

GOA STATE INFORMATION COMMISSION

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

**Penalty No. 18/2019/SIC-I
In
Appeal No.21/2019/SIC-I**

Shri. Jawaharlal T. Shetye,
H.No.35/A,W. No-11,
Khorlim, Mapusa Goa.
Pincode-403 507
V/s

....Appellant

1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa Goa.

2) First Appellate Authority,
The Chief Officer,
Mapusa Municipal Council,
Mapusa-Goa.

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 16/07/2019

ORDER

1. The penalty proceedings have been initiated against the Respondent No.1 PIO 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 29/3/2019. 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 09/07/18 to the respondent No.1 PIO of Mapusa Municipal council in exercise of his right in terms of sub-section (1) of section 6 of right to Information Act,2005 .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 10/08/2018 and the FAA vide order dated 17/10/2018 allowed the first appeal and directed the Respondent PIO to furnish the information to the appellant within 10 days, free of cost.

4. Appellant approached this commission in his second appeal on 6/2/2019 under 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 mala fide intention. After hearing both the parties, the Commission vide order dated 29/3/2019 allowed the appeal of the appellant and thereby directed the Respondent PIO to provide the information to the appellant within 20 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 29/3/2019 the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to PIO on 02/4/2019. In pursuance to showcause notice then PIO, Shri Vyankatesh Sawant appeared and filed his reply on 13/06/2019 and on 19/06/19 along with enclosure.
7. Then PIO, Shri Vyankatesh Sawant vide his both above reply have admitted that he was officiating as PIO when the application was received in their office on 09/07/2018. It is his contention that the said RTI application was marked to UDC Shri Rajendra Bhagkar who failed to process the RTI Application and failed to furnish him the information till date, and in support of his contention he relied upon extract of register marking the said application to Shri Bagkar. 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.

8. The respondent further contended that he was not served with the notice of hearing by first appellate Authority in the 1st appeal proceedings and that he was not a party to the proceedings held before First appellate authority on 17/10/18 and his signature is not seen in the proceeding sheets .He further prayed for a lenient view .
9. I have gone through the records available in file and also considered the submission of the Respondent PIO.
10. The extract of register of Mapusa Municipality which has been relied by the respondent shows that the application of the appellant dated 09/07/2018 filed u/s 6(1) of RTI Act, 2005 was marked to Shri Bhagkar, It appears that said Shri Rajendra Bagkar was the custodian of information as such the said application was marked to him and his assistance was sought u/s 5(4) of RTI Act, 2005. It is the case of the PIO that he could not furnish the information since the deemed PIO Shri Rajendra Bagkar failed to provide him information .
11. Further on perusal of the proceeding sheets of the first appellate authority though there is reference in an order that the PIO Sawant was present however no signature of his is seen in the said proceeding sheet. Hence I find some truth in the contention of the appellant that he was not present during the proceedings before the first appellate authority on 17/10/2018 .
12. The Hon'ble High Court of Bombay at Goa 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."

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 comply 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”.

13. Hence according to the above judgment possessing of the knowledge of the order to supply information is a must. There is nothing on record to show that the said order dated 17/10/2018 passed by the first appellate authority was communicated to the Respondent PIO and that he was aware of the said order and he deliberately with malafide intention did not comply the said order . In absence of any documents it is not proper on the part of this commission to draw any such adverse conclusions against Respondent PIO.
14. 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 fulfil 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.”

15. The replies filed by the Respondent PIO appears to be probable and convincing. I do not find any malafides attributing on the part of then PIO Shri Vyankatesh Sawant. The PIO cannot be made a scapegoat for no fault of his and for the fault of the other Officer. Considering the facts and circumstances of this case, I am of the opinion that benefit of doubt should go in favour of PIO and hence the show cause notice issued to then PIO Shri Vyankatesh Sawant dated 2/04/2019 stands withdrawn. 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.

Sd/-

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