

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 50 /2019

In

Appeal No.157/2019/SIC-I

Mr. Pradeep Gurudas Gaonkar,
H.no.1440/1,
Baynem Shiroda Ponda Goa.
403103.

.....Appellant

V/s

1. Public Information Officer,
(Technical Section),
Executive Engineer, Surendra Gaonkar,
South Goa Zilla Panchayat Margao,
Margao-Goa.
403601
2. The First Appellate Authority,
Chief Executive Officer,
Florina Colaco,
South Goa Zilla Panchayat Margao,
Margao-Goa.
403601.

....Respondents

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

Decided on: 21/02/2020

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, and delay in furnishing the information.
2. The full details of the case are mentioned in the main order dated 23/12/2019. 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 on 18/12/2018 interms of section 6(1) for information on 20 points including inspection of the records to the Respondent PIO of South-Goa, Zilla Panchayat office at Margao pertaining to Jr. Engineer Frankin Barboza, South Goa Zilla Panchayat from the date of his appointment till

the date of his application .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 as such he being aggrieved by the said action of PIO, preferred the first appeal on 28/1/2019 and the FAA vide order dated 5/3/2019 allowed the appeal filed by the appellant and directed Respondent PIO to furnish the complete and proper information to the appellant within a period of 8 days from the date of the order . The appellant despite of approaching the respondent on several occasion did not furnished him the information within stipulated time as was directed by the First appellate authority. The respondent PIO in compliance to the order of first appellate authority vide his letter dated 4/4/2019 again provided incomplete information to the appellant as such the appellant approached this Commission 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. The information was furnished to the appellant on 20/8/2019 by PIO vide letter dated 19/8/2019. The appellant vide his written synopsis dated 12/12/2019 placed before this commission what was the information not provided to him. Reply was filed by respondent No. 1 PIO on 23/12/2019 alongwith the enclosures. After hearing both the parties, the Commission vide order dated 23/12/2019 while disposing the Appeal No. 157/2019 came to the prima-facie finding that there was contravention of section 7(1) of RTI Act 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 of the RTI Act.

4. In view of the said order dated 23/12/2019 the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 03/12/2019. In pursuant to showcause notice PIO, Shri Surendra Gaonkar was present alongwith Advocate V.V. Pednekar and filed his reply to showcause notice on 10/2/2020 alongwith the enclosure.
6. Arguments were advanced by Advocate V.V. Pednekar on behalf of respondent PIO.
7. It was submitted that by virtue of his appointment/ additional charge as Executive Engineer of South-Goa, Zilla Panchayat at Margao, he was appointed as PIO with effect from 14/12/2015. It was further submitted that since his main duties were in other Department and as such he was visiting the office of Public authority concerned herein for a single day at a week . It was further submitted that on the receipt of the application after due verification of the contents of the information sought for , he instructed dealing hand to process the application and to put up the file in questions for necessary action and since the information sought is also relating to Administration Department and Account Department beside Technical Department, he instructed dealing hand to seek information from the other departments also so that the entire information sought under serial No.1 to 20 can be furnished to the appellant . It was further submitted that the concerned staff who were attending the said work in question envisaged difficulty in understanding the contents of the application since that were vague and not clear and more related to functioning details of specific employee as such the said application was referred back to the concerned higher officers for necessary suggestion or clarifications . It was further submitted that during the processing/tracing and

compilation of the information in question the appellant moved before the First appellate authority and as per the direction of the FAA has furnished the information to the appellant vide letter dated 26/2/2019 and again vide letter dated 4/4/2019 of compliance of the order and in support of his contention he relied upon the letter dated 26/2/2019 and 4/4/2019. It was further submitted that while hearing before this commission upon the direction of this commission, the inspection of the file in question were carried out by the appellant and the concerned dealing staff/Jr. Engineer had submitted his report dated 2/7/2019 of appellant having carried the inspection on 1/7/2019 and in support of his case he relied upon said letter. It was further submitted that as per the direction of this commission the PIO supplied the information to the appellant vide letter dated 27/9/2019 and since the appellant is not satisfied with the information he specifically instructed the dealing hand to work with extra time and ensure furnishing the information and he made every efforts to comply through his dealing hand and the same has been furnished to the appellant vide letter dated 31/12/2019, and support of his above contention he relied upon letter dated 27/9/2019 and letter dated 31/12/2019.

