

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

Complaint No.: 09/2019/SIC-I

Mr. Ivo Fernandes,
H. No. 542/1, Pongirwal,
Curchorem Goa, 403706.

..... Complainant

v/s

1. Public Information Officer,
Assistant Registrar of Cooperative Societies,
Quepem Zone, Quepem-Goa, South-Goa.

2. First Appellate Authority (FAA),
Registrar of Co-operative Societies,
Headquarters, Panaji-Goa, EDC,
Complex, Patto Panaji- Goa. 403001Opponents/Respondents

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

Filed on:- 30/01/2019
Decided on:-16/09/2019

ORDER

1. It is the case of the Complainant that he had filed the application dated 6/10/2018 seeking information under RTI Act 2005 which was denied by the Chairman of Messiah Multipurpose co-operative Society Ltd., Curchorem-Goa. Hence vide his application dated 4/12/2018 addressed to the PIO /APIO /FAA of the Office of Registrar of Co-operative Society, South Zone, Margao, Goa brought the said fact to their notice and requested to provide the information in the application dated 6/10/2018 .

2. It is the contention of the Complainant that he also received the reply dated 31/12/2018 from the PIO of the Head Quarters, Panajim thereby informing him that their office has no jurisdiction to entertain his appeal as their office have not appointed First appellate authority to hear the matter of appeal filed against the Cooperative society under the RTI Act , 2005.

3. It is the contention of Complainant that he also received letter dated 11/12/2018 from PIO of Assistant Registrar of Cooperative Societies, Quepem Zone, Quepem-Goa to his RTI application dated 4/12/2018 informing him that their office have no powers to take action with regards to appeal under the Act and he may approach First Appellate Authority at Panaji in order to settle the issue.
4. It is the contention of the Complainant that Department of Information and Publicity , Government of Goa has notified that FAA is the Registrar of Cooperative Society at Panajim. Hence it is his contention that officer at their respective office had failed to provide him the required information there by violating the RTI Act , 2005.
5. In this background the present complaint came to be filed by the complainant herein on 30/1/2019.
6. After notifying the parties the matter was taken up on board pursuant to which Respondent No. 1, PIO Shri P.A. Parab of Quepem Zone appeared and filed his reply on 12/4/2019 and on 3/05/2019. A rectification of his complaint was also filed by the complainant on 12/4/2019 alongwith the enclosures. The PIO of the Registrar of Cooperative Societies, Head Quarters also filed his reply on 17/6/2019. The copy of the same was furnished to the Complainant herein.
7. Vide reply the Respondent no. 1 PIO Shri P.A.Parab have contended that the information sought by the complainant in his original application dated 6/10/2018 was required to be furnished by the Chairman of Messaih Multipurpose Cooperative Societies Ltd., Curchorem and further contended that Since the complainant is the member of Cooperative Societies under section 32 of Goa Cooperative Societies Act 2001 has right to see the book etc. and on denial of the same by the Chairman of said

society within one month he could have approached the respondent for his intervention which was not done by the complainant. It was further contended that the complainant unnecessary made the application to the respondent under RTI Act, 2005 to harass Respondent No. 1. It was further submitted that complainant is having prejudice mind against the respondent ever since he lost the elections in respect of the elections of the Board of Directors of the Messaih Multipurpose Cooperative Societies Ltd, Curchorem and therefore he is adapting number of tactics in order to cause harassment to him, without filing any appeal before the information commission for obtaining the required information, but makes complaint against the respondent for imposing penalties. It was further contended that he neither refused access to information and he is ready to furnish the information to the complainant which is available on his records. It was also denied that he has misguided and harassed Complaint as alleged . He further contended that Cooperative Societies are not falling in the ambit of RTI , Act, 2005 and as there are no specific instructions from Higher Officers to confiled the request made by Complainant with any Cooperative Societies to furnish information, as such he informed the Complainant to approach the first appellate authority.

