

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 08 /2020
In
Appeal No.342 /2019/SIC-I

Mr. Nevil B. Furtado,
H. No. 51, Copelwado,
Sernabatim, Salcete-Goa.

.....Appellant

V/s

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

.....Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on:01/07/2020

ORDER

1. The penalty proceedings have been initiated against the Respondent under section 20(1) and or 20(2) of RTI Act, 2005 for contravention of section 7(1) of RTI Act, for not complying the order of First Appellate Authority 2005, and for delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 3/2/2020. However, the facts are reiterated in brief in order to appreciate the matter in its proper prospective.
- 3 A request was made by the Appellant on 20/9/2019 interms of section 6(1) for information on 4 points including the inspections of records from the PIO of the office of Village Panchayat of Colva at Salcete Goa pertaining to encroachment by gaddas in road set back and public spaces since 1/6/2018 till date of filing of application. The said application was not responded by Respondent PIO in terms of section 7(1) of RTI Act. As no

information was furnished to the Appellant, as such he being aggrieved by the said action of PIO, preferred the first appeal on 21/10/2019 interms of sections of section 19(1) of RTI Act, 2005 and the First Appellate Authority vide order dated 20/11/2019 allowed the said appeal and directed Respondent PIO to furnish the information and to give the inspection to the Appellant within period of 7 days, free of cost from the date of the order. The Respondent PIO did not furnish him the inspection nor the information within stipulated time as was directed by the First Appellate Authority, as such the Appellant approached this Commission on 28/11/2019 by way of appeal as contemplated u/s 19(3) of RTI Act, 2005, with the grievance stating that the Respondent PIO did not provide him the complete information with malafide intention even though directed by the First Appellate Authority (FAA). In the said appeal the Appellant prayed for directions for providing complete and correct information and also for invoking penal provision for inaction on the part of PIO in complying with the provisions of RTI Act. In the course of the hearing before this commission, the Respondent PIO showed his willingness to provide the inspection of the records to the Appellant which was agreed by the Appellant. Accordingly the inspection was carried by the Appellant on 25/1/2020 and identified the documents .The PIO sought time to compile the same and since Appellant submitted that he required the said information on priority bases to file writ before Hon'ble High Court in order to avoid further delay and as no information was submitted to the Appellant, the Commission vide order dated 3/2/2020 while disposing the Appeal No. 342/2019 came to the prima-facie finding that despite of giving undertaking by the Respondent PIO before this commission to furnish the information to the Appellant, no information have been furnished during proceedings and the order of First Appellate Authority was not complied by Respondent hence vide order dated 3/2/2020

directed Respondent PIO to furnish the information to the Appellant as sought by him vide application dated 20/9/2019 , free of cost within 10 days from the date of the order. The commission also came to the prima facia finding that there was a delay in furnishing complete information and that the Respondent PIO did not act diligently while disposing off the request for information under the RTI Act and hence directed to issue showcause notice to the Respondent PIO as contemplated u/s 20 (1) and 20(2) of the RTI Act and also directed to public authority i.e the village Panchayat of Colva ,Salcete Goa to comply with section 4 of RTI Act within 6 months incase the same is not complied .

4. In view of the said order dated 3/2/2020 the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 7/2/2020, in pursuant to said notice showcause notice PIO Shri Amol Tilve was present alongwith Advocate J. Mandes .
6. Reply was filed by PIO on 5/3/2020 and the supporting documents were placed on records by him vide memo dated 17/3/2020, such as letter dated 23/9/2019 addressed to Block Development Officer-I at Margao by the Appellant ,Complaint dated 29/9/2019 filed by Respondents PIO against Appellant and others, letter dated 3/2/2020 addressed to Executive Engineer PWD, Fatorda Margao-Goa by the Secretary of Village Panchayat Colva , Notice dated 7/12/2019 issued to Elvis D'Silva, Notice dated 19/2/2020 to Chairman of Sancgiri Arched Building Society, Colva by the Secretary of Colva Village Panhayat , Memorandum dated 20/2/2020 issued by Director of Panchayat Panaji to the Sarpanch of Village Panchayat Colva and the memorandum dated 24//2/2020 issued by Block Development officer , Margao Goa to Secretary of Village Panchayat Colva with regard to the order dated 12/2/2020 issued by the Hon'ble High

