

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

Appeal No. : 343/2019/SIC-I/

Shri Nixon L.Furtado,
H.No. 51, Copelwaddo,
Sernabatim. Salcete-Goa.

.....Appellant

V/s

1. Public Information Officer (PIO),
O/o the Village Panchayat,
Colva, Salcete-Goa.
2. First Appellate Authority,
O/o the Block Development Officer,
Margao,Salcete-Goa.

.....Respondents

CORAM:

Ms. Pratima K. Vernekar, State Information Commissioner

Filed on:05/12/2019

Decided on: 8/6/2020

ORDER

1. The second appeal came to be filed by Appellant Shri Nixon L. Furtado against Respondent No.1 Public Information Officer (PIO) of the Office of Village Panchayat, Colva, 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 30/9/2019 seeking certain information from the Respondent No.1 Public Information Officer (PIO) on several points as listed therein in the said application vis-a-vis:-
 - (i) (a) Certified copies of outward register of Village Panchayat dated 19/9/2019(entire entries)

(b) Certified copy of Resolution No.34 dated 10/9/2019.

(ii) Payment receipts in respect to the NOC's issued to

(a) Luis D'Silva for running food stall business/gadda.

(b) Levis Pedro Gomes, to operate unable kiosk.

(c) Rency Furtado, for running mini Restaurant by cooking food in a movable cabins.

(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 considering the same as rejection, the Appellant filed first appeal on 1/10/2019 before the Respondent No. 2, Block Development Officer of South-Goa at Margao-Goa, being First Appellate Authority interms section 19(1) of RTI Act, 2005.

(c) It is the contention of the Appellant despite of notice issued by First Appellate Authority, the Respondent PIO failed to remain present before the Respondent no.2 First Appellate Authority for the entire hearing taken place on several occasion.

(d) It is contention of the Appellant that the Respondent No. 2 First Appellate Authority disposed the said appeal by an order dated 26/11/2019. 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 7 days, free of cost from the date of the order.

(e) 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 5/12/2019 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 FAA 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 sought.
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 represented by his brother Shri Nevil Furtado. Respondent PIO Shri. Amol Tilve was present alongwith Advocate J. Mendes. Respondent No. 2 Amitesh Shirvoikar was present who filed reply on 21/1/2020.
5. During the hearing on 21/1/2020 the Respondent PIO showed his willingness to furnish the information to the Appellant as sought by him vide his application dated 30/9/2010 and accordingly the same was furnished alongwith the documents/ enclosures to the Appellant on 28/1/2020. After verifying the said information acknowledge 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 3/2/2020 to which counter reply was filed by Appellant on 17/2/2020.
7. 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 Panchayat which he is trying to bring to light. It was further contended that

the PIO did not adhere to the direction given by the FAA vide order dated 26/11/2019.

8. He 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 redress his grievances before appropriate forum.
9. It was further submitted that Respondent PIO cannot take a stand that he was pre-occupied due to other work of Panchayat and therefore he denied the Appellant the requested information. It was further submitted that the Respondent PIO has without any reasonable cause persistently not furnished any information within time framed provided under the Right of Information Act despite of having sufficient staff at his disposal. As such the stand taken by the PIO that he was involved in searching, Xeroxing and compiling the documents is not true.
10. It was further submitted that he has contacted Bio-diversity Board and found out that no such duty to create a booklet on bio-diversity was entrusted upon the PIO.
11. It was further submitted that Goa State Pollution Control Board would not have warned him several times regarding his duties and therefore imposed a penalty (Rs.10lakhs) on the Village Panchayat of Colva in respect of Garbage issued and for causing damage to the environment. In support of his contention he enclosed the inspection report and other documents of the Goa State Pollution Control Board to highlight the attitude of the PIO.
12. It was further submitted that the submission of Respondent PIO are baseless, false and cannot be relied upon, as the same are not genuine and only filed to get away from the penalty proceedings to be impeded against him.

13. 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.
14. The Respondent PIO submitted that whatever available information in the records have been furnished on 28/01/2020 to the Appellant. It was further submitted that he was completely busy with garbage disposal issues and to comply with the order /directions passed by the Hon'ble High Court of Bombay at Goa in suo moto writ petition No. 2/2007 dated 11/7/2019 since the compliance was sought on the said issue by the Hon'ble High Court . It was further submitted that one of the works as per the said directions was required to identify the land for the material recovery facility centre and then send the proposal as per law, which he had to keep on priority basis and in support of his contention he relied upon the judgment of Hon'ble High Court of Bombay at Goa.
15. It was further submitted by Respondent PIO that he was given the work to prepare the gram Panchayat development plan, tendering the development tenders, to make arrangement for the fama festivals which is held in the month of October, to conduct the forth night meetings and to facilitate the same to write the resolution taken therein and thereafter to execute the same.
16. It was further submitted that in the month of September and October 2019 he was occupied with the legal issue of the Panchayat Ghar, after the South Goa Collector issued a showcause notice dated 16/9/2019 to the office of Colva Panchat seeking reasons as to why the land allotted to the local body to build the Panchayat Ghar should not be revolted back to the State Government . It was further submitted that in that contest he had to visit the concerned Advocate office to appraise him

and to seek legal opinion on the same and in support of his above contention he relied upon the extract of the text reported in the Times of India on 25/10/2019 with a caption "Colva Panchayat wants to discontinues lease for Ghar" and on November 21 ,2019 with a caption " 10 lease holders in Colva Panchayat Ghar gets notices" and also on extract reported on Goa News reported on 13/11/2019 with a caption "Colva Village Panchayat to issue show cause notice to Panchayat Ghar occupants next weeks".