8. The PIO Shri Prasad Volvaikar of the Registrar of Cooperative Societies Head Quarter at Panaji contended that the Respondent No. 2 First Appellate Authority (FAA) does not have jurisdiction to entertain the first appeal filed against the cooperative societies as the said Society is not notify as the public authority to deal into the RTI matters.
9. Rejoinder /counter reply also came to be filed by the complainant on 3/5/2019, 29/5/2019, 28/6/2019 and on 16/07/2019 disputing the averments made by the Respondent No. 1 in his replies.

10. It is the contention of the Complainant vide his counter replies that Respondent no. 1 is duty bound and can intervene in the matter and direct the chairman of the society to furnish the requested information in accordance with section 32 of Goa Cooperative Societies Act 2001. It is further contention of Complainant that the chairman mismanages and misappropriate the funds of society and the respondent is the appropriate authorities under the Goa Cooperative Societies Act 2001 to decide the course of action in the said matter but failed to take any action against the chairman of the MMCSL for violation of section 32. It was further contended that respondent no. 1 in most of the RTI replies have failed even to mention the name and address of the competent authority and tactfully washed his hands by submitting information not available on record.
11. Vide additional reply dated 03/05/2019 at para 6, complainant also submitted that if Respondent PIO provides him minutes of BOD, then there is no question of imposing penalty.
12. I have scrutinize the records available in the file and also considered the rival submissions of both the parties.
13. On perusing the application dated 04/12/2018 made to the PIO/APIO/FAA of Assistant Registrar of Cooperative Society, South, Margao-Goa, it is seen that the appellant had also requested for information sought vide application dated 06/10/2018 so also requested to provide him the certified copy of the instruction letter /order given to the chairman of the MMCSL preferably on the date of dispatched from his office. Hence the application dated 04/12/2018 made to respondent no. 1 appears to have been made interms of sub section (1) of section 6 of RTI Act, 2005. The said was responded by the Respondent No. 1 Shri P A Parab on 11/12/2018. Since the complainant in application dated 04/12/2018 has mentioned the subject as "**appeal under**

RTI Act, 2005,” and as addressed to also first appellate authority it appears that the PIO has misconstrued the said application and replied him that he has got no powers to take actions with regards to appeal under RTI Act. Nevertheless the PIO was duty bound interms of section 7(8) to give the reason for such rejections, the period within which appeal against rejection may be preferred and the particulars of the appellate authority. The PIO has failed to specify the above requirements in his reply dated 11/12/2018.

14. The Complainant vide his application dated 03/05/2019, filed before this Commission besides other reliefs has sought for directions to furnish the information as sought for by him vide letter dated 06/10/2018 and also on application dated 20/03/2019 at point no. 3.
15. It pertains to mention that application dated 06/10/2018 since not made to respondent no. 1 PIO by Complainant, hence this Commission is not empowered to issue any directions to PIO pertaining to above application.
16. The application dated 20/3/2019 is also not a subject matter of the present Complaint, However, it appears from the records that the said application was replied by the Respondent NO.1 PIO on 18/4/2019 wherein the information at point no. 1 and 2 were provided and information at point no. 3 was replied not available in the office records. On perusal of the reply dated 18/4/2019 given by the Respondent No. 1 PIO, the respondent No. 1 PIO has failed to mention the details of the appellate authority.
17. The complainant has grievance with regards to said reply dated 18/4/2019 and hence vide his application dated 3/5/2019 filed before this Commission has sought for directions for providing information as mentioned in application dated 6/10/2018 and of his application dated 20/03/2019 at point No.3. In my considered

opinion is such situation the proper course of action for a complainant therein who have been to file first appeal and adjudicate the propriety of refusal before the appellate authority. My said observation are based on the decision of Apex Court given in case of Chief Information Commissioner and another V/s a State of Manipur and another's (***civil Appeal No. 10787-10788 of 2011***).