Court of Bombay at Goa, Letter/reply dated 26/2/2020 addressed to Block Development officer, Salcete Margao-Goa by the Secretary of Village Panchayat Colva given with regards to their memorandum/ letter dated 24/2/2020, Letter dated 10/2/2020 addressed to Goa State Pollution Control Board, Saligao Bardez-Goa by the Secretary of Village Panchayat, Notice dated 3/2/2020 issued to Thitu Thomas, to Elvis D'Silva dated 4/3/2020, to all fish vendors of Colva dated 16/3/2020 by the Secretary of Village Panchayat Colva. The respondent PIO also relied upon the notice dated 28/12/2019 and 16/11/2019 issued to Mrs Josephin F. Dias by the Secretary of Village Panchayat Colva, Notices issued by the additional Director of Panchayat -II South at Margao Goa in case No.ADT-II/T.T. No.5/2020, in case No.ADT-II/T.T. No.4/2020, and in case No.ADT-II/T.T. No.3/2020 of intimation of the date of hearing fixed on 20/1/2020. The Respondent PIO also enclosed the letter dated 7/1/2020 addressed to Mr.Sanjeev Joglekar, Goa Coastal Zone management Authority by him so also letters dated 4/2/2020 addressed to BDO, Salcete Margao-Goa and also the letter dated 4/2/2020 to the Director of Panchayat and a letter dated 27/10/2019 addressed to Hon'ble Collector in connection with the order no. 43/19/90/REV/ 11253 dated 16/9/2019.

7. Vide reply to the showcase notice Respondent PIO 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.

8. 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 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.
9. It was further submitted that in the month of September and October 2019 he was occupied with the legal issue of the Panchat Ghar after the South Goa Collector issued a showcase 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
10. 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 and also had to comply with the account opening and Bank procedure.
11. It was further submitted that he had to also deal with the complaints 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.
12. 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 other work and therefore it was extremely burdening for him to cater to the work which had to be done priority basis as mentioned by him and also to cater to RTI

applications and in all process he tried to manage and balance in a best possible ways he could .

13. It was further submitted that the Appellant did not wanted him to be brought to the Secretary of the village panchayat of Colva and hence he had filed false complaint against him to the BDO of Salcet and to the Vigilance Department within 3 days of joining work, making totally false allegation against him and the same did not yield any results to the Appellant.
14. It was also submitted that the Appellant and his brother Shri Nixon Furtado and another person namely Judit Almeida frightened and abused him that not to take charge of Village panchayat Colva and physically assaulted him and he had filed police complain on 29/9/2019 which is registered as FIR bearing No. 101/2019 by the Colva Police Station.
15. It was further submitted that he has furnished the information during the hearing before the commission to the Appellant which has been received by him and endorsed to be satisfied with the same . However the Appellant seeks to press for penalty proceedings against him only with the view to harass him.
16. It was further submitted that the delay in furnishing information was neither deliberate not malafide and was due to the circumstances mentioned in his reply.
17. The matter could not be taken up on 30/3/2020 in view of lockdown due to Covid-19 and as such after lifting of the lockdown fresh notices were issued to parties to appear before this commission on 22/6/2020.
18. In pursuant to said notice, Appellant was represented by his brother Shri Nevil Furtardo . Respondent PIO was absent despite of due service of notice. Opportunities was granted to

Respondent PIO to file his additional reply if he so desire to the penalty proceedings by Email to the Commission but no any such additional reply was filed by the Respondent PIO. As such this Commission presumes and holds that the Respondent PIO has no any other submissions to be made.

19. I have gone through the records available in the file, considered the written submission made on behalf of the Respondent PIO.
20. The respondent PIO has admitted of having not responded the RTI application of the Appellant interms of section 7(1) of RTI Act and of having not complied the order of FAA and delay in furnishing information . However it is his case that it was not deliberate and with malafide intention but for the reasons that he was pre-occupied with the other official work .
21. The RTI Act is enacted to provide fast relief to the information seeker and as such time limit is fixed to provide the information within 30 days and to dispose the first appeal maximum within 45 days .The information was sought somewhere on 20/9/2019 and the information was not furnished to the Appellant till the disposal of the second appeal proceedings. There is delay in furnishing information.
22. The Respondent PIO in his reply contended that the information was furnished during the hearing of this commission however the records of this commission speaks contrary to the submission made by the Respondent PIO . On perusing of the records of the appeal proceedings No. 342/2019 more particularly of dated 3/2/2020, it is seen that the Respondent PIO has sought time to furnish the same and since the Appellant wanted the said information on priority basis as to file writ before Hon'ble High Court, arguments were heard by this commission and the order was passed directing to furnish the information within 10 days. The Respondent PIO have not produced any documents on

evidence on record of having furnishing the information to the Appellant

23. Further on perusing the RTI application of the Appellant dated 20/9/2019, the Appellant had also sought for inspection of records, the same could have been very well offered by the Respondent PIO at the initial stage itself which was denied by the Respondent. The Appellant had sought for information on 3 limited points pertaining to limited period from 1/3/2019 till September 2019. Assuming for while that the PIO was busy with other work as mentioned by him in his reply, however nothing prevented him to intimate his said difficulties and fact to the Appellant and to seek extension of time. The same observation of mine are based on the ratio laid down by the Hon'ble High Court for the State of Punjab and Haryana at Chandigarh in W.P. No. 18694 of 2011.[O & M] ; Dalbir Singh V/S Chief Information Commissioner Haryana & others. It has been held as under;

“There appears to be no justification to deny the information on this ground. Suffice it to mention that if the records are bulky or compilation of the information is likely to take some time, the Information Officer might be well within his right to seek extension of time in supply the said information, expenses for which are obviously to be borne by the petitioner”.