17. It was further submitted that he was also occupied with the issue of sewage plant which is being opposed by the public in gram Sabha. It was further submitted that he was also preoccupied with the responsibility and duty to create booklet on Bio-diversity and to follow up with the work involved with it.
18. It was further submitted that he had to also deal with the complaint from local for illegal constructions carried out, matters u/s 66(2) and 66(7) of the Goa Panchayat Raj Act, conducting various site inspections disposing application relating to NOCs and trade licences which had to be done within time frame.
19. It was further submitted that the Appellant has also filed many RTI applications prior to present ones and claim that he is involved in works concerning the general public and to sought out issues faced by the public who seek their help and assistance.
20. It was further submitted that he had to depend upon very limited staff i.e two clerks and one peon who have to cater to their work as well and therefore due to the shortage of staff, it was extremely burdening for him to cater to the work which was on priority basis as mentioned by him and also to cater to RTI applications and he tried to manage and balance in the best possible ways he could .

21. I have perused the records available in the file and considered submissions of both the parties.
22. 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.
23. It is seen from the records that the application u/s 6(1) of the act was filed by the Appellant on 30/9/2019. 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 has also admitted of having not responded the application of the Appellant and of having not complied the order of First Appellate Authority, however it is his contention that the same was not deliberate and not with malafides intentions but was due to the circumstances that he was pre occupied with other official work which has to be completed within time frame.
24. Though it is contention of PIO that he had to give compliance before the Hon'ble High Court in pursuant to the order of the Hon'ble High Court in writ petition No. 2/2007 dated 11/7/2019 and to identify the land for the material recovery facility centre and then to send the proposal as per law, he has not placed on record the compliance report submitted to Hon'ble High Court nor also placed on record a proposal submitted by him to Competent Authority as per law.
25. Though it is contention of the PIO that he had to prepare Gram panchayat plan, tendering the development tenders, to make arrangement for fama festivals which is held in the month of October, to conduct the forth night meetings and to facilitate the same to write the resolution taken therein and thereafter to execute the same, the Respondent has not placed on record any

of the relevant document to show that he was busy with the above work .

26. Though it is a contention of PIO that in the month of September and October 2019 he was occupied with the legal issue of the Panchayat Ghar, after the South Goa Collector issued a showcause notice dated 16/9/2019 to the Office of Colva Panchayat seeking reasons as to why the land allotted to the local body to build the Panchayat Ghar should not be revolted back to the State Government and in that contest he had to visit the concerned Advocate office to appraise him and to seek legal opinion on the same, the PIO has not relied upon the copy of the Showcause notice dated 16/9/2019 issued by the South Goa Collector to the Colva Panchayat neither he had relied upon showcause notices issued to the occupant of the Panchayat Ghar in pursuance to the showcause that was issued by the South Goa Collector.
27. Though the Respondent PIO have claimed that he was completely occupied with the issue of sewage plant and in preparing booklet on Bio-diversity , the PIO has not relied upon any documents in support of his said contentions so also has not relied upon any documents with respect to his other contention also.
28. In the present case the application was filed on 30/9/2019 by the Appellant. The information furnished to the Appellant on 28/1/2020 during the second appeal proceedings. There is a delay in furnishing the information. Even assuming for a while that the PIO was busy with the work as mentioned by him in his reply, nothing prevented him to intimate Appellant and to the Respondent No. 2, FAA his difficulties and to seek extension of time. No such exercise was taken by the Respondent PIO in the present case.
29. From the conduct of the 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 order passed by the senior officer. Such a conduct of PIO is obstructing transparency and accountability, appears to be suspicious and adamant vis-a-vis the intend of the Act.

30. The PIO must introspect that the non furnishing of the correct and complete information or delay in furnishing 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.
31. From the above gesture of PIO and since the PIO has not relied upon any supporting documents and/or any convincing evidence in support of his contention as stated by him in his reply dated 3/2/2020, I am not inclined to accept his explanation as a gospel truth. I find that the entire conduct of PIO is not in consonance with the Act. Such an lapse on part of PIO is punishable u/s 20(1) and 20(2) of the RTI Act. However before imposing penalty, I find it appropriate to seek explanation from the PIO as to why penalty should not been imposed on him for the contravention of section 7(1) of the RTI Act, for not compliance of order of first appellate authority and for delaying the information.
32. I therefore dispose the present appeal with order as under ;

Order

Appeal partly allowed

- a) Since the available information is now been furnished to the Appellant as per his requirement and as sought by the Appellant vide her application dated 30/9/2019, no further intervention of this Commission is required for the purpose of furnishing the same and hence prayer (1) becomes infructuous.
- b) Issue notice to Respondent PIO to showcause as to why no action as contemplated u/s 20(1) and/or 20(2) of the RTI Act

2005 should not be initiated against him/her for contravention of section 7(1), for not complying the order of first appellate authority and for delay in furnishing the information.

- c) In case the PIO at the relevant time, to whom the present notice is issued, is transferred, the present PIO shall serve this notice along with the order to him and produce the acknowledgement before the commission on or before the next date fixed in the matter alongwith full name and present address of the then PIO.
- d) Respondent, PIO is hereby directed to remain present before this Commission on 22/6/2020 at 10.30 am alongwith written submission showing cause why penalty should not be imposed on him/her for contravention of section 7(1) of the Right to Information Act, 2005, for not compliance of order of First Appellate Authority and for delay in furnishing the information.
- e) Registry of this Commission to open a separate penalty proceedings against the Respondent PIO.

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