8. It was further submitted that he has carried out the duty with full responsibility in bonafides and obedient manner in order to provide the required information as sought by the appellant but was unable to supply the full information since that were not available at that relevant time in the records of the office of South-Goa, Zilla Panchayat at Margao. It was further submitted that he was also officiating as PIO for Mormugao council, Mapusa Municipal council, Margao Municipal Council and Goa State Urban Development Agency and there is no any case against him as denial of information to the public under the RTI Act.

9. It was further submitted that he has already complied with the direction of this Hon'ble Commission and vide letter dated 31/12/2019 provide the information to the appellant after due compilation based on the information/data available on records of the public authority .
10. It was further submitted that more time was taken by the dealing hand to trace the record/information and compile the same catering to the need of the appellant in the interest of public .
11. It was further submitted that there was no any malafide intention of whatsoever nature to furnish incomplete, misleading or denial of information as alleged by appellant in the appeal memo and the delay if any occurred in responding the application or furnishing the information was on account of he being pre-occupied in other Department and also communication gap of dealing hand to whom the work was entrusted.
12. I have gone through the records available in the file, considered the submission made on behalf of the Respondent PIO.
13. The respondent PIO have admitted that he was officiating as PIO when the application was filed by appellant herein 18/12/2018 and when the order was passed on 5/3/2019 by the First Appellate Authority (FAA). It is seen from the inward stamp affixed on the said application that the RTI application was received by the office of respondent on 18/12/2018. 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 10/2/2020 at para 4 and 5 have submitted that he had issued direction to dealing hand to furnish the information, however the PIO have not produced any documentary evidence of seeking assistance of said dealing hand on record in support of his above contentions neither placed on record letter of having adhere to section 7 of

RTI Act. Thus from the undisputed and unrebutted facts I find that the respondent PIO had not acted in conformity with the provisions of section 7(1) of RTI Act, 2005.

14. From the records, it reveals that even during the FAA stage no complete information was provided to the appellant herein and the said fact is reflected in the order dated 05/03/2019 passed by the Respondent no.2. FAA On perusal of the order of Respondent no.2, it is seen that the respondent no.1 PIO was directed to furnish the complete, proper information to the appellant with a period of 8 days. Hence the PIO was supposed to furnish the information on or before 15 March 2019. However from the letter 04/04/2019 of the PIO furnishing so called information, it could be gathered that said was not complied within time as directed by FAA so also though the directions were given by FAA to furnish the complete information as sought by the appellant however on going through the said letter dated 4/4/2019, of PIO, it is seen that the information at serial No. 1, 17,18 and 19 were only furnished hence it could be gathered that the order of FAA was not complied in toto
15. Despite of providing the list by the appellant vide written submission dated 12/12/2019, no any information came to be provide to the appellant herein despite of giving ample opportunities to the Respondent PIO to furnish the same. What is sought are the public documents. It is not the case of the PIO that same is not available in the records or weeded out as per procedure. The application was filed by the appellant on 18/12/2018 and even after completing a one year the PIO was seeking time to furnish the same on the ground that it is voluminous. Hence apparently there is a delay in furnishing complete and correct information.
16. 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 furnishing the complete information was not deliberate and/or not intentional.

17. The contention of Respondent PIO as stated by him at para 6 the dealing hand has not reported about the processing the information in time and the submissions made at para 12 that he was unable to supply the full information since they were not available in the record of office of South-Goa, Zilla Panchayat , Margao are also not supported by an affidavit or the Statement of a concerned person/dealing hand .
18. Apparently said dealing hand was subordinate of Respondent PIO 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 dealing hand by him or such a conduct was reported to his higher-ups.
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."

1. 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.

22. 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 intent of the RTI Act and is not in conformity with the provisions of the RTI Act.
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 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.
25. 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 Surendra Gaonkar shall pay a amount of Rs.2000/- (Rupees Two Thousand Only) as penalty for contravention of section 7(1), for not complying the order of First appellate authority in toto 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 South-Goa.
- iii. Copy of this order should be sent to the Chief Executive Officer of South -Goa Zilla Panchayat at Arlem-Raia Salcete-Goa and 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