

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

Penalty 23/2019
In Complaint No. 05/2019/SIC-I

Shri Jawaharlal T. Shetye
H.N. 35/A, Ward No, 11,,
Near Sateri Temple, Khorlim,
Mapusa-Goa
403 507

....Complainant

V/s

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

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 06/06/2019

ORDER

1. The Commission vide order dated 2/05/2019, while disposing the above Complaint had directed the Respondent Public Information Officer (PIO) Shri Vyankatesh Sawant to showcause as to why no penal action as contemplated u/s 20(1) and 20 (2) should not be initiated against him for contravention of section 7(1) of RTI Act, 2005 for not complying the Order of First Appellate Authority (FAA) and for delay in furnishing the information.
2. In view of the said order dated 02/05/2019 the proceeding stood converted into penalty proceeding.
3. Accordingly, showcause notice was issued to PIO on 6/05/2019. In pursuant to the showcause notice Shri. Vyankatesh Sawant appeared and filed his say on 6/06/2019.

4. Vide his say, he submitted that the RTI application dated 10/09/2018 was marked to deemed PIO and the deemed PIO failed to process RTI application even after order passed by FAA on 5/12/2018. He further submitted that he was holding charge of Municipal Engineer Gr. III, Municipal Engineer grade II and PIO on the date of the application and hence he could not furnish the information to the Complainant due to the overburden of work. He further submitted that the said application has been processed and was pending for the signature of the PIO. In support of his above contention he relied upon two memorandum dated 18/09/2019 one addressed to Unnati Ouskar, temporary Clerk, Engineering Section and Sangita Satardekar, ME III Engineering section. Vide reply the PIO prayed to take lenient view in the matter.
5. I have gone through the records available in file considered the submission of the Respondent PIO.
6. The Respondent PIO have admitted in his reply that he was officiating as PIO when the application was filed by the complainant herein and when the order was passed by the FAA on 5/12/2018 directing him to furnish the complete information. On perusing of the memorandum dated 18/09/2018 relied by the PIO himself, it is seen that there is endorsement of the said Unnati Ouskar dated 4/10/2018 informing him that she has made efforts to trace the file but could not find or trace it. So also on perusing memorandum dated 19/09/2018 addressed to Sangita Satardekar, it is seen that endorsement is made by the Sangita Satardekar on 19/09/2018 on the same, submitting that the matter is not pertaining to the work allotted to her. Hence it could be gathered from the endorsement, that both the above named persons have promptly responded to the memorandum issued by the respondent PIO. The respondent PIO on the receipt of the

reply from above concerned person ought to have informed the complainant that information is not traceable in the office records. The respondent PIO have not placed on record any documentary evidence of having adhered to section 7 of RTI Act. The PIO have also not given explanation for not responding application, despite it was brought to his notice by the concerned dealing hand that the information/file is not traceable.

7. On perusal of the order of the FAA it reveals that the Respondent PIO was present when the order was passed by him. The said order no where reflects that PIO has submitted that said information is not available or not traceable in the office records. The Respondent No. 2 went on presumption that information is available and passed an order directing PIO to provide information within 30 days on the assurance given by PIO that file is being traced. PIO has not specified what where the steps taken by him for complying order of FAA. The PIO has not placed on record any memo issued to dealing clerk after the order of FAA, in tracing and securing the information. The PIO has not placed on record any correspondence made by him in pursuant to the said order to the Complainant. No reasons whatsoever was conveyed to FAA nor to the complainant why he has not comply the said order in time. The Respondent have not produced any record /documents on record of having complied the order of FAA. Only during the present proceedings he came out with the stand that the information has been provided to appellant vide letter dated 8/05/2019.

8. The records reveals that the application was filed on 10/09/2018 and it is replied only on 8/05/2019 and till date no complete information has been furnished to the Complainant. The

information at point No. 3 have not been furnished to the Complainant. There is delay in furnishing information. From the conduct of then 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 orders passed by his senior officer.

9. The conduct of PIO is herein condemnable. PIO should always keep in mind these services are taken by government to help the people of state in particular and the people of country in large and the objective and the purpose for which the Act came into existence. Such conduct of PIO is obstructing transparency and accountability in public authority appears to be suspicious and adamant vis a vis the intent of the Act.

10. 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.

11. 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".

12. 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.**"

13. 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."

14. 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. In the present case the PIO has repeatedly failed to provide the information within time frame. 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.
15. 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.
16. I find that this is a 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