

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

Appeal No.: 280/2019/SIC-I/

Shri R. Pinto
F/6, Chamundi Apartments,
Martires Dias Road,
Margao-Goa.

.....Appellant

V/s

1. Public Information Officer (PIO),
The Municipal Engineer,
Margao Municipal Council,
Margao-Goa.

2. First Appellate Authority,
The Chief Officer,
Margao Municipal Council,
Margao-Goa.

.....Respondent

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Filed on: 30/08/2019

Decided on:29/07/2020

ORDER

1. The second appeal came to be filed by Appellant Shri R. Pinto against Respondent No.1 Public Information Officer (PIO) of the Margao Municipal Council, Salcete -Goa and against Respondent No.2 First Appellate Authority (FAA) Under sub-section (3) of section 19 of the Right To Information Act, 2005.
2. The brief facts leading to the present appeal are as under:-
 - (a) In exercise of right under section 6(1) of RTI Act, 2005, the Appellant filed application on 2/1/2019 seeking certain information from the Respondent No.1 Public Information Officer (PIO) on several points as listed therein in the said application pertaining to sealing undertaken by the council of the shops, Companies, banks and other establishments within the Jurisdiction of the Margao Municipal Council with

effect from 2//7/2018 till the date of issuing of the said information

- (b) According to the Appellant his said application was not responded by the Respondent PIO herein nor the information furnished to him within stipulated time of 30 days as contemplated under section 7(1) of the RTI Act, 2005, as such he send the reminder vide letter dated 4/2/2019 requesting the Respondent No. 1 to provide the necessary information, despite of same as no information was provided to him, as such considering the same as rejection, the Appellant filed first appeal on 18/2/2019 before the Respondent No. 2, Chief Officer of Margao Municipal Council, at Margao-Goa, being First Appellate Authority interms section 19(1) of RTI Act, 2005.
- (c) It is contention of the Appellant that the Respondent No. 2 First Appellate Authority disposed the said appeal by an order dated 12/6/2019. By this order the Respondent No. 2, First Appellate Authority (FAA) allowed the said appeal and directed Respondent PIO to furnish information to the Appellant within the period of 15 days, free of cost from the date of the order.
- (d) It is contention of the Appellant that the Respondent PIO did not comply the order of Respondent No.2, First Appellate Authority and also did not furnish him the information as such he being aggrieved by the action of PIO, is forced to approach this Commission by way of 2nd appeal.
3. In this background the Appellant has approached this Commission on 30/8/2019 in this Second Appeal with the contention that the information is still not provided and seeking order from this Commission to direct the PIO to take steps as may be necessary to secure compliance of the order passed by the Respondent No. 2 First Appellate Authority as also for invoking penal provisions for

inaction on the part of PIO in complying with the provisions of the Act and for delay in providing information and also sought compensation for the loss and other detriments suffered by him.

4. The Matter was taken up on board and was listed for hearing after intimating both the parties. In pursuant to the notice of this Commission, Appellant was present in person. Respondent PIO Shri. Prashant Narvekar was present alongwith Advocate Somnath Karpe and duly assisted by Advocate S. Vaigankar. Respondent No. 2 First Appellate Authority opted to remain absent.
5. During the hearing on 28/11/2019 the Respondent PIO volunteered to give the inspection of the documents/files to the Appellant first, on the ground that it is voluminous and also requested the Appellant to identify the documents which are required by him. Such an arrangement was also agreed by the Appellant and accordingly the due information was furnished to the Appellant on 8/1/2020. After verifying the said information, the Appellant acknowledged the same on the memo of appeal. However he pressed for invoking penal provisions.
6. The reply was filed by Respondent No. 1 PIO on 10/1/2020 along with the copy of information to which Affidavit in rejoinder was filed on 21/1/2020 by the Appellant. Written arguments was also submitted by the Appellant on 14/2/2020 and also additional arguments were filed on 29/6/2020 by Appellant .
7. Arguments were advanced by both the parties.
8. It was submitted by Appellant that the PIO did not furnished him the requisite information intentionally and deliberately as he was trying to shield the irregular and illegal acts of the said Municipality which he is trying to bring to light. It was further contended that the PIO did not adhered to the direction given by the First Appellate Authority vide order dated 12/6/2019.

