

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 01/2020

In

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

Decided on:10/02/2020

ORDER

1. The penalty proceedings have been initiated against the Respondent under section 20(1) and or 20(2) of RTI Act, 2005 for the contravention of section 7(1) of Right To Information Act, 2005, for not complying the order of First appellate authority (FAA) and delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 07/01/2020. 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 12/11/2018 interms of section 6(1) for information on 2 points including inspection of the file bearing No.PER/LND/REG/ENG/78/1.Varconda of Pernem Taluka. As no information was given nor any reply was sent to Appellant in a statutory period of 30 days as contemplated under sub-section (1) of section 7 of RTI Act and being aggrieved by the reply of PIO dated 5/2/2019 informing him that the relevant file is not traced, hence the first appeal was filed by the complainant and the FAA vide order dated 3/5/2019 allowed

the appeal filed by the complainant and directed Respondent PIO to furnish the information to the complainant after searching the relevant file within a week time in the presence of the complainant. The complainant despite of approaching the respondent on 2 occasion and despite the order of first appellate authority as no information was furnished to him as such the complainant approached this Commission by way of complaint as contemplated u/s 18 of RTI Act, 2005, with the grievance stating that the respondent PIO did not provide him the information with malafide intention even though directed by the First appellate authority (FAA). In the said Complaint the complainant prayed for imposing penalty interms of section 20 of the RTI Act against the Respondent PIO. During the hearing before this commission a reply was filed by the PIO on 21/10/2019 and 21/11/2019 alongwith enclosure. After hearing both the parties, the Commission vide order dated 7/1/2020 while disposing the complaint No. 47/2019 came to the prima-facie finding that there was delay in furnishing 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 of the RTI Act.

4. In view of the said order dated 07/1/2020 the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 16/01/2020. In pursuant to showcause notice then PIO, Shri Rajesh Ajgaonkar appeared and filed his reply on 24/1/2020 alongwith the enclosure and submitted to consider his reply as his arguments.
6. It is the contention of the Respondent PIO that he was not the custodian of records and the files of the office of Mamlatdar at Pernem. It was further contented 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 directions to the dealing hand Mr. Damodar Morjkar, UDC to furnish the information to the complainant and also issued memorandum to concerned dealing hand to trace out the file and provide the information to the Complainant.

7. It was further contended that the concerned dealing hand submitted that information is not available and accordingly the complainant was informed
8. 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 that they are in process of searching the file pertaining to information sought by the Complainant and after search the relevant file is traced, the Respondent will furnish the complainant the desire information, the first appellate authority was pleased to pass order directing him to furnish the information and in support of this contention he relied upon the copy of the order passed by the FAA .
9. 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.
10. 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 .

11. It was further submitted that he was transferred on 13/9/2019 as Chief Officer, Valpoi Municipal council, Sattari-Goa.
12. It was further submitted that he has learnt from the present Mamlatdar of Pernem the file in question has been traced out however, the number appear on the file is different from the file number mentioned by the applicant. It was further submitted that, the said fact could be established from the fact that the documents sought by the applicant vide his application dated 16/5/2007, wherein he has mentioned page numbers of the documents sought by him are placed in the file which is traced by the office of the Mamlatdar Pernem, hence there is no other relief and grievance remained to be addressed of the complaint . The copy of the application dated 16/5/2007 filed by the applicant was also relied upon in support of his above contention.
13. I have gone through the records available in the file, considered the submission made on behalf of the Respondent PIO.
14. The respondent PIO have admitted that he was officiating as PIO when the application was filed by Complainant herein 12/11/2018 and when the order was passed on 3/5/2019 by the First Appellate Authority (FAA) 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. Though the PIO in his reply dated 24/1/2020 at para 2 and 3 have submitted that he had issued direction to dealing hand Mr. Damodar Morajkar, UDC to furnish the information and issued memorandum to concerned dealing hand to trace out the file and concerned dealing hand reported that information not available and accordingly complainant was informed, however

the PIO have not produced any documentary evidence in support of his above contentions neither placed on record letter of having adhere to section 7 of RTI Act.

15. 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 dated 9/1/2019 placed on record by Respondent PIO in complaint proceedings addressed to dealing clerk and the custodian of records shows that it is issued much after the period of 30 days period.
16. The contention of Respondent PIO as stated by him at para 5 that Shri Damodar Morajkar did not bring to his notice the order dated 3/5/2019 is also not supported by an affidavit or the Statement of a concerned person.
17. 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 relied by the Respondent PIO is only after the first hearing before this commission.
18. 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.
19. 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 so also the averments made in the reply by the PIO are also not supported with relevant documents.

20. 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".

21. 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.**"

22. The Hon'ble Gujarat High Court in special civil Application No.8376 of 2010 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. 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. Such a conduct and attitude of Respondent PIO in the present matter appears to be suspicious vis-à-vis the intend of the RTI Act and is not in conformity with the provisions of the RTI Act.
24. 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.
25. If the correct and timely information was provided to complainant it would have saved valuable time and hardship caused to the complainant 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.
26. Considering the above conduct, I find that PIO has without reasonable cause repeatedly has failed to furnish 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 Rajesh Ajgaonkar shall pay a amount of Rs.3000/- (Rupees Three Thousand Only) as penalty for contravention of section 7(1), for not complying the order of First appellate authority within stipulated time 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 North Goa.
- iii. Copy of this order should be sent to the Collector, North-Goa District, at Panajim and Director of accounts, North Goa Panajim 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