

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 26/2019
In
Appeal No. 68 /2019/SIC-I

Shri Siddesh Simepurushkar,
r/o Flat No. 2, Ananta Appt,
Angodwada, Mapusa-Goa.

.....Appellant

V/s

1. Public Information Officer,(PIO)
Administrator of Comunidade,
(North Zone), Mapusa,
Bardez Goa.

.....Respondent

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

Decided on:31/10/2019

ORDER

1. The penalty proceedings have been initiated against the Respondent Public Information Officer (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 10/6/2019. 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 27/11/2018 to the PIO of Administrator of Comunidade North Zone, Mapusa-Goa for information on 7 points pertaining to the Comunidade of Assagao. Since no any reply was sent to Appellant in a statutory period of 30 days and as no complete information was furnished to him vide letter dated 4/1/2019 by the PIO the first appeal was filed by the appellant on 15/1/2019 to the collector of North-Goa

District, Panajim being First Appellate Authority (FAA) and the First Appellate Authority (FAA) vide order dated 25/2/2019 partly allowed the appeal filed by the appellant and directed Respondent No. 1 PIO to furnish the information at point No.4, 5, and 7 as sought by the appellant vide his application dated 27/11/2018 within 15 days free of cost from the date of the order. The said order of first appellate authority dated 25/2/2019 was not complied by the Respondent PIO as such being aggrieved by the action of respondent PIO and as no information was received by him, the appellant approached this Commission by way of second appeal as contemplated u/s 19(3) of RTI Act, 2005, with the grievance stating that the respondent PIO did not provide him the information with malafide intention even though directed by the First appellate authority (FAA). In the said second appeal he had sought for directions for providing him correct and complete information and also for invoking penal provisions.

4. After hearing the parties, the Commission vide order dated 10/6/2019 allowed the appeal of the appellant bearing No.68/2019/SIC-I and directed PIO to furnish the information to the appellant at point no. 4 and 7, free of cost as sought by him vide his RTI application 27/11/2018 within 15 days from the date of receipt of the order by him. While disposing the Appeal No. 68/2019 Commission also came to the prima-facie finding that there was delay in furnishing information and contraventions of RTI provisions 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 10/06/2019, the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to PIO on 28/6/2019. In pursuant to showcause notice, then PIO Shri Gaurish Shankawalkar appeared and filed his reply on 30/9/2019. The

present PIO Shri Vivek Naik also appeared during the hearing on 27/6/2019 and submitted that in compliance to the order of this commission the required information has been already furnished to the appellant.

7. I have considered the records available in the file and also submission of the parties.

8. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005:-

The Hon'ble High court of Bombay , Goa bench at Panaji in writ petition No.205/2007 ; Shri A A Parulekar v/s Goa State information commission has observed

“ The order of penalty for failure to akin action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate.”

9. In the back ground of above ratio as laid down by the Hon'ble Bombay High Court, the point arises for my determination is

a) Whether the delay in furnishing information was deliberate and intentionally?

10. The Respondent PIO have admitted of having received the application of the appellant dated 27/11/2018 seeking information on 7 points as mentioned in the application. The PIO fairly admitted delay in responding the same. However it is his case that it was not intentional. Vide reply he submitted that on receipt of the application of the appellant, he sought the assistance of the Escrivio (clerk) of Comunidade of Assagao vide letter dated 30/11/2018 for issuing the information sought by the appellant as the same was possession of Comunidade of Assagao and the said clerk was directed to supply the said information to his office within 3 days for submitting the same to the applicant . However it is the case of the then PIO that Escrivao did not

adhere to his instruction and information was not made available to him for onward submission to the appellant and the same was only submitted by the Escrivao to him vide letter dated 1/1/2019 which intern he furnished to the appellant vide his letter dated 4/1/2019 .

