

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

Complaint No. 47/2019/SIC-I

Shri Suresh D. Naik.
R/o H.No. 124/4/6,
Gaunsawado, Mapusa- Goa.

....Complainant

V/s

1. The Public Information Officer,
The Mamlatdar of Pernem Taluka,
Office of the Mamlatdar of Pernem,
Pernem-Goa .

.....Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on:24/07/2019

Decided on:07/01/2020

ORDER

1. The brief facts leading to present complaint are that the complainant Shri Suresh D. Naik by his application dated 12/11/2018 filed u/s 6(1) of The Right to Information Act, 2005 sought from the Respondent No. 1 Public Information Officer (PIO) of the O/o Mamlatdar of Pernem Taluka, Pernem-Goa for certain information including inspection of the file bearing No.PER/LND/REG/ENG/78/1, VARCONDA of Pernem Taluka
2. It is the contention of the complainant that he did not receive any reply to his above application from the PIO nor any information was furnished to him within a stipulated time of 30 days as contemplated u/s (1) of section 7 of RTI Act and he received communication from Respondent PIO only on 05/02/2019 thereby informing him that the relevant file is not traced and in that connection four files are traced and he was requested to visit their office.
3. It is the contention of the complainant that as the information as sought was not furnished, he filed first appeal before the Deputy

Collector & SDO Pernem being the first appellate authority, which was registered as Case no.DPC/F.RTI/APPEAL/02/ 2019.

4. It is the contention of the complainant that the First Appellate Authority vide order dated 03/05/2019 directed the Respondent PIO to furnish the information to the complainant, after searching the relevant file within a week time in the presence of the Complainant.
5. It is the contention of the complainant that he approached respondent on two occasions , however despite of the order of the first appellate authority, the respondent has not furnished him the information till date, as such he being aggrieved by action of PIO had to approached this commission in this complaint u/s 18 of the Act.
6. In this background the present complaint has been filed by the complainant on 24/07/2019 with the contention that the information is still not provided to him deliberately with malafide intention. The complainant herein have prayed for imposing penalty in terms of section 20 of RTI Act against the respondent PIO.
7. The matter was listed on board and was taken up for hearing. In pursuant to Notice issued to the parties, complainant was present in person alongwith Advocate Ravish Chodankar. Respondent PIO Shri Rajesh Asgaonkar was present who filed reply on 21/10/2019 and on 21/11/2019 along with the enclosures. The copy of the same was furnished to the complainant herein.
8. Arguments were advanced by both the parties on 02/01/2020.
9. It is the case of the Complainant that information which is asked by him is available with the respondent PIO. It is his further contention that this commission vide order dated 22/03/2007 in

appeal no. 93/2006/MAM had directed to give the information from the same file to the complainant and now he has asked for other documents from the same file. It was further contended that once the file is available in 2007, the respondent cannot now avoid to give information on the pretext of the file is not traceable. It was further contended that the respondents office ought to have maintained records so also as per section 4 of the RTI Act 2005, the Respondent is bound to maintain all the records otherwise it would be against the provision of RTI Act, 2005 . It was further contended that the act of the Respondent amounts to illegality and has caused delay and Prejudice to the complainant and as such necessary directions is to be issued to the Respondent to furnish the information as per the directions of First appellate authority and to impose penalty till the information furnished to the complainant.

10. It is the contention of the Respondent PIO that Mr. Damodar Morajkar, UDC was/is looking after the process of RTI information applications received by the office of Mamlatdar and that all the files and documents pertaining to RTI were/are in the custody of dealing hand of the respective subject matter and as such he had issued memorandum to his staff to trace out the file and place before Damodar Morajkar within two days for further necessary action and in support of his contention he relied upon memorandum dated 9/1/2019 issued by him.
11. It was further submitted that the Aval Karkun Shri Ulo Mangueshkar, Shri G. V. Masurkar, Circle Inspector and Shri Y.N. Gaonkar head Clerk vide their respective letters informed him that despite of through search the file bearing No. PER/LND/EG/ENG/78/1, is not traceable/available and is not found in the charge list handed over to them by their predecessor and in support of his contention he relied upon

letters dated 14/1/2019 ,30/1/2019 and 14/1/2019 written to him by the above named person.

