

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

**Penalty No. 11 /2020/SIC-I
In
Appeal No. 343/2019/SIC-I**

Shri Nixon B. Furtado,
H No. 51, Copelwado,
Sernabatim, Salcete Goa. 403708

.....Appellant

V/s

1. Public Information Officer,
Office of the Village Panchayat of
Colva, Salcete Goa. 403708
2. The First Appellate Authority,
O/o. Block Development Officer-I,
Salcete, Margao-Goa.

.....Respondents

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

Decided on: 07/07/2020

ORDER

1. The penalty proceedings have been initiated against the Respondent PIO 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, and for delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 8/6/2020. 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 30/9/2019 interms of section 6(1) for information on several points with respect to operate gadas, Mobile kiosk running mini restaurants in a mobile cabins for commercial activities in the locality of Sernabhatim and Colva and other connected information pertaining to the said subject. The said information was sought from Respondent PIO

of Village Panchayat Colva Salcete-Goa . 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 01/10/2019 before the Respondent no. 2 Block Development Officer South, Margao Goa being First Appellate Authority and First Appellate Authority vide order dated 26/11/2019 allowed the said appeal and directed Respondent PIO to furnish the information within period of 7 days, free of cost from the date of the order. The Respondent PIO did not furnish him the information within stipulated time as was directed by the First Appellate Authority, as such the Appellant approached this Commission on 5/12/2019 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 furnish the information to the Appellant as sought by him vide his application vide his application dated 30/9/2019 and accordingly the same was furnished along with the documents/enclosures to the Appellant on 28/1/2020. After verifying the said information the Appellant acknowledged the same on the memo of Appeal. However he pressed for invoking penal provisions. The Reply was filed by Respondent No. 1 PIO on 3/2/2020 to which counter reply was filed by the Appellant on 17/2/2020 along with supporting documents. Arguments were advanced by both the parties. Though the PIO in his reply submitted that he was completely busy with garbage disposal issue, to comply with the order / Direction passed by Hon'ble High

Court of Bombay at Goa in suo moto writ petition No. 2/2007 dated 11/7/2019 and he was supposed to identify the land for the material recovery center and was to give compliance to the Hon'ble High Court, was given a work to prepare a Gram Panchayat development plan, tendering the development tenders, to make arrangement for fama festival, to conduct fortnight meetings, to write the resolution and to execute the same, had to deal with the legal issue of Panchayat Ghar after the South Goa Collector issued a showcause notice dated 16/9/2019, also was occupied with a sewage plant which is being opposed by the Public in Gram Sabha and also pre-occupied with the responsibility and duty to create booklet on Biodiversity and to follow up the work involved with it and also had to deal the complaints from local for illegal construction were carried out, matters u/s 66(2) and 66(7) of Goa Panchayat Raj Act and also had to conduct site-inspection etc, but the PIO did not placed on record any of his supporting documents and/or convincing evidence in support of his above contention stated by him in his reply dated 3/2/2020. The Appellant in counter to arguments and contention of respondent PIO, produced the inspection report and other documents of the Goa State Pollution Control Board to highlight the attitude of PIO, showing that the Colva Panchayat was directed to deposit an amount of Rs 5 lakhs by the Pollution Control Board by way of penalty and compensation for the damage for the environment. This commission taking into consideration all the above factors and since no supporting documents were relied by respondent no. 1 PIO hence, was not inclined to accept the explanation of PIO as gospel truth and found that entire conduct of PIO was not in consonance with the Act. The Commission vide order dated 08/06/2020 while disposing the Appeal no.343/2019 came to be prima facie findings that there was delay in furnishing the complete information. However the Commission in the interest of justice also decided to

give opportunity to Respondent PIO and to seek appropriate explanation fresh from him as to why penalty should not be imposed on him for contravention of section 7 (1) of RTI Act, for not complying the order of First Appellate Authority and for delay in the information, and hence show cause notice was issued to Respondent PIO as contemplated u/s 20(1) and 20(2) of the RTI Act.

4. In view of the said order dated 8/6/2020 the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 15/6/2020. Despite of due service of Show cause notice, the PIO opted to remain absent neither filed any reply to the proceedings.
6. Opportunities were granted twice to Respondent PIO to file his say /reply if he so desire to the penalty proceedings by email to this commission, however no any reply/written submissions was filed by Respondent PIO. It appears that he is not interested in the present proceedings and as such this commission presumes and holds that that Respondent PIO has no any say/written submission to be made and does not have and supporting documents/convincing evidence to show that the delay in furnishing the information was not intentional and deliberate .
7. Since the Respondent opted to remain absent, neither filed any reply, this commission had no any option then to decide the matter based on records available including that of appeal proceedings.
8. The Respondent PIO herein during appeal proceedings have admitted that he was officiating as PIO when the application was filed by the Appellant herein on 30/9/2019 and when the order was passed on 26/11/2019 by the First Appellate Authority. It is seen from the inward stamp affixed on the said application that the RTI application was received by the office of

Respondent on the same day. He also during the appeal proceedings has admitted of having not responded the RTI application of the Appellant and of not complied the order of First Appellate Authority. PIO did not place on record relevant documents in appeal proceedings supporting his contention neither took any pain in penalty proceedings to substantiate his case. Hence the PIO herein has failed to show or established vis-à-vis any supporting documents/convincing evidence as to how and why the delay in responding the application and/or not complying the order of First Appellate Authority and delay in furnishing information was not deliberate and intentional but due to the circumstances beyond his control.

9. 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 30/9/2019 and the information was provide on 28/1/2020, there is delay in furnishing information.

10. 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”.

11. 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.**”

12. 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.”

13. 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.

14. 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”.

15. 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”

16. 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 persistently failed to provide 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.
17. 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.
18. 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 Appellant has suffered lots of harassment and mental torture in seeking the information under the RTI Act which is denied to him till date of filing of 2nd appeal before this Commission. If the PIO has given prompt and correct information such harassment and detriment could have been avoided.
19. 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.5000/- (Rupees Five 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