

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 08/2019
In
Appeal 268/2018/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,
Mapusa Municipal Council,
Mapusa Goa-403507

2) First Appellate Authority,
Chief Officer,(Mr.Clen Madeira)
Mapusa Municipal Council,
Mapusa-Goa.

.....Respondents

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

Decided on: 30/04/2019

ORDER

1. This Commission Vide order dated 14/02/2019, while disposing the above appeal directed then PIO to showcause as to why no penal action as contemplated u/s 20(1) and 20(2) of the Right to Information act 2005 should not be initiated against him/her for contravention of section 7(1) of RTI Act and for delay in furnishing the information .
2. In view of said order passed by this commission on 14/2/2019, the proceedings should converted into penalty proceedings .
3. Accordingly showcause notice was issued to PIO on 19/2/2019. In pursuant to the showcause notice Shri Venkatesh Sawant appeared alongwith Advocate Matlock D'Souza and filed reply on 20/3/2019 and also additional reply on 29/03/2019.

4. Vide said reply dated 20/3/2019 PIO contended that information could not be furnished in time since the dealing clerk was on maternity leave from 12/05/2018 to 7/11/2018 and earned leave from 8/11/2018 to 30/11/2018 and the charge was not given to any officer. It has further contended that in pursuant to the order passed by the FAA dated 17/10/2018, he had issued the information to the appellant vide letter dated 26/10/2018. It was also further contended that a fresh information was also issued to the appellant on 20/12/2018 on the directions of this commission and the information pertaining to point no. 5 was forwarded to the Public Information Office of personal Department u/s 6(3) of RTI Act, 2005 vide letter dated 20/12/2018. It was further contended that he was holding charge of Municipal Engineer Grade III and Grade II and the PIOs duty is addition to those two charges and the marginal delay in furnishing information to the appellant was due to over burden of work.
5. The Respondent PIO vide additional reply dated 29/3/2019 contended that the appellant Shri J.T. Shetye is a chronic litigant and has been filing time and again RTI application which are hampering the work timing of PIO and also the regular work. It was further submitted that almost every week there are appeals preferred and that respondent has to file reply to the same and also attend the hearings. It was further submitted that the appellant has been abusing the said system and has rather targeting the process of RTI's by keeping on filing various RTI's against the Mapusa Municipal Council. It was further submitted that due to the filing of multiple application, complaints and appeals by the appellant, the functioning of the Mapusa Municipality gets hamper. It was further submitted that almost every second day the PIO is in the office of Information Commission for matters either appearing or preparing replies for appeals or complaints, penalty proceedings to be filed before the commission. It was further submitted that the appellant has been filing all such applications with such sinister motive of

hampering the functioning of the Municipality and to harass the Mapusa Municipality and in the process the staff of Mapusa Municipal have been frustrated due to the filing of so many RTI application by appellant mostly on the same or similar subject and hence the appellant Shri J.T. Shetye has to be black listed from filing so many RTIs application, 1st appeals and 2nd appeals and complaints. It was further submitted that the appellant never initiated any proceedings against the Municipality on any information received before any court of law and therefore cannot be aggrieved party and as such fine has to be imposed on a appellant for filing so many application, appeals, complaints and penalties proceedings. It was further submitted that appellant has been vindictive in his approach and he is only seeking penalties against the respondent and the prayers are a clear indications that the appellant is trying to harass the respondent PIO . It was further submitted that the PIO has acted in good faith and there are no malafide on his part. It was also submitted that the appellant being a retired person has not disclosed how he has income to file so many appeals , applications, complaints etc.

6. I have scrutinized the records and also considered the submission of parties.
7. 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.
8. It is admitted fact by PIO that he received application of appellant under RTI Act on 09/07/2018. U/s 7(1) of the Act the PIO is required to respond the same within 30 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. It is also not the case of PIO that the information has been furnished to the appellant

or that he has responded to his application. The PIO has not category disputed that the application of the applicant was not responded within 30 days time by him. The respondent No.2 FAA in his order dated 17/10/2018 has also observed that no information was provided to the appellant by the PIO till the date of order and has allowed the frist appeal filed by the appellant herein. Hence the records shows that PIO has not acted in consonance with provision 7(1) of RTI Act.

