

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

Complaint 08/2017/SIC-I

Shri Munnalal Halwai,
5th Floor, F.F.Complex,
Above Bank of Baroda,
Vasco Da Gama.
Mobile No. 9422063115.

....Complainant

V/s

- 1) The Public Information Officer,
Smt. Nathin Araujo,
Dy. Director, Vigilance,
Altinho, Panaji-Goa.Respondent/Opponents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 18/04/2017

Decided on:03/04/2019

ORDER

1. The brief facts leading to present Appeal are that the Complainant Shri Munnalal Halwai herein by application dated 16/2/17, filed u/s 6(1) of the RTI Act, 2005 sought certain information from the Public Information Officer, Office of Chief Secretary, Secretariat, Porvorim-Goa under three points there in.
2. The PIO of the office of the chief secretary by letter dated 20/2/2017 transferred the said application of the Complainant to the PIO/Additional Director (vigilance), Directorate of Vigilance, Altinho-Panjim in terms of sec 6(3) of the RTI Act as the file No. ACB-VIG-COM-116-2016 was forwarded to the office of Respondent PIO vide entry No.569 on 27/1/2017.

3. It is the contention of Complainant that as there were lots of threatening act were going against him as such he had sought the said information to be furnished within 48 hrs as it concerned his life and liberty.
4. It is the contention of the Complainant that the said application was responded by Respondent No.1 PIO on 22/3/2017 interalia informing Complainant that his complaint dated 11/8/2016 against IGP Shri. Sunil Garg, P.I.S. is under investigation and hence the information sought by him cannot be spared at that stage in view of section 8(1) (h) of the RTI Act, 2005, as it will impede the process of investigation.
5. It is the contention of the Complainant that he being not satisfied with the said response and as the information as sought was not furnished, the Complainant filed first appeal on 29/3/2017 against the decision of the public information officer interms of section 19(1) of RTI Ac 2005.
6. It is the contention of the Complainant that the first appellate authority by an order dated 20/4/2017 dismissed the appeal filed by him by upholding the say of the Respondent No. 1 PIO.
7. It is the contention of the Complainant that he being aggrieved by the actions of both the Respondents, has approached this commission on 22/05/2017 in the 2nd appeal filed u/s 19(3) of the act and also under complaint u/s 18 of the act on the ground raised in the memo of appeal/complaint.
8. In this back ground the Complainant has filed this Complaint thereby seeking relief of invoking penal provisions as against respondent.
9. In pursuant to notice of this commission, the Complainant appeared in person. Respondent PIO Mrs. Nathin Araujo was present.

10. Reply filed by Respondent No. 1 on 19/09/2017 along with enclosures .
11. Complainant also filed rejoinder to the reply filed by the respondent on 11/1/2018 along with enclosures to which sur-rejoinder was filed by Respondent PIO on 10/8/2018 to which again sur-rejoinder was filed by complainant on 8/1/2019.
12. Written argument were placed on record by complainant on 18/2/2019 and by Respondent on 20/3/2019
13. It is the Contention of the Complainant that he had filed a Complaint dated 11/08/2017 against the then Inspector General of Police Shri. Sunil Garg for demanding and accepting the bribe money of Rupees Five Lakh Fifty Thousand. It was further contended that a criminal application No. 87/2016 u/s 156(3) was filed by him before the Hon'ble court in view of non registration of FIR into the complaint dated 11/8/2016 lodged by him.
14. It is the contention of the Complainant that his life and liberty was in danger after lodging complaint against Sunil Garg and after submitting criminal miscellaneous application u/s 156(3) and hence he was entitled for getting the said reply within 48 hrs as provided u/s 7(1) of RTI and that failure to do so amount to refusal of the information sought.
15. It is the contention of the Complainant that Respondent No. 1 PIO provided him false and fabricated information on the assumption that his Complaint dated 11/8/2016 was under investigation. According to him the Chief Secretary had already concluded enquiry into his Complaint through administrative aspect and has sent his findings to the Director of Vigilance in order to convey the same to Anti Corruption branch of vigilance who had registered the preliminary inquiry no 4/2016 for conducting inquiry through technical /criminal aspect.

16. According to the Complainant the Respondent PIO failed to show satisfactory as to why the release of such information would hamper the investigation process and mere reproducing of the wording of the statute would not be sufficient especially when the office of the PIO is not holding the inquiry or investigation. It is his contention that when the information sought is not in possession of the PIO or if he is not authority to provide the information recourse ought to have taken to the provisions of section 6(3) of RTI Act.
17. It is the contention of the Complainant that since he did not received the information sought vide application dated 16/2/2017 from Respondent no.1, he filed fresh application on 8/2/2018 under RTI before the PIO, Anti Corruption Branch and after long legal fight he succeeded in getting the part information after filing first appeal. It is his contention that he got the information pertaining to point No. 1 of his RTI application dated 16/2/2017 on 18/6/2018 from the office of ACB and the information pertaining to point No. 2 and 3 of his application dated 16/2/2017 have not been received by him till date.
18. It is his contention that due to the malafide and false information (rejection) provided by PIO Mrs. Natin Araujo he had to suffer a lots and due to non furnishing the information, he was not able to represent appeal filed by the Shri Sunil Garg IPS in the High Court against the order of Sessions court and due to which he lost the said appeal.
19. The Respondent PIO on the other hand had submitted that she had furnished the correct reply within the prescribed time to the Complainant. She further submitted that since the information sought by the Complainant within 48 hrs alleging that it concerns his life and liberty and the complainant had not produced anything

