

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Complaint No. 40/2023/SIC

Shri. Ramesh S. Kerkar,
R/o. Saligao, Muddawaddo,
Bardez-Goa.

-----Complainant

v/s

1. The First Appellate Authority,
Block Development Officer,
Mapusa-Goa.

2. Mr. Ashok Naik,
The Public Information Officer,
Village Panchayat Secretary,
Village Panchayat of Saligao,
Bardez-Goa.

-----Opponents

Relevant dates emerging from appeal:

RTI application filed on	: 03/07/2023
PIO replied on	: Nil
First appeal filed on	: 04/08/2023
First Appellate Authority order passed on	: 04/09/2023
Complaint received on	: 29/09/2023
Decided on	: 27/02/2024

ORDER

1. The brief facts of the present complaint filed by the complainant are that, the complainant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act'), had sought certain information. Since no information was furnished by Opponent No. 2, Public Information Officer (PIO), the complainant filed first appeal before Opponent No. 1, First Appellate Authority (FAA). The FAA, while disposing the appeal, directed the PIO to provide inspection of relevant documents and furnish the information to the complainant.
2. It is the contention of the complainant that, neither inspection was provided, nor any information was furnished by the PIO, inspite of the direction by the FAA. Being aggrieved, he has appeared before the Commission by way of the present complaint.
3. The concerned parties were notified and the matter was taken up for hearing. Pursuant to the notice, Shri. Akash Naik, Village Panchayat Secretary (HQ) appeared on behalf of the FAA, under authority and on 28/11/2023, filed reply. Shri. Ashok Naik, PIO initially remained

absent, later appeared in person and undertook to file reply, however, filed no reply before the Commission. Ms. Natasha R. Kerkar appeared on behalf of the complainant under letter of authority and argued for complete information and penal action against the PIO.

4. Complainant stated that, the PIO has deliberately refused to furnish the information sought by him. The PIO did not respond within the stipulated period, thereafter requested another month time to furnish the information. Subsequently, appellate authority directed the PIO to provide inspection and information. Yet, the PIO took no action to comply with the direction.
5. FAA submitted that, the first appeal received under Section 19 (1) of the Act was heard and disposed as provided by law, with directions to the PIO to provide inspection of the requested record and furnish the required information as desired by the complainant.
6. Upon perusal of the records of the instant matter, it is seen that the complainant is primarily aggrieved by no response and no compliance of the provisions of the law by the PIO, which ultimately has resulted into non-receipt of the information, desired by the applicant.
7. It is seen that the PIO initially failed to furnish any information within the stipulated period of 30 days. Later, failed to comply with the direction of the FAA. Further, Shri. Ashok Naik, PIO, though remained absent for the initial proceeding of the present complaint, later on 16/01/2024 appeared and undertook to file reply. Then again on 31/01/2024, he requested the Commission for one more opportunity to file reply. The opportunity was granted and the PIO was directed to file reply on the next date of hearing, i.e. 22/02/2024. The Commission is astonished to note that, the PIO in spite of his undertaking, failed to appear before the Commission and file reply.
8. Meaning, the PIO neither furnished information to the complaint, nor complied with the direction of the FAA. Further, the PIO failed to fulfil his own undertaking before the Commission. The PIO with such conduct has shown complete disrespect to the provisions of the Act and also towards the authorities constituted under the Act. What is even more serious is the fact that the PIO during the entire proceeding, has offered no explanation for his failure, even after getting multiple opportunities.

9. Thus, the Commission holds that such an irresponsible and arrogant conduct on the part of the PIO is not at all acceptable and the erring PIO is required to be punished as provided by law.
10. 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".*
11. The Hon'ble High Court of Delhi in Writ Petition (c) 3845/2007; Mujibur Rehman V/s Central Information Commission, while mentioning 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 limit 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."*
12. Subscribing to the ratio laid down by the Hon'ble High Courts as mentioned above and in the background of the findings of the Commission, it is concluded that, the PIO is guilty of contravention of Section 7 (1) of the Act, for not furnishing the information to the applicant. Also, the PIO is held guilty of not adhering to the direction of the FAA and not offering any explanation to justify his action, as required under Section 19 (5) of the Act. Hence, penal action under Section 20 of the Act is required to be initiated against the guilty PIO. However, before imposing such penalty, the PIO will be given a hearing to explain why penalty under Section 20 of the Act should not be imposed against him.
13. The complainant, while praying for penal action against the PIO, has also requested the Commission to direct the opponent PIO to furnish the information sought by him. However, the Commission holds that the present proceeding, being a complaint, this Commission has no jurisdiction to direct the PIO to furnish any information under Section 18 of the Act.

14. Hon'ble Supreme Court, in Chief Information Commissioner and Another v/s. State of Manipur and Another (Civil Appeal No. 10787-10788 of 2011), while dealing with similar facts has held at Para 35:-

"35 Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."

The Hon'ble Apex Court has elaborated these observations further in Para 37:-

"37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other."

15. In the light of above discussion, the present complaint is disposed with the following order:-
- a) The prayer for directions to the PIO to furnish the information is rejected.
 - b) Issue Show Cause Notice to Shri. Ashok Naik, PIO, Secretary, Village Panchayat Saligao and the PIO is further directed to

show cause as to why penalty as provided under Section 20 (1) and / or 20 (2) of the Act, should not be imposed against him.

- c) In case the PIO is transferred, the present PIO shall serve this notice alongwith the order to the then PIO and produce the acknowledgment before the Commission on or before the next date of hearing, alongwith the present address of the then PIO.
- d) Shri. Ashok Naik, PIO is hereby directed to remain present before the Commission on 28/03/2024 at 10.30 a.m. alongwith the reply to the Show Cause Notice.
- e) The Registry is directed to initiate penalty proceeding against Shri. Ashok Naik, PIO.

Proceeding of the present appeal 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/-

Sanjay N. Dhavalikar

State Information Commissioner
Goa State Information Commission,
Panaji-Goa.