9. It was further submitted that entire objective of him to seek the information was to expose the illegality of the Municipality concerned . It was further submitted that the municipality and its officer from 2/7/2018 had sealed lots of premises in the jurisdiction of Municipal council on one or the other ground and within a short span of time they unsealed the premises. It was further submitted that he learned from reliable sources that the work of sealing was done to create some sort of pressure to extract money from various establishment and the once the money was handed over, only then, the premises were unsealed . He further submitted that he had sought the said information as to ascertain about the illegality of the Municipality and expose the same in the larger public interest.
10. It was further submitted that the tenor of the information which is sought to be supplied to him would reveal that no information apart from the public notices has been maintained and as such the submission of Respondent No.1 PIO at para 6 that the information sought by the Appellant is voluminous and running into many pages cannot at all to be believed.
11. It was further submitted that the Respondent No. 1 PIO has made a submission in its reply that shops, Companies ,Bank and Establishments are institutions with sensitive information and data sought by the Appellant cannot be provided but in the information furnished to him it has been stated no list, inventory has been maintained, which, two statements create a reasonable doubt that the Respondent are playing on this forum.
12. It was further submitted that the Respondent PIO never raised such objection before the First Appellate authority also neither filed any reply before Respondent no. 2 as such the defence taken by Respondent PIO in the reply filed before this commission are nothing but an after thought.

13. It was further submitted that information furnished to him states and admits at point No. 10 that the Goa Municipality Act 1968 does not empower the Chief Officer to seal the shops but at point no. 12 it has been stated that the Chief Officer had undertaken the sealing exercise.
14. It was further submitted that Respondent PIO cannot take a stand that he and his dealing clerk who was handling with a processing of RTI application was pre-occupied due to the Election duty and as such the same could not be processed and information could not be issued at the earlier date, such an excuse is taken to escape any liability under the Act. It was further contended that the time limit had already expired before any sort of alleged transfer or alleged election duties and thus the reason given by the Respondent is not of any help to the Respondent.
15. It was further submitted that the election of Lok Sabha for Goa State were announced on 10/3/2019, the election were held on 23/4/2019 and the result were declared on 23/5/2019. The First Appellate authority announced his order on 15/6/2019 directing the PIO to release the information within 15 days free of cost, the Respondent PIO even after 38 days after the declaration of election result and issuance of the lawful order promulgated by the First Appellate Authority, the PIO has wilfully violated the same.
16. It was further contended that there was a delay in providing the information of 194 days from the date of the order of the First Appellate Authority. It was further contended that during the course of the hearing of the second Appeal the Respondent PIO submitted on 10/1/2020, only 4 pages of the information which otherwise was claimed by the PIO to be voluminous running in to 100/1000 of pages.

17. It was further contended that the judgment relied by the Respondent in their oral arguments therefore do not land any support to the Respondent and the information furnished to the Appellant in the present case by the PIO would reveal that the information does not reach unmanageable proportion effecting other public interest.
18. It was further contended that the First Appellate Authority is a Statutory authority and the action of Respondent PIO by not implementing the order is legally unjustifiable and tantamount to defiance of the very RTI Act 2005.
19. It was further submitted that he is knocking the doors of different authorities to get the said information which was sought by him with specific purpose in order to redressed his grievances before appropriate forum.
20. It was further submitted that lots of valuable time and energy have been lost in pursuing the application and on the above grounds he prayed for invoking penal provisions against Respondent PIO.
21. On the other hand, on behalf of Respondent No. 1 PIO, it was submitted by Advocate Karpe that the RTI application under consideration is too vague and the composite general requisition was sought as such the Respondent cannot be expected to provide this large numerous queries to the Appellant of various such shops, companies, Banks and Establishments which are voluminous and running into many pages .
22. It was further submitted that the Appellant has not sought for any specific information and/or not asked for any specific documents pertaining to any specifics shops, companies, Banks and establishments. It was further submitted that such shops, companies, Banks and establishments all being institutions with

sensitive information, as such the data sought by the Appellant cannot be provided in terms.