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 Honb'le 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 as per law.

25. Though it is contention of the PIO that he had to prepare Grampanchayat 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 right 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 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 Panchat 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 relied only the notices dated 16/11/2019 and 28/12/2019 issued to one person namely Josephin F. Dias.
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. The information was sought on 20/9/2019 the order was passed by the First Appellate Authority on 21/11/2019 . The most of the Documents relied by the Respondent PIO in support of his contention as mentioned by him in his reply after to the dates, mainly issued and pertaining to the year 2020. Further the memorandum issued by the Director of Panchayat and by the BDO in pursuant to the order of Hon'ble High Court are dated 20/2/2020 and 24/2/2020 respectively and the compliance report

given by the Respondent PIO to the Block Development officer is also dated 26/2/2020.

29. On perusal of the letter dated 10/2/2020 issued by the village Panchayat Colva addressed to Goa State pollution control Board, it is seen that the said is written with a reference letter dated 25//1/2020 and the subsequent notices issued to respective parties namely Thitu Thomas to fish venders , to Elvis D'Silva are all dated some where in February ,March 2020.
30. Hence on perusal of the Documents relied by the PIO itself, one could gather that the said has been executed some wehere in the year 2020. The PIO failed to show vis-a-vis any supporting documents as to how and why the delay in responding the application of the Appellant complying the order of first appellate authority and not furnishing the complete information was not deliberate and/or not intentional.
31. 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".

32. 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.**"

33. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 in 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."

- 23 The Hon'ble Bombay High Court at Goa bench in writ petition No.304/2011, Johnson V. Fernandes V/s Goa State information commission ;AIR 2012 Bombay 56 has observed , at para 6;

" Nothing prevented the petitioner for furnishing the information to Respondent de-hors the appeal . in fact , if the petition is intended to furnish the information to Respondent (information seeker) he

could have communicated it without waiting for Respondent No. 2 (Appellant) to file an appeal .”

The facts in the said case information was supplied for the first time before the First Appellate Authority. The Hon’ble High Court dismissed the appeal of the PIO by upholding the order of this commission wherein the penalty of Rs. 2000/- was awarded for failure to supply information in accordance with the provisions.

24. The Hon’ble High Court of Judicature of Madras in W.P. No. 3776 and 3778 of 2013, P. Jayasankar V/s Chief Secretary as held;

“ It is only in cases, where the authorities have disobeyed the order of this commission or there is specific findings of obligation of the public authority was not perform in terms of section 6 and 7 the question of penalty or direction to take disciplinary action will arise”.

25. The Hon’ble High Court of Himachal Pradesh in letters patent Appeal No. 4009 of 2013 , Sanjay Bhagwati V/s Ved Parkash and others decided on 5/11/2019 has held at para 16;

“ Bearing in mind the laudable object of the Act mere inaction or laid back attitude on behalf of the Appellant cannot exonerate him of his culpability because higher is the post, not only more but greater are the responsibilities. Even after being put to notice by the petitioner that the information supplied to him is incorrect. Yet the Appellant took no steps whatsoever to ensure that the true, correct and not incorrect, incomplete or misleading information is supplied to Respondent No. 1 information seeker. If a person refuses to act, then his intention is absolutely clear and is a sufficient indicator of his lack of bonafides. After all malafide is nothing sort of lack of bonafides or good faith”

- 26.** 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. The Respondent PIO has pursuantly failed to provide the information to the Appellant. Such a conduct and attitude of Respondent PIO in the present matter appears to be suspicious vis-à-vis the intent of the RTI Act and is not in conformity with the provisions of the RTI Act.
27. 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.
28. If the correct and timely information was provided to Appellant it would have saved valuable time and hardship caused to the Appellant 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.
29. Considering the above conduct, I find that PIO has without reasonable cause repeatedly has failed to furnish complete information within time. Thus I am convinced and is of the opinion that this is fit case for imposing penalty on PIO. Hence the following order.

ORDER

- i. The Respondent No. 1 PIO Shri Amol Tilve shall pay a amount of Rs.3000/- (Rupees Three Thousand Only) as penalty for contravention of section 7(1) of RTI Act, for not complying the order of First Appellate Authority within

stipulated time as directed by the First Appellate Authority 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 South-Goa.
- iii. Copy of this order should be sent to the Director of Panchayat of North -Goa at Panaji-Goa and Director of Accounts, south- Goa for information and implementation.

With the above directions penalty proceedings closed.

Pronounced in the open court. 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.

Sd/-

(Ms. Pratima K. Vernekar)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa