

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Penalty No. 12/2019/SIC-I
In
Appeal No. 02/2019/SIC-I

Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,,
Near Sateri Temple, Khorlim,
Mapusa-Goa
403 507

....Appellant

V/s

1. The Public Information Officer (PIO),
Mapusa Municipal Council,
Mapusa-Goa 403507.
 2. First Appellate Authority,
Chief Officer, Mapusa Municipal Council,
Mapusa-Goa
-Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Decided on: 25/06/2019

ORDER

1. The penalty proceedings have been initiated against the Respondents under section 20(1) and or 20(2) of RTI Act, 2005 for the contravention of section 7(1) of Right to Information Act, 2005, for not complying the order of First Appellate Authority (FAA) and delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 6/3/2019. However, the facts are reiterated in brief in order to appreciate the matter in its proper prospective.
3. A request was made by the Appellant on 20/8/2018 addressed to the PIO of the office of Chief Secretary for the state of Goa which was then transferred by the PIO of Chief Secretary vide letter dated 23/8/2018 to the PIO of the Director of Municipal Administration in terms of section 6(3) of RTI Act, 2005 who interned transferred the same to the Respondent No. 1 PIO of Mapusa Municipal Council

also in terms of section 6(3) of RTI Act, 2005 with a request to furnish the said information directly to the appellant. As no information was given nor any reply was sent to appellant in a statutory period of 30 days, hence the first appeal was filed by the appellant on 8/10/2018 and the FAA vide order dated 21/11/2018 allowed the first appeal and directed the Respondent PIO to furnish the information to the appellant within 15 days, free of cost.

4. Appellant approached this commission in his second appeal on 4/1/2019 in terms of section 19(3) of RTI Act 2005 with a grievance that the respondent despite of the order of FAA did not provide him information with malafide intention. After hearing both the parties, the Commission vide order dated 6/3/2019 allowed the appeal of the appellant and thereby directed the Respondent PIO to provide the information to the appellant within 15 days and also came to the prima-facie finding that there was delay in furnishing information and that the respondent PIO did not act diligently while disposing off the request for information under the RTI Act and hence directed to issue showcause notice to the respondent PIO.
5. In view of the said order dated 6/3/2019 the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to PIO on 7/03/2019 and on 17/4/2019. In pursuance to showcause notices then PIO, Shri Vyankatesh Sawant and Mrs. Resha Desai appeared. Then PIO, Shri Vyankatesh Sawant filed his reply on 8/5/2019 along with enclosure. Affidavit also came to be filed by Shri Vyankatesh Sawant on 6/6/2019 and by then PIO Smt Resha S. Raut Desai on 19/6/2019 along with enclosures.
7. Then PIO, Shri Vyankatesh Sawant vide his affidavit have admitted that he was officiating as PIO when the application was received in their office on 31/8/2018. It is his contention that the said RTI application was marked to head clerk Smt. Nazira Sayed who failed to process the RTI Application. He further contended that he had

issued memorandum dated 4/9/2018 to temporary clerk Mrs. Madhavi Patkar for processing the RTI application dated 20/8/2018 received by the council on 31/12/2018. It was further contended that on learning that the said dealing clerk Mrs Joana Fernandes had failed to serve the memorandum to the concerned clerk, he vide his note dated 16/5/2019 reported the said matter to the chief officer for taking necessary action against dealing clerk, and in support of his contention, he relied upon the extract of inward register and the memorandum issued by him dated 4/9/2018 and his note dated 16/5/2019. He further submitted that he was holding charge of Municipal Engineer Gr. III, Municipal Engineer grade II and PIO on the date of the application and hence he could not furnish the information to the appellant due to the overburden of work. It was further contended that Smt. Resha Desai was officiating as PIO when the order was passed by the FAA on 21/11/2018.

8. Then PIO Mrs Resha S Raut Desai Vide her affidavit have submitted that she was holding the charge of PIO as per order dated 4/9/2018 and order dated 27/9/2018 . She further contended that the delay caused in non furnishing of the informtion to the appellant in mainly due to non submission of information by deemed PIO . It was further contended that the negligence on the part of APIO /UDC have been brought to the notice of Chief Officer of Mapusa Municipal council vide her note dated 16/5/2019. She further contended that information have now been furnished to the appellant vide letter dated 7/5/2019 and in support of her contention she relied upon the letter dated 7/5/2019 of furnishing the information to the appellant and her note dated 16/5/2019 .
9. Both the above named respondents submitted to consider their reply as their arguments and prayed for a lenient view.
10. I have gone through the records available in file and also considered the submission of the Respondent PIO.