23. It was further submitted that information which has been sought by the Appellant is huge and voluminous in nature, contained in several files running into hundreds/ thousands of pages and it is not possible to compile the details of the information sought by the Appellant however in order to avoid any unwanted controversy, the PIO by reply dated 10/12/2019 furnished the copy of relevant information which is available with the Respondents to the Appellant herein.
24. It was further submitted that the Public information officer then who was handling the processing of the RTI application dated 2/1/2019 was replaced vide order dated 26/2/2019 and Shri Uday S.N.Desai and Shri Prashant Narvekar both were appointed as new Public information officers to perform their duties as per respective wards allotted to them and the present matter came to be processed by PIO Shri Uday S.N.Desai.
25. It was further submitted that by partial modification to the order dated 26/2/2019, the present PIO Prashant Narvekar came to be appointed as PIO upon the transfer of Shri Uday S.N.Desai to Ponda Municipal Council and was given charges of all the sections and the application of RTI was filed much before when the present PIO could be appointed .
26. It was further submitted that the dealing clerk and the concerned PIO who were handling with the processing of this application in taxation Department were on election duty and as a result of which the application could not be processed and the information could not be issued at the earlier date and in support of his above contention the Advocate for the Respondent PIO vide memo dated 11/3/2020 placed on records the copy of the order dated 7/1/2020 bearing number 79/07/2018/ELN/Lok-Sabha,2019 issued by the office of Collector and District Election officer, South

Goa District at Margao and deputing Shri Manoj Arsekar for election duty. Order dated 15/7/2019 appointing Shri Prashant Narvekar as public Information officer under RTI Act, 2005.

27. The Advocate for the Respondent PIO pointed out the name of Shri Manoj Arsekar reflected in the order dated 7/1/2019 and also pointed out para wherein it was stated as "per the ECI directive, from the date of reporting and till completion of the entire election process of relieving date, whichever is earlier you are deemed to be on deputation to Election Commission of India, as per Section 28 A of the Representation of people Act 1951". He also relied upon the order passed by the Chief Information Commission on 30/7/2019 in Appeal No.154/2019/CIC and submitted that the CIC has not granted request of penalty since the PIO was busy with election process .
28. It was further submitted that Applicant is RTI activist and he is aware of all procedure that needs to be followed by him he has not specified whatsoever reason in application and not justified before this commission that it was sought in a larger public interest .It was also submitted that nexus for information is very important and the Applicant should pointed out the shops whose irregularities were there and ought to have sought information of those premises /shops .
29. The Advocate for the Respondent PIO relied upon the Judgment of the Apex Court reported in 2011 DGLS (SC71), Institute of Charter Accountant of India V/s Shounak S. Satya and also judgment reported in 2011 DGLS (SC621) Central Board of Education and another's. He also relied upon judgment of Hon'ble High Court of Orissa in writ petition(C) no.17197 of 2015, Kailas Chandra Pandya V/s Central Information Commission and others and submitted that the above Honb'le court has come to the finding that it is necessary to make a distinction in regards to information intended to bring transparency to improve

accountability and to reduce corruption, falling under section 4(1)(b)and(C) of the RTI Act and other information which may not have a bearing on accountability of reducing corruption, and that the competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests ,which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources. He further submitted that it was not a case of Appellant that some irregularities were going in the public authority or for corruption was taking place and hence he did not specified in his RTI application that it was sought in larger public interest.

30. I have perused the records available in the file and considered the rival submissions of both the parties.
31. Since the available information is now being furnished to the Appellant during the present proceedings, I find that no further intervention of this Commission is required for the purpose of furnishing information and prayer (a) of the memo of Appeal become infructuous.
32. 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.”