11. It is also his contention that the concerned dealing hand did not also bring to his notice about the 1st appeal filed by the appellant, and also did not bring to the notice of first appellate authority that the information have been already furnished to the appellant . It was further contended that after the order of first appellate authority the Escrivao was again directed to submit the information at point no. 4 and 7, even thereafter the Escrivao delayed to furnishing the information .
12. It is his further contention that he was holding main regular charge of Dy. Collector and sub-divisional Magistrate of Bardez Taluka and was holding additional charge of office of Administrator of Comunidade ,Bardez and due to the heavy work at Dy. Collector office, he could not keep a track and issue the information within stipulated time due to oversight. It was further submitted that there was extreme shortage of Staff in the office of the Comunidade and this has resulted in extreme difficulty in completing /disposing of the day to day work.
13. The PIO further contended that due to the Lok Sabha election and due to the bye elections for Mapusa Assembly constituency scheduled on 23/4/2019, the entire focus and concentration was on speedy completion of election preparation work such as preparation of electoral roll, Polling stations ,AMF at the poling station , training of officers and staff, law and order monitoring etc. He further contended that the election work is time bound as reports are sought on day to day basis and that he got completely tide up with all activities concerning elections. In

support of his above contention he relied upon letters dated 4/1/2018 addressed to the appellant, memorandum issued to the clerk of Comunidade Assagao dated 30/11/2018 etc.

14. Hence in the nutshell it is the case of the respondent PIO that there was no willful intention on his part to refuse the information and the delay if any was on account of the lethargic attitude of the staff of Administrator of Comunidade office and the movement he received the information from Escrivao of Assagao Comunidade he submitted the same to the appellant without any further delay . It is his further case that there is no evidence of malafide denials of information in order to attract the penalty .
15. The controversy which has arisen here is whether the respondent PIO is liable for action as contemplated under section 20(1) of RTI Act 2005 and whether the delay in furnishing information was deliberate and intentional
16. In writ petition No. 15288 of 2007 , S.P. Arora V/s state Information Commission Haryan and others, reported in AIR 2009 Punjab and Haryana , it has been held at para 8.

“The penalty can be imposed only if there is no reasonable cause for not furnishing the information with in a period of 30 days. The word “reasonable” has to be examined in the manner, which a normal person would consider it to be a reasonable the information is required to be supplied within 30 days only if the records is available with the office”.

17. In writ petition No. 2730 of 2013, in case of Narendra Kumar V/s the Chief Information Commissioner Uttarakhand, reported in AIR 2014 Uttarakhand page 40 Hon’ble High Court has held ;

“information could not be supplied before his transfer for the reasons that entire staff was

engaged in the collection of date and preparations of Voters identity Card under order of Collector and was busy with rescue work after natural Calamities seems to be a reasonable ground for non supplying the information within time.”

“Imposition of penalty on hyper technical ground that information was not supplied within 30 days seems to be totally unjustified and arbitrary”.

18. The information sought was not in possession of Respondent PIO. The records shows that he had sought assistance of Esciriao and he had no adhere to his instructions. The PIO herein also was assigned the work of by elections etc, hence the ratio laid down in (i) S.P. Arora (Supra) and in Narandra Kumar (Supra) are applicable to the facts of the present proceedings.

19. Yet in another case, the Delhi High Court in writ petition (C)11271/09; 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.”

20. In Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, the Hon’ble court held;

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. **It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not.** There had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. **The 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.**”

21. Yet in another decision, Ramesh Sharma and others v/s the State Commission reported in AIR 2008 Punjab & Haryana at page 126 others, the Hon’ble High Court of Punjab and Haryana, decided on 8/2/2008, it has been held;

“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 penalised. ***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***”.

22. Hence according to the said judgment penalty u/s (1) and (2) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause .Even though there is lapse on the part of PIO is not responding the said application within stipulated time of 30 days, and delay in furnishing information nevertheless the PIO have tried to justify the reasons for not responding or not providing the information within 30 days time and also in delay in furnishing information.
23. By considering the above ratios laid down by various High Courts, and since the explanation given by the PIO is supported by the documentary evidence, the same appears to be convincing and probable as such I hold that there are no grounds to hold that information was *intentionally and deliberately* not provided to appellant by the PIO.
24. In the above circumstances and as discussed above, I am of the opinion that the levy of penalty is not warranted in the facts of the present case.

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