

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

Complaint No: 61/2018/SIC-I

Shri Suryakant B. Naik,
R/o H.No.25 W/1, Cuchelim,
Mapusa, Bardez-Goa.

....Complainant

V/s

1) The Public Information Officer,
Keerti Vidyalaya,
Siolim Bardez Goa.

2) First Appellate Authority,
Dy. Director of Education,
North Educational Zone,
Mapusa Goa.

..... Respondent

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

Filed on: 15/3/2019
Decided on: 20/6/2019

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:
2. (a) The complainant Shri Suryakant B. Naik by application Dated 24/7/2018 filed u/s 6 (1) of the RTI Act, 2005 sought certain information viz-a-viz;
 - (i) copies of the notices issued to the members of the school managing committee inviting them to attend the meeting of the managing committee along with the acknowledgment of all the ten (10) members of the Managing Committee, held since on or after 24/09/2017 till date . and
 - (ii) Copy of the minutes of the managing committee meeting held on or after 24/09/2017 till date.

- (b) It is the contention of the complainant that the said application was responded by the PIO on 21/8/2018 rejecting his request on the ground that the same cannot be spared u/s 8(1)(h) of RTI act. As such deeming the same as refusal, the complainant filed first appeal on 27/8/2018 before the Dy. Director of Education, North Educational Zone at Mapusa-Goa being first appellate authority who is the Respondent No. 2 herein and the Respondent No. 2 first appellate authority by an order dated 4/10/2018 allowed the said appeal and thereby directed the respondent PIO to provide the information sought by the complainant within 10 days as on the receipt of the order.
- (c) It is contention of the complainant that in pursuant to the said order he received the copy of the letter dated 19/10/2018 addressed to Respondent No.2 first appellate authority intimating him that they are appealing before the next competent higher forum.
- (d) It the contention of the complainant that PIO showed his non willingness to provide the documents and denied him the information despite of the order of the Respondent no. 2 first appellate authority and as no information was furnished to him and being aggrieved by the actions of Respondent No.1 PIO, he had to approach this commission by way of the present complaint on 30/10/2018 on the grounds raised in the memo of complaint .

3. In the present complaint the complainant has prayed for initiating inquiry against respondent No.1 PIO for not furnishing information within stipulated time of 10 days as per the order dated 4/10/2018 of Respondent No. 2, and for invoking penal provision interms of section 20(1) and (2) of RTI Act.

4. The matter was taken up on board and was listed for hearing after intimation to both the parties. In pursuant to the notice of this commission Complainant was present in person. Respondent PIO Shri Suresh Khochrekar was present along with Shri Permanand Mandrekar.
- 5 . Reply filed by Respondent PIO on 7/1/2019. Copy of the same was furnished to the Complainant. Complainant also filed rejoinder on 23/1/2019 to the reply of Respondent PIO. Additional reply came to be filed by the respondent PIO on 15/3/2019 .
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 so also to his higher authority. He further submitted that that PIO has no authority to challenge the order passed by his senior officer and there is no provision in the RTI Act to prefer any appeal by PIO against the order of First appellate authority and submitted that appeal No. 12/SCIC/2015 filed by the PIO of same authority was dismissed by this commission and in support he relied upon judgment dated 15/4/2016 passed by this commission. He further contended that the respondent PIO has used time delaying tactics and deliberately denied him information with malafide motive. He further submitted that till date no writ has been filed by the respondent and now even if writ is filed, no stay has been obtained by PIO.
8. It is the contention of the Respondent PIO that the complainant was the Head master of said school and he was suspended w.e.f. 21/8/2014 with due approval from Director of Education for committing various gross misconducts and the inquiry was conducted by the inquiry officer appointed under the directions of Hon'ble High Court of Bombay at Goa and inquiry officer in his inquiry report concluded that out of 57 charges leveled against

present complainant, 25 charges had been fully proved and 15 charges had been partially proved. It was further contended that by accepting the inquiry report in toto, sent a proposal to the Director of Education to major penalty u/s 97(2) but the Director of education issued managing committee several correspondences to reinstate the complainant despite of his charges proved and therefore the managing committee approached Hon'ble High Court in writ petition No. 905/2017 and Hon'ble High Court quashed the Directors order and directed that there will be no reinstatement till the decision is taken. It was contended that Director of Education vide order dated 29/2/2017 granted approval for compulsory retirement to the complainant instead of termination from his services and hence the management appealed against the said order of Director of Education to the Hon'ble High Court and the Hon'ble High Court is seized with the writ bearing No. 25/2019.

