

GOA STATE INFORMATION COMMISSION

Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 06/2020/SIC-I
In
Appeal No. 109/2019/SIC-I

Shri Vijaykumar Verlekar,
Major of Age, House No. 1028/B,
Candolim, bardez-Goa.

....Appellant

V/s

1)The Public Information Officer (PIO),
Village Panchayat Candolim,
Candolim,Bardez-Goa.

.....Respondents

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

Decided on:03/08/2020

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, and for delay in for furnishing complete information.
2. The full details of the case are mentioned in the main order dated 31/01/2020. 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 20/12/2018 interms of section 6(1) for information on 21 points with respect to structure in the property bearing Survey No.161/8, **Escirivoa** Vaddo, Village Candolim, constructed recently in the year 2018 by Shri Sanjeev Verlekar r/o Escrivao Vaddo, Village Candolim. The said information was sought from Respondent PIO of Village Panchayat Candolim Bardez-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 07/03/2019 before the Respondent no. 2 Block Development Officer-II at Mapusa Goa being First Appellate Authority. During the pendency of the First Appeal the Respondent PIO vide letter dated 20/03/2019 provided only information at point no.8 and with regard to other points it was reported, that "*Panchayat does not maintain records as per survey numbers*". The First Appellate Authority vide order dated 29/03/2019 allowed the said appeal and directed Respondent PIO to allow the Appellant to inspect the records concern in RTI application dated 20/12/2018 within period of 7 days from the dated of receipt of the order and after the inspection the Appellant to apply for the information within 5 day from the last date of inspection and thereafter the Respondent PIO to furnishing the information to the Appellant within 5 days from the date of the applying from the same, accordingly the appellant inspected the records containing few pages said documents which was provided to him by the Respondent PIO and based on the documents given for inspecting by the Respondent he made additional request dated 05/04/2019 and then the Respondent PIO by his reply dated 09/4/2019 bearing No.V.P.C/33/39/2019-20 furnished some information in the form of answer at point no.8,9,16 & 19 to the Appellant. The copy of the Panchanama and the rough sketch both dated 09/11/2018 pertaining to illegal construction carried out by Shri Sanjeev M. Verlekar in survey no. 161/8 of Candolim Village situated at **Escirivoa** Vaddo, Village Candolim was also enclosed to his above reply. As the information provided vide reply dated 09/4/2019 as was contradicting to the earlier reply dated 20/3/2019 given by the Respondent and as Appellant being aggrieved by non furnishing of full and correct information, as such the Appellant approached this Commission on 26/04/2019 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. In the said appeal the Appellant prayed for directions for providing complete and correct information as sought by him at Point No.(1) to (21) except at point no.(19) free of cost and also for invoking penal provisions for inaction on the part of PIO in complying with the provisions of RTI Act. The reply was filed by Respondent PIO on 18/09/2019 and additional reply was also filed on 27/06/2019 by the Respondent PIO before this Commission thereby providing information at point No.9 & 16. The copy of the said replies along with the information was furnished to the Appellant and after hearing both the parties, and the commission taking into consideration all the factors passed a order dated 31/1/2020 directing the Respondent PIO to furnish pointwise complete and correct information as available in the records to the Appellant as sought by him vide his Application dated 20/12/2018 free of cost within 20 days from the date of receipt of order. The commission vide said order while disposing the Appeal No. 109/2019 came to be prima facie finding that the application of the Appellant was not responded interms of section 7(1) of RTI Act within 30 days from the date of the application since no records were produced by the PIO that the same is adhere to and there was delay in furnishing complete and correct information. Hence showcause notice were issued to Respondent PIO as contemplated u/s 20(1) and 20(2) of RTI Act.

4. In view of the said order dated 31/1/2020 the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 6/2/2020. In pursuant to which Respondent PIO Lorence Rebeiro appeared and sought time on may occasions to file reply to showcause notice.
6. In view of lockdown due to covid 19 the matter could not be heard on 3/4/2020 hence fresh showcause notice was issued to

Respondent PIO on 17/6/2020 and the matter was then fixed on 24/6/2020. Despite of due service of showcause notice the Respondent PIO opted to remain absent neither filed any reply to the penalty proceedings even though the option was given to him to file his say in penalty proceedings by Email to the commission in PDF format by forwarding the same to the opposite parties.

7. Seven Opportunities were granted to Respondent PIO to file his say/reply in the penalty proceedings including opportunity of filing his say by Email to the commission. However no any reply/written submissions was filed by Respondent PIO. It appears that he is not interested in contesting the present proceedings and as such this commission presumes and holds that that Respondent PIO has no any say/written submission to be made and does not have any supporting documents/ convincing evidence to show that the delay in furnishing the information was not intentional and deliberate .
8. Since the Respondent opted to remain absent, neither filed any reply, this commission had no any option then to decide the matter based on records available including that of appeal proceedings.
9. The Respondent PIO herein during appeal proceedings have admitted that he was officiating as PIO when the application was filed by the Appellant herein on 20/12/2018 and when the order was passed on 29/3/2019 by the First Appellate Authority. It is seen from the inward stamp affixed on the said application that the RTI application was received by the office of Respondent on the same day which was inwarded vide entry No. 4394. He also during the appeal proceedings in his reply given before this commission has admitted of having not responded the RTI application of the Appellant and submitted the vide his reply dated 22/12/2019 in appeal proceedings that the application

remained pending as the appeal was preferred before the FAA. However on going to the memo of First Appellate authority it is seen that the same was filed on 7/3/2020. Since the RTI application was filed on 20/12/2018 the same ought to have been relied by 20/1/2019. The Respondents PIO have not assigned any reasons for not furnishing the information within 30 days time. Thus from undisputed and unrebutted facts, I find that the Respondent have not acted in the conformity with the provisions of RTI Act 2005.

10. The records also reveals that the information pertaining to point No. 8,9,16 and 19 were furnished to the Appellant after the order of First Appellate Authority vide letter dated 9/4/2019 and the copy of the Panchanama and the sketch was furnished to the Appellant at information at point no. 16
11. On perusing of the answers given/information furnished on 20/3/2019 during the hearing before the First Appellate Authority vis-a-vis the replies given vide letter dated 9/4/2019, in compliance to the order of First Appellate Authority, it is seen that the answers given at point no. 9, at point no. 16 and point no.19 are not consistent with each other. Further on perusal of copy of the panchanama dated 9/11/2018 and the sketch enclosed to the reply of PIO dated 9/4/2019, one could gather that the name of the person i.e Shri Sanjiv M. Verlekar and the Survey Number has been mentioned on the same, hence the contention of the Respondent PIO that panchayat does not maintain records as per survey number does not hold good. Hence it appears that the information which has been initially provided was vague, incorrect and incomplete.
12. PIO did not place on record relevant documents in appeal proceedings supporting his contention neither took any pain in penalty proceedings to substantiate his case. Hence the PIO

herein has failed to show or established vis-à-vis any supporting documents/convincing evidence as to how and why the delay in responding the application and delay in furnishing correct information was not deliberate and intentional but due to the circumstances beyond his control.

13. The RTI Act is enacted to provide fast relief to the information seeker and as such time limit is fixed to provide the information within 30 days and to dispose the first appeal maximum within 45 days .The information was sought somewhere on 20/12/2018 and the complete information was still not provided till the disposal of the second Appeal, hence this commission had directed Respondent to furnish the point wise complete and correct information pertaining to point No. 1 to 21 except point no. 19 to the Appellant as sought by him vide his RTI Application dated 20/12/2018 inwards at entry NO. 4394, free of cost, within 20 days from the date of the order by him. There is delay in furnishing information.
14. 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".

15. 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.**”

16. 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”.

17. 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”

18. 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. The respondent PIO has persistently failed to provide information to the Appellant. 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.
19. 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.
20. 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 of filing of 2nd appeal before this Commission. If the PIO has given prompt and correct information such harassment and detriment could have been avoided.
21. 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 Lorence Rebeiro shall pay a amount of Rs.3000/- (Rupees Three Thousand Only) as penalty for contravention of section 7(1) of RTI Act, and for delaying in furnishing the correct 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 of North-Goa at Panaji-Goa and Director of Accounts, North-Goa 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