

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 12 /2020/SIC-I

In

Appeal No.40/2020/SIC-I

Shri Nazareth Baretto,
Agriculturist ,Indian National,
Resident of H.No. 126, Borda,
Margao, Salcete-Goa.

....Appellant

V/s

The Public Information Officer (PIO),
Administrator of Comunidades,
South Zone, Margao, Salcete-Goa.

.....Respondent

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

Decided on:10/08/2020

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 25/6/2020. 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 26/8/2019 interms of section 6(1) for information on 3 points with respect to Elections of managing Committee of Comunidade of Aquem for triennium years 2019-21, which elections were held on 16/12/2019 at Comunidade hall at Margao and other connected information pertaining to the said subject. The said information was sought from Respondent PIO of Office of Comunidade, South Zone at 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 18/10/2019 before the Collector at Margao Goa being First Appellate Authority and First Appellate Authority vide order dated 29/11/2019 allowed the said appeal and directed Respondent PIO to furnish the information free of cost. The Respondent PIO did not furnish him the information as was directed by the First Appellate Authority, as such the Appellant approached this Commission on 5/2/2020 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.

- 4 Notice were issued to both the parties in the Appeal proceedings in pursuant to the said notices the Appellant was present in person alongwith Umesh Mangueshkar. The Respondent PIO was represented by Shri Vivek Desai on 12/3/2020 and thereafter neither the Respondent PIO nor his representative remained present neither filed any reply to the Appeal proceedings. Since no reply came to be filed despite of giving opportunity, the Commission presumed that the Respondent PIO has no any say to be offered and the averments made by the Appellant are not disputed by the PIO. After considering the arguments of the Appellants and perusing the records available in the file, this Commission found that entire conduct of PIO was not in consonance with the Act. The Commission vide order dated 25/06/2020 while disposing the Appeal no. 40/2020 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.

5. In view of the said order dated 25/6/2020 the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to PIO on 30/6/2020. In pursuant to Show cause notice, the representative of PIO Shri Vivek Desai appeared on 14/7/2020 and placed on record forwarding letter addressed to Appellant bearing No. ACSZ/120/RTI/2020-2021/47 dated 3/7/2020 thereby submitting the information to the Appellant alongwith the copies of the information. The said letter and the information was received by the Advocate Shri Umesh Mangueshkar on behalf of Appellant on 14/7/2020.
7. Reply to showcause notice was submitted by Respondent PIO with the registry of this commission alongwith enclosure on 3/8/2020 which was inwards vide entry No. 985.
8. Vide reply dated 23/7/2020 which was inwards with the registry of this commission on 3/8/2020, the Respondent Shri Vishal Kundaikar submitted that beside working as Dy. Collector and SDO-I, Salcete Taluka, he is holding additional charge of Administrator of Comunidade at south Zone at Margao. It was further contended that as the records which were sought pertains to comunidade of Aquem, a Memorandum No. ACSZ/120/RTI /2019-20/451 dated 24/2/2020 was issued to Escrivao of Comunidade of Aquem . He further submitted that the Escrivao of Comunidade of Aquem has not submitted the information to the Respondent, therefore he could only provide whatever information which were available in the office of

Respondent vide letter No. ACSZ/120/RTI /2020-21/47 dated 3/7/2020 and in support of his above contention he relied upon the memorandum dated 24/2/2020 issued to Escrivao of Comunidade of Aquem and a letter dated 3/7/2020 addressed to Appellant thereby providing the available information. It was submitted that as the required information is already provided the showcause notice issued to him may be withdrawn and proceedings to be dropped.

9. I gone to the records available in the file also considered the submission made on behalf of respondent PIO.
10. On perusal of the records, it is seen that the application dated 26/8/2019 was filed and received by the Office of Respondent PIO on 26/8/2019 itself. Under section 7(1) of the Act, the PIO is required to respond the same within 30 days from the said date. The Respondent PIO has not placed on record any documentary evidence of having adhered to section (7)of RTI Act, 2005.
11. The records shows that the first appeal was filed by the Appellant on 18/10/2019 and the order was passed by the First Appellate Authority on 29/11/2019. The First Appellate Authority vide his order directed Respondent to furnish the required information. It is not a case of PIO that the order of First Appellate Authority was challenged by him or has complied the order of the First Appellate Authority. The PIO has also not placed on record any correspondence made by him to the Appellant in pursuant to the said order. No reasons whatsoever were intimated to First Appellate Authority nor to the Appellant herein why he would not comply the said order in time. The Respondent PIO have not produced any documentary evidence on record of having complied the order of First Appellate Authority.
12. Thus from the records and undisputed facts, it could be gathered that the Respondent PIO have failed to respond the

said application filed by the Appellant u/s 6(1) of RTI Act and also did not comply the order of First Appellate Authority.

13. From the reply of PIO filed in the penalty proceedings before this Commission, it could be gathered that memorandum was issued to the Escrivao of Comunidade of Aquem only on 24/2/2020 that is after filing the second appeal proceedings. Such an exercise was not taken by the Respondent PIO soon after filing of the RTI Application by the Appellant neither during the first Appeal proceedings neither after the order of First Appellate Authority .
14. The PIO also failed to show vis-a-vis any supporting documents 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 the complete information was not deliberate and/or not intentional.
15. 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".

16. 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."**

17. 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."

18. 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.

19. 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”.

20. 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”

21. 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.
22. The information was sought on 26/8/2019, the order was passed by First Appellate Authority on 29/11/2019 and the information at point No. 1 was furnished to the Appellant vide letter dated 3/7/2020. The respondent PIO in his reply in the penalty proceedings contended that they have provided the information available in the office, hence based on his own statement, it appears that the information at point No. 1 was available in their office records hence the Respondent PIO ought to have furnished the same at the inception itself. There is a delay of approximately one year in providing the said information
23. 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.
24. 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. If the PIO has given prompt and correct information such harassment and detriment could have been avoided.
25. From the conduct of the PIO it can be clearly inferred that the PIO had no concern to his obligations under the RTI Act and /or has no respect to obey the orders passed by the senior officers. Such a conduct and attitude on the part of the

Respondent 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.

26. 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. However since there is nothing on record that such lapses on the part of Respondent PIO are persistent , considering this as an first lapse, a lenient view is taken, Hence the following order.

ORDER

- i. The Respondent No. 1 PIO Shri Vishal Kundaikar shall pay a amount of Rs.2000/- (Rupees Two Thousand Only) as penalty for contravention of section 7(1),of RTI Act, 2005. For non compliance of the order of First Appellate Authority within stipulated time and for delay in furnishing 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 Accounts, South-Goa at Margao 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