9. It was further contended that the complainant has been filing series of RTI applications to harass the school authority which does not have public interest but only pertain to him .
10. It was further contended that application dated 24/7/2018 filed by the complainant was placed before managing committee in the meeting held on 18/8/2018 and it was decided that the information sought cannot be spared being is sensitive and would impede the future progress of disciplinary action taken on complainant and in case the FAA issued orders to furnish to complainant then managing committee will appeal to the next competent higher forum. The notice dated 5/6/2018 and agenda of meeting dated 9//6/2018 at point No. 4 and minutes of the managing committee meeting held on 18/8/2018 was brought to the notice of this commission to substantiate their above stands. It was contended that hence after the order dated 9/10/2018

of first appellate authority, he vide letter dated 19/10/2018 intimated the first appellate authority that they are appealing before next competent higher authority.

11. It was contended by the respondent PIO that he received letter dated 1/3/2019 from the manager of Managing Committee informing him that they are in the process of filing writ petition in respect of the order dated 4/10/2018 passed by the FAA . PIO also placed on record letter dated 29/3/2019 addressed to this commission by Advocate Sidharth Madgaonkar informing this commission that he has accepted the briefs to prefer writ petition in respect of impugned order dated 9/10/2019 and in the process of initiating the same.
12. The respondent PIO vide his application dated 10/6/2019 and 13/6/2019 submitted that the writ has been already filed before the Hon'ble High Court of Bombay at Goa Branch challenging the order of Respondent No. 2 FAA and in support of said contention he placed on record the Xerox copy of stamp bearing No. STMP/2023/19 .
- 13 I have perused the records available in the file so also considered the submission made on behalf of both the parties.
14. The complainant in the present complaint has sought for inquiry and for imposing penalty on respondent mainly on the ground that PIO failed to furnish him information as sought by him within 10 days as ordered by the first appellate authority vide its order dated 4/10/2018.
15. The Hon'ble High Court of Bombay at Goa, in case of Shri A. A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007) 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.**"

16. Yet in another decision the Hon'ble High Court of Delhi at New Delhi in writ petition (c)5469/2008 ; COL. Rajendra Singh V/s Central Information Commissioner as held that;

" 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 the application or the request or denied malafidely**".

17. Yet in another decision, The High Court of Punjab & Haryana in matter of Ramesh Sharma and others v/s the State Commission and others, reported in AIR 2008 Punjab and Haryana held at page 126.

" if the information is not furnished within the time specified by sub section (1) of section 7 of the Act then under sub section(1)of section 20, Public authority failing in furnishing the requisite information could be penalized . ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases were there is simple delay the commission had been clothed with adequate Powers "***

18. Hence according to ratio laid down by the above Hon'ble courts in the above judgments, only in case of malafide and deliberate intention the Penalty can be imposed on PIO .

19. The Hon'ble High Court of Bombay at Goa, in case of Shri A. A. Parulekar (supra) At para 11 further also held that:-

“unless and until it is borne on record that any office against whom order of penalty for failure to be sought to be levied and has occasion to complied with a order , **and has no explanation or excuse available worth satisfying the forum**, possessing the knowledge of the order to supply information, and order of penalty cannot be levied”.

20. In the present case the PIO has tried to justify why the information sought by the complainant could not have been dispensed at initial state itself. On perusal of order of first appellate authority dated 4/10/2018, it appears that PIO had taken the stand about the inquiry and the records pertaining to the defence of the action to be taken on complainant. No sooner the order was intimated by the first appellate authority, the intention to challenge said order was intimated to the first appellate authority and complainant herein by the PIO. Needless to say that any party aggrieved by the judicial decision or any decision of any of the adjudicating authorities, has right to challenge such decisions/orders passed before competent higher forum up to the Hon'ble Supreme Court. The Respondent PIO had placed on record the minutes of the managing committee meeting held on 18/8/2018 wherein it was decided that if the first appellate authority issues order to furnish the information then the same would be challenged to the next competent higher authority. The respondent PIO has now placed on record the documents of having filed writ petition before the Hon'ble High court of Bombay.
21. The Respondent PIO has tried to justify their stand and given explanation, for not compliance of the order of first appellate authority. Replies filed by the respondent PIO before this commission appears to be probable and convincing the same is supported by the documents. As such I do not find at this stage any malafides attributing on the part of PIO.

22. In the fact and circumstances of above case and in view of discussion above, I find no substance/ no merits in the complaint and as such relief sought by the complainant cannot be granted. Hence the complaint stands dismissed.

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