

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty 49/2019

In

Appeal No.101/2018/SIC-I

Suresh Gopal Vengurlekar,
R/o. Royal Plaza Building,
Ground Floor, Opp. Allahabad Bank,
Vasco da Gama, Goa-403 802.

.....Appellant

V/s

1. Ulka Bandekar, Asst. Registrar of
Co-operative Society/ PIO,
O/o. the Assistant Registrar of Cooperative Society,
South Zone, 3rd floor,
Gomant Vidhya Niketan Building,
Margao-Goa 403601
2. H. S. Gawade,
Asst. Registrar of Cooperative Society/
Public Information Officer (PIO),
O/o. the Asst. Registrar of Cooperative Society,
Govt. of Goa, South Zone, 3rd floor,
Gomant Vidhya Niketan Building,
Margao-Goa 403601.
3. Registrar of Cooperative Society/
First Appellate Authority (FAA),
O/o. the Registrar of Cooperative Society,
Govt. of Goa, Sahakar Sankul, 4th & 5th floor
EDC Complex, Panaji-Goa 403001Respondents

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

Decided on: 20/1/2020

ORDER

1. The penalty proceedings have been initiated against the then Public Information Officer Shri H.S.Gawade under section 20(1) and or 20(2) of RTI Act, 2005 for not complying the order of First appellate authority (FAA) in toto and delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 12/12/2019. 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 Shri Suresh G. Vengurlekar on 22/12/2017 and on 5/1/2018 to the PIO of Office of Registrar Co-operative Housing Society, South Zone at Margao-Goa for information pertaining to the Mahima Vastu Housing Co-operative Society Ltd(Registered NO. HSG(b) 480/south Goa/4) situated at Alto Dabolim, Mormugao-Goa pertaining to the period from January 2004 till the date of application. As no complete information was furnished to him vide/under letter dated 10/1/2018 by the PIO, the first appeal was filed by the appellant on 12/2/2018 and the First Appellate Authority (FAA) vide a common order dated 9/3/2018 allowed the appeal filed by the appellant and directed Respondent PIO to furnish the information as sought by the appellant vide his application dated 22/12/2017 within 8 days so also to provide the information as sought by the appellant vide application dated 5/1/2018 within 3 days on payment of required fees. Despite of depositing the fees, the said order of first appellate authority dated 9/3/2018 was not complied by the Respondent PIO within time as specified in the said order and whatever information was furnished was incomplete, as such being aggrieved by the action of respondent PIO and as no complete information was received by him, the appellant approached this Commission by way of second appeal as contemplated u/s 19(3) 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 second appeal he had sought for directions for providing him correct and complete information and also for invoking penal provisions.
- 4 After hearing the parties, the Commission vide order dated 12/12/2019 allowed the appeal of the appellant bearing No.101/2018/SIC-I and directed PIO to furnish to the appellant i.e the name of the Chartered Accountant to do the Audit of Accounts of Mahima Vastu Housing Society Ltd., and to furnish the copy of the

order issued to the said chartered accountant by public authority concerned herein to conduct the said audit, so also the respondent PIO was directed to give the name of the managing Director of the Society or clarification to that effect as available on the records of the public authority within 20 days from the date of the receipt of the order. While disposing the Appeal No. 101/2018 Commission also came to the prima-facie finding that there was delay in furnishing information and the order of the first appellate authority was not complied in toto and hence directed to issue showcause notice to the Respondent PIO.

5. In view of the said order dated 12/12/2019, the proceedings stood converted into penalty proceeding.
6. Accordingly showcause notice was issued to then PIO on 17/12/2019. In pursuant to showcause notice, then PIO Shri H.S.Gawade appeared and filed his reply to showcause notice on 10/1/2020 and submitted to consider his reply as his arguments.
7. I have considered the records available in the file and also submission of the parties.
8. For the purpose of considering such liability as contemplated u/s 20(1) and 20(2) of the RTI Act 2005:-

The Hon'ble High court of Bombay, Goa bench at Panaji in writ petition No.205/2007; Shri A A Parulekar v/s Goa State information commission has observed

"The order of penalty for failure to akin action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate."

9. In the back ground of above ratio as laid down by the Hon'ble Bombay High Court, the point arises for my determination is
 - a) Whether the delay in furnishing information and non compliance of the order of first authority within stipulated time as directed by first appellate authority was deliberate and or intentionally?

