

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 312/2019/SIC-I

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

....Appellant

V/s

1) The Public Information Officer (PIO),
Main Engineer Gr-I (Denis D'Mello)
Mapusa Muncipal Council,
Mapusa-Goa – 403507.

2) First Appellate Authority (FAA),
Chief Officer,(Mr. Clen Madeira)
Mapusa Muncipal Council,
Mapusa-Goa 403507

.....Respondents

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

Filed on: 11/11/2019

Decided on: 08/01/2020

ORDER

1. The second appeal came to be filed by the appellant Shri Jawaharlal T. Shetye on 11/11/2019 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 Right To Information Act, 2005.
2. The brief facts leading to the second appeal are that the appellant vide his application dated 14/8/2019 had sought for certain information from Respondent No.1 Public Information Officer (PIO) of Mapusa Municipal Council, Mapusa-Goa on 3 points as stated therein in the said application mainly pertaining to the letter No. MMC/Admn/4274/2019 dated 9/7/2019 addressed to the Director of Department of Urban Development at Panajim-Goa by the Chief Officer of Mapusa Municipal Council with a subject "The decision of Mapusa Municipal Council to re-advertise the post of driver". The said information was 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 neither the information was provided to him by the Respondent no 1 Public Information Officer (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 17/9/2019 being first appellate authority.
4. It is the contention of the appellant that the Respondent No. 2 first appellate authority, did not disposed his first appeal within stipulated time as such he is forced to file the present appeal.
5. In the above background the appellant being aggrieved by action of PIO and of First Appellate Authority (FAA), has approached this commission in this second appeal u/s 19(3) of the act with the contention that the information is still not provided and seeking order from this commission to direct the PIO to furnish the information as also for invoking penal provisions as against respondent PIO so also sought compensation for the detriment suffered by him at the hands of Respondents.
6. Matter was taken up on board and was listed for hearing and accordingly notices were issued to the parties. Appellant opted to remain absent for the proceedings. Respondent PIO Shri Diniz D'Mello appeared along with APIO Vinay Agarwadekar. The Respondent No.2 First Appellate Authority (FAA) opted to remain absent despite of due service of notice neither filed any reply to the proceedings.
7. Reply was filed by respondent no. 1 PIO on 17/12/2019 thereby also enclosing information at point No.1. and 2 . The copy of reply of the PIO alongwith the copies of information was collected by the appellant on 23/12/2019. Additional reply alongwith the enclosures was also submitted by the Respondent PIO on 27/12/2019 with the registry of this commission which was inwards vide entry No. 2006

dated 27/12/2019. The copy of the same could not be furnished to the appellant on account of his absence .

8. Respondent PIO Shri Deniz D'Melo submitted to consider his reply as his arguments
9. Vide reply dated 17/12/2019 PIO contended that efforts were made by him to trace out the concerned files/documents from the Administrative section and he vide his letter No. Admin/RTI/6252/2019 dated 26/9/2019 had informed the appellant to collect the information at point No. 1 and 2 on the payment of Rs. 4/- and to attend their office on 30/9/2019 for inspection of file at 3.00 Pm. It was further contended that the appellant appeared on 30/9/2019 and paid an amount of Rs. 4/- vide receipt No. 1205 dated 30/9/2019 but failed to collect the said document and also failed to carry out the inspection of the records as sought by him at point no. 3 .
10. It was further contended by PIO that the appellant is habitually filing the RTI application, first appeals and second appeals as such the Municipal staff and the PIO remain busy to sort out and to furnish information to the appellant.
11. It was further contended that the difficulties to furnish the information in time is genuine and not to cause any hardship or inconvenience to the appellant. He apologized for the delay caused in the matter and prayed to Condon the said delay
12. It was further contended that there was no any willful intention on his part to cause any monetary loss or delay to furnish the information to the appellant.
13. The respondent PIO vide his additional reply dated 27/12/2019 submitted that the inspection of the file of Shri Nilesh Gadekar has been carried out by the appellant and has endorsed his signature of having carried the inspection on note sheet and in support of his contention he relied upon the said note sheet.