9. On perusing the order dated 17/10/2018 of FAA it reveals that the PIO Shri V. Sawant along with APIO Vinay Agarwadekar 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 7 days. The records show that the order was passed by FAA on the undertaking given by the PIO furnishing the information within 3 days to the appellant .
10. Since the PIO had claimed that order of the First appellate authority was complied and had issued the information vide letter dated 26/10/2018 to the appellant, hence the onus was on the respondent PIO to prove the same and to reburtt the contention of the appellant that he never received letter dated 26/10/2018 but in the present case the PIO failed to place on record the mode and the manner by which the same was submitted to the appellant along with the supporting documents. So also affidavit of a concerned person who submitted/posted the information to the appellant is also not placed on record. The letter dated 26/12/2018 produced by the PIO in the appeal proceedings also does not bear the acknowledge of the appellant of having received the said letter by him. Hence the statement and the contention of the respondent PIO cannot be taken as gospel truth.
11. Even presuming and assuming for a while the contention of the respondent PIO that the information was submitted to the appellant

vide letter dated 26/10/2018, on verification of the information sought vide RTI application dated 06/07/2018 visa viz the information furnished vide letter dated 26/10/2018 it could be seen that the same was not provided as what was sought. The correct information at point number 1 to 4 came to be furnished to the appellant by the PIO only during the present proceedings vide letter dated 20/12/2018. There is a delay in furnishing information and transferring the application at point no. 5 to the concerned other public authority.

12. 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.

The Respondent PIO cannot make a grievance due to the filing of first and second appeals lots of his time is wasted in appearing before first and second appellate authority. 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.

13. 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 cogent and convincing evidence in support of his above contention.
14. The contention of the respondent PIO that the information could not be submitted to the appellant since the dealing clerk was on maternity leave from 12/05/2018 till 30/11/2018 and the charge was not given to any other officer is also not supported by any evidence. There is nothing on records to show that the PIO has placed such difficulties before his superior officers. Such a stand was never taken by the Respondent PIO at the initial stage nor before the first appellate authority.
15. 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”.

16. 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.**”

17. The Hon'ble Bombay High Court Goa bench in writ petition No.304/2011 Johnson V. Fernandes V/s Goa State information commission; AIR 2012 Bombay 56 has observed, at para 6;

“Nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal. In fact, if the petition is intended to furnish the information to Respondent (information seeker) he could have communicated it without waiting for Respondent No. 2 (appellant) to file an appeal.”

18. The facts of the records shows that there is a delay in furnishing the information. Reasons and the say filed by the PIO to show cause notice does not appear to be probable and convincing as it is not supported by cogent evidence. The appellant herein have been made to run from pillar to post in pursuing his RTI Application. If correct and timely information provide to the appellant it would have saved valuable time and hardship caused to the appellant. such harassment & Detriment caused to appellant could have been avoided.

19. In view of above discussion, facts and circumstances of the present case and by subscribing to the ratios laid down by above Hon'ble courts, I am of the opinion that this is an fit case for imposing penalty on PIO. Hence the following order.

ORDER

- i) The Respondent Public Information Officer (PIO) Shri Venkatesh Sawant is hereby directed to pay a sum of Rs. 2,000/- (Rupees Two Thousand only) as penalty for a contravention of 7(1) of RTI Act, and for delay in furnishing the correct information. The penalty amount shall be credited to the Government Treasury.
- ii) The copy of the order shall be sent to the Director of Accounts, Panaji and To Chief Officer of Mapusa Municipal Council Mapusa Goa for information and implementation.

With the above directions the above penalty 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