33. 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? and whether the Respondent PIO is liable for action as contemplated under section 20(2) of RTI Act 2005.
34. The RTI Application was filed by the Appellant on 02/01/2019 hence in terms of section 7(1) it was supposed to be responded within 30 days i.e. by 02/02/2019. It is a specific case of the Respondent is that then PIO's namely Shri. Manoj Arsekar and Shri. Prashant Narvekar that they were not officiating as PIO's when the RTI Application was filed on 02/01/2019 but had taken charge of PIO's only after order dated 26/02/2019 and by partial modification to the order dated, 26/02/2019, the present PIO Shri Prashant Narvekar took the full flaged charge of PIO vide order dated 15/02/2019. Order dated 15/02/2019 was also placed on record in support of their contention. Taking into consideration the above said fact, the above name PIO's cannot be held responsible for not responding the application within stipulated time interms of section 7(1) of the RTI Act.
35. The Respondent PIO's has fairly admitted of having not responded the application of the Appellant and of having not complied the order of First Appellate Authority, however it is their contention that the same was not deliberate nor with malafide intention and it was due to the circumstances that then PIO Shri Manoj Arsekar was pre occupied with Election duties.
36. Reliance was also placed on the order dated 07/01/2019 issued to then PIO Shri Manoj Arsekar of deputing him on election duty for the Lok Sabha parliamentary election 2019, on perusal of the same it could be gathered that soon after the filing the RTI application on 2/1/2019 and during the first Appeal he was assigned with election duties. Further from perusal of the order dated 07/01/2019 issued by the Office of the Collector and District

Election Officer, South Goa District, it is stated that "*failure to comply with the above instruction shall attract violation of section 134 of the Representation of people Act, 1951, thereby making Officer concerned liable for action under the provisions of the said Act.*" The election work is time bound as reports are sought on day to day basis and the other preparations are also required to be made in that connection and that the possibility of he got completely tide up with all activities concerning elections cannot be ruled out.

37. 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 data 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".

38. The Hon'ble High Court of Bombay at Goa in writ petition No. 303 of 2011, Johnson Fernandes V/s Goa State information Commission has held :

" Staff was busy in election to Zilla Panchayat 2010 in the month of February and thereafter in the work of 1st phase of census operation which was conducted soon after the bye-election to Zilla Panchayat in may 2010. Dealing hand was also was not conversant with matter and hence penalty ought not to have been levied ".

39. Since the PIO's herein and the dealing hand were also assigned with the election work, hence the ratio laid down in Narandra Kumar (Supra) and in Johnson Fernandes (Supra) are applicable to the facts of the present proceedings.

40. The Hon'ble High Court of Bombay at Goa in A. A. Parulekar v/s Goa State Information Commission and others Writ Petition No.205/2007 (Supra) has observed at para 11.

"unless and until it is borne on record that any Office against whom order of penalty for failure to be sought to be levied and has occasion to comply with the order, and has no explanation or excuse available worth satisfying the forum, possessing the knowledge of the order to supply information, and order of penalty cannot be levied".

41. It is expected from Quasi Judicial Authority to pass a reasoned order. The order dated 12/06/2019 passed by the Respondent No.2 First Appellate Authority is not a reasoned order and it appears that the same is passed casually and mechanically. The parties who appeared therein in the said proceedings nor the arguments of the parties are reflected in the said order. It is also not known whether the said order was served upon the Respondent No.1 PIO for compliance. Since there is nothing on record to show that order was served on Respondent PIO and that the PIO had the knowledge of the order of the First Appellate Authority to supply information, hence in my opinion by subscribing to the ratio laid down above, given in A.A. Parulekar case (Supra) the benefit of the doubt goes in favour of the Respondent PIO.

42. The Hon'ble 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.”

43. 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.”

44. 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"***.

45. 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 and also in delay in furnishing information.
46. 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. Only lapse found by this commission that the PIO ought to have intimate his difficulties and ought to have sought extension of time for providing the information. No such exercise was taken by the Respondent PIO in the present case.
47. The PIO must introspect the non furnishing of the correct and complete information lands the citizen before the FAA and also before this Commission resulting into unnecessary harassment of the Common man which is socially abhorring and legally impermissible.
48. In the above circumstances and as discussed above, I finds that the levy of penalty is not warranted in the facts of the present case. Apparently there is a delay in furnishing information and lots of hardship has been caused to the Appellant in securing the

information in larger public interest. The Respondent PIO is hereby directed to be vigilant henceforth while dealing with the RTI matters and any lapses found in future shall be viewed seriously.

Appeal stands disposed accordingly. 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