

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 21/2019/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,
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

Filed on: 06/02/2019

Decided on:29/3/2019

ORDER

1. The second appeal came to be filed by the appellant Shri Jawaharlal T. Shetye on 06/02/2019 against the Respondent No.1 Public Information Officer of Mapusa Municipal Council, Mapusa, Bardez-Goa and against Respondent no. 2 first appellate authority under sub section (3) of section 19 of RTI Act 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 9/7/2018 had sought for certain information from Respondant No.1 Public Information Officer (PIO) of Mapusa Municipal council ,Mapusa-Goa on 5 points as stated therein in the said application pertaining to the complaint dated16/8/17 filed by one shri sudesh P. Tivrekar to the chief officer of Mapusa Municipal council with a caption "DAY LIGHT ROBERY IN THE NAME OF FEES

COLLECTED FOR PARKING OF FOUR WHEELERS BEHIND NEW MUNICIPAL BUILDING ,FEIRA AVTA ,MAPUSA-GOA". The said information sought in exercise of his right u/s 6(1) of RTI Act, 2005.

3. It is the contention of the appellant that his above application filed in terms of sub section 1 of section 6 was not responded by the respondent no 1 PIO within stipulated time of 30 days and as such deeming the same as rejection, the appellant filed 1st appeal to Respondent no 2 chief officer of Mapusa Municipal council on 10/08/2018 being first appellate authority .
4. It is the contention of the appellant that the respondent no. 2 FAA vide order dated 17/10/2018 allowed his appeal and directed the respondent no 1 PIO to issue the information to the appellant, free of cost within 10 days as per the original application dated 9/7/2018.
5. It is the contention of the appellant that in spite of the said order, the said information was not furnished and hence the appellant has approached this commission in his 2nd appeal seeking relief of directions to PIO to furnish the information as also seeking penalty and compensation for not giving information within time.
6. Notices were issued to both the parties. Appellant appeared in person Respondent PIO Mr. Venkatesh Sawant appeared along with Advocate M. D'Souza. Respondent no.2 First appellate authority opted to remain absent.
7. No reply came to be filed by Respondent PIO despite of giving him opportunities and also failed to provide information. Appellant walked away in hurry during the proceedings in appeal No. 1/2019 showing scant respect to this commission as such the commission had no option then to hear the argument of Respondent PIO. However in the interest of justice an opportunity was granted to appellant to argue the matter but he opted not to appear and hence this commission had to decide the matter based on the available records in the file.

8. It is the contention of the Respondent PIO that this appellant abuses the RTI Act and as such the appellant has to be black listed from filing any RTI against Mapusa Municipality. It was further contended that the appellant is every time cribic that he is a senior citizen but has all the time to file all RTI application, 1st appeals, complaint ,penalty and second appeals. It was further contended that the appellant is only harassing all the staff members as he is interested in taking out his personal vengeance against his enemies and the staff of the municipality. It was further contended that through the forum of RTI appellant tries to get his complaints, representations against many persons completed without proceedings to the appropriate authority in accordance with law. It was further contended that the appellant has scant regards to the RTI Act. It is further contended that the appellant has been filing applications of similar nature in multiple times and or repetitive time. Respondents PIO states that every alternate days he is in this forum either representing in person or is in his office only looking after multiple RTI applications filed by appellant and as such it is not possible for the Respondent PIO to submit any information to this appellant within 30 working days. Advocate for Respondent PIO further states that Charge of PIO has been given to Diniz D'melo and presently he is on election duty as such the reply could not have been signed by the present PIO. Respondent PIO states that since the present month is in code of conduct and the present PIO has to leave his office and go for training and has to join his election duties and is presently deputed in the flying scot where he had to attend all the illegalities. It was also contended that then PIO Shri Venkatesh Sawant is hardly in office and is more before State Information Commission because of the appeals, complaints being filed by the appellant. It is contention of the PIO that on the receipt of the applications filed under RTI, he seeks necessary information from the concerned clerk and the concerned clerk does not hand over to him requisite information on time. It is his further contention that the

appellant is filing repeated application for the same information after the gap of some time and the appellant is every day in the office of Respondent harassing the staff and trying to impose that the action will be taken on them through RTI.

9. It is his further contention that the appellant is trying to get the information which is not available and trying to paralyze the functioning of Municipalities due to some personal enmity and is trying to settle scores with councilors .
10. It is contention of the PIO that appellant has been abusing the said system and has targeting the process of RTI's by keeping on filing various RTI's against the Mapusa Municipal Council with motive of hampering the functioning of Municipality. It is his contention that the appellant is trying to induce the PIO and the other staff of Municipality to give the information. It was further submitted that the appellant is not seeking to pursue any legal remedies but he is only harassing the Respondent by filing number of complaint.
11. I have scrutinise the records available in file, submissions made by PIO and pleadings made in the memo of appeal.
12. The RTI Act came into existence to provide fast relief as such the time limit is fixed to provide the information within period of 30 days, to dispose the first appeal maximum within 45 days and to transfer the application interms of section 6(3) within 5 days. It is seen that as per the records the application dated 9/7/2018 was filed and received by the office of respondent no 1 on 9/7/2018. U/s 7(1) of the Act the PIO is required to respond the same within 7 days from the said date. The Respondent PIO have not placed on records and documentary evidence of having adhere to section 7 of RTI Act.
13. The respondent No.2 FAA in his order dated 17/10/18 has also observed that PIO has not responded the application of appellant within 30 days. On perusing the order of FAA it reveals that the PIO

shri sawant was present during the proceedings and the order was passed in his presence and as such the respondent PIO was aware of the order passed and directions issued to him for furnishing information within 10 days. It is also not the case of PIO that the order of the First appellate authority was challenged by him or has complied the order of first appellate authority. The PIO has also not placed on record any correspondence made by him to the appellant in pursuant to the said order. No reasons whatsoever nature were conveyed either to the first appellate authority nor to the appellant herein why he could not comply the said order in time. The respondent PIO has not produced any documents on record of he having complied with the order of respondent No.2 FAA. The contention of the appellant that his RTI application was not responded within 30 days and PIO having failed to comply with the order dated 17/10/18 have gone undisputed and unrebutted. The information still not furnished till date to the appellant. There is an delay in furnishing information. Such an conduct by PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-viz the intent of the act.

