

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 4/2019

In

Appeal No. 292 /2018/SIC-I

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

.....Appellant

V/s

1) The Public Information Officer (PIO),
Mapusa Municipal Council,
Mapusa Goa-403507

2) First Appellate Authority (FAA),
Chief Officer,Mapusa Municipal Council,
Mapusa-Goa-403507

.....Respondents

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

Decided on: 19/06/2019

ORDER

1. The penalty proceedings have been initiated against the Respondent 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 11/01/2019. 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 1/08/2018 for information on 4 points alongwith the copies of the documents. 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 24/09/2018 and the FAA vide ordered dated 24/10/2018 allowed the appeal filed by the appellant and directed Respondent PIO to issue

information to the appellant except at point no. 2 free of cost as sought by him vide his application dated 1/08/2018 within 10 days, free of cost from the date of the order.

- 4 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 malified intention even though directed by the First appellate authority (FAA). In the said second appeal he has sought for directions for providing him correct and complete information and also for invoking penal provisions. During the hearing before this commission a reply was filed by the PIO on 2/01/2019 thereby furnishing the information. After hearing both the parties, the Commission vide order dated 11/01/2019 while disposing the Appeal NO. 292/2018 came to the prima-facie finding that there was delay in furnishing information and that the respondent PIO didnot act deligently while disposing off the request for information under the RTI Act and hence directed to issue showcause notice to the respondent PIO.
5. Inview of the said order dated 11/01/2019 the proceedings stood converted into penalty proceeding.
6. Accordingly showcauese notice was issued to PIO on 15/01/2019. In pursuant to showcause notice then PIO, Shri Vyankatesh Sawant appeared alongwith Advocate Matlock D'souza and filed reply on 23/01/2019 alongwith the enclosure. Written submission were also filed by the Respondent PIO on 6/02/2019 and on 29/03/2019, copy of the same was furnished to the appellant.
7. Oral arguments were also advanced by the Advocate representing Respondent .

8. It is the contention of PIO that there was a RTI information which was given against the appellant by the Mapusa Municipality within a period of 24 hours after which the appellant lost his job and therefore the appellant has kept on filing RTI Application to strangulate the functioning of Municipality.
9. Advocate for the Respondent PIO submitted that appellant is a chronic litigant and that there are more than 30 RTI applications filed by the appellant in a month and whether the information given or not the appellant keeps on filing first and second appeals to settled his personal scores with municipality and councilors.
10. It was further contended that after gap of some time the appellant seeks the same information again if the same is earlier provided to him . It was also submitted that the conduct on the part of the appellant depicts that he is not interested in the information but only interested in disturbing the functioning of municipality.
11. It was further contended that beside the appellant there is no other person who is aggrieved in the functioning of PIO and as such there is no second appeal filed ever by any other person.
12. It was further contended by the PIO that appellant rather approaching various authorities, on his Complaint is pressing upon the PIO to take appropriate action on his complaints/application/representation.
13. It was further submitted that till date no cases have been filed against the Mapusa Municipality by the appellant based on any information received by him under Right to Information Act, 2005.
14. It was further contended that records reveals that the appellant has a common draft for first and second appeal with an

common prayer of initiating disciplinary proceedings against PIO and also seeking compensation .

15. It was further contended that the Commission should take into account the conduct of the appellant in filing so many RTI applications , first appeal and second appeal and should decide whether this conduct of the appellant is of an innocent litigant or compulsive or abusive litigant.
16. It was further submitted that the PIO and the staff of municipality are frustrated with the approach of the appellant
17. It was also contended that the information at point no. 1, 3 and 4 was furnished to the appellant vide letter dated 31/08/2019 and information at point no. 2 was furnished vide letter dated 12/09/2019. The copy of the registered A. D. card pertaining to letter dated 31/08/2018 and the copy of the letter dated 12/09/2018 bearing acknowledgement of appellant were enclosed. It was also further submitted that the documents were also furnished to the appellant on 24/09/2018 and on 25/09/2018 respectively. It was further contended that the said information was furnished even prior to the order dated 24/10/2018 to the appellant by the PIO.
18. I have gone through the records available in the file and also considered submissions of the PIO.
19. The respondent PIO have admitted that he was officiating as PIO when the application was filed by appellant herein 01/08/2018 and when the order was passed on 24/10/2018 by the First Appellate Authority (FAA). It is seen from the records that the application was filed by the appellant on 1/08/2018 which is received by the office of Respondent on 1/08/2019. Under section 7 (1) of the RTI Act the PIO is required to respond the same within 30 days from the said date. Though the PIO relied upon letter dated 31/08/2018 and the

Xerox copy of the acknowledgment copy of the department of Post, however on verification of the same, it is seen that the said was dispatched only on 22/09/2018 which was received by the appellant on 24/09/2018.

20. According to the PIO himself that he had requested the appellant to collect the information at point no. 2 vide letter dated 12/09/2018 and he has collected information on 25/09/2018.

21. At para 4 of PIO's reply dated 23/01/2019, it is his own case that the information was furnished to appellant on 24/09/2018 and on 25/09/2018 respectively. Hence, from his own submissions and the records produced by him, it is seen that the PIO has not responded the said RTI application within stipulated time of 30 days as contemplated under the RTI Act, 2005 and also has provided the information in piece meal manner.

22. On perusal of the order of First appellate authority (FAA) dated 24/10/2018, it is seen that the PIO was present and had submitted that he had provided information at point no. 2 and which the appellant agreed of having received the same on 25/09/2018. In the said order, it is nowhere reflected that PIO had submitted that the information at point no. 1, 3 and 4 was furnished to the Appellant by him earlier in month of September. It is seen from the records that the FAA had passed the said order after hearing both the parties and had directed to provide the information within 10 days. It is seen that the order was passed on 24/10/2018 and as such the PIO was required to furnish the information on or before 4/11/2018. There is nothing on record produced by the PIO that the FAA order was complied by him within time. The complete and correct information came to be provided to appellant only on 2/01/2019. There is delay in furnishing full and complete information.

23. 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 Information Officer is supposed to supply correct information, 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".

24. Yet in another case the Hon'ble Delhi High Court in W.P. (C) 3845/2007; Mujibur Rehman versus central information commission while maintaining 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 disclosure so necessary for a robust and functioning democracy.**"

25. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 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 appellate 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 appellate 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.”

26. Hence according to the ratios laid down in the above judgment the PIO has to provide correct information in a time bound manner as contemplated under the RTI Act. The complete information only came to be submitted during 2nd appeal proceedings. There is an delay in providing complete information. Such a conduct and attitude of Respondent PIO appears to be suspicious vis-à-vis the intend of the RTI Act and is not in conformity with the provisions of the RTI Act.
27. The PIO must introspect that non furnishing of the correct or incomplete information 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.
28. If the correct and timely information was provided to complainant 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 and detriment could have been avoided.
29. Considering the above conduct, I find that PIO has without reasonable cause repeatedly and persistently has failed to furnish

information within time. Thus I am convinced and is of the opinion that this is fit case for imposing penalty on PIO. Hence the following order.

ORDER

- i. The Respondent No. 1 PIO Shri Vyankatesh Sawant 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 Panajim and Director of accounts, North Goa Panajim 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.

Sd/-

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