

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

Penalty 40/2019
In
Appeal No. : 249/2019/SIC-I

Mrs. Santana Nazareth,
H. No. 4/111-H, Mollem Bhat,
Saligao, Bardez-Goa

.....Appellant

V/s

1. Public Information Officer (PIO),
Village Panchayat Saligao,
Bardez-Goa
2. First Appellate Authority,
Block Development Officer,
Mapusa, Bardez-Goa

.....Respondents

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

Decided on: 27/12/2019

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 27/9/2019. 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 17/6/2019 to the PIO of Village Panchayat of Saligao, Bardez-Goa, for information on several points as listed therein at point no. 1 to 9 mainly about the action taken on her various letter as mentioned by her in the said application. Since no any reply was sent to Appellant in a statutory period of 30 days and as no information was furnished to her by the PIO, the first appeal was filed by the appellant on

19/7/2019 to the Block Development officer of Mapusa , North-Goa being First Appellate Authority (FAA) and the First Appellate Authority (FAA) vide order dated 7/8/2019 allowed the appeal filed by the appellant and directed Respondent No. 1 PIO to furnish the information to the appellant sought by her vide her application dated 17/6/2019 within 7 days, free of cost from the date of the order. The said order of first appellate authority dated 7/8/2019 was not complied by the Respondent PIO as such being aggrieved by the action of respondent PIO and as no information was received by her, 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 her the information with malafide intention even though directed by the First appellate authority (FAA). In the said second appeal she had sought for directions for providing her correct and complete information and also for invoking penal provisions for inaction on the part of PIO in complying with the provision of the Act and also for compensation of delay in providing information sought .

4. After hearing the parties, since the information was furnished during the proceedings on 24/9/2019, the Commission vide order dated 27/9/2019 partly allowed the appeal of the appellant bearing No.249/2019/SIC-I. While disposing the Appeal No. 249/2019 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 27/9/2019, the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to PIO on 11/10/2019. In pursuant to showcause notice, PIO Shri Clifton Azavedo was

present alongwith Advocate A.P. Braganza and filed his replies on 17/10/2019 and on 4/12/2019 alongwith the enclosures .The appellant who was present during the penalty proceedings was furnished with the copies of above replies of Respondent PIO alongwith the enclosures

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 17/6/2018 seeking certain information on 9 points as mentioned in the application. The PIO fairly admitted delay in responding the same and delay in furnishing information. However it is his case that it was not intentional and deliberate.

11. It is the contention of respondent PIO that in addition to regular work of panchayat, he was also assigned other duties such as Garbage management, law in order in panchayat regarding illegal constructions, NGT matters, open defecation free toilets, elections work etc . It was further submitted that there was extreme shortage of Staff in the office of the Panchayat and this has

resulted in extreme difficulty in completing/disposing of the day to day work and due to the heavy work at Panchayat office, he could not keep a track and issue the information within stipulated time .

12. It was further submitted that memorandum and circulars were received from the authorities even prior to the RTI application of the appellant with regards to open defecation free status at Saligao Junction so also copies of the application were received from the applicants for want of Bio Gas toilets and in regard to this inspection and other procedures had to be carried out. It was further submitted that the Director of Panchayat vide circular dated 6/8/2019 had issued necessary instructions and hence he was busy collecting said information ward wise which was submitted by him vide his letter dated 26/8/2019.
13. It was further submitted that a memorandum dated 3/6/2019 was received from BDO stating that there is an order from NGT for implementation of solid waste management for all villages and this is to be implemented immediately. It was further submitted that the Block Development officer had time and again issued them memorandum to that effect. It was also submitted that he was also in receipt of memorandum from Director of Panchayat dated 22/5/2019 and other correspondence pertaining to the implementation of Act ,rules and court directions in the matter of solid waste management by village Panchayat as per NGT directions . It was further contended that if the orders from NGT is violated , there is a several punishment which will also amount to imprisonment and hence priority had to be given to those matters and the information was required to be furnished in respect of all wards by 31/7/2019 and accordingly the same was complied on 31/7/2019.
14. It was further submitted that Legislature Assembly various questions were required to be answered by the panchayat and he

accordingly after collecting and verifying the information the said was duly answered by him vide letter dated 22/7/2019.

15. The PIO further contended that at a relevant time there was one peon and two clerks attached to his office and they also deputed at the office of Mamlatdar for election duties for two days in a week which was through out the year in view of corrections of roles , deletions of name etc. so basically it was difficult to manage and to cope up with office work.
16. It was further submitted that the information was furnished to the appellant on 24/9/2019 during the proceedings before this commission.
17. Contentions of Respondent PIO were supported by relevant documents which were also furnished to the appellant herein.
18. 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 above factors . It is his further case that there is no evidence of malafide denials of information in order to attract the penalty .
19. 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
20. 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”.

21. The Hon’ble High Court of Bombay at Goa W.P. No. 303 of 2011, Johnson B. Fernandes V/s Goa State information Commission .

“Staff was busy on election to Zilla Panchayat 2010 in the month of February and thereafter in the work of 1st phase of census operations which was conducted soon after the bye-election of Zilla panchayat in may 2010. Dealing hand was also new and was not conversant with matter”.

22. 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) and (iii) Johnson B. Fernandes are applicable to the facts of the present proceedings.

23. 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.”

24. 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.**”

25. 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"***.

26. 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.

27. It is also seen form the records that the application was made by the appellant on 17//6/2019 ,the information was supposed to be furnished by 17/7/2019 which was furnished on 24/9/2019 .

28. The Hon'ble High Court of Bombay at Goa in Writ Petition No. 704/12, public authority V/s Yashwant Sawant has held that at para 6;

" the imposition of such penalty is blot upon the career of the officer at list to some extent, in any

case the information ultimately furnished though after some marginal delay in such circumstances, therefore no penalty ought to have been imposed upon the PIO”.

29. 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.
30. 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