14. Since the information at point No. 1 and 2 have now been collected by the appellant on 23/12/2019 and since appellant has carried out the inspection as sought by him at point no. 3 on 26/12/2019 as per his requirement, I am of the opinion that no intervention of his commission is required for the purpose of furnishing the information and hence the prayer (i) becomes infructuous.
15. With regards to other prayers which are in nature of penalty and compensation, for the purpose of considering liability interms of section 20 of RTI Act, The Hon'ble High Court of Bombay, Goa bench at Panaji in writ petition 205/2007 ; Shri A.A. Parulekar v/s Goa State information commission has observed;

"The order of penalty for failure is akin to action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate".
16. Hence according to the ratio laid down by above court failure to supply the information should be either intentional or deliberate .
17. On perusal of the records, it is seen that the application dated 14/8/2019 was filed and received by the Office of Respondent PIO on 14/8/2019 itself. Under section 7(1) of the Act, the PIO is required to respond the same within 30 days from the said date i.e by 14/9/2019. The said was replied on 26/9/2019. There is marginal delay in responding the same. However on perusal of the said letter/reply, it is seen that there is no denial of information from PIOs side and in fact the Respondent PIO had offered him the information. The PIO in his reply before this commission have categorily submitted that the appellant failed to collect the said documents . I have no hesitation in accepting the said contention of the Respondent PIO as the same has not been disputed and reburtted by the appellant herein.

18. The Hon'ble High Court of Bombay at Goa in writ petition No. 704/12; public authority V/s Yeshwant Sawant has held at para 6;

“ The imposition of such penalty is a blot upon the career of the officer at list to some extent ,in any case the information ultimately furnished though after some marginal delay in such circumstances, therefore, no penalty ought to have been imposed upon the PIO”.

19. Yet in another decision, the Hon'ble High Court of Bombay at Goa in writ petition No.488/11; Shivanand Salelkar v/s Goa state Information commission has held at para 5;

“The delay is not really substantial. The information was applied on 26/10/2009 and therefore the information had to be furnished by 25/11/2009. On 30/11/2009 complainant made his complaint and no sooner the petitioner received the notice of complaint, the petitioner on 15/1/10 actually furnished the information. If all such circumstances considered cumulatively and the law laid down by this court in the case of A A Parulekar (supra) is applied , then it does appears that there was no justification for imposing penalty of Rs 6000/- against the petitioner. ”

20. In the present case, the averments made by the Respondent PIO in his reply has gone undisputed and un-rebutted by the appellant. May be the letter dated 26/9/2019 was not written within a period of 30 days requiring PIO to furnish the information but the facts remains that there was no denial of information by Respondent PIO and the information at point NO. 1 and 2 ultimately came to be collected by the appellant on 23/12/2019 and inspection was carried on 26/12/2019.

21. Further, the Hon'ble High Court of Delhi in Writ Petition (c) 3114/2007, Bhagat Singh V/s CIC has held;

“ The petition has not been able to demonstrate that they malafidely denied the information sought therefore a direction to central information commission to initiate action on the section 20 of the act cannot be issued “.

22. Considering the facts and circumstances of present case and as there is no sufficient, convincing and cogent evidence on record produced by the appellant attributing malafides on the part of Respondent PIO,hence by subscribing to the above ratios laid down by the above courts, this commission is of the opinion that this is not a fit case warranting levy of penalty on PIO.

23. For seeking compensation, the burden lies on the claimant to produce evidence sufficient to grant compensation. In the present case as there is no evidence of whatsoever nature of the losses or detriment suffered by the applicant, as such compensation cannot be ordered.

24. In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

ORDER

a)Since the information have now been collected by the appellant, no intervention of this commission is required for the purpose of furnishing the information and as such prayer (i) becomes infructuous.

b) Rest prayers are rejected.

The appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

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.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa