GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 02 /2020
In
Appeal No.333/2019/SIC-I

Mr. Surendra S. Govekar
R/o H.No.678/5,Soratto Waddo,
Anjuna Bardez Goa. .....Appellant

V/s

1. The Public Information Officer (PIO),
   The Secretary,
   Village Panchayat Anjuna-Caisua,
   Bardez-Goa.

2. The First Appellate Authority,
   The Block Development Officer Bardez,
   Mapusa, Bardez –Goa. .....Respondents

CORAM: Ms. Pratima K. Vernekar**,** State Information Commissioner

Decided on: 09/03/2020

ORDER

1. The penalty proceedings have been initiated against the Respondent under section 20(1) and or 20(2) of RTI Act, 2005 for 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 27/1/2020. 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 20/7/2019 interms of section 6(1)seeking certain information from the Respondent No.1 Public Information Officer of Village Panchayat of Anjuna-Caisua, on 3 points pertaining to form 7 Assessment Register and Form 8 Demand & Collection register for the period from 1/1/2014 till 28/7/2019 so also for inspection of the concerned

subject file /Diary/inward outward register, Receipt books and registers. The said application was responded on 13/8/2019 by Respondent PIO in terms of section 7(1) of RTI Act wherein his request was rejected on the pretext that the information sought by him is voluminous in nature and the same will further disproportionately divert the resources of the public authority and also will be detrimental to the safety and preservation of the public records. As no information was furnished to the Appellant as such he being aggrieved by the said action of PIO, preferred the first appeal on 21/8/2019 interms of sections of section 19(1) of RTI Act, 2005 and the First Appellate Authority vide ordered dated 9/10/2019 allowed the appeal filed by the Appellant and directed Respondent PIO to allow for inspection of the files/documents and to furnish the complete information to the Appellant within 10 days from the date of the order. The Appellant despite of approaching the Respondent on several occasion did not 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 25/11/2019 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 furnish the information to the Appellant. The inspection was carried by the Appellant on 21/1/2020.The Appellant during the hearing on 27/1/2020 submitted that PIO till date have not furnished the

information despite of the visiting the Panchayat and identifying the documents and despite of bring the said fact to the notice of the PIO vide his letter dated 21/1/2020. No reply came to be filed by Respondent PIO neither any information was furnished by the Respondent No. 1 PIO to the Appellant despite of granting ample opportunities. This Commission vide order dated 27/1/2020 while disposing the Appeal No.333/2019 directed the Respondent PIO furnish the complete and correct information as sought by him at point no 1 and 2 vide his application dated 27/7/2019 free of cost within 20 days from the date of the receipt of the order and also came to the prima-facie finding that the order of First Appellate Authority was not complied by Respondent and 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.

4. In view of the said order dated 27/1/2020 the proceedings stood converted into penalty proceeding.

5. Accordingly Showcause notice was issued to PIO on 3/1/2020. In pursuant to said notice Showcause notice PIO Shri Dharmendra Govekar appeared on 11/2/2020 and sought time . He was also represented by Advocate Kapil Kerkar on some of the hearings .

6. No reply to the show cause notice came to be filed by Respondent PIO despite of giving ample opportunities

7. Since the Respondent PIO failed to appear neither filed any reply hence this Commission had no any option then to pass the order based on records available in the file .

8. On perusal of the reply of Respondent PIO dated 13/8/2019 given in the terms of section 7(1) of RTI Act, it appears that the same is given in very causal manner. Vide said reply information has been denied on one of the ground that information sought is voluminous in nature and it would divert the resources of Public Authority.

9. 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 has 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".

10. Assuming for a while that information sought by the Appellant is voluminous in nature. However in view of the ratio laid down by the Hon'ble High Court of Punjab in Dalbir Singh case (Supra), the PIO could have sought extension of time to supply the information.

11. Further on perusing the RTI application of the Appellant dated 20/7/2019, the Appellant had sought for inspection of records at item no.3. The same could have been very well offered by the Respondent PIO at the initial stage itself which was denied by the Respondent.

12. In the contest of section 7(9) of RTI Act, The Hon'ble High Court of Kerela in Writ Petition No.6532 of 2006 Treesa Irish

V/s The Central Public Information officer and others has observed and held

> "In fact there is no provision in the Act to deny information on the ground that the supply of the information would disproportionately divert the resources of the public authority".

13. In view of the ratios laid down by the above Hon'ble Courts the out rightly rejection/ denial of information by the Respondent PIO to the Appellant was not in accordance with law.

14. From the records, it reveals that even during the First Appellate Authority stage no information was provided to the Appellant herein. On perusal of the order of Respondent no.2 First Appellate Authority, it is seen that the Respondent no.1 PIO was directed to provide the inspection and to provide complete information to the Appellant within 10 days from the date of the order.

15. On perusal of the records, more particularly the judgment and order of the Respondent No.2 First Appellate Authority dated 9/10/2019, it is seen that the order was passed after hearing both the parties as such the Respondent PIO was well aware of the direction issued to him by Respondent No.2 First Appellate Authority. It appears that the order dated 9/10/2019 of First Appellate Authority was not complied by the Respondent PIO.

16. The records show that the said inspection was only offered by Respondent PIO to the Appellant during the second appeal proceedings and the date for inspection was then mutually fixed by both the parties on 21/1/2020, accordingly the same was carried by the Appellant on 21/1/2020.Despite of the letter of the Appellant dated 21/1/2020 which was inwarded vide entry no. 4907 no information came to be furnished to the Appellant until the order dated 27/1/2020 was passed by this

Commission directing Appellant to furnish the information Apparently from the above conduct of Respondent PIO one could gathered that the order of First Appellate Authority was not complied by the Respondent PIO and no information was furnished to the Appellant

17. The PIO also failed to show vis-a-vis any supporting documents as to how and why the delay in complying the order of First Appellate Authority and not furnishing the complete information was not deliberate and/or not intentional.

18. The RTI Act is enacted to provide fast relief to the information seeker and as such time limit is fix to provide the information within 30 days and to dispose the first appeal maximum within 45 days. The information was sought somewhere on 20/7/2019 and till date of passing of the order by this commission the information was not furnished to the Appellant. There is delay in furnishing information and the Respondent has not acted in conformity with the provisions of RTI Act, 2005.

19. 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".

20. 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."**

21. 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."

22. The Hon'ble Bombay High Court 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.

23. 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"

24. 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. 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.

25. 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.

26. 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 Appellant has suffered lots of harassment and mental torture in seeking the information under the RTI Act which is denied to him. If the PIO has given prompt and correct information such harassment and detriment could have been avoided.

27. 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 Dharmendra Govekar shall pay a amount of Rs.4000/-(Rupees Four Thousand Only) as penalty for not complying the order of First Appellate Authority toto within stipulated time as directed by the First Appellate Authority and for delay 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 Director of Panchayat at Panaji-Goa and Director of Accounts, North-Goa at 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