on record to substantiate the same as such in the interest of justice the RTI application was forwarded to the Superintendent of Police, of South Goa District by link officer /then PIO to find out whether there is truth in the application of Appellant however no reply in the affirmative was received from the Superintendent of Police, South-Goa.

20. It is a contention of PIO that at the given time the application was made and when the information was sought within 48 hrs she was deputed for election duty in the office of Chief Electoral Officer, Altinho and her charge was given to another officer.
21. It is her further contention that while processing the RTI application of the appellant, relevant files were called for by her and it was seen that the investigation in the matter was still under progress, as such by the letter dated 23/2/2017 she informed the Appellant that the information sought cannot be spared in view of Section 8(1)(h) of the RTI Act since the matter was under investigation and sharing the same would have impeded the process of investigation.
22. It was further contented that no investigation could be said to be completed unless it has reached the point where the final decision on the basis of that investigation is taken.
23. In a nutshell it is case of the Respondent PIO the matter was under investigation and the grounds raised by the complainant in the present appeal are baseless without any support as well documentary evidence.
24. I have scrutinise the records available in the file, considered the submissions made by both the parties.
25. The present complaint is filed specifically against Smt.Nathin Araujo, PIO of Dy. Director of Vigilance. The complainant has sought for penalising respondent PIO primarily on two grounds that is;

- a) Information is not furnished within 48 hours .
 - b) Respondent malafidely denied him information on the ground that investigation is in progress and provided him incorrect incomplete and misleading information.
26. On perusing of the records it is seen that the application dated 16/2/2017 was made by the complainant herein to the PIO of office of Chief Secretary for providing information within 48 hours, which was intuned transferred to the PIO of Additional Director of Vigilance in terms of section 6(3) of RTI Act on 20/2/2017 i.e after completion of 48 hours from the date of filing of said application by complainant.
27. As it was the contention of the complainant that he had sought the information within 48 hours as there were lots of life threatening activities where going against him, as such it was for him to produce cogent evidence to substantiate his said contention. The RTI application was filed on 16/2/2017, no any documents have been produced on record by the complainant to substantiate his case when the application was filed his life was in danger .Only During the present proceedings complainant produced on records copy of the FIR bearing number 26/18 dated 10/3/2018 filed against two unknown accused persons thattoo after year of filing RTI application.
28. It is the contention of the Respondent that at a relevant when the RTI application seeking information within 48 hours was filed by the complainant, she was posted for election duty at the office of Chief Electoral Officer vide order dated 28/11/2016 and had joined the said office on 5/12/2016. She further contended that the Department of personnel vide order dated 4/1/2017 had made a link arrangement, and in pursuant to same the link officer Shri Vishant Gaunekar joined on 6/1/2017. She further contended that she was relieved from the election duty from the office of Chief

Electoral Office vide order dated 21/3/2017 and she reported on her duty on a same day. In support of her above contention she relied upon joining report dated 5/12/2016 of having resuming her duties at Chief Electoral office, joining report dated 6/1/2017 of Shri Vishant S. Naik Gauneker joining as link officer for deputy Director of Vigilance and the joining report of the respondent dated 21/3/2017 of she joining back again at original posting at department of Vigilance. The PIO also relied upon the letter dated 2/3/2017 addressed to the superintendant of Police, South Goa by the link officer Shri Vishant S.N. Gaunker wherein the S.P. of South Goa was requested to inquire and to find out whether there are lots of life threatening against complainant or not. The above contention and the documents submitted by the Respondent PIO herein has gone undisputed and unrebutted by the complainant.

29. Hence the records shows that initially the RTI application of the complainant was not processed by the Respondent and hence she cannot be held responsible for not providing information or/and for not responding the application within 48 hours .
30. It is the contention of the complainant that PIO malafidely denied him information by providing false and incorrect reply by taking shadow of section 8(1)(h) of RTI Act.
31. The Hon'ble High Court of Bombay at Goa in the case of **Dr. Celsa Pinto V/s.The Goa State Information Commission and another,reported in 2008(110)Bombay L.R.1238 at relevant para 8 has held**

“The Commission has with reference to question No. 1 held that the petitioner has provided incomplete answers misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false

information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. ***This conclusion could have been as valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available.*** In such circumstances it would have been possible to upload the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available."