10. The PIO submitted that the charge of then PIO Smt. Ulka Bandekar was given to him for a limited period and he has taken the charge of the duties with effect from 5/2/2018 (B.N.) and he was relieved from the said charge and handed over the charge back vide letter dated 28/3/2018 and in support of his said contention he relied upon letters dated 5/2/2018 and letter dated 28/3/2018 both addressed to the Registrar of Co-operative Societies Panajim- Goa by him.
11. The Respondent PIO have fairly admitted of having officiating as PIO during the proceedings before the first appellate authority and when the order was passed by the first appellate authority. However it is his case that it was not intentional. He submitted that in pursuant to the order of the first appellate authority, since the said information was not available with him, he vide his letter dated 9/3/2018 called upon the Chairman of the Mahima Co-operative Vastu Society Ltd. to furnish the information on or before 12/3/2018 by 5.00 pm. and the information requested by him was received from the society on 12/3/2018 by letter dated 10/3/2018 and thereafter information was provided to the appellant by him within 3 days vide his letter dated 15/3/2018 and in support of his said contention, he relied upon letter dated 9/3/2018 addressed by him to the Chairmen of the said Society and the reply of the said society dated 10/3/2018 so also the letter dated 15/3/2018 addressed to the appellant by him furnishing the information.
12. It was further submitted that the notice was issued upon misunderstanding caused due to the fact that above letters and reply dated 25/6/2018 and 13/8/2018 which was submitted to the Hon'ble Commission has not been taken into account.
13. In the Nutshell it is the case of above respondent PIO that he has provided information as received by him to the appellant

within time limit fixed by the first appellate authority and as such there is no lapses nor delay caused by him on his part.

14. Even though the information ought to be available as per the provision of the Goa Societies Act, the PIO is only duty bound to furnish the information as available and as exists on the records of the public authority. On the perusal of the order dated 9/3/2018 of the first appellate authority it could be gathered that the respondent PIO have submitted before him that the same could not be furnished on account of non availability of such information on their official records and as such the first appellate authority had directed PIO to supply the said information pertaining to application dated 22/12/2017 by arranging the same from which ever agency within 8 days .
15. From the letter produced on records dated 9/3/2018 it is seen that the said was made very promptly on same day after the order was passed by the first appellate authority. In the said letter the respondent PIO had also submitted what was the information was required to be submitted to him in pursuant to the said order and the chairman was directed to furnish the said information on or before 12/3/2018 by 5.00 Pm.
16. On perusing the Xerox copy of letter dated 10/3/2018 submitted by the chairman of the said society to the Assistant Registrar Co-operative Society at Margao in pursuant to the above letter dated 9/3/2018, one could gathered from the inward stamp fixed on the same, that was received by office of PIO on 12/3/2018 .
17. No sooner the Information is received by the respondent from the said co-operative society, the available information was submitted to the appellant within three days i.e on 15/3/2018 and only the information i.e the copies of audit report could not be furnished since the same was not submitted in the office of Respondent as they were under auditing and finalization. Hence the order

of the first appellate authority pertaining to application dated 22/12/2017 was complied within time. Even though the part of the order pertaining to the information pertaining to RTI Application dated 5/1/2018 was not complied within time, however there is nothing on record to show that the same was done intentionally and deliberately. The records produced by the respondent PIO shows that he has promptly taken steps in securing the information from the said society and further bonafids have been shown by him in intimating the appellant very promptly vide letter dated 15/3/2018. From the records produced by the Respondent PIO, it appears that he had made all efforts to secure the said information from the said society and there was no denial of information from his side .

18. The Delhi High Court in writ petition (C)11271/09; Registrar of Companies and Others V/s Dharmendra Kumar Gard and Another's has held that ;

“The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e. where the PIO without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. **If the CIC starts imposing penalty on the PIO's in every other case, without any justification , it would instill a sense of constant apprehension in those functioning as PIOs in he public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity.** Such consequences would not auger

well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

19. In Writ petition No. 6504 of 2009 State of Punjab and others V/s State Information Commissioner, Punjab and another, the Hon’ble court held;

“The penalty provisions under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. **It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not.** There had been a delay of year and if there was a superintendent, who was prodding the public information officer to act, that itself should be seen a circumstance where the government authorities seemed reasonably aware of the compulsions of time and the imperatives of providing information without any delay. The 2nd respondent has got what he has wanted and if there was a delay, the delay was for reasons explained above which I accept as justified.”

20. Yet in another decision, Ramesh Sharma and others v/s the State Commission reported in AIR 2008 Punjab & Haryana at page 126 others, the Hon’ble High Court of Punjab and Haryana, decided on 8/2/2008, it has been held;

“if the information is not furnished within the time specified by sub section(1)of section 7 of the Act

then under sub section(1)of section 20,Public authority failing in furnishing the requisite information could be penalised. ***It has further held that it is true that in case of intentional delay, the same provision could be invoke but in cases were there is simple delay the commission had been clothed with adequate Powers".***

21. Hence according to the said judgment penalty u/s (1) and (2) of the section 20 could be imposed only in the case where there is repeated failure to furnish the information and that too without any reasonable cause . The PIO have tried to justify the reasons.
22. By considering the above ratios laid down by various High Courts, and since the explanation given by the PIO is supported by the documentary evidence, the same appears to be convincing and probable as such I hold that there are no grounds to hold that information was *intentionally and deliberately* not provided to appellant by the PIO.
23. In the above circumstances and as discussed above, I am of the opinion that the levy of penalty is not warranted in the facts of the present case.

Proceedings stands closed.

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.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