12. It was further submitted that he had authorized Mr. Damodar Morajkar to appeared before First appellate authority and to make submissions and based on the submission made by Shri Damodar Morajkar the first appellate authority was pleased to pass order directing him to furnish the information.
13. It was further submitted that Shri Damodar Morajkar, UDC did not bring to his notice the order dated 3/5/2019 passed by the FAA and he learnt about the same only on receiving a notice from this commission.
14. It was further submitted by Respondent PIO that Shri Damodar Morajkar being deemed PIO in terms of section 5(4) of RTI Act was required to place the information before him in order to furnish the same to the complainant in a prescribed time. He further contended that he had once again issued him memorandum, directing him to trace the file and provide the information to the complainant and in support of his contention he relied upon memorandum dated 13/9/2019 .
15. It was also contended that present Mamlatdar of Pernem Taluka Shri Anand Rajaram Malik has also issued memorandum dated 23/10/2019 to Shri Yeshwant Gaonkar and to Shri Damodar Morajkar directing them to search the file and to submit the compliance report within three days time and in support of his contention he relied upon two memorandums dated 23/10/2019 issued to above persons.
16. It was further submitted that he should be absolved/set free from the penalty proceedings and same to be imposed against Shri Damodar Morajkar, UDC/RTI dealing hand who is deemed PIO.

17. I have gone through the records available in the file, considered the submission made on behalf of both the parties.
18. 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. It is seen that as per the records the application dated 12/11/2018 was filed and received by the office of respondent on 12/11/2018. 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 complainant or that he has responded to his application. On the contrary on perusal of the letter/reply dated 5/2/2019 Purportedly given in terms of sub section (1) of section 7 of RTI Act relied by both the parties ,it is seen that the same was not responded within 30 days time and there is a delay in responding the same . It is also observed that the same was issued under the signature of Head Clerk which is again not in accordance with law.
19. The RTI Application was made and received by their office on 12/11/2018 as such it was expected from PIO to immediately seeks the assistance of the dealing hand or of the custodian of the records and files of the office of Mamlatdar of Pernem. However the memorandum to dealing clerk and the custodian of records is only issued on 9/1/2019 much after the 30 days period.
20. It is also observed that the memorandum dated 13/9/2019 issued to Shri Damodar Morajkar and Shri Y. Gaonkar of the office of Mamlatdar is only after the first hearing before this commission.
21. Though the respondent PIO have claimed that the penalty should be imposed against Shri Damodar Morajkar being deemed PIO, however no any documentary evidence have been placed on

record of having appointing him to deal the matters in the RTI Act or any documents seeking assistance interms of section 5(4) of RTI Act.

22. Apparently Shri Damodar Morajkar was subordinate of Respondent and as such he being superior officer was empowered to take any action under the C.C.S. Conduct rules for any dereliction of duties by him. There is nothing on record to show that the deemed action was taken against said Damodar Morajkar (UDC) by him or such a conduct was reported to his higher-ups.
23. The contention of the complainant that his RTI application was not responded within 30 days and PIO having failed to comply with the order dated 3/5/2019 have gone undisputed and unrebutted .
24. Thus I find prima facie some substance in the argument of the complainant that PIO purposely and malafiedly refused access to the information. Such and lapse on the part of PIO is punishable u/s 20(1) and 20(2) of RTI Act. Hence I find it appropriate to seek explanation from then PIO Shri Rajesh Ajgaonkar as to why the penalty should not be imposed on him for contravention of section 7(1) of RTI Act, for non compliance of order of first appellate authority and delay in furnishing information.
25. In the present case Complainant has also prayed for furnishing him information as per direction of first appellate authority. As per the ratio laid down by (i) the Hon'ble Apex court in the case of Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011) and (ii) by the Hon'ble High Court of Karnataka at Bangalore in writ petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited V/s State Information Commissioner, Karnataka Information Commission, this Commission's has no powers to provide the

information in an complaint case which have been requested for by any person, or denied to him and the remedy would be under section 19(3) of RTI Act, 2005 hence the relief sought by the Complainant of direction to PIO to provide him the information in a present Complaint cannot be granted.

26. In view of above, I disposed the present complaint with following order:-

ORDER

- i. Issue notice to Respondent then PIO Shri Rajesh Ajgaonkar 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 for contravention of section 7(1), for not complying the order of First Appellate Authority and for delay in furnishing the information.
- ii. The Respondent PIO Shri Rajesh Ajgaonkar is hereby directed to remain present before this commission on 24/1/2020 at 10.30 am alongwith written submission showing cause why penalty should not been imposed on him.

Complaint is disposed off and the further inquiry is posted on 24/1/2020 at 10.30 am

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