

GOA STATE INFORMATION COMMISSION

Kamat Towers, seventh Floor, Patto, Panaji, Goa

Shri Prashant S. P. Tendolkar,
State Chief Information Commissioner

Complaint No.17/SCIC/2017

Shri Jawaharlal T. Shetye,
H. No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa 403507. Appellant

V/s

- 1) The Public Information Officer,
Administrator of Comunidade North Zone,
Mapusa.
- 2) The Attorney,
Comunidade of Assagao,
Assagao, Bardez.
- 3) The Clerk,
Comunidade of Assagao,
Bardez
- 4) The First Appellate Authority,
Addl. Collector II,
North Goa, Panaji. Respondents

Filed on: 19/07/2017.

Date: 18/06/2019.

O R D E R

1) This is a complaint filed by the complainant. The facts as pleaded by him are that:

a) By his application dated 03/02/2017, filed u/s 6(1) of the Right to Information Act 2005 (Act) the complainant sought certain information from the PIO, Mapusa Police Station.

b) The said application was transferred by PIO Mapusa Police Station on 06/02/2017 to PIO, Administrator of comunidade (North) Mapusa Goa, the Respondent No.1 herein, u/s 6(3) of the act.

Sd/-

...2/-

c) The Respondent No.1 by letter, dated 03/03/2017, directed the attorney and clerk of Comunidade of Assagao to furnish the information to complainant.

d) The said information was not furnished to complainant and hence he filed first appeal to First Appellate Authority(FAA).

e) According to Complainant the said first appeal was not disposed within time and hence he has filed the present complaint.

f) In the present complaint the complainant has sought for a direction to furnish information and also for imposing penalty and recommend disciplinary action in terms of section 20(1) and 20(2) of the Act.

2) On notifying the parties, the FAA filed its reply interalia submitting that the concerned first appeal is disposed. The copy of the order of FAA is also filed.

3) From the records it is seen that the complainant has filed the present proceedings as a complaint u/s 18 of the act. However considering the ratio laid down by Hon'ble Supreme Court dated 12/12/2011 in Civil Appeal Nos. 10787-10788 of 2011 **(Chief Information Commissioner and another v/s State of Manipur and another)**, I find that the relief at point (2) of the complaint cannot be granted in this complaint. Such a relief can be granted only in an appeal, if filed u/s 19(3) of the act. Hence the other reliefs as prayed only are being dealt with herein.

4) Considering the above circumstances and further in view of the legal position that the proceedings for penalty u/s 20(1) and/or 20(2) are akin to criminal proceedings, it was necessary that the concerned PIO, responsible for furnishing information was required to be heard. Accordingly as per the memo filed by

Sd/-

...3/-

the complainant and on verification of the records, more particularly the response of concerned PIO, dated 03/03/2017, notice was ordered to be issued to Shri Rohan J. Kaskar, the then PIO.

5) Accordingly by notice, dated 23rd April 2018, the concerned PIO, Shri Rohan J. Kaskar, was required to show cause in writing alongwith the documents in support if any, as to why penalty in terms of section 20(1) and/or 20(2) of the act should not be ordered.

6) In spite of the receipt of said notice on 26/04/2018, said PIO, Shri Rohan Kaskar neither filed any reply nor appeared before this Commission. In spite of granting of several opportunities to Shri Rohan Kaskar to file reply, he failed to show cause as to why the action as contemplated u/s 20(1) and/or 20(2) should not be initiated against him. In these circumstances this proceedings are dealt with based on the records.

7) I have perused the records from which it is seen that the complainant had sought the information from the PIO Mapusa Police Station by his application, dated 03/02/2017. On 06/02/2017 the said application was transferred to PIO, Administrator of Comunidade Mapusa. The then PIO, Shri Rohan J. Kaskar directed the attorney of Comunidade and clerk of comunidade of Assagao, Bardez, Goa by memorandum, dated 03/03/2017 to furnish the information.

8) It is to be noted that the said PIO has the control over the records of comunidade and hence the request for information was required to be dealt with by him. If at all the information was in custody of another officer, that the same was required to be called by PIO as the administrator, for being furnished to the seeker. In other words PIO could have sought the assistance of

Sd/-

...4/-

other officer U/S 5(4) of the act and was not required to transfer the said application to be dealt with by the attorney or the clerk directly like the one u/s 6(3) of the act.

Be that as it may, the PIO, Shri Kaskar has also failed to appear before this Commission continuously to show his bonafides in directing other officer to furnish the information.

9) I have also perused the order of the FAA. The said PIO has also failed to appear before FAA to explain as to under what circumstances the direction was issued to another officer/employee to furnish the information.

10) Considering the above circumstances, no grounds are made out to hold that the delay in furnishing of information was at all not deliberate and unintentional. The contentions of the complainant are not rebutted by the concerned PIO, Shri Rohan Kaskar.

11) In the facts and circumstances of the case, I find that the then PIO, Shri Rohan J. Kaskar, without reasonable cause has failed to furnish information within time specified u/s 7(1) of the act and consequently is liable for imposition of penalty u/s 20(1) of the act. However I find no grounds to invoke my powers u/s 20(2) of the act. Considering the facts, I find that a penalty of Rs. 10000/- (Rupees ten thousand only) is just and reasonable.

12) I therefore, order that the PIO, Shri Rohan J. Kaskar, shall pay the said amount of Rs. 10,000/- (Rupees ten Thousand only) as penalty. Said amount shall be deducted from the monthly salary payable to Shri Kaskar in two monthly installments of Rs.5000/- each first of such starting from the salary of July 2019.

Sd/-

...5/-

The prayer of the complainant to recommend disciplinary proceedings stands rejected.

Order be communicated to the parties. Copy of the order be also sent to Shri Rohan J. Kaskar, in person as also to the directorate of Accounts, for implementation of the order.

Proceeding closed.

Pronounced in open hearing.

Sd/-
(Shri. P. S.P. Tendolkar)
Chief Information Commissioner
Goa State Information Commission
Panaji -Goa