18. The only issue which can be dealt by this commission in this complaint is pertaining to RTI Application dated 4/12/0218 and the reply given by the Respondent PIO dated 11/12/2018 . It appears from the records that the Complainant was aggrieved by the above reply dated 11/12/2018 of the Respondent PIO and hence preferred appeal before the Registrar of Cooperative Societies /FAA on 18/1/2019.
19. On perusal of the application /appeal dated 18/12/2018 with an caption "Appeal under RTI Act, 2005, w.r.t. letter dated 31/12/2018" it could be gather that the Complainant had requested and has sought for relief of providing him necessary information. The Respondent No. 2 FAA did not appear before this commission neither filed any reply substantiating his case . There is nothing on record to show that the Respondent No. 2 FAA had issued the notice to the a parties and heard them and disposed the said first appeal. It appears that said application/appeal was not decided and dealt by Respondent no .2 FAA. It appears that since the said appeal was not filed in proper format, the same might have been dealt by the PIO of Head quarters Panajim Goa vide letter dated 13/2/2019 .
20. Nowhere it is suggested that an information seeker cannot approach the Commission under Section 18 but only after he exhausts the alternate and efficacious remedy of First Appeal, before approaching the higher forum. Judicial institutions operate

in hierarchical jurisprudence. An information seeker is free to approach the Commission by way of a Complaint under Section 18, if his grievance is not redressed, even after the decision of the First Appellate Authority. As held above, in Chief Information Commission V/s State of Manipur (Supra) that "Section 18, is 'subject' to provisions of Section 19 and Section 19 provides for an efficacious remedy to the fundamental requirement of information under the Act. Such a remedy of filing first appeal would also be in conformity with the provisions of section 19(5) of the Act and grant a fair opportunity to the PIO, to prove that the denial of request for information was justified. Seeking penalty and information by way of complaint, without first appeal, would be violative of such rights". In the present case the appeal dated 18/01/2019 filed by Complainant was not dealt in accordance with law. The Complainant as well as Respondent PIO has lost a forum to put forth all his grievances and to substantiate his case. By not hearing 1st appeal, the Complainant as well as Respondent has been deprived of one forum.

21. Be that as it may be , for the purpose of considering liability u/s 20(1) and /or 20(2) of the Right to information Act , 2005 , the High Court of Bombay in writ petition No. 205/2007-Shri A.A. Parulekar V/s Goa State Information Commission and others 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.**"

22. 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 .
23. The Complainant him selves have relied upon letters dated 18/4/2019, 22/3/2019, 15/10/2018 ,14/2/2019 of Respondent No.

1 PIO wherein the information was offered to the Complainant within stipulated time of 30 days which intern reveals that respondent No. 1 PIO has discharged his obligations diligently in other RTI matters . Even though there is a flaw in dealing with RTI application dated 4/12/2018 which is the subject matter of present complaint ,however there is no cogent and convincing evidence on records attributing malafides on the part of the PIO.

24. It needs to mention that in above replies dated 18/04/2019, 22/03/2019, 15/10/2018 and 14/02/2019 given interms of sub suction (1) of section 7 by Respondent No. 1, PIO to other RTI applications it is seen that PIO has failed to mention name of 1st Appellate Authority and other details as required under section 7(8) of RTI, Act. The said section is an mandatory and hence Respondent No. 1, PIO is hereby directed to comply with said section in true spirit hence forth.
25. Never the less considering the intent of the RTI Act and the times spent by the complainant in pursuing this complaint and as he is still interested in information, I am of the opinion that the interest of the complaint is required to be protected . I therefore proceed to dispose the present complaint with following order :

ORDER

Complainant is granted liberty to file first appeal under section 19(1) of The RTI Act in respect of the rejection/refusal of his request for information vide his application, dated 4/12/2018, within forty-five days from the today. If such an appeal is filed, the first appellate authority shall decide the same on merits in accordance with law, without insisting on the period of Limitation. The rights of the complainant herein to file complaint/appeal in case the complainant is aggrieved by the order of the first appellate authority in such appeals, are kept open.

Parties to be notified. Authenticated copies of this order shall be furnished to the parties free of cost. Proceedings stands closed.

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.

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