- 14.** Only during the present proceedings the PIO have contended that due to magnitude of RTI Application and the appeals being filed by appellant herein the Respondent could not submit the requisite information within 30 days time nor could submit the information as per the directions of first appellate authority. The above difficulties faced by the Respondent herein even if considered genuine however the same is not recognized and cannot be considered as a ground for denying or delaying the information as there is no bar for filing application by one person before the same authority so also the constitution of India and the Right to information Act also guarantees and recognizes the right of a citizen to seek information and to prefer appeals.
15. The contention of the appellant that he has to be before this commission on every alternate day attending the second appeal filed

by the appellant cannot be ground to deny the information since the provisions 19(1) and (2) of RTI Act, 2005 stipulates the right to the appellant to prefer first or second appeal in case he is aggrieved by the decision of the PIO, so also if no required information is provided within 30 days time.

The Respondent PIO cannot make a grievance due to the filing of first and second appeals lots of his time his wasted in appearing before first and second appellate authority and the same cannot be considered as the Respondent PIO is himself responsible for the same. If the PIO have provided him correct and complete information within stipulated time or even before filing first appeal, the appellant would have not approached the first appellate authority with his grievances. In the present case the despite of the order of first appellate authority no information came to be provided to the appellant as such the appellant have landed before this commission in the second appeal. The conduct and the attitude of the Respondent PIO himself have forced the appellant to pursue the matter before different authorities and it is the need of the hour that the Respondent PIO should re-introspect himself.

16. One of the contention of the Respondent is that the concerned dealing clerk does not hand over to him the requisite information within time for the purpose of onward submission to the information seeker. However nothing is placed on record by the PIO of having taken the assistance of the dealing clerk or having issued him memo for not submitting the information on time or reporting the conduct of the dealing clerk to his higher-ups for appropriate action on him for dereliction of his duties. In absence of any such documents it is not appropriate on the part of this commission to arrive at any such conclusions.
17. The onus lies on the party who makes the averment to prove such averment by way of cogent and convincing evidence. Though the Respondent have contended that (i)Appellant have been filing

repeated application for the same information after the gap of some time,(ii)trying to get the information which is not available with a intention of paralyzing the functioning of Municipality due to some personal enmity, and (iii) the Appellant is every day in the office of Respondent harassing the staff and inducing the PIO and the other staff to give information , has failed to produce any evidence in support of his above contention.

18. From the conduct of the PIO it can be clearly inferred that the PIO has no concern to his obligation under the RTI Act or has no respect to obey the order passed by the senior officer. Such a conduct of PIO is obstructing transparency and accountability appears to be suspicious and adamant vis-a-vis the intend of the Act.
19. Public authority 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.
20. From the above gesture of PIO, I find that the entire conduct of PIO is not in consonance with the act as he repeatedly failed to provide information and the same is still not provided. I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information. Such an lapse on part of PIO is punishable u/s 20(1) and 20(2) of the RTI Act. However before imposing penalty, I find it appropriate to seek explanation from the PIO as to why penalty should not been imposed on him for non compliance of order of first appellate authority and for delaying the information.
20. This commission is aware of the practical difficulties faced by the PIOs. The officer of the public authority designated as PIOs have other duties also and the duties to be discharged by them as PIO is

an additional duty. The dealing with the request for information is a time consuming process. Time and again this commission had directed the public authority to comply with section 4 of RTI Act so that public have minimum resort to the use of this Act to obtain information. It appears that the public authority concerned herein is not serious in implementing section 4 of RTI Act.

22. Considering the conduct of PIO and his indifferent approach to the entire issue, I find prima facie some substance in the argument of the appellant that the PIO purposely and malafidely refused access to the information. Such allegation if proved would call for disciplinary proceedings and imposition of penalty against him. However, before imposing penalty I find it appropriate to seek explanation from the PIO as to why penalty should not be imposed on him for contravention of section 7(1) of the Act, for non-compliance of order of FAA and for delaying the information.

23. I therefore dispose of the present appeal with order as under ;

Order

a) Appeal allowed.

b) The Respondent No.1 PIO is directed to furnish the information free of cost to the appellant herein as sought by him vide his RTI Application dated 9/7/2018, within 20 days from the date of receipt of this order.

c) Issue notice to respondent No. 1 PIO to show cause as to why no action as contemplated u/s 20(1) and /or 20(2) of the RTI Act 2005 should not be initiated against him/her for contravention of section 7(1), for not complying with the order of first appellate authority and for delay in furnishing the information.

d) In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice along with the order to him and produce the

acknowledgement before the commission on or before the next date fixed in the matter along with full name and present address of the then PIO.

- e) Respondent, PIO is hereby directed to remain present before this commission on 8/04/2019 at 10.30 am along with written submission showing cause why penalty should not be imposed on him.
- f) Appeal proceedings disposed and closed accordingly. The registry of this commission is directed to open separate penalty proceedings.

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.