11. The extract of inward register of Mapusa Municipality which has been relied by both the respondents shows that the application of the appellant dated 20/08/2018 filed u/s 6(1) of RTI Act, 2005 was received in the office of the Mapusa Municipal Council on 31/08/2018. As per the version of the then PIO Smt Resha S Raut Dessai she was appointed as PIO vide order dated 04/09/2018 and order dated 27/09/2018. If one takes into consideration the said orders, it can be gathered that Shri Vyankatesh Sawant was officiating as PIO till 04/09/2018. In other words the PIO Shri Vyankatesh Sawant had only 4 days at his disposal to deal with the said RTI application. The said Vyankatesh Sawant had also placed on records the memorandum dated 04/09/2018 seeking assistance u/s 5(4) of RTI Act, 2005, thereby requesting the custodian of information to supply the said information to him for onwards submission to appellant. The PIO Shri Vyankatesh Sawant has also placed on records his note dated 16/05/2019 addressed to Chief Officer requesting him to take appropriate action against the staff involved in none processing of the said RTI application. I find the reply of the then PIO Shri Vyankatesh Sawant as probable and convincing as the same is supported by the documentary evidence. The then PIO Shri Vyankatesh Sawant have shown his bonafides in securing the said information from the concern dealing clerk by issuing memorandum within 4 days of receipt of application. As such I do not find any malafides attributing on the part of then PIO Shri Vyankatesh Sawant and hence the show cause notice issued to then PIO Shri Vyankatesh Sawant dated 7/03/2019 and on 17/4/2019 stands withdrawn.

12. The then PIO Resha S Raut Dessai has admitted that she was officiating as PIO when the order was passed by the FAA on 21/11/2018. It could be gathered from the order and from the proceedings sheets of the FAA that the PIO Resha S Raut Dessai was present during the hearing and the said order passed in her presence. The said proceedings sheets also bears a signature of Smt Resha S Raut Dessai of having attended the proceedings. As such she was

aware of the order passed and the directions issued to her by the FAA for furnishing the information within 15 days. She has not specified what were the steps taken by her in compliance of the order of FAA and in providing the said information. The PIO has also not placed on records any correspondents made by her in pursuant to the said order to the appellant. No reasons what over were conveyed by her to the FAA nor to the appellant why she could not comply the said order in time. Only during present proceedings she has contended that non furnishing of the information to the appellant is mainly due to the non submission of information by deemed PIO. She has also not produced on records any documentary evidence seeking assistance of the said deemed PIO. Neither she has specified who was the deemed PIO at the relevant time. Further she has also not placed on records any documents showing that the conduct of deemed PIO and the UDC was reported to her higher ups. The belated note dated 16/05/2019 made to chief officer appears to have been made after thought in order to escape the penal liability.

13. The Hon'ble High Court of Gujarat in special civil application No. 8376 of 2010, in case of Umesh M. Patel V/s State of Gujarat has held that Penalty can be imposed if First Appellate Authority order not complied. The relevant para 8 and 9 is reproduced herein.

“Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellant authority, directing him to do so. Whatever be the nature of the appellate order the petitioner was duty bound to implement the same, whether it was a speaking order or whether the appellant authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty.”

14. Yet in another case the Hon'ble Delhi High Court in W.P. (C) 3845/2007; Mujibur Rehman versus central information commission

while maintain the order of commission of imposing penalty on PIO has held;

“Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure’ they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. **It is to ensure these ends that time limits have been prescribed, in absolute terms as well as penalty provisions. These are meant to ensure a culture of information disclose so necessary for a robust and functioning democracy.**”

15. The Hon’ble High Court of Punjab and Haryana. In Civil Writ Petition No. 14161 of 2009 Shaheed Kanshi Ram Memorial V/s State Information Commission has held;

“As per provisions of the Act, Public Informtion Officer is supposed to supply correct informtion that too, in a time bound manner. Once a finding has come that he has not acted in the manner prescribed under the Act, imposition of penalty is perfectly justified. No case is made out for interference.”

16. Hence according to the ratios laid down in the above judgements the PIO has to provide correct information in a time bound manner as contemplated under the RTI act. In the present case the PIO Smt Resha S Raut Dessai has repeatedly failed to provide the information within time frame. Such a conduct and attitude of Respondent PIO appears to be suspicious vis-s-vis the intend of the RTI act and is not in conformity with the provisions of the RTI Act.

17. The PIO must introspect that non furnishing of the correct or incomplete informtion lands the citizen before first appellate authority and also before this commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible.

18. If the correct and timely information was provided to appellant it would have saved valuable time and hardship caused to the complainant herein in pursuing the said appeal before the different authorities. It is quite obvious that complainant has suffered lots of harassment and mental torture in seeking the information under the RTI Act which is denied to him till date. If the PIO has given prompt and correct information such harassment could have been avoided.

19. Considering the above conduct, I find that PIO Smt Resha S Raut Dessai has without reasonable cause repeatedly and persistently has failed to furnish information within time. Thus I am convinced and is of the opinion that it fits the case for imposing penalty on then PIO Smt Resha S Raut Dessai. Hence the following order.

ORDER

- i. The respondent No. 1 PIO Resha S Raut Dessai shall pay a amount of Rs. 2000/- (Two Thousand) as penalty for contravention of section 7(1), for not complying the order of First appellate Authority within stipulated time and for delaying in furnishing the information.
- ii. Aforesaid total amount payable as penalty shall be deducted from the salary of PIO and the penalty amount shall be credited to the Government treasury at North Goa.
- iii. Copy of this order should be sent to the Director, Directorate of Municipal Administration, at Panaji and Director of Accounts, North Goa Panaji for information and implementation.

Proceedings 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.

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