection (1) and(2) of section 20 of RTI Act could be imposed only in the cases only there is repeated failure to furnish information and that too deliberately and intentionally without any reasonable cause.

15. In the present proceedings it is seen from the records that there was no denial or refusal of information from the side of the respondent PIO. The respondent PIO right from the inception had offered information to the complainant on the payment of fees. The FAA also held that intimation letter dated 29/11/2018 for collecting information was sent to the appellant by the PIO and that appellant has not reverted to collect. The order of the FAA dated 15/01/2019 also reveals that the appellant had agreed to collect the information from the respondent.

16. The contention of the respondent PIO that complainant approached her in person on 25/02/2019 to collect the information but refused to pay the fees has gone undisputed and un rebutted. The respondent PIO has again vide reply before this commission also volunteered to furnish the information to the complainant on the payment of fees. Hence the records show that the PIO has not obstructed in any manner in furnishing the information. on the contrary it appears from the records that delay if any caused in receiving/submitted the information was only on account of non deposit of fees by the complainant herein.

17. Time and again the Respondent No. 1 PIO has shown her bonafides in furnishing the information. The complainant has not been able to demonstrate in any manner that the PIO malafidly denied the information.
18. In the present case Complainant has also prayed for compensation for the harassment and agony caused to him by the Respondent for not providing information within stipulated period. Considering the provisions of the act, the said cannot be granted in the present proceedings being a complaint which is beyond preview of section 19 (8) (b) of RTI Act.
19. In view of above discussion and subscribing to the ratios as laid down by above Hon'ble court, I find that there is no cogent and convincing evidence on records attributing malafides on the part of the respondent PIO and as such I am of the opinion that this is not an fit case for warranting levy of penalty on PIO. Hence the complaints stands dismissed.

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