32. The complainant vide his rejoinder dated 11/1/2018 at Para 6 have submitted that two authority were conducting the inquiry/ investigation into his complaint dated 11/8/2017 and the Chief Secretary had already concluded his inquiry into his complain through administrative aspect on 31/12/2016 and the Anti Corruption Branch of vigilance concluded preliminary inquiry No. 4/2016 through technical/criminal aspects on 22/2/2017. As such the onus was on the complainant and it was encumbdent on his part to place on record relevant documents. The complainant herein has miserably failed to produce any cogent and convincing evidence on record substantiating his above contention. Hence by subscribing to above ratio as laid down by Hon'ble High Court in case of Celsa Pinto (Supra), I am of the opinion that in absence of any such supporting documents it will not be appropriate on the part of this commission to take the above contention/ statement of complainant as a gospel truth. Moresoever the documents produced by the complainant himself speaks contrary. The note dated 22/2/2017 of Shri Bosvet Silva, Deputy Superintendent of Police, ACB/Vigilance states that "***inquiry in a matter is in progress***" so also letter dated 10/4/2017

addressed to the complainant herein by the PIO of ACB/Vigilance also reveals that the inspection of the files pertaining to preliminary inquiry 4/16 was denied to the complainant u/s 8(1)(h) of RTI Act on the ground the inquiry is in progress and allowing the inspection may impeded further process of investigation. So also the note of DIG dated 22/3/2017 also reveals that registration of FIR was required in order to obtain SDR and CDR of telephones, voice samples, technical examination and comparison of voice sample etc. The above documents were enclosed by the complainant to his rejoinder dated 11/1/2018 .

33. In written arguments dated 8/2/2019 the complainant have himself contended that he had filed fresh application dated 8/2/2018 before PIO of Anti Corruption Branch seeking same information and the same was denied to him by the PIO of ACB /Vigilance and after long fight he succeeded in receiving information at point No. 1 after the order of first appellate authority. It is pertinent to note that the order of first appellate authority dated 18/6/2018 in appeal no.SP/(ACB)/RTI-04/Appeal /2018/134 ,the information at point no. 2 and 3 of the application dated 8/2/2018 i.e the instruction issued/comment forwarded and the certified copy of the entire noting and the correspondence of the file pertaining to inquiry conducted by Chief Secretary was not ordered to be furnished by the first appellate authority.
34. Section 8(1) (h) does not provide for blanket exemption covering all information relating to investigation process and the partial information wherever is justified can be granted. In the present case though the complainant have contended that he had received the information at point no.1 from ACB/Vigilance after the order of first appellate authority dated 18/6/2018 in first appeal No. SP (ACB) (RTI-4/Appeal /2018/134 since he did not produce the same on record. It was not possible for this commission to arrive at conclusions whether the same could

have been furnished to the complainant at the initial stage itself or not by the Respondent PIO or partial information wherever could have been granted

35. However the facts remains that the information which was denied by the Respondent PIO vide her letter dated 22/3/2017 was also denied by the PIO of ACB Vigilance, who is the investigating agency in the year 2018 interms of section 18 (1) (h) of RTI Act. Thus I do not find any illegality or irregularity in the reply of PIO given interms of section 7(1) to the complainant as the investigation agency has also denied the said information by coming to the conclusion that it will impead persecution/investigation.
36. It is also the contention of the complainant that his Complainant dated 11/8/2016 was not been investigated by the office of PIO and hence she was not an authority to deny the information. It was further contended that the opponent ought to have transferred his application to the investigation agency/inquiry authority alongwith concerned file to take the decision in the matter. As per section 6(3), the application can be transferred to another public authority who is holding the said informtion or the subject matter of more closely connected with the functioning of another public authority. As on the day of reply the file was in the custody and in possession of office of the Director of vigilance hence the PIO of the said section had every authority to call for the records/file and deal with the RTI application in accordance with law . The decision of transferring and or allotting the file to other section is generally taken by the head of the Department and the PIO has no role or authority to mark the same to other section. Hence I do not concur with the submission of the complainant that the PIO ought to have transferred the application interms of section 6 of RTI Act along with the file to the Anti Corruption Branch.

37. The Hon'ble High Court under inherent powers can call for the records from any authority for the purpose of verification or scrutiny if they feel it necessary for the just discussion of case. As such, I am not in agreement with the contention of complainant that he lost the appeal filed by Shri Garg before Hon'ble High Court since he could not represent properly due to non furnishing of the information by Respondent PIO.
38. The Delhi High Court writ petition (C)11271/09; in case of Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

39. The reply filed by the Respondent PIO appears to be probable and convincing and the documents on record reveals that the entire investigation was not concluded on the date of the information sought by complainant. By subscribing to the ratio laid down in case of Registrar of companies (Supra), I am of the opinion that facts of the present case does not warrant levy of penalty on PIO as there is no cogent and convincing evidence attributing malafides on the Part of respondent PIO. and hence the relief sought by the complainant cannot be granted.

Complaint proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa