

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

Penalty No. 46/2019/SIC-I
In
Complaint No. 44/2019/SIC-I

Shri Sadanand Narvekar,
O/o H.No. 7/25,
Near Beiramar Oliva Resort, Sautavaddo,
Calangute, Bardez-Goa.

....Complainant

V/s

- 1) The Public Information Officer,
Mamlatdar of Bardez,
Government Office Complex,
Bardez, Mapusa-Goa.
- 2) First Appellate Authority,
Deputy Collector & SDO, Bardez,
Government Office Complex,
Bardez, Mapusa-Goa,

.....Respondents

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

Decided on: 19/02/2020

ORDER

1. The penalty proceedings have been initiated against the Respondent No. 1 Public Information Officer (PIO) under section 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 28/11/2019. However, the facts are reiterated in brief in order to appreciate the matter in its proper prospective.
3. A request was made by the complainant on 31/1/2019 in terms of section 6 of RTI Act, 2005 to the Public Information Officer (PIO) of Mamlatdar of Bardez, Mapusa-Goa for certain information on 4 points listed therein pertaining to the complaint dated 7/1/2019 filed by the complainant in the office

of Mamlatdar of Bardez at Mapusa, Bardez-Goa. Since no any reply was sent to complainant in a statutory period of 30 days and as no any information was furnished to him by the PIO, the first appeal was filed by the complainant before the Deputy collector & S.D.O., Bardez being First Appellate Authority (FAA) and the First Appellate Authority (FAA) ignored to pass any order on his first appeal within 30 days as such being aggrieved by the action of respondent PIO and of first appellate authority and as no information was received by him, the complainant approached this Commission on 2/7/2019 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. In the said complaint he had sought for inquiry and for invoking penal provisions against Respondents. After hearing the parties, while disposing the Complaint bearing No. 44/2019 Commission came to the prima-facie finding that there was delay in furnishing information and contraventions of RTI provisions 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 show cause notice to the Respondent PIO.

4. In view of the said order dated 28/11/2019, the proceedings stood converted into penalty proceeding.
5. Accordingly showcause notice was issued to PIO on 6/12/2019. In pursuant to show cause notice, PIO Shri Laxmikant Kuttikar appeared and file his reply to showcause notice on 16/12/2019 and affidavits on 7/1/2020 and on 7/2/2020 alongwith enclosures .Affidavit of dealing hand namely Shri Ashok G. Naik was also filed during the proceedings.

6. Written arguments were submitted by the complainant with the registry of this commission which was inwards vide entry No. 134 dated 23/1/2020 praying that the showcause issued to PIO Shri laxmikant Kuttikar may be withdrawn .
7. I have considered the records available in the file and also submission of the PIO namely Shri. Laxmikant Kuttikar .
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 was deliberate and intentionally?
10. The Respondent PIO Shri Laxmikant Kuttikar vide his affidavits have admitted of having received the application of the complainant on 31/1/2019 under Right to Information Act. The PIO fairly admitted delay in responding the same. However it is his case that it was not intentional. Vide affidavit he submitted that the RTI application was forwarded to dealing hand/clerk Smt. Sarita M. Morajkar on 1/2/2019 who submitted her report on 12/2/2019 however due to the inadvertence the RTI clerk failed to intimate the complainant about the same as the RTI clerk was busy with the oncoming election duty . It was further

submitted that he issued showcause notice to then dealing clerk to Shri Ashok G. Naik on 11/12/2019 which was duly replied by said dealing clerk on 12/12/2019 and in support of his case he relied upon the showcause notice dated 11/12/2019 ,the reply given by dealing clerk Shri Ashok G.Naik dated 12/12/2019 the office order dated 8/3/2019 issued by Mamlatdar of Bardez allotting the election duties to the dealing hand Shri Ashok G. Naik.

