

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.391 OF 2021

Santana Nazareth

..Petitioner

Versus

State of Goa, thr. Chief Secretary And 2 Ors.

..Respondents

Mr. Sanman R. Keny, Advocate for the Petitioner.

Ms. Maria S. J. Correia, Additional Government Advocate for the Respondents No. 1 and 3.

Mr. V. Rodrigues, Advocate for the Respondent No.2.

**CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

DATED: 30th March 2022

ORAL JUDGMENT (Per, Chief Justice)

The petitioner, invoking the mechanism under the Right to Information Act, 2005 (hereafter the Act for short), presented an application seeking information before the Public Information Officer, respondent no.2, on 29.08.2018. The respondent no.2 did not furnish information within the time stipulated by the Act resulting in institution of a first appeal under section 19(1) of the Act by the petitioner before the first

appellate authority, respondent no.3. Despite an order passed by the respondent no.3, the respondent no.2 caused unnecessary delay in furnishing information to the petitioner. On 09.11.2018, the petitioner approached the Goa State Information Commission with an appeal/a complaint against the respondent no.2, *inter alia*, seeking an order that penalty be imposed on the respondent no.2 for breaching the provisions of the Act as also for causing hardship to the petitioner. The appeal/complaint of the petitioner was disposed of by the Information Commissioner (hereafter the Commissioner for short) by an order dated 06.02.2019. The claim of the petitioner that there was delay in furnishing information by the respondent no.2 was accepted. The Commissioner also found that the petitioner had been made to run from pillar to post whilst pursuing her application for information and if correct and timely information were provided to her, it would have saved valuable time and hardship that she faced. Considering these aspects, the Commissioner imposed penalty of ₹2000/- upon the respondent no.2 for contravention of the provisions of section 7(1) of the Act as well as for not complying with the order of the first appellate authority resulting in delay in furnishing of information to the petitioner. The sum of ₹2000/- was directed to be credited to the Government Treasury at North Goa. It is not in dispute that the respondent

no.2 has since complied with such direction of the Commissioner.

2. Aggrieved by the direction of the Commissioner requiring the respondent no.2 to deposit the penalty of ₹2000/- with the Government Treasury, the writ jurisdiction of this Court has been invoked by the petitioner claiming that the aforesaid direction contained in the order dated 06.02.2019 be suitably altered by directing the Commissioner to make an order requiring the respondent no.2 to pay the sum of ₹2000/- to the petitioner.

3. Mr. S. Keny, learned advocate appearing for the petitioner submits that the Commissioner having recorded a specific finding that hardship was caused to the petitioner, he failed to exercise jurisdiction in not directing payment of the sum of ₹2000/- to the petitioner and misdirected himself in directing the said sum to be credited to the Government Treasury. He has, accordingly, prayed for an order as claimed vide prayer clause (a) of the writ petition.

4. Section 19 of the Act, providing for the procedure for institution of appeals as well as disposal thereof, confers power on the State Information Commission to require the public authority to compensate the complainant for any loss or other detriment

suffered [see section 19(8)(b)]. Power is also conferred to impose any of the penalties provided under the Act [see section 19(8)(c)]. If indeed the Commissioner had, upon recording the relevant findings, arrived at a conclusion that the petitioner had suffered loss or other detriment which ought to be compensated in monetary terms, the Commissioner was free to do so. However, what the Commissioner ordered in the present case after complying with the requirements of Section 20 of the Act is to penalise the respondent no.2 for committing breach of the provisions of the Act. The words “penalty” and “compensation”, having regard to the provisions of the Act, are distinct and different liabilities. While imposition of penalty as in section 19(8)(c) is a punitive action for breach of the mandatory provisions of the Act by the public authority, compensation as in section 19(8)(b) is intended to be provided to the information seeker by the public authority on proof of loss or sufferance of detriment by the former because of negligence, carelessness or recalcitrance of the latter. Merely because the petitioner was found to have suffered hardship did not entitle her to payment of compensation unless a case of loss or sufferance of detriment was specifically set up in the appeal/complaint that was before the Commissioner at her instance.

5. Mr. S. Keny has placed before us the appeal/complaint dated 09.11.2018 of the petitioner wherefrom we find that it was the specific prayer of the petitioner in paragraph 9 thereof to impose penalty on the respondent no.2 for not sharing the required documents as well as for harassment. In the absence of any prayer for compensation and, on the contrary, having prayed for an order that the respondent no.2 be suitably penalised, we fail to comprehend as to how the petitioner can claim the relief as sought for in the writ petition on the ground that the Commissioner misdirected himself in not directing the penalty of ₹2000/- to be paid to the petitioner.

5. We are reminded at this stage of the decision of the Supreme Court in ***Mani Subrat Jain And Others vs State Of Haryana And Ors.***¹. Paragraph 9 of the decision being relevant is quoted below:

'9. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a

¹ 1977 1 SCC 486

legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.'

6. Since no legally protected right of the petitioner capable of being judicially enforced has been infringed in the present case by reason of the Commissioner not providing her compensation in monetary terms, we are of the clear opinion that no relief can be granted to the petitioner particularly having regard to the contents of her appeal/complaint to the Commissioner.

7. The writ petition being devoid of any merit, stands dismissed. No costs.

M. S. SONAK, J.

CHIEF JUSTICE