11. The PIO further contended that due to the Lok Sabha election 2019 and due to the bye elections for Mapusa Assembly constituency scheduled on 23/4/2019 and the counting scheduled on 23/05/2019, the entire focus and concentration since September 2018 was on speedy completion of election preparation work such as preparation of Electoral roll, Polling stations, AMF at the poling station, training of Officers and Staff, law and order monitoring, transport facilities etc. He further contended that the election work is time bound as reports are sought on day to day basis and that he got completely tide up with all activities concerning elections and in support of his case he relied upon letter dated 4/1/2019 issued by office of the Chief Electoral officer, Altinho Panaji-Goa, the schedule of special summary revision, the memorandum dated 5/2/2019 alongwith annexure-I issued by Addl. Collector-II North Goa District to the Mamlatdar of Bardez Taluka to collect the sets of EVM/VVPAT to be kept in the VFC centre for public demonstration and the guidelines dated 19/2/2019 issued by election commission of India.
12. It was further contended that besides the election duties he was also assigned the court matters and the law and order and the inspection were also required to be conducted in time bound manner etc. and hence he could not furnish the desired

information to the complainant in the time limit prescribed under the RTI Act.

13. It was further submitted that he had also written to the complainant to remain present in the office during office hours in order to redress complainant's grievance but the complainant failed to remain present and in support of his contention he relied upon letter dated 6/2/2019 addressed by him to the complainant .
14. The PIO also placed on record the affidavit of dealing hand Shri Ashok G. Naik in support of his above contention and sought for a lenient view in the above proceedings.
15. Hence in the nutshell it is the case of the Respondent PIO that there was no willful intention on his part to refuse the information and the delay if any was on account of the lethargic attitude of the dealing hand and on account of above additional duties including election duties.
16. The controversy which has arisen here is whether the respondent PIO is liable for action as contemplated under section 20(2) of RTI Act 2005 and whether the delay in furnishing information was deliberate and intentional
17. In writ petition No. 2730 of 2013, in case of Narendra Kumar V/s the Chief Information Commissioner Uttarakhand, reported in AIR 2014 Uttarakhand page 40 Hon'ble High Court has held ;

“Information could not be supplied before his transfer for the reasons that entire staff was engaged in the collection of data and preparations of Voters identity Card under order of Collector and was busy with rescue work

after natural Calamities seems to be a reasonable ground for non supplying the information within time.”

“Imposition of penalty on hyper technical ground that information was not supplied within 30 days seems to be totally unjustified and arbitrary”.

18. The Hon’ble High Court of Bombay at Goa in writ petition No. 303 of 2011, Johnson Fernandes V/s Goa State information Commission has held :

“ Staff was busy in election to Zilla Panchayat 2010 in the month of February and thereafter in the work of 1st phase of census operation which was conducted soon after the bye-election to Zilla Panchayat in may 2010. Dealing hand was also was not conversant with matter and hence penalty ought not to have been levied “.

19. On perusal of the RTI application dated 31/1/2019, which is at annexure(A) enclosed to the affidavit filed on 7/1/2020 it is seen that there is a endorsement of having sought assistance of Head clerk on 1/2/2019 and had instructed him to furnish the information within 5 days. Hence the Respondent no. 1 PIO have promptly and diligently acted on the said RTI application of the complainant. The dealing clerk have also admitted since he was busy with election work, he was not able to send the reply to the complainant within stipulated time and the same could not be also furnished to the complainant during the first appeal as the first appeal was not being heard by the First appellate authority on account of election work.

20. Since the PIO's herein and the dealing hand were also assigned with the work of bye elections etc, hence the ratio laid down in Narandra Kumar (Supra) and in Johnson Fernandes (Supra) are applicable to the facts of the present proceedings.
21. Yet in another case, 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 the 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."

22. 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."

23. 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".

24. 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. Even though there is lapse on the part of PIO is not responding the said application within stipulated time of 30 days, and delay in furnishing information nevertheless the PIO have tried to justify the reasons for not responding or not providing the information within 30 days time and also in delay in furnishing information.
25. 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.
26. 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.

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